

SAINT KITTS AND NEVIS

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 7 OF 1993

BETWEEN:

DORA CASEY

APPELLANT

and

EDITH JAMES

RESPONDENT

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice C.M.D. Byron - Justice of Appeal
The Honourable Dr. N.J.O. Liverpool - Justice of Appeal

Appearances: Dr. Henry L. Browne for the Appellant
Mr. Hesketh W. Benjamin for the Respondent

1993: March 22, 23.

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

The appellant filed two complaints against the respondent in the Magistrate's Court District "A". The first (Complaint No. 560 of 1992) was filed on the 28th of August, 1992 and *the* second (Complaint No. 638 of 1992) was filed on the 13th of October, 1992.

On the 6th October, 1992 the learned Magistrate dismissed the first complaint for want of prosecution. On the 1st December, 1992 the learned Magistrate heard the evidence of the appellant on the second complaint and dismissed the second complaint on the grounds that it was previously dismissed and it was an abuse of the process of the Court. The appellant has appealed against the dismissal of the second complaint.

To the extent to which the dismissal of the second complaint is based on "autrefois acquit", the dismissal is erroneous for three reasons: Firstly, since the insulting

language complained of in the first complaint was not specified, there is no proof that the first complaint was the same as the second complaint. Secondly, the first complaint was not tried and adjudicated on its merits. Thirdly, the dismissal of the first complaint was not an acquittal of the offence charged therein or a decision or finding that the respondent was not guilty of that offence.

In this connection, we refer to DPP v. Nasralla (1967) 2 A.E.R. 161 where Lord Devlin (delivering the Judgment of the Privy Council) said (at p. 166):

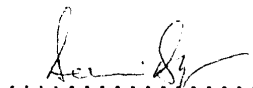
"It is true that the object of the plea of autrefois is to ensure that a man is not placed in double jeopardy. It is true also that as a general rule, i.e. whenever the trial of an offence is concluded as it usually is, it is right to say that the accused must not be put in jeopardy again. But what is essential to the plea of autrefois acquit is proof of a verdict of acquittal of the offence alleged - not proof that the accused was in peril of conviction for that offence".

To the extent to which the dismissal of the second complaint is based on an abuse of the process of the Court, since the second complaint is a first attempt to revive an abortive charge, it cannot be said to be a judicial abuse.

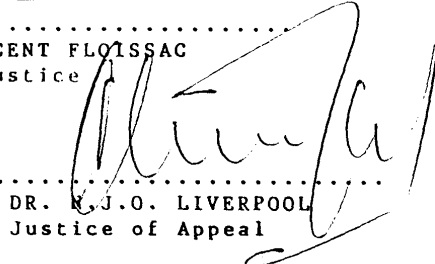
Accordingly, the appeal is allowed and the case is hereby remitted to the learned Magistrate under Section 78 of the Magistrate's Code of Procedure Act (Cap. 46) with a direction to complete and finalise the adjudication of the second complaint on its merits.



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SIR VINCENT FLOISSAC
Chief Justice



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C.M.D. BYRON
Justice of Appeal



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DR. R.J.O. LIVERPOOL
Justice of Appeal