

GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 6 of 1992

BETWEEN:

WILSON GOMEZ

- Appellant

and

THE QUEEN

- Respondent

Before: The Honourable Mr. Dennis Byron, Justice of Appeal -
President
The Honourable Dr. Nicholas Liverpool - Justice of Appeal
The Honourable Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. Anselm Clouden for the Appellant
Dr. Francis Alexis (Attorney-General) and
Mr. Keith Friday (D.P.P.) for the Respondent

1992: November 9;
1993: February 8.

JUDGMENT

LIVERPOOL, J.A.

The appellant was convicted on 2nd July, 1992 for having in his possession a controlled drug on 17th September, 1991 contrary to the provisions of section 7(2) of the Misuse of Drugs Act, No. 39 of 1981. He was sentenced to pay a fine of \$25,000.00 in one year, and to fourteen years imprisonment with hard labour.

He appealed against his conviction and sentence on five grounds, the first of which states: "that the Misuse of Drugs Act to wit; Act 39 of 1981 is not a valid law and consequently my conviction under this law must be quashed". It was agreed on both sides that this ground of appeal should be argued before hearing Counsel for the appellant on the other grounds; since, if it was successful that would have been sufficient to dispose of the appeal. Accordingly the Court proceeded to hear full argument on this ground.

The Misuse of Drugs Law, 1981 (No. 39 of 1981) (the 1981 Law) which was Gazetted on 30th October, 1981 was proclaimed by the Prime Minister in exercise of the powers vested, in the People's

Revolutionary Government (PRG) by **People's Law No. 2** and, in the Prime Minister by **People's Law No. 10. Section 1(2) of the 1981 Law** provided as follows:

"1. (1)....."

(2) This law shall come into operation on such day as the Minister may by order publish in the Gazette appoint and different dates may be appointed under this subsection for different purposes."

The Minister of Health acting in pursuance of this provision made an Order (The Misuse of Drugs Order, 1990) on 28th March, 1990 appointing Monday 2nd April, 1990 as the day on which the Law should come into force. This Order was Gazetted on 30th March, 1990. That Law had in fact been passed by the PRG, which the majority of the Court of Appeal in **Mitchell and others v Director of Public Prosecutions and Another** (1986) (Const.) 35 held to have exercised legislative authority in Grenada from 1979 to 1983 by virtue of the doctrine of necessity.

After Constitutional normalcy had returned to Grenada, the elected Parliament passed the People's Laws, Interim Government Proclamations and Ordinances, Confirmation of validity Act, **1985 (Act No. 1 of 1985) (the 1985 Act)**. The Act recited *inter alia* that during the period 13th March, 1979 to 19th October, 1983, certain enactments were promulgated by the PRG which were given full force and legal effect, and the relevant provision of section 2 of this Act which came into force on 22nd February, 1985, read as follows:

"2. For the avoidance of doubt it is hereby enacted that the following laws, rules and proclamations are in force, and shall remain in force until otherwise enacted:

(i) Laws and rules made by the People's Revolutionary Government;"

The 1985 Act was replaced by a later Act of the same name in **1987 (Act No. 16 of 1987) (the 1987 Act)**. The only difference being that the 1987 Act recited additionally that the 1985 Act had been passed by both the House of Representatives and the Senate by the unanimous vote of each Chamber; that it had received the assent of the Governor-General on the 22nd day of February, 1985; but that it was considered expedient to repeal the 1985 Act and to enact similar legislation to be submitted to the Governor-General accompanied by a Certificate under the hand of the Speaker in accordance with section 39(8) of the Constitution in relation to the Act. This step was no doubt taken in answer to a statement

made by Lord Diplock when delivering the opinion of the Judicial Committee of the Privy Council in **Mitchell and Others v Director of Public Prosecutions and Another** (1986) LRC (Const.) 122. Speaking in reference to the 1985 Act, His Lordship had said (at p. 125) -

"Although there is not among the papers lodged with the Petition a certificate by the Speaker or Deputy Speaker under section 39(8) of the Constitution to the effect that Act No. 1 of 1985 was supported by two-thirds of all members of the House of Representatives, no point was taken as to this either before their Lordships or in the courts of Grenada; for it is common ground that the Bill which became Act No. 1 of 1985 received the support of at least two-thirds of all members of the House of Representatives, where the Bill passed unopposed as it did also in the Senate."

Counsel for the appellant submitted that the purported attempts by the Grenada Parliament in 1985 and 1987 to save the 1981 Law had been ineffectual because that Law had not been in force when either the 1985 Act or the 1987 Act came into force; since both those Acts referred to, and were intended to validate laws which had been promulgated by the PRG and were in force when the 1985 and 1987 Acts came into force. So that when the Minister of Health made the Order in 1990 bringing the 1981 Law into force, this Order had no effect since that Law was not in force. He submitted that the expressions "are in force" and "shall remain in force" which were contained in the 1985 and 1987 Acts ought to be interpreted to refer to Laws of the PRG which were already in operation; and urged this Court to find that the intention of Parliament in enacting the 1985 and 1987 Acts was to save Laws which had already been brought in force when those Acts took effect, and not to save Laws whose enactment had been complete but not brought into force.

The learned Attorney General argued that the 1985 and 1987 Acts were meant to confirm the validity of Laws passed by the PRG and that therefore the 1981 Law was caught by their provisions. He also submitted in the alternative, that if the 1981 Law was not within the contemplation of the 1985 and 1987 Acts, then this Court should nevertheless go on to find that since it was a law which had been made by the PRG and had not been repealed, it remained on the statute book until repealed or brought into force, and therefore the Minister of Health acted quite properly in making **SRO 11 of 1990** to bring the 1981 Law into force.

After a Bill has gone through all its stages in Parliament and received the Royal assent it is generally regarded as having been passed, or enacted or reached the statute book, and is referred to as an enactment. These expressions should be contrasted with those which tend to show that an enactment may be acted upon by way

of the institution of civil or criminal proceedings based on its validity. The words and expressions used in the latter sense include "commenced", "came into force", "came into operation", "came into effect", "enforceable as law" and "became effective" *inter alia*.

The distinction in nomenclature has been variously expressed.

For example, Halsbury's Laws of England, Volume 44, paragraph 918 states -

"Where any Act, whenever passed, refers to the commencement of an Act, it is to be taken as referring to the time at which that Act comes into force.

.....
References in a statute to the passing of any statute are references to the first moment on the day on which the royal assent was given, and not to the date of commencement, where different."

E.L. Driedger in "The Composition of Legislation" 2nd Edition (1976) at p. 110 puts it this way -

"There is a difference between the enactment of an Act and its commencement. The former relates to the time it is assented to, and the latter to the time when it comes into operation".

In Craies on Statute Law, 5th edition, p. 49, the following paragraph is to be found:

"Unless a contrary intention appears, the expression 'the passing of this Act' in a statute means the date of the royal assent, and not the date fixed by the Act at which all or certain parts of it are to come into operation."

In *Beckles v Dellamore* (1965) 9 W.I.R. 299 the issue for determination was whether or not the Emergency Powers Ordinance (Cap. 11, No. 10) was or was not a law in force at the commencement of the Constitution in 1962. Wooding C.J. summed up the matter thus (at page 302):

"Because it is fundamental to the appellant's contention, I think it proper and convenient to ascertain at once the precise meaning of the expression "law in force".

.....
I think further that in relation to an enactment the expression 'law in force' refers to its enforceability as law. It is so enforceable as from the date of its commencement and for so long as, if perpetual, it remains unrepealed or, if temporary, it has not yet expired. It may commence on being assented to or on proclamation or on a future date therein specified or on a date to be thereafter fixed by an Order in Council. Whichever it be, it becomes on commencement a law in force or an existing law, enforceable according to its terms. And it continues so to be in force or to exist or to be so enforceable until it is repealed or until it expires."

In the case of the Laws of the PRG, People's Law No. 10 - Declaration and Effect of Laws - provided that "For the time being

all people's laws shall become effective upon oral declaration and/or publication on Radio Free Grenada by the Prime Minister or in the Official Gazette under the hand of the Prime Minister". This Law must be read in conjunction with the Interpretation Act of Grenada (Chapter 149) which was then in force and which provided by section 8 -

"8.(1) In every Act passed in Grenada the Governor-General shall on receiving an official intimation that the Act has been duly assented to, or on assenting thereto, as the case may be, cause a notification of the assent having been given, to be published in the Gazette.

(2) Every Act shall, unless it is therein otherwise expressly provided, come into force on the day of the publication of the notice mentioned in the last preceding subsection."

In *The King v Smith and The King v Weston* (1910) 1 KB 17, Lord Alverstone C.J. in the Court of Criminal Appeal in England explained the operation of a similar provision thus (at page 24)-

".....the date when each Act is passed and receives the Royal assent is to be indorsed thereon, and that is to be the date of its commencement where no other commencement is provided therein. At the present time there are two well-known dates in many Acts of Parliament, the date of the Act passing and the date of its coming into operation. If therefore, an Act is silent as to the date of its coming into operation, it comes into operation at the date of its passing."

It seems to me that although the Misuse of Drugs Act had been Gazetted on 30th October, 1981 and had reached the statute book, it did not on that date come into operation, or become effective, because of the delaying effect of section 1(2). And it remained on the statute book as a valid law, but non-operational because of the suspensory effect of section 1(2), until it was brought into operation by the Misuse of Drugs Order, 1990.

After the close of oral argument in the matter the learned Attorney General brought to the attention of the Court the following extract from pages 56 and 57 of the fourth edition of Sir Alison Russell's book, "Legislative Drafting and Forms" -

"The question has arisen as to how an Act, the operation of which is suspended under a suspensory section, should be dealt with, if it is desired that it should not come into effect. An Act which has reached the statute book, but is not brought into operation, is as much an integral part of the statute law as an Act which has been put into effect. The Act is an Act passed and assented to. One of the sections provides for suspension: but the Act is nevertheless an Act, suspended in operation. It can, therefore, be repealed; and that is what should be done to get rid of it."

This quotation also supports the view which I have taken of the matter. I would therefore hold that the **Misuse of Drugs Act, No. 39 of 1981** was a valid law under the provisions of which the appellant could properly have been brought before the Court and tried. The appeal should now, therefore, be heard on its merits.

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N.J.O. LIVERPOOL,
Justice of Appeal

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C.M.D. BYRON,
Justice of Appeal

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SATROHAN SINGH,
Justice of Appeal