

In the Home Circuit Court

Re: Eric Martin Darien - Juror

Sonia Jones for Juror

E.H. Watkins, Q.C. and A.L. Davis as Amici Curiae

1974 - Feb. 22. April 19. July 29

The name of Mr. Eric Martin Darien appeared on the panel of jurors summoned for service in the Home Circuit Court for the week commencing February 18, 1974. He attended and was called to the jury box with others for the trial of the case of R. v. Andrew Yee Barnes et al charged for robbery with aggravation. When his turn came to be sworn he asked to be excused from serving on the ground that his conscience did not allow him "to take part in judging a person". He said that he was a student of the Bible and he had found that if he should be involved "in charging (sic) someone who is not guilty or letting someone free who is guilty" then he would be guilty of the crime "that such a one is being charged for" and, because of this, he asked to be exempted from jury service. I told him that what he had said was no ground for excusing or exempting him and that he should take the oath. He refused to do so. I imposed a fine of \$20.00 for his refusal and he was stood down. On February 22 Miss Jones appeared for Mr. Darien and was allowed to show cause why the fine imposed on him should not be estreated. After hearing Miss Jones I adjourned the matter so that I might be assisted further on the submissions made by her. I am grateful to Dr. Watkins and Mr. Davis for appearing to give that assistance.

Miss Jones conceded that Mr. Darien could get no assistance from the provisions of the Jury Law, Cap. 186, as he does not fall within any of the categories of persons exempted by that law but she submitted that the provisions of the law must now be viewed against the background of the subsequent enacted provisions of the Constitution. / .....

She submitted that the law should be interpreted in a way that reflects the dignity that the Constitution has attempted to impose upon citizens and their rights. It was contended that Mr. Darien's objection fell within the provisions of s. 21(1) of the Constitution, which protects him in the enjoyment of his freedom of conscience, and that these provisions should be given the widest possible interpretation in favour of the citizen. It was said, in effect, that these provisions protect a citizen who earnestly and seriously goes before a court and says "I believe it is a violation of my conscience to judge someone else".

Dr. Watkins submitted that the contentions on behalf of Mr. Darien were untenable on three grounds. Firstly, because certain inherent limitations had to be read into s. 21(1). It was submitted that wherever any right framed in absolute terms is given, reason and authority necessitate the implication of inherent limitations. Reference was made to Francis v Chief of Police, (1973) 2 All. E.R. 251. Secondly, because of the provisions of sub-s. (6) of s. 21 which, it was said, confirms the right of the legislature to pass laws reasonably required in the interest of public order and for the purpose of protecting the rights and freedoms of other persons. Thirdly, because of the provisions of s. 26(8) of the Constitution, which, it was said, expressly saves from unconstitutionality any law in existence at the coming into force of the Constitution whose provisions are in fact inconsistent with the fundamental rights provisions.

Section 21 of the Constitution provides as follows :

"(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

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(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required -

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion " .

Section 26(8) provides :

" Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions. "

The chapter here referred to is Chapter III, which deals with fundamental rights and freedoms in sections 13 to 26 (inclusive).

Dr. Watkins interpreted Mr. Darien's objection to be on the ground of religion as provided in s. 21(1). Miss Jones contended that it is thought as opposed to formal religious belief. I would have thought that it is on the ground of religion in view of the reference to the Bible and to the consequences of "letting someone free who is guilty" ; but it does not matter whether it be thought of as religion or only a sincerely held belief. Mr. Darien referred in terms to his conscience. I do not doubt his sincerity. It appears that his particular belief, which he explained, is one which s. 21(1) of the Constitution allows him to be free to enjoy without hindrance. The question is, therefore, whether his constitutional right will be violated by being compelled to serve as a juror.

It is well to repeat here an observation of Wooding, C.J., in Collymore v Attorney General (1967), 12 W.I.R. 5. The learned Chief Justice said (at p. 9) :

" My first observation is that individual freedom in any community is never absolute. No person in an ordered society can be free to be antisocial. For the protection of his own freedom everyone must pay

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due regard to the conflicting rights and freedoms of others. If not, freedom will become lawless and end in anarchy. Consequently, it is and has in every ordered society always been the function of the law so to regulate the conduct of human affairs as to balance the competing rights and freedoms of those who comprise the society. "

I would add that no member of the society should expect to enjoy rights granted to him by the state, as representative of the society, without being willing to fulfil the obligations imposed upon members of the society as a whole for the protection of those rights and for the creation and maintenance of an environment in which they may be enjoyed.

Dr. Watkins relied on the above observation of Wooding, C.J., in support of his submission that the right claimed by Mr. Darien is subject to inherent limitations. That the right is so subject is also evident from the judgment of the Privy Council in Francis v Chief of Police (supra). The fundamental rights and freedoms declared and preserved in Chapter III of the Constitution have their origins in the common law, by virtue of which the citizens of this Country were entitled to them prior to August of 1962. The declaratory provisions contained in s. 13 of the Constitution show that at common law the rights and freedoms were not absolute but were "subject to respect for the rights and freedoms of others and for the public interest." These must be taken to be the inherent limitations to which Dr. Watkins referred. The scope of these limitations are, however, now confined by those provisions of Chapter III which were enacted for the purpose of protecting the fundamental rights and freedoms. Section 13, having set out what these rights and freedoms are, goes on to provide that "the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in these provisions being limitations designed to

ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. "

It is necessary for the peace, order and good government of every civilised society that courts of law should be established and maintained for the dispensation of justice in disputes between members of the society, between them and the state and generally for the enforcement of laws regulating and controlling their conduct in the general interests of the society. The rights guaranteed under the Constitution are of little value without courts before which they can be vindicated and it is at least doubtful whether there would be freedom to enjoy them if for any reason the courts ceased to function, with a consequent breakdown in the maintenance of law and order.

The system of law administered in our courts provides for trial by jury in certain circumstances. They are essential in criminal trials in the Circuit Courts. To this end the Jury Law makes provisions whereby persons may be available for service as jurors when required. It is provided in s. 2 of the Law that every person resident in Jamaica and having the qualifications stated in that section shall be liable to serve on juries unless otherwise disqualified or exempted under the provisions of the Law. As stated above, it is conceded that Mr. Darien is a person liable to serve on juries. Section 39 of the Law provides for the imposition of a penalty on persons who fail to attend when summoned for jury service or, having attended, refuse to serve or to be sworn or wilfully withdraw from the presence of the Court without leave and reasonable excuse.

Mr. Darien's contention that s. 21(1) of the Constitution exempts him from service on juries can succeed only if the provisions of the Jury Law, which make him liable under a penalty

to serve, are held to be inconsistent with the provisions of s.21(1), in which event compelling him to serve would be in breach of those provisions. This raises the question whether the relevant provisions of the Jury Law are within the limitations on s. 21(1) contained in s. 21(6) of the Constitution, set out above. If they are, the contention cannot succeed. Dr. Watkins submitted that jury service under the Jury Law is something reasonably required in the interest of public order and for the purpose of protecting the rights and freedoms of Mr. Darien and others. Miss Jones in answer was of the view that "public order" in s. 21(6) (a) refers to threats to public order and that Government is able to protect society from grave and immediate danger.

In my judgment, Dr. Watkins' contention is clearly right. As I have said, the establishment of courts of law is one of the means by which it is sought to maintain peace and order in a civilised society. In Attorney General v Times Newspapers Ltd., (1973) 3 All E.R. 54 at p. 66 Lord Morris said ; "In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order". Later he said (ibid):" .... the purpose and existence of courts of law is to preserve freedom within the law for all well disposed members of the community ..... " Trial by jury being an integral part of our judicial system, it is plain that the relevant provisions of the Jury Law are reasonably required in the interests of public safety and public order and for the purpose of protecting the rights and freedoms of other persons, as provided in s. 21(6) (a) and (b). For these reasons, Mr. Darien's contention fails.

Even if I am wrong and there can be said to be inconsistency between the Jury Law and s. 21(1), the contention would fail because of the provisions of s. 26(8), also set out above. In reference to s. 26(8), Lord Devlin said, in Director of Public Prosecutions

v Nasralla, (1966) 10 W.I.R. 299 at p. 303:

" Whereas the general rule, as is to be expected in a Constitution and as is here embodied in s. 2, is that the provisions of the Constitution should prevail over other law, an exception is made in Cap. III. This chapter, as their Lordships have already noted, proceeds upon the presumption that the fundamental rights which it covers are already secured to the people of Jamaica by existing law. The laws in force are not to be subjected to scrutiny in order to see whether or not they conform to the precise terms of the protective provisions. "

The point here seems to be that all the laws in force immediately before the appointed day must be presumed to have been enacted with due regard to the common law rights and limitations which are declared in s. 13 of the Constitution.

I am afraid that for the future, when he is summoned for jury service, Mr. Darien will have to rely, for the preservation of his freedom of conscience, not on the Constitution but on the discretion of the presiding judge before whom he is called upon to serve, who I am now satisfied has the power to excuse him for the occasion. As regards the fine imposed on him on February 18, the circumstances justify its remittal. It is accordingly remitted.

Chief Justice.