

SUPREME CT.

ATT.-GEN. v. G.B.C.

[1988–90 Gib LR 91]

**ATTORNEY-GENERAL v. GIBRALTAR BROADCASTING CORPORATION and BRITISH FORCES BROADCASTING SERVICES**

SUPREME COURT (Kneller, C.J.): May 5th, 1988

*Criminal procedure—fair trial—media reporting—balance to be struck between freedom of press and ensuring fair trial by restricting media influence on jurors and witnesses—may be achieved by blocking publication prior to inquest of evidence or comment relating to inquest and/or trial—injunction need not extend past start of inquest, as purpose of injunction to prevent outside influences on jurors and witnesses*

*Injunctions—prohibitory injunction—protection of administration of justice—injunction preventing media reporting of evidence or comment on judicial proceedings imposed to ensure freedom of jurors and witnesses from media influence—court generally refrains from limiting media activities, but should restrict dealing by media with information relating to testimony of potential witness*

*Inquests—fair hearing—media reporting—balance to be struck between freedom of press and ensuring fair hearing by restricting media influence on jurors and witnesses—may be achieved by blocking publication prior to inquest of evidence or comment relating to inquest and/or trial—injunction need not extend past start of inquest, as purpose of injunction to prevent outside influences on jurors and witnesses*

The Attorney-General obtained an *ex parte* injunction restraining the applicants from publishing or broadcasting information concerning the evidence that might be given at an inquest.

Following the shooting of three members of the I.R.A., the Attorney-General obtained an injunction preventing the applicants from publishing or broadcasting any material or comment relating to the testimony of any witness who might be called at the inquest to be held as a result of the deaths. The applicants sought an amendment to the injunction to enable them to report matters revealed in open court at the inquest, and at any criminal proceedings resulting from the inquest.

They submitted that (a) it was not practicably possible to comply with the injunction as it stood without delaying (until the conclusion of the inquest and, if there was one, the trial) the broadcast of the news bulletins it obtained from overseas and relayed to Gibraltar; and (b) the injunction

as it currently stood prevented the Gibraltar media from broadcasting what was said in open court, which overseas media (not subject to the injunction) would be free to do; and, given that the purpose of the injunction was to ensure that jurors and witnesses were not influenced by the media, this was a superfluous restriction.

The Crown submitted in reply that (a) it was practicable for the applicants to comply with the terms of the injunction; and (b) it might still be possible for witnesses and jurors to be influenced by media comment on their words and actions, even when these had been aired in open court.

**Held**, amending the injunction:

(1) The balance to be struck—between the freedom of the press to report and comment on events on the one hand and the necessity of ensuring fair judicial proceedings by blocking the influence of media commentary on the other—would best be achieved by amending the injunction. The publication or broadcast of material relating to the evidence to be given at the inquest (and trial, if there was one) would be prohibited only prior to the start of the inquest, especially in light of the fact that the applicants had undertaken to broadcast responsibly in relation to the matter. The purpose of the court's jurisdiction to grant prohibitory injunctions such as the present one, and to back them up with the threat of punishment for contempt of court (when a balance had to be struck between the seriousness of the offence and the gravity of the penalty), was to ensure that the administration of justice was not hindered by the exertion of outside influences on witnesses and jurors (paras. 3–6; paras. 11–12).

(2) The court had not heard enough to be able to judge whether it was possible for the applicants to comply with the terms of the injunction without stopping relaying news bulletins received from overseas because of the risk of a potential infringement (para. 8).

(3) Generally, it was not for the court to tell the media how to conduct its business, or to tell reporters how to report; it could, however, restrict what was done with information garnered by reporters and journalists when it related to the testimony of a witness who might be called during the course of judicial proceedings, in order to ensure the unimpeded administration of justice (para. 9).

**Cases cited:**

- (1) *R. v. Bolam, ex p. Haigh* (1949), 93 Sol. Jo. 220, applied.
- (2) *R. v. Evening Standard Co. Ltd.*, [1954] 1 Q.B. 578; [1954] 2 W.L.R. 861; [1954] 1 All E.R. 1026; (1954), 98 Sol. Jo. 287, *dictum* of Lord Goddard, C.J. applied.
- (3) *R. v. New Statesman (Editor), ex p. D.P.P.* (1928), 44 T.L.R. 301, applied.
- (4) *Roach v. Garvan (or Hall) (The St James's Evening Post case)* (1742), 2 Atk. 469; 26 E.R. 683, *dictum* of Lord Hardwicke, L.C. applied.

SUPREME CT.

ATT.-GEN. v. G.B.C. (Kneller, C.J.)

*K.W. Harris, Senior Crown Counsel, for the Crown;*  
*A.V. Stagnetto, Q.C. for the defendants.*

1 **KNELLER, C.J.:** The Coroner was put on inquiry when he learnt that three corpses lay within his jurisdiction. Their deaths appeared to be violent ones. He took possession of them, so to speak, and became seised of their deaths. He found that he had reasonable grounds for believing that the information that he had required him to order a *post mortem* examination. He also believed that it was such that he must hold an inquest. He has directed that an inquest be held in Gibraltar.

2 It also appeared to him that he had to summon a jury which, in due course, will be asked to return a verdict. Before this jury he will examine all persons who wish to give evidence and anyone having knowledge of the events relevant to these deaths whom he thinks it expedient to examine. He should summon any person whose conduct is likely to be called into question at the inquest, or give such people notice that it is being held. He will sum up the evidence to the jury and direct them as to the law before they consider their answers to the questions of where, when and how these three people died in Gibraltar.

3 All along, the Attorney-General has the task of deciding whether or not anyone should be charged with any offence relating to these deaths. If he does, it may be a matter for trial before a judge and jury. Inquest or trial, this court must try, as Lord Hardwicke, L.C. in *The St James's Evening Post case* (4) put it (2 Atk. at 472; 26 E.R. at 685), "to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters." Lord Goddard, C.J. described that as the foundation of the jurisdiction to punish for contempt of court which the Queen's Bench Division of the High Court of Justice in England and Wales had exercised for more than 200 years by 1954. It was "the reason why the court [would] intervene to prevent and punish the publication of improper information before a case [was] heard or the dissemination of improper information about a case which [was] to be heard or [was] not fully heard:" *R. v. Evening Standard Co. Ltd.* (2) ([1954] 1 Q.B. at 584). As Lord Goddard, C.J. said, summarizing the *ratio decidendi* of *R. v. New Statesman (Editor), ex p. D.P.P.* (3), "the gravity of the penalty or sanction which the court will impose must depend upon the circumstances of each particular case" ([1954] 1 Q.B. at 584); see also *R. v. Bolam, ex p. Haigh* (1).

4 This is also the law on the matter in Gibraltar. Returning to the matter before the court now, the issue is whether or not the *ex parte* injunction on the Gibraltar Broadcasting Corporation and the British Forces Broadcasting Services should be discharged or amended.

5 The principles are these. A balance has to be struck between the Corporation's and Services' freedom to import, broadcast, or print anything that they

wish about the inquest and the possible trial on the one hand and, on the other, the need to ensure, as far as possible, that the jury at the inquest and those whose conduct may be called into question in it, and the jury and anyone charged in the trial, hear or read the evidence without having heard or read it—with or without comment—beforehand.

6 The fact that television authorities, newspaper proprietors and editors outside Gibraltar are alleged to be acting, or to have acted, contrary to the second of those principles and that potential jurors here can hear and read their efforts has been taken into account by the court. So has the submission that both the Corporation and the Services know their duty in these matters, and do not intend to broadcast, publish, print or comment on any material relating to any evidence which will be given by any witness who is to be called, or who may be called, at the inquest or at any trial relating to those deaths, or to let their agents or servants do so.

7 Some material which the Corporation and Services receive can be checked, and edited if necessary, before it is reproduced or presented to their viewers and listeners. There is no difficulty there in obeying the injunction as it stands or is amended.

8 There is, however, much in the way of international news that is broadcast or published by both defendants from sources outside Gibraltar, and it is said that it is impossible to edit it and, short of not relaying it until the conclusion of the inquest or subsequent trial (if there is one), the risk of publishing material which would be caught by the terms of this injunction cannot be avoided. The Attorney-General does not accept that this is so. It is not a matter which the court can decide on what it has heard so far.

9 Another point. Generally, “it is not for the court to tell [Gibraltar’s television and radio authorities] . . . how they are to conduct their business, still less to instruct reporters how they are to report” (*per* Lord Goddard, C.J., in *R. v. Evening Standard Co. Ltd.* (2) ([1954] 1 Q.B. at 582)), but it can tell them what they must not do with the material that they discover or excavate if it is the testimony of a witness whom they know is to be called or may be called at the inquest or subsequent trial: they must not broadcast or publish it. And for how long? At the moment it is until the inquest—and the trial if there is one—is concluded.

10 Mr. Stagnetto pointed out that this would mean in effect that the Corporation and the Services would be blindfolded and muzzled until the end of the trial if there is one, while the rest of the world would be able to hear and read reports of the inquest and the trial as they proceed.

11 At this point, I cannot think it would be right to let this injunction prohibit the Corporation or the Services broadcasting or publishing those parts of the proceedings in open court at the inquest which the Coroner

SUPREME CT.

ATT.-GEN. V. G.B.C. (Kneller, C.J.)

does not order them not to broadcast or publish. The Attorney-General can apply on notice before the inquest begins if he is of the view that such a prohibition is necessary.

12 Weighing one thing with another, then, the court, in the exercise of its discretion, now makes this order:

“The *ex parte* order of Friday April 29th, 1988 is amended to read as follows:

“That the defendants, the Gibraltar Broadcasting Corporation and the British Forces Broadcasting Services in Gibraltar, and each of them, by themselves, their respective servants, agents or otherwise, be restrained from broadcasting, publishing, causing, authorising or procuring to be broadcast or published any material or matter which sets out or comments on in whole or in part the evidence to be given by any person who is to be or may be called as a witness at the inquest into the deaths on 6 March 1988 in Gibraltar of Sean Savage, David McCann and Mairead Farrell and/or at any criminal proceedings instituted upon the direction of Her Majesty’s Attorney-General for Gibraltar arising from the circumstances of such deaths until the beginning of the inquest.”

13 There will be liberty to all parties to apply on notice, and a penal notice is to be added to the order. No order as to costs of or incidental to the making of this order is made.

*Order accordingly.*