

The Plaintiff's contention is, inter alia, that had the marketing and auctioneering procedures (and other aspects) been conducted in the manner the plaintiff alleges that they should have been the property would have realised a higher price.

A subpoena duces tecum has been served on the Registrar of Lands to produce and show to the Court the written instructions issued "by the Financial Secretary or other officer or member of the Executive Council to the Registrar of Lands" to attend the auction and bid on behalf of Government for the Tower building. The present Registrar was not the officer who bid at the auction, but has custody of the document and the intention is to call also the person who was the Registrar at the relevant time, who actually conducted the bidding on Government's behalf, to say whether or not the instructions were varied before the auction had been completed. The hope is that the figure to which the bidder was authorised to go was well in excess of that at which the building was knocked down to Government.

Learned counsel for the plaintiff has made it clear that he is interested only in the maximum price Government was prepared to pay and that, if the court considers that any other material surrounding that fact in the document should be protected on any ground recognised by law, then that material can be excised at the Court's discretion. To that end, it has been pointed out that the court has power to examine the document.

That the evidence is relevant to the issues raised is not, in my opinion, in doubt. It is not contended otherwise. The weight that should be accorded in the context of this case might well be another matter depending on several factors, but it is unnecessary for me to go into that aspect.

I have examined the development of the doctrine of public interest immunity in the United Kingdom and in other parts of the Commonwealth so ably unfolded by learned counsel. While the circumstances giving rise to that development /in parts of the Commonwealth have no counterpart (certainly as yet) in these

Islands one must accept that the doctrine in its modern form is applicable here. It was not suggested otherwise.

It is apparent from the authorities that the courts are less easily persuaded to accede to a claim of ^{public} interest immunity where the claim relates to a commercial transaction in the course of business by e.g. a nationalised industry, but it is clear from the affidavit of the Financial Secretary (paragraph 5) that this transaction does not fall within that class. It is considered "a wholly exceptional purchase" and, having regard to the level at which decisions regarding the purchase were made (sub paragraph (b) of paragraph 5), it is difficult to disregard that claim. Perhaps, to get the matter ^{into} perspective, one can envisage the position if, say, the Secretary to the Executive Council had been summoned to disclose the decision or to produce the minutes reflecting it. Although, according to the cases, not inviolate the confidentiality of such decisions is normally accorded the utmost respect and compelling reasons would have to be advanced before that protection could be invaded. One should appreciate that disclosure of the instructions would, in substance, equate with revelation of the Executive Council minute concerned.

Learned counsel for the plaintiff has sought to persuade the Court that the evidence he seeks is vital to his case. He rightly asserts that the evidence sought can come from no other source (i.e. only a Government source). I have carefully considered this submission. Without detracting from the view that the evidence sought has relevance to some of the issues it cannot in good conscience be said to be vital to the fair disposition of the case. It has a bearing on some issues, the significance no doubt depending on argument which it would be premature to assess at this stage. One can only point to the fact that the issues on which it could bear have been the subject of a good deal of expert evidence to date. There will be more expert evidence on those issues. As to the significance of the evidence sought to be adduced one can only point to the fact that, so far as I recall, it was not opened to - understandably, because, not knowing what it would be, no party was in a position to attach any significance to it. I am sure that the issues are capable of fair resolution without the evidence sought. The late stage at which the matter has been raised suggests that the evidence had not

always assumed the importance now sought to be attached to it..

This is a factor, although not a conclusive one, I have taken into account in determining the public interest immunity question.

More important are the certificate of the Financial Secretary and his affidavit. The certificate dated 10th April 1987 states:

"I hereby certify that in my opinion the disclosure of the existence of the aforementioned document or documents or the disclosure in the manner sought of any of such contents would be injurious to the protection of the public interest."

The affidavit provided, inter alia:

"4. The Certificate claimed public interest immunity from disclosure in respect of the contents of a document(s) conveying instructions on behalf of the Executive Council of the Cayman Islands to a senior civil servant (the Registrar of Lands) in respect of the conduct of the financial business of Government at the auction of the Tower Building. I have personal and direct knowledge of those instructions and the circumstances in which they came to be given. They were issued in strict and utter confidence.

5. Among the reasons that the instructions were, and still are, regarded as confidential is that:

(a)....

(b)....

(c)....

(d)....

(e) The transaction remains a fairly recent one and it retains a potentially sensitivity."

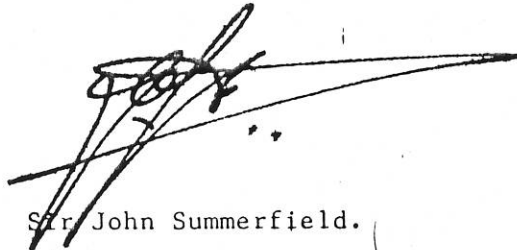
Despite dicta in the cases referred to I am not prepared to go behind that assertion. After the Governor, the Financial Secretary is the highest ranking official in Executive Council. He is not a political appointee. I do not think that I can properly arrogate to myself the complacent view that I am better placed to determine whether or not the public interest will suffer by disclosure in the face of his clear assertion. The deponent has to weigh many factors, no doubt some conflicting, in reaching his conclusion. And with no particular interest to serve he is well placed to reach a decision on the public interest. The public interest is much wider than considerations of defence and diplomatic relations which have been so strongly stressed and which, obviously, have no place in this matter.

One final point on this aspect. Had the evidence sought been as

important as now alleged one would have expected this aspect to have been agitated earlier when the matter could have been taken further by an aggrieved party without interrupting proceedings. As it is, the summons was not issued until the 2nd of April of this year.

As to the Confidential Relationships (Preservation) Law, that enactment is not worded with the precision one would wish. However, I have little doubt that the information sought is confidential information within the meaning of that Law. Under that Law Government enjoys the same protection as any private person - definition of "principal" ^{and "professional person"} Accordingly the provisions of that Law, in my view, apply and protect the disclosure of the information sought unless disclosure is authorised pursuant to that Law.

For the purpose of my decision it is unnecessary to elaborate on the other reasons advanced and which I have not relied on. That does not preclude the submissions being agitated further at a later stage.



Sir John Summerfield.

15th May 1987.