



Honourable Society of the Inner Temple and carries on the practice of barrister in Trinidad and Tobago and has so done for a period of about ten years.

3. The said Order of Committal was made by Maharaj J. in the course of proceedings in a civil matter on which the Appellant was appearing as Counsel for one of the parties which the learned Judge was trying in the said High Court on the 17th April, 1975. There was at that time no right of appeal to the Court of Appeal or otherwise in Trinidad and Tobago either against such conviction or sentence. Accordingly the Appellant was unable to challenge the said conviction or sentence in Trinidad and Tobago upon its merits. However, certain rights and freedoms were entrenched in Section 2 of the then Constitution of Trinidad and Tobago in the Second Schedule of the Trinidad and Tobago (Constitution) Order in Council 1962 (S.I. No. 1875 of 1962). Pursuant to the provisions of Section 6 of the said Constitution the Appellant applied by the aforesaid Notice of Motion to which the learned Judge was initially named as the First Respondent and the Attorney-General of Trinidad and Tobago was the Second Respondent for a declaration and other relief as aforesaid. The said Notice of Motion was not served upon the First Respondent and the matter proceeded as against the Attorney-General only. On the 17th April, 1975 on an ex parte application to the High Court under the said Notice of Motion the Honourable Mr. Justice Braithwaite granted a Conservatory Order directing the release of the Appellant from custody pending the full hearing and determination of such Motion. The full hearing of the said Motion took place on some thirteen days between 23rd April and 27th June, 1975 before the Honourable Mr. Justice Garvin M. Scott who on 23rd July, 1975 gave judgment dismissing the Motion with costs and ordered that the Appellant return to custody forthwith and serve the remnant of the term imposed upon him by the Honourable Mr. Justice Maharaj. The Appellant was thereupon detained and served the said sentence.

4. Notice of Appeal to the Court of Appeal in Trinidad and Tobago was given against the dismissal of the said Motion by the Appellant on the 11th August, 1975. The proceedings commenced by the aforesaid Notice of Motion are

hereinafter referred to as "the Constitutional proceedings."

5. On 2nd February, 1976 (that is to say during the pendency of the aforesaid Appeal to the Court of Appeal in the Constitutional proceedings) special leave to appeal against the said Order of Committal was granted by the Judicial Committee of Her Majesty's Privy Council. On the 27th July, 1976 their Lordships of the Judicial Committee of the Privy Council delivered reasons for humbly advising Her Majesty to allow the said appeal (Privy Council Appeal No. 7 of 1976) and the order therein was made on the 30th July, 1976. Although the Appellant had submitted in his Case in the said appeal that he had been denied his Constitutional rights by the learned Judge the point was not pursued in the hearing before or by their Lordships in view of the pendency of the appeal to the Court of Appeal in the Constitutional proceedings.

6. The facts which gave rise to the said committal of the Appellant for contempt by Maharaj J. were summarized in the aforesaid Reasons for the Report of their Lordships of the Judicial Committee of the Privy Council delivered the 27th July, 1976. For the purpose of setting out shortly the facts of this matter, the Appellant respectfully quotes from the said Reasons.

"On the 17th April the hearing of Harripersad v. Mini Max Limited was resumed. The Appellant then applied for the two doctors who had given evidence for the Plaintiff on the 15th April (whilst the Defendants were unrepresented) to be called so that he might have the opportunity of cross-examining them on behalf of the Defendants. His application was refused. This, after what had occurred on the 14th April, may have seemed to the Appellant to have been the last straw. The Appellant then repeated in open Court what he had said the previous day and stated that he exercised the right to impeach the entire proceedings, by which he presumably meant that he intended to appeal."

"The learned Judge took the curious course of writing out the following question and then putting it to the Appellant :

Are you suggesting that this Court is dishonestly and corruptly doing matters behind your back because it is biased against you?"

"The Appellant had never said nor suggested that the learned Judge had ever done anything corruptly or dishonestly. He had complained that on the 14th April the learned Judge had entered judgment against his clients without giving them any reasonable opportunity of being heard and that this amounted to unjudicial conduct. Their Lordships do not desire to express any view about these matters which are under appeal save that there may be circumstances under which a Judge who gives judgment against a party without giving him a proper opportunity of putting forward his own case could be regarded as acting unjudicially ... "

"The Appellant was taken aback when the Judge posed him the question to which reference has been made. He answered :-

"I do not think this is the right place to answer that question. I do not think the question arises. But I say you are guilty of unjudicial conduct having regard to what I said yesterday."

"This again was a very tactless answer. He may have thought the learned Judge was trying to put words into his mouth which he had never uttered or suggested. Even so, it would have been far wiser to reply "Of course not, my Lord." Their Lordships are satisfied however that the Appellant did not by his answer impute any corruption or dishonesty against the learned Judge."

"The dialogue then went as follows :-

The learned Judge : "Mr. Maharaj, you are formally charged with contempt of Court

and I now call upon you to answer the charge."

The Appellant : "I am asking to have an adjournment to retain a lawyer."

Application refused.

The Appellant : "I am not guilty. I have not imputed any bias or anything against your Lordship."

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The learned Judge : "Mr. Maharaj, do you have anything to say on the question of sentence?"

The Appellant : "I want to consult Dr. Ramsahoye to whom I have spoken about this matter and as a result of whose advice I appealed in the other matters."

The learned Judge : "7 days simple imprisonment."

7. Their Lordships further stated in their said Reasons inter alia as follows:-

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"In the written reasons given by the learned Judge for his decision he more than once referred to what he described as "a vicious attack on the integrity of the Court" by the Appellant. Their Lordships are satisfied that the learned Judge mistakenly persuaded himself that the Appellant had made such an attack upon him ..."

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"In charging the Appellant with contempt, the learned Judge did not make plain to him the particulars or the specific nature of the contempt with which he was being charged. This must usually be done before an alleged contemner can properly be convicted and punished (Pollard's Case (1868) 2 L.R. P.C. 106). In their Lordships' view justice certainly demanded that the learned Judge should have done so in this particular case. Their Lordships are satisfied that his failure to explain that the contempt with which he intended to charge the Appellant was what the Judge has described in his

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written reasons as "a vicious attack on the integrity of the Court" vitiates the committal for contempt ... "

8. In support of the relief sought in the said Notice of Motion and on appeal in the Court of Appeal the Appellant relied on certain human rights and fundamental freedoms set out in provisions of Chapter I of the said Constitution of Trinidad and Tobago and complained that he had been denied such rights and freedoms by Maharaj J. and that he had been committed by order of the learned Judge in derogation of such rights and freedoms. 10

9. Section 1 of the said Constitution so far as is relevant to the present Appeal, is in the following terms :

"1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely 20

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and a right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law; 30

(c) ... "

Further, it was provided by Section 2 of the said Constitution as follows :

"2. Subject to the provisions of Sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall - 40

(a) authorise or effect the arbitrary

detention, imprisonment or exile  
of any person;

(b) ...

(c) deprive any person who has been  
arrested or detained

(i) of the right to be informed  
promptly and with sufficient  
particularity of the reason  
for his arrest or detention;

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(ii) to the right to retain and  
instruct without delay a legal  
advisor of his own choice and  
to hold communication with him;

(iii) ...

(d) authorise a court, tribunal,  
commission, board or other authority  
to compel a person to give evidence  
if he is denied legal representation  
or protection against self-  
crimination;

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(e) deprive a person of the right to a  
fair hearing in accordance with  
the principles of fundamental justice  
for the determination of his rights  
and obligations;

(f) deprive a person charged with a  
criminal offence of the right to be  
presumed innocent until proved  
guilty according to law in a fair  
and public hearing by an independent  
and impartial tribunal ... ;

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(g) ...

(h) deprive a person of the right to  
such procedural provisions as are  
necessary for the purpose of  
giving effect and protection to  
the aforesaid rights and freedoms."

10. Section 3 of the said Constitution so far  
as relevant enacted as follows :

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"3. (1) Sections 1 and 2 of this

Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution."

By virtue of Section 105(1) "law" included "any instrument having the force of law and any unwritten rule of law."

11. Section 6 of the said Constitution contained provisions for the enforcement of the protective provisions of the said Constitution including those set out above and inter alia provided as follows : 10

"6. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections ... of the Constitution has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress. 20

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of sub-section 1 of this section;... 30

(b) ...

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any provisions of the said foregoing sections ... to the protection of which the person concerned is entitled." 40

12. The principal submissions in law on behalf of the Appellant were and are :

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- (1) That the learned Judge (Maharaj, J.) failed to comply with the procedural requirements of the "due process" provisions of the Constitution (namely s.1(a) and (h) and s.2(a)(c)(d)(e)(f) and (h)) in that he failed to give to the Appellant proper or sufficient or any particulars of the alleged contempt with which he was charged;
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- (2) That the said learned Judge deprived the Appellant of the right to the presumption of innocence and/or to a fair hearing and/or to such procedure as was necessary for the purpose of giving effect and protection to the Appellant's constitutional rights contrary to the requirements of s.1 and s.2(f) and (h) of the said Constitution;
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- (3) That the failure of the learned Judge to give essential particulars or to explain the contempt with which he was charging the Appellant was not a practice or procedure which accorded with any law in force in Trinidad and Tobago at the commencement of the said Constitution;
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- (4) That it is contrary to public policy, to the proper administration of justice, to the rule of law and to the terms of the Constitution (including s.6 thereof) that there be no or no sufficient and adequate redress in respect of any failure by a judge acting as such to comply with the requirements of s.1 or s.2 of the Constitution;
- (5) That the Appellant is entitled to "redress" pursuant to s.6 of the said Constitution;
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- (6) That the Attorney-General is the proper Respondent to proceedings seeking such redress or alternatively if the Attorney-General is not the proper Respondent, the Court should give such directions as it may consider

appropriate for the purpose of enforcing or securing the enforcement of the relevant provisions of the Constitution pursuant to s.6(2) of the said Constitution.

13. The reasons given by the learned Judges in the High Court and Court of Appeal for their several orders and judgments in the Constitutional Proceedings commenced by the said Notice of Motion were in summary as follows. 10

14. Braithwaite J. granted the interlocutory conservatory order aforesaid for reasons given in writing dated 26th June, 1975 the effect of which were that :

(a) the common law required that a person charged with contempt was entitled to have the charge against him sufficiently particularised. The Appellant had not been given proper or sufficient particulars of the said charge. 20

(b) the effect of the said Constitution was to confer upon a person charged with a criminal offence the right to be defended by counsel of his choice and this right had been denied to the Appellant.

15. Scott, J. in his written judgment dismissed the Appellant's Motion upon the grounds, inter alia, that it was crystal clear from all the evidence that the Applicant knew the specific offence with which he had been charged and was afforded ample opportunity of answering that charge; that the relief sought against the Attorney-General was contrary to the provisions of the Crown Liability and Proceedings Act 1966; that a Judge of one of the Superior Courts was absolutely exempt from all civil liability for acts done by him in the execution of his judicial functions nor was the Crown vicariously liable for his acts; that the Attorney-General ought not to have been made and was not a proper party to the proceedings; and that the Court had no jurisdiction to entertain the Motion it being a matter which had arisen in the High Court of Justice. Further, due process 30 40

of law had been fully observed and the Application was misconceived.

10 16. The Appellant's said appeal to the Court of Appeal was heard before the Honourable Chief Justice Sir Isaac Hyatali and the Honourable C.E.G. Phillips and the Honourable M.A. Corbin, J.J.A. on the 4th, 8th, 9th and 10th November, 1976. On 29th April, 1977 the said Court of Appeal by a majority dismissed the Appellant's said appeal with costs, the Honourable Phillips J.A. dissenting.

20 17. The learned Chief Justice held that the said appeal should be dismissed for the following principal reasons. He stated that the Privy Council's ruling in relation to the Appellant's committal for contempt, left four questions for consideration on the judgment of Scott, J. :  
(1) Was the Appellant's imprisonment for contempt tantamount to a deprivation of his liberty without due process of law; (2) if so, was he entitled to redress under s.6 of the Constitution; (3) was the Attorney-General properly made a Respondent to the Motion; and (4) did the Court have jurisdiction to entertain the Motion? This fourth question, the learned Chief Justice held could be disposed of at once. Section 6(1) was a provision which conferred jurisdiction on the High Court and its language was sufficiently wide and general to permit an  
30 application to pursue a claim for redress in any case in which an Applicant alleged in relation to himself that a person exercising the plenitude of legislative, executive or judicial power had contravened or threatened to contravene the provisions securing the Appellant's rights and fundamental reasons. A Judge of the High Court was not therefore excluded from the purview of s.6(1). In  
40 relation to the other three issues, the learned Chief Justice held that the rights and freedoms contained in the Constitution were not sui generis, and that if they were so judges would be denuded of the protection afforded by the common law and become liable to civil proceedings for acts done or words spoken in their judicial capacity, in so far as they infringed such rights and freedoms. In the learned Chief Justice's view, the Appellant's claim for redress was (as counsel

for the Respondent had contended), in reality one for damages against the learned Judge for unlawful detention or false imprisonment, however one might choose to describe the unlawful deprivation of the Appellant's liberty. The fact that the Appellant had not served the learned Judge with the Motion, and had proceeded only against the Attorney-General, made no difference whatever to the sacrosanct rule of the common law, that a judge of a superior court of record is absolutely exempt from all civil liability for acts done or words spoken in his judicial capacity and that the State is not vicariously liable for his acts or words. His conclusions made it unnecessary for him to express a firm view of the question whether the Appellant was imprisoned "without due process of law" but he entertained grave doubts about the validity of the proposition that a person can be said to have been deprived of his liberty without due process of law, if he is committed to prison because a judge acting in his judicial capacity made a mistake of law or of fact in so committing him.

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18. Corbin, J., held that Section 3 of the Constitution meant :

"Sections 1 and 2 shall not apply in relation to any common law that is in force at the commencement of the Constitution,"

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and that the law of contempt was in force at such commencement. Further, he did not understand the Reasons for the Report of the Judicial Committee to mean that the Judge had acted arbitrarily. It was not every error made by a Judge which could be said to amount to a breach of due process. However, he did not require to come to a decision on this point because in his opinion the redress being sought under Section 6 was in effect and in substance the same thing as a claim for damages for false imprisonment based on tort. The common law rule was that a Judge was not liable in an action for damages in respect of any judicial act by him nor was the Crown vicariously liable therefor. That was the common law preserved by the Constitution and given statutory effect to by the State Liability Act 1966. Accordingly,

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neither the Judge nor the Crown (nor the State) could be held liable for damages even though the claim was brought under Section 6 of the Constitution.

10 19. In his dissenting judgment Phillips, J.A., agreed that the making of an allegation alleging  
contravention of fundamental rights was sufficient for the purpose of invoking the original jurisdiction conferred on the High Court by the section irrespective of the source of the alleged contravention. He considered the meaning of the expression "due process of law" in the Constitution. He said that it clearly appeared from the Reasons of the Judicial Committee for holding that the Appellant's committal to prison was unlawful that the basic error made (albeit unwittingly) by Maharaj, J. was his failure to give to the Appellant full particulars of the offence  
20 allegedly committed by him in making what the Judge described as "a vicious attack on the integrity of the Court." The result of this was that the Appellant was not given a proper opportunity of defending himself. It was clear from principle and authority that an essential ingredient of procedural due process was that an individual should have a full opportunity of being heard. The manner of the Appellant's committal to prison was  
30 prima facie a contravention of the right enshrined by s.2(e) of the Constitution and, therefore, a contravention of his fundamental rights conferred by s.1(a) and (b). He dismissed the assertion made by counsel for the Respondent that the effect of s.3(1) of the Constitution was to protect the proceedings under review against the taint of unconstitutionality. He held that the kernel of the matter was that a clear distinction was to be drawn between a law as such and the exercise of a jurisdiction conferred by that law - in other words, between substantive law and matters of procedure. In his opinion, the object of s.3(1) was to continue the existence of substantive laws per se and not to exempt the procedure for their  
40 administration from the constitutional restraints imposed by s.1(a) and (b) and s.2.

He next considered the argument put forward on behalf of the Respondent that the Appellant's complaint was made in relation to the act of a Judge of a superior Court of Record done in pursuance of his judicial authority and was, accordingly, not justiciable. He came to the conclusion that the contravention of a fundamental right conferred by the Constitution lay outside the province of the law of torts, even though the consequences arising from it might be identical with a class of acts that fell within that province. It followed, therefore, that such a contravention was justiciable in the manner provided for by the Constitution. He stated that in his opinion the Appellant had adopted the correct course in not making Maharaj, J. a party to the originating Motion. There was nothing in the Constitution which required that a judicial officer should be held personally liable for a contravention of the due process clause and it seemed to him that the principle of judicial immunity from civil liability for acts done in the exercise of judicial functions was one of universal application and must be held applicable to the present case for the same reason for which it applied to ordinary civil litigation. That however did not mean that the Appellant was not entitled to redress. He considered the true nature of the fundamental rights declared by Chapter I of the Constitution. He held that the committal order made by Maharaj, J. was not the act of an ordinary tort-feasor. It was in fact a State act - an act performed by the judicial arm of the State. Accordingly there was no real problem as to vicarious liability arising either in respect of the State or the Attorney-General. The Crown Liability and Proceedings Act 1966 was, ex hypothesi, not applicable to the present case and a doctrine of conferment upon Judges of immunity from civil proceedings in the interests of the proper administration of justice could not per se be a valid reason for exempting the State from its primary liability in cases of a contravention of an individual's constitutional rights by the judicial arm of the State. Finally, he registered his profound dissent from the proposition that whilst a citizen was legally entitled to recover from another citizen damages for a wrongful deprivation of his liberty, he was not entitled to a similar

remedy in a claim against the State for redress in respect of a similar deprivation sustained in consequence of a judicial act of the State which act was in contravention of his fundamental rights solemnly declared by the Constitution.

10 20. The Appellant submits that the learned Judges who were the majority in the Court of Appeal were wrong in holding that the alleged breaches of the Constitution were mere torts; were wrong in  
20 failing to distinguish between a claim against a judge personally and a claim in respect of some act or default of a judge against the Attorney-General. A right to claim a declaration and/or damages in respect of an unconstitutional act by a member of the judiciary in his capacity as such is no more damaging to the integrity of the judiciary than is a right of appeal to a higher court in respect of judicial error. Indeed, it is submitted, respect for the rule  
30 of law and the judiciary is sustained and enhanced by the existence of proper and adequate safe-guards against judicial error whether such safeguards be a right of appeal or, in cases of unconstitutional acts, a right in a proper case to proceed in a suit against the Attorney-General for a declaration and/or damages. It is further submitted that the majority of the Court of Appeal failed to recognise that allegations of error and  
30 default by Judges acting as such are already habitually litigated on appeal.

40 21. The Appellant accordingly submits that the judgment of the Court of Appeal of the Supreme Court of Judicature for Trinidad and Tobago is wrong in law and should be set aside and that this Appeal should be allowed and that it be declared that the aforesaid Order of the Honourable Mr. Justice Sonny Maharaj whereby the Appellant was committed to prison for contempt was unconstitutional and for an order that the Motion be remitted to the High Court of the Supreme Court of Judicature for Trinidad and Tobago for the assessment of damages and that the Appellant be awarded the costs of this Appeal and his costs in the Courts below for the following among other

#### R E A S O N S

1. BECAUSE the Honourable Mr. Justice

Maharaj deprived the Appellant of his liberty otherwise than by due process of law contrary to the provisions of s.1(a) of the said Constitution;

2. BECAUSE the said learned Judge denied the Appellant the protection of the law contrary to the provisions of s.1(b) of the said Constitution;
3. BECAUSE the said learned Judge authorised the arbitrary imprisonment of the Appellant contrary to the provisions of s.1 and s.2(a) of the said Constitution; 10
4. BECAUSE the said learned Judge deprived the Appellant of the right to be informed with sufficient or any particularity of the reasons for his detention on the charge of contempt contrary to s.1 and s.2(c)(i) of the said Constitution;
5. BECAUSE the said learned Judge deprived the Appellant of the right to a fair hearing in accordance with the principles of fundamental justice contrary to s.1 and s.2(e) of the said Constitution; 20
6. BECAUSE the said learned Judge deprived the Appellant of the right to the presumption of innocence and to a fair hearing and to such procedural provisions as are necessary for the purpose of giving effect and protection to the Appellant's aforesaid rights and freedoms, contrary to s.1 and s.2(f) and (h) of the said Constitution; 30
7. BECAUSE Judges of the Supreme Court of Judicature for Trinidad and Tobago are not exempted from compliance with the provisions of s.1 and/or s.2 of the said Constitution;
8. BECAUSE the aforesaid Court of Appeal was wrong in holding that the Attorney-General for Trinidad and Tobago was not a proper party to the proceedings brought by the Appellant or alternatively BECAUSE if he was not a proper party (contrary to the contention of the Appellant) the aforesaid 40

Court of Appeal and/or the Honourable Mr. Justice Scott failed to give sufficient or any directions appropriate for enforcing or securing the enforcement of the provisions of s.1 and s.2 of the said Constitution in favour of the Appellant;

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9. BECAUSE the aforesaid Court of Appeal was wrong in holding that the proceedings were in substance or in effect or at all proceedings against the Honourable Mr. Justice Maharaj;
10. BECAUSE the aforesaid Court of Appeal was wrong in holding that a breach of the aforesaid protection afforded by the said Constitution was a mere tort;
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11. BECAUSE the aforesaid Court of Appeal were wrong in holding that public policy required that allegations of breaches by judges of the Supreme Court of Judicature for Trinidad and Tobago in the exercise of their office of breaches of or failure to comply with provisions of s.1 and/or s.2 of the said Constitution should not be justiciable;
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12. BECAUSE the aforesaid Court of Appeal was wrong in holding that the State was not responsible for or answerable for breaches by the Judges of the Supreme Court of Judicature for Trinidad and Tobago acting as such of the provisions of s.1 and s.2 of the said Constitution;
13. BECAUSE the reasons of Phillips, J.A., in his dissenting judgment in the aforesaid Court of Appeal are correct;
14. BECAUSE the Appellant was entitled under s.1, s.2 and s.6 of the said Constitution to redress and to the relief claimed;
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15. BECAUSE in the premises the said decisions of Scott, J. and of the aforesaid Court of Appeal were wrong.

D.J. TURNER-SAMUELS

FENTON RAMSAHOYE

No. 21 of 1977

JUDICIAL COMMITTEE OF THE  
IN THE PRIVY COUNCIL

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O N    A P P E A L

FROM THE COURT OF APPEAL OF THE  
SUPREME COURT OF JUDICATURE FOR  
TRINIDAD AND TOBAGO

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I N    T H E    M A T T E R of the  
Constitution of Trinidad and  
Tobago being the Second Schedule  
to the Trinidad and Tobago  
(Constitution) Order in Council  
1962

B E T W E E N :

RAMESH LAWRENCE MAHARAJ      Appellant/  
Applicant

- and -

THE ATTORNEY GENERAL OF TRINIDAD AND  
TOBAGO                              Respondent

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CASE FOR THE APPELLANT

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