

No. 21 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N:

RAMESH LAWRENCE MAHARAJ

Appellant

- and -

10 THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal from a decision and order of the Court of Appeal of Trinidad and Tobago (Hyatali, C.J., Phillips and Corbin JJ.A.) made the 5th May, 1977, dismissing by a majority the appeal of the Appellant from the dismissal of the Appellant's motion by the High Court (Scott J.), on the 23rd July 1975, and affirming the judgment of Scott J. save insofar as Scott J. declared that the High Court had no jurisdiction to entertain the motion. Phillips, J.A. agreed with the majority that the High Court had jurisdiction but dissented in that he would have allowed the appeal.

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p.117/8

2. The Appellant, who is a barrister practising in Trinidad and Tobago, was, on the 17th April, 1975, summarily convicted of contempt of court by the High Court, (Maharaj J.), and sentenced to seven days' simple imprisonment. On the same day he served notice of motion upon Maharaj J. and the Attorney General seeking inter alia a declaration that the committal was unconstitutional, illegal, void and of not effect" and damages against the Attorney General for wrongful

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p.7. detention and false imprisonment. On the same day the High Court, (Braithwaite. J.), made a conservatory order releasing the Appellant from custody pending further hearing of the motion. Braithwaite, J. gave written reasons for making the conservatory order on the 26th June, 1975. In the meantime the motion had come on for further hearing before Scott, J. on the 23rd April 1975. The learned judge heard evidence and, in his written judgment of the 23rd July, 1975 dismissed the motion with no order as to costs. The Appellant thereupon served the residue of his sentence. On the 11th August, 1975, he served Notice of Appeal to the Court of Appeal from the judgment and order of Scott J. The Notice of Appeal was amended the 28th October, 1975. It asserted that the Appellant's conviction violated his constitutional rights, and claimed damages including punitiv damages. The Notice and Amended Notice were served on the Attorney General, but not upon Maharaj. J. In the proceedings before Scott J. counsel stated that while Maharaj J. had been named as a respondent, no notice of motion had ever been served upon him and that, in the proceedings, the Attorney-General was the sole respondent. 10

pp.127-130

pp.132-135

p.36 p.7

pp.194-200

3. Pending the appeal on the constitutional issue the Appellant, by special leave, appealed to the Privy Council against his conviction for contempt. The Privy Council had the benefit of Maharaj.J's written reasons for his decision. The appeal was heard the 26th and 27th June, 1976, and allowed. Written reasons were given on the 11th October, 1976. On the appeal, which is reported as Maharaj v. Attorney General of Trinidad and Tobago (1977) 1 All.E.R. 411, the Privy Council held that Maharaj J. had mistakenly persuaded himself that the Appellant had made a "vicious attack on the integrity of the Court" and had failed to give particulars of the charged contempt to the Appellant. They thought it unfortunate that the learned judge had refused the Appellant's request to be allowed to consult counsel. 20

4. Thereafter the Appellant pursued his appeal to the Court of Appeal on the issue of violation of constitutional rights and his claim for damages. The statutory provisions relevant to the hearing of this constitutional issue are set out in the Appendix to this case. 30

5. In his judgment Scott J. first set out the evidence that was before him. He found on the evidence: that the Appellant had committed an act of contempt in the face of the Court of Maharaj. J; and, that he knew the specific offence with which he had been charged and with afforded ample opportunity of answering that charge. His Lordship held that the High Court has power to punish summarily for such contempt. On the constitutional issues his Lordship held that the fundamental rights and freedoms of guaranteed by the Constitution were rights which existed previously and were largely derived from the common law. The law relating to contempt in the face of the Court was the common law of England as it stood prior to independence on the 31st August, 1962. Contempt procedure was summary and swift and a contemnor was not, as of right, entitled to counsel or an adjournment. The complaints of denial of adjournment and counsel and non-observance of due process of law, constituting a breach of fundamental rights, were therefore without foundation. His Lordship then spoke of the common law immunity of judges in respect of acts done by them in their judicial capacity, and went on to refer to the Crown Liability and Proceedings Act, No. 17 of 1966 (and, in particular Sections 2 (2) (h) (v) and 4 (6) thereof). By the Act the Crown was not liable for acts of persons done while discharging responsibilities of a judicial nature. Thus the seeking of relief against the Attorney-General was contrary to Act, and the Attorney-General ought not have been made, and was not a proper party to the proceedings. Finally, the learned judge held that, in any event, the High Court had no jurisdiction to entertain applications made from the High Court. His Lordship referred to, and relied upon Section 6 (3) of the Constitution.

6. The first judgment in the Court of Appeal was delivered by Hyatali C.J. His Lordship said that the ruling of the Privy Council left four questions for determination on the judgment of Scott J. viz: was the Appellants' imprisonment for contempt a deprivation of liberty without due process of law; if so, was he entitled

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p.101
p.14.

pp.104,
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p.102. p.33

p.108.p.5

p.108,p.13

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p.111.p.30
p.112.p.34

p.115.p.26

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	to redress under Section 6 of the Constitution; was the Attorney-General properly made a respondent; and, had the High Court jurisdiction to entertain the motion. Dealing first with the fourth question, his Lordship was of the opinion that Scott J. had erred in his ruling. It was Section 6 (1) of the Constitution which conferred jurisdiction on the High Court. The language of the sub-section was sufficiently wide to allow the High Court to entertain applications in any case in which contravention of fundamental rights was alleged. Dealing with the other questions, the Appellant's case was not that of an action for false imprisonment against Maharaj J. or against the Crown vicariously. It was that the constitutional rights and freedom stood above the common law and gave a separate, and new, right of redress against the State. This argument was untenable. It overlooked the constitutional provisions, (a) in Section 1, that the enshrined rights and freedoms existed in Trinidad and Tobago before the introduction of the Constitution and, (b) in Section 3, that Sections 1 and 2, did not apply in relation to any law in force in Trinidad and Tobago at the commencement of the Constitution. Under the existing law, which remained unaltered, a judge was wholly immune from liability for acts done in his judicial capacity (and the Appellant accepted that the act complained of was such an act) and the Crown had no vicarious liability for such acts. Writing the fundamental rights and freedoms into the Constitution did no more than entrench those rights and freedoms. In order to hold that, by entrenching these provisions they were made sui generis and, moreover, endowed with practical effects diametrically opposed to the existing law, would require clear words in the Constitution to this effect. There were no such words. Indeed, such an interpretation would make nonsense of the provision in Section 6 that application to the High Court should be without prejudice to any other action lawfully available. His Lordship would dismiss the appeal, with costs.	10
p.143,p.25		
p.148.p.10		20
p.147.p.6		30
p.153.p.22		40
p.152.p.40		
pp.157-182 p.160,p.14 p.162.p.4	7. Phillips, J.A. agreed with the learned Chief Justice and for the same reason, in holding that Scott J. erred in concluding he had no jurisdiction. His Lordship then turned to the question of whether or not there had been	50

a violation of constitutional rights - in particular the right not to be deprived of liberty save by due process of law - and concluded that, prima facie there had been. The Appellant had been denied the right to be heard. The argument of the Respondent that there was no unconstitutionality because Section 3 (1) of the Constitution rendered Sections 1 and 2 inapplicable where there was an existing law in force was untenable. A distinction must be drawn between substantive law and matters of procedure. It was not indispute that the common law permitted summary proceedings for contempt in the face of the Court. This was substantive law, and was preserved by Section 3 (1). But the obligation to adhere to the rules of natural justice was procedural, and no law permitted Maharaj. J. to depart from these rules, as he had done. The next matter was as to what redress, if any, the Appellant was entitled, and whether the Respondent was the proper party to the application. The Respondent had argued that the application was, in reality, an attempt to sue for the tort of false imprisonment and, because of the law of judicial immunity, it could not succeed. But, in his Lordships view, this argument failed. A distinction must be drawn between a tort (whether arising from infringement of a common law right or breach of statutory duty) and contravention of enshrined fundamental rights. No law exempted the latter from proper judicial scrutiny. Contravention of a fundamental right lay outside the province of tort, and must be justiciable in manner provided by the Constitution. His Lordship accepted that the principle of judicial immunity for acts done in the exercise of judicial functions was of universal application, but this point was not relevant. The contravention was the direct result of an act of the State authority enjoined by the Constitution to secure the enforcement of its provisions, and the effect of the relevant Sections of the Constitution was, by necessary implication, to prohibit the contravention by the State of the fundamental rights and freedoms. So, the right to liberty had, by reason of its entrenchment in the Constitution, acquired a new status, and Section 6 gave a new right of redress. The right is redress was not to be defeated by the failure of the rule-making authority to make specific provision

p.167.p.37
p.168.p.11
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p.173.1.3.
p.173.p.42.
p.174.p.37
p.177.p.1.
p.178.p.42.

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as to the identity of the party from whom redress was to be sought. But in any event the Attorney-General was the proper party to be pursued where the remedy sought was against the State. His Lordship would allow the appeal with costs, make a declaration that the committal order of Maharaj J. was unconstitutional and void, and order the assessment of damages by a Judge in Chambers.

p.180,p.1

pp.182-193 8. Corbin, J.A. was also of opinion that Scott, J. had erred in concluding that the High Court had no jurisdiction to entertain the application, and for the same reason as that advanced by the learned Chief Justice. To succeed, the Appellant must shew that he had been imprisoned without due process of law, and that he was entitled to damages. His Lordship dealt with the concept of due process of law, but did not find it necessary to decide whether there had been a breach of due process - although he noted that the Privy Council had not been of the view that Maharaj, J. had acted arbitrarily. In his Lordship's view the application must fail because, contrary to the contention of the Appellant, the rights enshrined in Sections 1 and 2 of the Constitution were not new rights, sui generis, but already existing common law rights. They, and the common law generally, were preserved by the Constitution. At law, a judge was not liable for damages for a judicial act, nor was the State vicariously liable. The effect and substance of the application, if correct, was that a judge was liable. His Lordship agreed with the reasons advanced by the learned Chief Justice and would dismiss the appeal. making the same

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p.184,l.16.

p.186,l.23

p.187,l.11.

p.190,l.39.

p.193,l.17.

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Rider A

save as to the question of jurisdiction of the High court which in his Judgment Scott, J correctly determined.

NO NEW RIGHTS FOR JUDGES, etc.

10 against the State, and independent and distinct from such rights and remedies as already exist against the infringer of a fundamental right. Phillips, J.A. erred, it is submitted, in holding that new rights and remedies were introduced. So holding, it is submitted, introduces into the law of Trinidad and Tobago a system of droit administratif. The introduction of such a system would require express provision in the Constitution. There is no such provision: indeed, it is submitted the whole tenor of the Constitution is against such introduction.

20 10. It is submitted, respectfully, that Phillips, J.A. erred further in holding; that the Appellant had been denied the right to be heard, and that such denial constituted a breach of fundamental rights; that adherence to the rules of natural justice is procedural rather than substantive law and that procedural law is not preserved by Section 3(1) of the Constitution; that a distinction falls to be made between common law and breach of statutory duty on the one hand and breach of fundamental right on the other; and, that breach of fundamental right confers a double remedy.

30 11. It is respectfully submitted that the order of the Court of Appeal ought to be upheld, and the appeal dismissed with costs, for the following, among other

R E A S O N S

- (1) BECAUSE the application was, in substance and effect, an attempt to obtain a remedy in a situation where there had been no wrong, alternatively, if there had been a wrong, where no remedy lay.
- (2) BECAUSE the entrenchment of the fundamental rights in the Constitution conferred no new right to proceed against anyone who could not be proceeded against under the constitution.

Rider B

- 7.
- 3(a) because the Judgment of the Court of Appeal would effect that in any of the circumstances herein mentioned sub-section (1) of Section 6 enables a person in pursuit of the rights and freedoms declared in Section 1 and 2 of the constitution to apply for redress to a Judge of the High Court from a decision or ruling of the High Court itself and even of the Court of Appeal is erroneous.

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the Court of Appeal was right and ought to be affirmed.

GERALD DAVIES

APPENDIX

Statutory Provisions Relevant at the Material
time

The Constitution of Trinidad and Tobago (Second
Schedule to the Trinidad and Tobago (Constitution)
Order in Council, S.I. 1875 of 1962)

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

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

.....

20 Section 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, abridgment or
infringement of any of the rights and freedoms
hereinbefore recognised and declared and in
particular no Act of Parliament shall -

- (a) authorise or affect the arbitrary
detention, imprisonment or exile
of any person:

.....

30 (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;"

.....

Section 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."

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Section 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 or section of this 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.

(2) The High Court shall have original jurisdiction - 10

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) thereof,

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 of the provisions of the said foregoing sections or section to the protection of which the person concerned is entitled. 20

(3) If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the foregoing sections or section the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious. 30

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal.

(5) Nothing in this section shall limit the power of Parliament to confer on the High Court or the Court of Appeal such powers of Parliament may think fit in relation to the exercise by the High Court or the Court of Appeal, as the case may be, of its jurisdiction in respect of the matters arising under this Chapter." 40

The Crown Liability and Proceedings Act, No. 17
of 1966.

Section 2(2). "in this Act -

.....

(h) 'servant', in relation to the Crown includes an officer who is a member of the public service and any servant of Her Majesty, and accordingly (but without prejudice to the generality of the foregoing) includes:

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(i) a Minister of the Crown;

(ii) a member of the armed forces of the Crown;

(iii) a member of the Trinidad and Tobago Police Service,

but does not include -

(iv) the Governor-General

(v) any Judge, Magistrate, Justice of the Peace or other judicial officer;

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(vi) any officer, employee or servant of a statutory corporation"

.....

Section 4(1) "Subject to this Act, the Crown shall be liable to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject -

(a) in respect of torts committed by its servants or agents;

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(b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer

.....

(2) No proceedings shall lie against the Crown by virtue of paragraph (a) of subsection (1) in

respect of any act or omission of a servant or agent of the Crown unless the act or omission would depart from the provisions of this Act have given rise to a cause of action in tort against that servant or agent or his estate

.....

(6) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process."

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Section 19(2). "Subject to this Act and to any other enactment, proceedings against the Crown shall be instituted against the Attorney General."

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- and -

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Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
Hale Court,
21, Old Buildings,
Lincoln's Inn,
London W.C.2.

Respondents Solicitors