Judgment 3 of 1978

3/78

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 21 of 1977.

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL 1962

BETWEEN

RAMESH LAWRENCE MAHARAJ (Appellant)

A N D

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO (Respondent)

RECORD OF PROCEEDINGS

INGLEDEW, BROWN, BENNISON & GARRETT,
51, MINORIES,
LONDON EC 3N 1JQ,

Solicitors for the Appellant.

CHARLES RUSSELL & CO.
HALE COURT
LINCOLN'S INN
LONDON WC2 3UL

Solicitors for the Respondent

IN THE ~~PRIVY~~ JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 21 of 1977.

O N A P P E A L

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ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL 1962

BETWEEN

RAMESH LAWRENCE MAHARAJ (Appellant)

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO (Respondent)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

No. 21 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

No 1.

In the High Court

No. 1 Notice of Motion

17th April 1975.

Notice of Motion

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962.

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTIONAND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ

In the High Court

No. 1
Notice of Motion

17th April 1975

(continued)

COMMITTING THE APPLICANT TO PRISON FOR COMTEMPT OF COURT.

TAKE NOTICE that this Court will be moved on the 17th day of April, 1975 as soon as Counsel may be heard or at such time as the Registrar may thereafter appoint for the following relief in favour of the Applicant:-

(1) A declaration that the order of the Honourable Mr. Justice Sonny Maharaj made on this day committing the applicant to prison for contempt of court for a period of seven days is unconstitutional, illegal, void and of no effect:

(2) An order that the applicant be released from custody forthwith.

(3) An order that damages be awarded against the second named respondent for wrongful detention and false imprisonment.

(4) All such orders, writs, including a writ of habeus corpus, and directions as may be necessary or appropriate to secure redress by the applicant for a contravention of the human rights and fundamental freedoms guaranteed to him by the constitution of Trinidad and Tobago.

(5) Such further or other relief as the justice of the case may require.

(6) Costs.

And the applicant further seeks upon the hearing of this motion the following conservatory orders to await the final hearing and determination of this action in the event that this application is not heard on this day:-

(a) An order directing the release of the applicant from custody upon his own recognisance or upon such terms as may be just or appropriate.

(b) Such further or other order as may be appropriate to preserve the status quo of the applicant.

Dated this 17th day of April, 1975.

Carlyle M. Kangaloo

Carlyle M. Kanagloo of No 3 Lord Street, San Fernando and in Port of Spain c/o Mr. L. Ramcoomarsingh of 36 Sackville Street, Port of Spain. Solicitor for the Applicant.

In the High Court

No. 1
Notice of Motion

17th April, 1975

(Continued)

To: The Honourable Mr. Justice Maharaj,
High Court of Justice.

AND TO: The Honourable Attorney General Of Trinidad and Tobago,
"Chambers"
Red House,
Port of Spain.

No. 2.

No. 2
Affidavit of Barendra Sinanan

17th April, 1975.

Affidavit of Barendra Sinanan

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF THE APPLICATION OF RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT

AND

IN THE MATTER OF THE ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HON. SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

I, BARENDRA SINANAN, s Solicitor employed with the firm of Hobson & Chatoor, Solicitors of 9B1, Harris Promenade, San Fernando having been duly sworn make oath and say as follows:-

1. I am a Solicitor of the High Court of Justice of Trinidad

In the High Court

No. 2

Affidavit of Barendra Sinanan

17th April, 1975.

(continued)

and Tobago and I am duly authorised to swear to this affidavit on behalf of the applicant who is in custody pursuant to the execution of a warrant more particularly referred to herein.

2. I am Solicitor for the defendant in action No. 564 of 1973 between Samdaye Harripersad (Plaintiff) and Mini Max Ltd. (Defendants) which was being heard in the High Court, San Fernando today 17th April, 1975 by the Honourable Mr. Justice Maharaj.

3. The case commenced before the said judge on Tuesday the 15th day of April, 1975 when two medical witnesses for the Plaintiff Doctors H. Collymore and Romesh Mootoo were heard while the defendant was unrepresented their Counsel the applicant having been engaged in a special fixture in the Court of Appeal in the case of Trinidad Islandwide Cane Farmers Association and the Attorney General -vs- Prakesh Seereeram Maharaj, an adjournment having been applied for on behalf of the defendants and having been refused by the Judge.

4. On the 15th day of April, 1975 the two witnesses for the Plaintiff were heard the hearing was adjourned to the 17th April, 1975.

5. Upon the resumption of the hearing on the 17th April, 1975 the following events took place before the judge:-

1. Mr. Archibald Q.C. and Mr. Panday appeared for the Plaintiff instructed by Mr. Jack.

2. The applicant instructed by Messrs. Hobson & Chatoor, Solicitors appeared for the defendant.

3. The applicant asked leave of the judge to recall Doctors Collymore and Mootoo to be cross-examined in order to have an investigation into the Plaintiff's medical history and to assist the defendants in the establishment of paragraph 4 of the defence which related to an allegation that the plaintiff who sued in negligence after falling on a floor alleged to be slippery had not taken care to observe the condition of the floor and to exercise reasonable care for her own safety. The application was refused by the judge.

4. The applicant then referred to an application he made on the previous day in the case of Bachan -v- Caroni Limited in the High Court when he invited the Judge to disqualify himself from hearing that case and said he reserved the right to impeach the entire proceedings.

5. The Judge then asked the applicant whether he was

saying that the Court had acted dishonestly and corruptly in doing cases behind Counsel's back.

6. The applicant replied that he did not think it the right place to answer that question, further he did not think the question arose having regard to what he said to the Judge the previous day and that was that the Judge's conduct had been "unjudicial" in certain matters in which the applicant was Counsel.

7. The Judge then formally charged the applicant with having committed contempt of Court and called upon the applicant to answer the charge.

8. The applicant then asked the judge to grant an adjournment to enable him to retain a lawyer.

9. The judge refused the application.

10. The applicant then said that he was not guilty and that he had not imputed bias or anything against his Lordship.

11. The Judge then asked the applicant whether he had anything to say on the question of sentence.

12. The applicant replied that he had nothing to say but that he wanted to consult Dr. Ramsahoye of Counsel upon whose advise he had filed two appeals in matters heard by his Lordship .

13. The Judge then committed the applicant to seven days simple imprisonment.

6. The facts and matter recited above are true to the best of my knowledge I having been present throughout the hearing.

7. The applicant was advised that the facts and matters alleged did not permit the exercise of the jurisdiction of the High Court to commit summarily and of its own motion for contempt of Court and that in any event the offence of contempt of Court had not been committed by the applicant during the hearing.

8. The Judge did not provide the applicant with particulars of the offence of contempt of Court and the applicant is advised that he was entitled to be charged formally even though orally and not in general terms.

9. The applicant is further advised that the denial of Counsel for the applicant rendered the proceedings invalid and that the said proceedings which led to the imprisonment of the applicant

In the High Court

No. 2

Affidavit of Barendra Sinanan

17th April, 1975.

(Continued)

was a grave miscarriage of justice.

10. The applicant is further advised that he has been denied his liberty under and by virtue of an order which is a nullity and that the order of imprisonment and the execution thereof is a denial of the right of the applicant under section 1 (a) of the constitution of Trinidad and Tobago not to be deprived of his libertyexcept by due process of law. He is further advised that the said order and imprisonment are a denial of his right to equality before the law and to the protection of the law in terms of section 1 (b) of the said constitution.

11. No order was entered by the Court for the committal of the applicant before he was detained and imprisoned and at the time of the swearing of this application no order has yet been made under the seal of the Court.

12. The judge signed a warrant committing the applicant to prison without an order having been made under the seal of the Court and the applicant is advised that the said warrant is a nullity.

13. The applicant has been the subject of harsh, arbitrary and oppressive action leading to his confinement and is in the premises entitled to aggravated damages.

14. Unless released the applicant who is confined will continue to be confined in Her Majesty's Prison at Port of Spain and be denied his liberty by the servants and/or agents of the Government of Trinidad and Tobago who are responsible for his unlawful detention and imprisonment.

15. In the premises the applicant prays for the relief sought in the motion in exercise of the powers vested in the Court by Section 6 of the Constitution of Trinidad and Tobago and in pursuance of all other powers enabling the Court in that behalf.

SWORN to at 3 Penitence Street,)
in the Town of San Fernando) Barendra Sinanan
this 17th day of April, 1975.)

Before me,

Dalton Chadee
Commissioner of Affidavits.

Filed on behalf of the applicant herein.

No. 3

In the High Court

Order of Braithwaite J.

No. 3
Order of Braithwaite J.

17th April, 1975.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No: 974 of 1975.

IN THE MATTER OF THECONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962.

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

Before - The Honourable Mr. Justice John Braithwaite.
on the 17th day of April, 1975.
Entered the 17th day of April, 1975.

UPON reading the Notice of Motion filed herein and the affidavit of Barendra Sinanan filed in support thereof and upon hearing Dr. Fenton Ramsahoye and Mr. Dasdeo Persad Maharaj, Counsel for the Applicant.

IT IS ORDERED

That the Applicant be released from custody forthwith and that to all men into whose hands these presents may come THIS Applicant do enter into his own recognisance in the sum of One Thousand Dollars and that the further hearing of this Motion be fixed for Wednesday 23rd April, 1975 at the hour of 9.30 o'clock in the forenoon and that Notice of the Motion be served on the Honourable Attorney General within forty eight hours.

AND IT IS FURTHER ORDERED:

That in default of signing the recognisance the Applicant do remain in prison for seven days.

W. D. Punnett - Assistant-Registrar:

In the High Court

No. 4

Order of release of Braithwaite J. 17th April, 1975.

No 4.

Order of release by Braithwaite J.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No: 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962.

IN THE MATTER OF AN APPLICATION BY RAMESH LAWRENCE MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR, JUSTICE SONNY MAHARAJ, COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

Queen Elizabeth the Second by the Grace of God of Great Britain Ireland and British Dominions Beyond the Seas, Queen, Defender of the Faith.

To: Thomas Isles Esquire, Commissioner of Prisons, Greetings.

It is ordered that the Applicant be released from Custody forthwith and that to all men into whose hands these presents may come. This shall be the authority for obedience to this Order.

By Order of His Lordship The Honourable Justice John A. Braithwaite.

Dated this 17th day of April, 1975.

W. G. Punnett

Assistant Registrar.

No. 5

In the High Court

No 5

Affidavit of Ramesh L. Maharaj.

Affidavit of Ramesh L. Maharaj

21st April, 1975.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No: 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF THE APPLICATION OF RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF THE ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

I, RAMESH LAWRENCE MAHARAJ, of 3 Penitence Street, San Fernando having been duly sworn make oath and say as follows:-

1. I am a barrister-at-law lawfully practising my profession in Trinidad and Tobago

2. On the 17th April, 1975 while I was standing at the Bar representing the defendant as Counsel in Action No. 564 of 1973 between Samdaye Harripersad (Plaintiff) and Mini Max Ltd. (Defendant) I was on the oral direction of the Honourable Mr. Justice Sonny Maharaj herein referred to as "the Judge" taken into custody by a member of the Trinidad and Tobago Police Force and was removed to the San Fernando Police Station where I was placed in a cell with other prisoners. I was later on the same day removed from the Police Station at San Fernando and was imprisoned in Port of Spain at the Royal Goal.

3. The following facts and matters relate to the circumstances which arose before and after the detention and are true to the best of my knowledge, information and belief.

4. On the 14th April, 1975 I was engaged as Junior Counsel for the Respondent in the Court of Appeal in the case of Trinidad Islandwide Cane Farmers Association and the Attorney-General of Trinidad and Tobago -v- Prakash Seereeram Maharaj. The hearing

In the High Court

No. 5

Affidavit of Ramesh L. Maharaj

21st April, 1975.

(Continued)

of that appeal commenced on the 2nd April, 1975 and was completed on the 15th April, 1975. The hearing had been expected to last for about five days but in the events which occurred it took a longer time and I was unavailable for the cases in which I was briefed to appear as Counsel in San Fernando.

5. In the month of April, 1975 the judge set in the High Court in San Fernando. In accordance with the practice of the Court its sitting commenced at 9 o'clock in the forenoon and the Court rose between 12.30 and 1 o'clock in the afternoon of every sitting day. Except on the 14th April, 1975 the judge rose between 12.30 and 1 p.m. on each sitting day.

6. On the 14th April, 1975 I was Counsel for the Plaintiffs in two consolidated actions numbered 572 and 875 of 1971 in which Clarence Henry, Mary Taylor, Viola Joseph and Rita Cobbler were claiming damages against Texaco Trinidad Incorporated and Mr. Chen for property lost in a fire. Mr. M. De La Bastide Q.C. was Counsel for Texaco Trinidad Incorporated and Mr. Tajmool Hosein Q.C. and Mr. Ewart Thorne Q.C. were Counsel for Mr. Chen. None of the Counsel engaged in the case appeared. Mr. Basdeo Persad Maharaj held my brief. Mr. Frank Misir Q.C. held the briefs of Senior Counsel on the other side. Counsel on both sides agreed that an adjournment should be sought and both sides made applications to the Court to that effect. The grounds of the applications were that witnesses from Texaco Trinidad Incorporated were not available because of a strike at the refinery which had been completely shut down and because of the engagement of Counsel in the Court of Appeal. The Judge refused the application by Mr. Basdeo Persad Maharaj and dismissed the action without calling upon the plaintiffs who were personally in Court to proceed personally or to retain other Counsel to represent them. The two actions were called for hearing for the first time on the 14th April, 1975.

7. On the same day there were two other actions on the list of cases being heard by the Honourable Mr. Justice Sonny Maharaj in which I was Counsel. One was action No. 822 of 1972 between S. Dindial (Plaintiff) and Caroni Limited (Defendant) I was Counsel for Caroni Limited. The other was Action No 564 of 1973 between Samdaye Harripersad (Plaintiff) and Mini Max Ltd. (Defendant). I was Counsel for Mini Max Ltd.,

8. After the dismissal of the consolidated actions mentioned in paragraph 6 hereof the case of S. Dindial v. Caroni Ltd. was called. My brief was held by Mr. Basdeo Persad Maharaj who sought an adjournment on the grounds that witnesses were not available because of a strike at Caroni Limited which had also also been shut down. Mr. Hendrikson Seunath held the brief of Mr. Allan Alexander for the Plaintiff and he informed the Judge that Mr. Alexander was unable to be present to conduct

his case. Mr. Basdeo Persad Maharaj also informed the Judge that he could not proceed because he had signed the statement of claim for the Plaintiff. The Judge refused the application for an adjournment and sent for my wife Mrs. Lynette Maharaj who was appearing bocore the Honourable Mr. Justice Narine in another Court.

When Mrs. Maharaj appeared in answer to his summons the Judge said he was sorry to do so but the case had to be proceeded with and whe was obliged to represent Caroni Limited even though she had not been retained or had any instructions. The hearing commenced immediately. The claim of the Plaintiff was for damages for negligence arising out of a motor accident and there was a counterclaim by the Defendant. At the close of the case for the Plaintiff which Mr. Seunath conducted Mrs. Maharaj applied for an adjournment to enable the witnesses for the Defendant to be called. Her ground was that there was industrial unrest at Caroni Limited and it was found impossible to have process served on the witnesses there and that she had no other addresses for them. The Judge said he noted the application and refused it. Two formal witnesses were called for theDefendant and it being then 1 o'clock in the afternoon Mrs. Maharaj against applied for an adjournment to the following day to enable her to call the driver of one of the vehicles concerned and other witnesses to establish her case but the Judge refused her application and called upon Mrs. Maharaj to address the Court. She addressed the Judge on the material available, Mr. Seunath then addressed him. Judgment was entered for the Plaintiff and a counterclaim by the defendant was dismissed. The hearing was completed at 2 o'clock.

A special partheard fixture listed for that date Soochit and Deyalsingh was postponed for the next day to accommodate Mr. Nathaniel King, Counsel for the Plaintiff who was not in attendance in Court.

9. Earlier in the day Mr. Basdeo Persad Maharaj held my brief for the Defendant in Samdaye Harripersad v. Mini Max Ltd., Mr. Rupert Archibald, Q.C. and Mr. Basdeo Panday appeared for the Plaintiff. Mr. Archibald applied for an adjournment on the ground that he was not ready to proceed because his witnesses were not available. Mr. Basdeo Persad Maharaj also said that the Defendant's witnesses were not available and he also sought an adjournment. Mr. Justice Maharaj adjourned the hearing to Tuesady 15th April, 1975 and said the hearing would be taken after a part heard matter Suchit v. Deyalsingh was completed on that day. On the same day in Edward Lee On v. Profit Cooper in which Mr. Archibald, Q.C. appeared for the Plaintiff and Mr. Harricharan for the Defendant Mr. Archibald applied for an adjournment on the ground that the Plaintiff was not in attendance and an adjournment was granted by the Judge to the 18th April, 1975. On the 15th April, 1975 Mr. Basdeo Persad Maharaj again held my brief for Mini Max Ltd., Two doctors were present in Court to give evidence for the Plaintiff. Mr. Basdeo Persad Maharaj said the Defendant was objecting to his

In the High Court

No. 5

Affidavit of Ramesh L. Maharaj

21st April 1975

(Continued)

representing them and that I was still engaged in Port of Spain in the Court of Appeal . The hearing proceeded and the two medical witnesses were heard while the defendant was unrepresented and the hearing was adjourned to a time later in the day. At 12.30 o'clock in the afternoon the Judge said that he had an appointment and he further adjourned the hearing to the 17th April, 1975.

10. At the resumed hearing on the 17th April, 1975 I appeared for Mini Max Ltd. when the events mentioned and referred to in the affidavit of Barendra Sinanan occurred except that as was explained to the Court by Counsel upon the hearing of this motion I did not invite the Judge to disqualify himself from sitting in the proceedings as is mentioned in paragraph 4 thereof. I only said that I reserve the right to impeach the proceedings. The reference to the day previously was made because on that day in Chambers I made application to the Judge to disqualify himself in all proceedings in which I appeared and referred to the cases which are mentioned herein. The Judge refused the application and I continued to appear while he heard and determined two of my cases and adjourned the others. The deposition in paragraph 12 of Barendra Sinanan's affidavit is also in error because no warrant was signed by the Judge. It was signed by the Registrar and although I asked that it be shown to me the member of the Police Force who escorted me to prison refused to show it to me or to read it to me. At the Police Station my fingerprints were taken and kept by the Police.

11. I was removed from the Bar at the request of a policeman in Court on the oral direction of the Judge who signed no warrant to authorise my removal and I was asked by the policeman to remove my robes before I was taken to the Police Station.

12. The appeals to which I referred before the Judge pronounced the sentence for my alleged contempt of Court were filed on the 16th April, 1975 and copies are hereto annexed and marked RLM 1 and RLM 2.

13. A copy of the warrant which was signed after my removal from the Bar and while I was in police custody at the San Fernando Police Station is hereto annexed and marked RLM 3.

14. At the Police Station at San Fernando I was placed in an unclean cell with about eight other prisoners one of whom had been under a charge of murder and another appeared to be a mental defective. I remained in custody in San Fernando and Port of Spain for approximately seven hours and during a part of that time I was being conveyed by Police Land Rover from San Fernando to Port of Spain.

15. I repeat my claim for redress made in the motion filed

herewith and I wish to rely upon this affidavit, upon the affidavit of Mr. Darendra Sinanan and upon such other evidence as the Court may admit.

SWORN to at No. 3 Penitence Street,)
in the town of San Fernando) Ramesh L. Maharaj
this 21st day of April, 1975.)

Before me

Dalton Chadee
Commissioner of affidavits.

In the High Court

No. 5
Affidavit of Ramesh L. Maharaj

21st April, 1975.

(Continued)

10 Filed on behalf of the applicant herein.

Exhibit "RLM 1" Copy of Appeal filed in High Court Action No 822 of 1972.

16th April, 1975.

EXHIBITS

"RLM 1" - Appellant's Exhibit. Copy of Appeal in High Court Action No 822 of 1972. Satinand Dindial v. Caroni Ltd.

High Court Action No. 822 of 1972.

Civil Appeal No. 35 of 1975.

Between

CARONI LIMITED Defendant-Appellant;

and

SATINAND DINDIAL Plaintiff-Respondent:

TAKE NOTICE that the Defendant-Appellant being dissatisfied with the whole of the decision of the Honourable Mr. Justice Sonny Maharaj more particularly set forth in paragraph 2 hereof contained in his judgment dated 14th day of April, 1975 doth appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing seek the relief set out in paragraph 4.

AND the Defendant-Appellant further states that the names and addresses including its own of the persons directly affected by theAppeal are those set out in paragraph 5.

2. That it is this day adjudged that the Plaintiff recover against the Defendant the sum of $4,325.00 with interest at the rate of 6% per annum from the date of issue of Writ and that the Defendant do pay the Plaintiff his costs of suit to be taxed.

3. GROUNDS OF APPEAL

1. That the Learned Trial Judge erred in determining the action on the 14th April, 1975 in refusing an application for an adjournment to enable the defendants to obtain their witnesses who were not available because of an Industrial dispute and stoppage of work in the Sugar Industry.

2. The determination of the action in circumstances in which the Defendants were unable to present their case adequately or at all was part of a course of unjudicial conduct in which the trial Judge on the 14th April, 1975 unreasonably dismissed an action

No. 572 of 1971 between Clarence Harry and Others and Texaco Trinidad Inc. and W. Chen which was consolidated with Action No 875 of 1971 between Rita Cobbler and Texaco Trinidad Inc., and W. Chen and proceeded to hear and determine Action no. 822 of 1972 between Satinand Dindial vs Caroni Limited, when the witnesses for the Defendants were unavailable because of an Industrial dispute involving the Defendants. The said course of conduct was continued on the 15th April, 1975 when the trial judge unreasonably suspended the hearing of a part-heard action Soochit vs Deyalsingh No. 707 of 1968 to commence the hearing, with the Defendants being unrepresented, of Samdaye Harripersad vs Mini Max Limited No. 564 of 1973, he having refused the application for adjournment on the grounds that necessary witnesses and Counsel were not available. In all of the cases the action taken by the Trial Judge was prejudicial to the interests of litigants who were being represented by Mr. Ramesh L. Maharaj who was engaged in the Court of Appeal in the Appeal of Attorney General and T. I. C. F. A. vs Prakash Maharaj.

Exhibit "RLM 1" Copy of Appeal filed in High Court Action No 822 of 1972.

16th April, 1975.

(Continued)

4. The relief sought by the Defendant Appellant is that:-

(a) That the order of the trial judge be set aside and that a hearing be ordered do novo and that such provision may be made for costs as may be just.

5. Persons directly affected by the Appeal:-

1. Caroni Limited, Brechin Castle, Couva.

2. Satinand Dindial, Mc Bean Village, Couva.

Dated this 16th day of April, 1975.

G. Mungalsingh
Solicitor & Agent for Laurence Narinesingh & Co

Solicitors for the Defendant Appellant.

To: The Registrar, Court of Appeal, Port of Spain.

And To: Satinand Dindial, Mc Bean Village, Couva.

And To: Mr. Ramnarine Rampersad No. 7a Harris Promenade, San Fernando, Solicitor for the Plaintiff-Respondent.

" RLM 1"

This is the copy of the Appeal marked "RLM 1" referred to in the annexed affidavit of Ramesh Lawrence Maharaj sworn to be-fore me this 21st day of April, 1975.

Dalton Chadee
Commissioner of Affidavits.

Exhibit "RLM 2" Copy of Appeal filed in High Court Actions Nos 572 & 879 of 1971.

16th April 1975.

EXHIBITS

"RLM 2" - Appellant's Exhibit. Copy of Appeal in High Court Actions Nos 572 and 879 of 1971. Clarence Harry, Mary Taylor and Viola Joseph, Rita Cobbler vs Texaco Trinidad Inc and W. Chen.

IN THE COURT OF APPEAL

NOTICE OF APPEAL

Civil Appeal No 34 of 1975.

Between

CLARENCE HARRY, MARY TAYLOR, and VIOLA JOSEPH, RITA COBBLER
Plaintiffs-Appellants

and

TEXACO TRINIDAD INC.
1st Defendant-Respondent

and

W. CHEN
2nd Defendant-Respondent.

TAKE NOTICE that the Plaintiffs-Appellant being dissatisfied with the whole of the decision of the Honourable Mr. Justice Sonny Maharaj more particularly set forth in paragraph 2 hereof, contained in his Judgment dated the 14th day of April, 1975 in Actions Nos. 572 of 1971 and 879 of 1971 (Consolidated Actions) doth appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing seek the relief set out in paragraph 4.

AND the Plaintiffs-Appellants further states that the names and addresses including their own of the persons directly affected by the Appeal are those set out in paragraph 5.

2. The Plaintiffs-Appellants apeal against the whole decision.

3. GROUNDS OF APPEAL.

1. The learned trial Judge wrongly exercised his discretion when he refused an adjournment which was sought by the Plaintiffs and the Defendants and in the absence of a motion or application to dismiss having regard to the following circumstances.

(a) The solicitors for the second named Defendant sought

and obtained by telephone one week before the hearing the consent of the Plaintiffs to a proposed application for an adjournment on the 14th April, 1975 on the ground that their Counsel Mr. Tazmool Hosein, Q.C. and Mr. Ewart Thorne, Q.C. were unavailable.

Exhibit "RLM"2" Copy of Appeal filed in High Court Actions Nos 572 & 879 of 1971

(b) Counsel for the Plaintiffs Mr. Ramesh L. Maharaj was engaged in a Special fixture in the Court of Appeal as Junior Counsel for the Respondents in the case of the Attorney General and Trinidad Islandwide Cane Farmers Association vs Prakash Secreram.

16th April 1975.

(c) Counsel for the first named Defendant Mr. Michael De La Bastide, Q.C. was unavailable on the 14th April, 1975 and communicated his position to Counsel for the Plaintiff Mr. Ramesh L. Maharaj.

(Continued)

(d) By reason of a strike at Texaco it was impossible for the Plaintiffs to obtain the necessary documents in support of their case.

(e) The Learned Judge refused to invite Counsel who held for Mr. Ramesh L. Maharaj for the Plaintiffs to start the Plaintiffs' case.

(f) At the time the action was called for hearing a part-heard action Soochit -v- Deyalsingh No. 707 of 1968 (San Fernando) and the hearing was in progress when Nathaniel King, Counsel for Soochit did not appear to continue. The hearing was adjourned to the 15th April, 1975 and a similar concession was denied Counsel for the Plaintiff Mr. Ramesh L. Maharaj.

The facts and matters except (e) and (f) above were placed before the trial judge for consideration and were not given any and/or sufficient weight by the Judge in reaching his decision to refuse the adjournment and dismiss the action.

2. The said decision was part of a course of conduct in which the trial judge on the 14th April, 1975 acted unjudically in determining the actions subject to appeal herein and another action No 822 of 1972 between Dindial -v- Caroni Limited the defendants being unable to proceed because of Industrial disputes affecting the Defendants and disabling them from obtaining their witnesses. Mr. Ramesh L. Maharaj their Counsel having been engaged in the Court of Appeal sought an adjournment of the hearing. Mrs. Lynette Maharaj having held his brief but the trial judge refused the adjournment and proceeded to judgment against the Plaintiff and to dismissal of the Counterclaim even though the witnesses for the defendants were not available. The above difficulties were

Exhibit "RLM 2" Copy of Appeal filed in High Court Actions Nos. 572 & 879 of 1971

16th April, 1975

(Continued)

communicated to the trial judge by Mrs. Maharaj. The trial Judge was further informed of attempts made by the Defendant's Solicitors to serve the witnesses but they were futile.

3. The said unjudicial conduct was continued and on the 15th April, 1975 in the matter of Samdaye Harripersad -v- Mini Max Ltd., which was adjourned on the 14th April, 1975 by the trial Judge to the 15th April, 1975. Mr. Ramesh L. Maharaj of Counsel for the Defendant was still engaged in the Court of Appeal and Mr. Basdeo Persad Maharaj held his Brief and sought an adjournment on that ground and on the further ground that the witnesses were not available and that the Defendants were desirous of having Mr. Ramesh L. Maharaj conduct their case. The adjournment was refused and the hearing of the part heard case of Soochit and Deyalsingh was suspended to allow the trial judge to commence the hearing of Sandaye Harripersad -v- Mini Max Limited. Two witnesses were heard while the Defendants were unrepresented and after the hearing of that action was adjourned to continue after the hearing of Soochit and Deyalsingh which he hoped to complete the said morning. At 12.30 p.m. the Learned Judge having completed Soochit -v- Deyalsingh adjourned the matter of Samdaye Harripersad =v= Mini Max Limited for the 17th April, 1975 stating that he had an appointment.

4. The relief sought by the Plaintiffs-Appellant is that:-

(a) The Judgment of the Trial Judge be set aside and that the matter be sent back for trial before another Judge.

5. The persons directly affected by theAppeal are:-

1. Clarence Harry, New Haven Avenue, Marabella.

2. Mary Taylor, Edison Ways, Stne Village, Penal.

3. Viola Joseph, 48 New Haven Avenue, Marabella.

4. Rita Cobbler, Brazzo Friedia, Monserrat.

5. Texaco Trinidad Inc., Pointe-a-Pierre.

6. W. Chen, Marabella, Pointe-a-Pierre.

Dated this 16th day of April, 1975.

G. Mungalsingh
Solicitor & Agent for Laurence, Narinesingh & Co
Solicitors for the Plaintiffs-Appellants of no. 75 Broadway, San Fernando.

To: The Registrar, Court of Appeal, Port of Spain

And To: Texaco Trinidad Inc., Pointe-a-Pierre.

And To: W.Chen, Marabella, Pointe-e-Pierre

And TO; Messrs Fitzwilliam, Stone & Alcazar, c/o Messrs Hobson & Chatoor, H rris Promenade, San Fernando Solicitors for the Defendant Texaco Trinidad Inc.,

And To: Messrs I. P. Thorne & Co., Court Street,San Fernando, Solicitor for the Defendant W. Chen.

Exhibit "RLM 2" Copy of Appeal filed in High Court Actions Nos. 572 & 879 of 1971

16th April, 1975.

(Continued)

"RLM 2"

10 This is the copy of the Appeal marked "RLM 2" referred to in the annexed affidavit of Ramesh Lawrence Maharaj sworn to before me this 21st day of April, 1975.

Dalton Chadee

Commissioner of affidavits.

Exhibit "RLM 3" Copy of Warrant

EXHIBITS

"RLM 3" - Appellant's Exhibit Copy of Warrant of the 17th April, 1975.

17th April, 1975.

Queen of Trinidad and Tobago and of her other Realms and Territories.
Head of the Commonwealth.

W A R R A N T.

TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE
Sub-Registry, San Fernando.

To: THE COMMISSIONER OF POLICE AND ALL POLICE CONSTABLES AND TO THE KEEPER OF THE ROYAL GAOL.

WHEREAS by an order made by the Honourable Mr. Justice Maharaj on the 17th day of April, 1975, it was ordered that Ramesh Lawrence Maharaj, do stand committed to the Royal Gaol for his contempt of Court on the said 17th day of April, 1975.

THESE ARE THEREFORE TO REQUIRE you the said Commissioner of Police, Assistants or others to take the body of the said RAMESH LAWRENCE MAHARAJ and him safely forthwith convey to the Royal Gaol, in the City of Port of Spain in the said Island of Trinidad, and there deliver him into the custody of the Keeper of the said Royal Gaol and you the said Keeper of the Royal Gaol to receive the said Ramesh Lawrence Maharaj and him safely keep in the said Royal Gaol for Seven (7) days from the arrest under this order or until he shall sooner be discharged by due course of law.

AND THIS shall be to you and eny of you who do the same a sufficient warrant.

WITNESS: The Honourable Sir Isaac Hyatali, Chief Justice of Our Said Island of Trinidad at San Fernando, this 17th day of April, in the year of Our Lord One thousand nine hundred and seventy five.

S. Cross
Assistant Registrar,
San Fernando.

"RLM 3"

This is the copy of the Warrant marked "RLM 3" referred to in the annexed affidavit of Ramesh Lawrence Maharaj sworn to before me this 21st day of April, 1975.

Dalton Chadee
Commissioner of Affidavits.

No. 6

Affidavit of Renrick Scott

In the High Court

No. 6

Affidavit of Renrick Scott

23rd April, 1975.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No: 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF THE APPLICATION OF RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF THE ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

I, RENRICK SCOTT, of 47, St. Vincent Street, in the Town of San Fernando, in the Island of Trinidad, Public Servant make oath and say as follows:-

1. I am an acting Clerk III attached to the Judiciary, Supreme Court, San Fernando, Sub-Registry and I sometime act as clerk to the Court.

2. On the 16th day of April, 1975 Mr. Justice Sonny Maharaj was presiding over the Chamber Court as Chamber Judge, and Iwas taking notes as his court clerk. On that day Action No. 414 of 1972 between S. Dindial (plaintiff) and Caroni Limited (defendant) was called for hearing and stood down. Mr. Ramesh L. Maharaj appeared as Counsel for the Defendant, and during the course of his address to His Lordship Mr. Ramesh L. Maharaj requested His Lordship to disqualify himself from sitting as trial Judge in any matters in which he, Mr. Maharaj was appearing.

3. The request for disqualification was refused by His Lordship and Mr. Ramesh L. Maharaj then told His Lordship the trial Judge that his conduct in certain matters in which he Mr. Maharaj was appearing was "unjudicial".

In the High Court

No. 6

Affidavit of Renrick Scott.

23rd April, 1975.

(Continued)

4. On the morning of the 17th April, 1975 I was taking notes in the Court presided over by His Lordship Mr. Justice Sonny Maharaj. It was an open Court hearing civil matters. At about 10.03 part heard action No. 564 of 1973 between Samdaye Harripersad and Mini Max Limited was called. Mr. R. Archibald Q.C. appeared for the plaintiff and Mr. Ramesh L. Maharaj for the defendant.

5. Counsel for the defendant. Mr. Ramesh L. Maharaj applied to the Court for leave to recall, for cross examination, Doctors Harry Collymore and Romesh Mootoo who had given evidence in chief in the said action on the 15th day of April, 1975 in the absence of Counsel. This application for leave to recall the witnesses was refused.

6. Mr. Ramesh L. Maharaj then stated that in view of the present application and of the one he had made to His Lordship the previous day, he would like to impeach the proceedings, but that he would be appearing for the defendant. Mr. Ramesh Maharaj then stated that he was repeating all that he had said the day before about "unjudicial" conduct and disqualification of His Lordship.

7. His Lordship then asked Mr. Ramesh L. Maharaj to think carefully before answering the question which His Lordship was about to put to him. His Lordship then asked Mr. Maharaj if he was saying that the Court was biased or corrupt by taking matters behind his back. Mr. Maharaj replied that he did not think thatthe Court was the right place to answer the question and reserved the right to answer same. His Lordship then repeated the said question to Mr. Maharaj requesting an answer.

8. After some exchange of words between His Lordship and Mr. Maharaj, His Lordship charged Mr. Maharaj with having committed a contempt of Court and asked him to answer the charge. Mr. Maharaj asked for an adjournment so that he could consult his Counsel. This application was refused and His Lordship told Mr. Maharaj to answer the charge. Mr. Maharaj said that he was not guilty of the charge and requested an adjournment to consult his Counsel Dr. Fenton Ramsohoye. This application was refused and His Lordship found Mr. Maharaj guilty and committed him to 7 days simple imprisonment and the action was adjourned to the 28th day of April, 1975.

Sworn to by Renrick Scott at
St. Vincent Street, Port of Spain
this 23rd day of April, 1975.

/s/ Renrick Scott

Before me,
/s/ R. L. Bynoe.
Commissioner of Affidavits.

Filed on behalf of the Respondent.

No. 7.

Affidavit of George Anthony Edoo.

In the High Court

No. 7.

Affidavit of George Anthony Edoo

7th May, 1975.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION by RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

I, GEORGE ANTHONY EDOO of Busby Street, Battoo New Development, Marabella, Deputy Registrar of the Supreme Court of Judicature, make oath and say as follows:-

1. The annexed 7 pages of typescript document marked "A", "B" "C" and "D" contain copies of the notes taken by Mr, Justice Maharaj in Civil Court Note Book for San Fernando on the 14th, 15th, 16th and 17th days of April, 1975.

2. I have examined the said exhibits "A", "B", "C" and "D" with the original notes and I have found them to be true and correct.

Sworn by the within named George Anthony Edoo, at Harris Promenade, San Fernando this 7th day of May, 1975.

Sgd. G. A. Edoo

Before me,

Sgd. George Brown
Commissioner of Affidavits.

Filed on behalf of the Respondent, the Attorney General.

"A"
This is the exhibit marked "A" and referred to in the affidavit of George Anthony Edoo sworn to this 7th day of May, 1975, before me.

George A. Brown.
Commissioner of Affidavits.

Exhibit"A" Notes of Evidence in Action 572/71

EXHIBITS

"A" - Respondent's Exhibit - Notes of Evidence in High Court Action No. 572 of 1971.

14th April, 1975.

14th April, 1975.

No. 572 of 1971.

B. Maharaj for the defendant.

R. Maharaj for the Plaintiff.

NOTES OF EVIDENCE.

Misir Q.C. holding for Mr. T. Hosein for the defendant; and de la Bastide for Texaco.

B. Maharaj:

We are not ready to go on today. We require certain documents from Texaco, and having regard to the present position we cannot get these documents. I am not in a position to proceed today.

Court: What are those documents?

Maharaj:

No response. I am now made to understand that there is an expert witness dealing with evidence for us with certain oil in the river.

Court: What is the name of the witness and what efforts have been made to get him here; was he cited.

B. Maharaj:

I am unable to give his name.
Dismissed for want of prosecution.
No Order as to costs.
A true copy of the original which I hereby certify.

Dated the 6th day of May, 1975.

Sgd. G. A. Edoo
Deputy Registrar.

EXHIBITS

Exhibit "B"

"B" - Respondent's Exhibit - Notes of Evidence in High Court Action No. 564 of 1973.

Notes of Evidence in High Court Action No. 564 of 1973.

15th April, 1975.

15th April, 1975.

No. 564 of 1973:

B. Maharaj holding for R. Maharaj for the defendants,

Panday holding for Archibald, Q.C., for the Plaintiff.

B. Maharaj:

I am asking for an adjournment. Mr. R. Maharaj cannot be here this morning. He is at the Court of Appeal and the defendants would like him personally to deal withthis matter. Also the witnesses only went to the Solicitor on Friday.

Application refused.

B. Maharaj:

I am asking the Court for leave to withdraw.

Application granted.

A true copy of the original which I hereby certify.

Dated the 6th day of May, 1975.

Sgd. G. A. Edoo

Deputy Registrar.

"B"

This is the exhibit marked "B" and referred to in the affidavit of George Anthony Edoo sworn to this 7th day of May, 1975, before me

George A. Brown

Commissioner of Affidavits.

"C"

This is the exhibit marked "C" and referred to in the affidavit of George Anthony Edoo sworn to this 7th day of May, 1975, before me,

George A. Brown.
Commissioner of Affidavits

Exhibit "C"

EXHIBITS

"C" - Respondent's Exhibit - Notes of Evidence in High Court Action No. 414 of 1972.

Notes of Evidence in High Court Action No. 414 of 1972

16th April, 1975.

16th April, 1975.

No. 414 of 1972.
R. Maharaj for the defendant.

Jenvy for the plaintiff.

R. Maharaj:

This is a matter in which the Court had pressed to go on. It is an assessment matter. The plaintiff accepted the money deposited into Court. I would like to apply to the Court to disqualify yourself from sitting in any matter in which I am appearing. I make this submission on the basis that on Monday 14th April, 1975, Your Lordship dismissed action No. 572/71 and action No. 875/71, although there were applications on all sides for adjournment and without any motion or application to have the said actions dismissed; that on the said date in action No. 822/72 Your Lordship proceeded to hear that action although there was an application for an adjournment on the basis that the witness from Caroni Limited could not have been got because of the industrial situation; further, in that action at the close of the plaintiff's case Mrs. Maharaj who held papers for me applied for an adjournment to the next day in order to try and get the witness that was referred to and there was a decision in favour of the plaintiff. My counter-claim was dismissed.

Further, on the 14th April, 1975 there was a part heard matter between Soochit and Depal Singh - Action No. 707/68, Mr. King, Counsel for the plaintiff, did not attend on that date and that was adjourned to the 15th. A similar concession was not afforded to me;

Further, in Samdaye and Caroni, which was listed for the 14th April, on application for an adjournment was made on my behalf and it was mentioned that Mr. Archibald had requested my consent to an application for an adjournment and that it was mentioned to Your Lordship that the witnesses were not available. Your Lordship postponed the matter from the 14th April to the 15th to go on. On the 15th April, 1975 there was in progress a part-heard matter.

Exhibit "C"

Notes of Evidence in High Court Action No. 414 of 1972

16th April, 1975

(continued)

I submit that you have pursued an unjudicial course of conduct. Having regard to what I have stated I am asking you to disqualify yourself in all my cases.

Application refused.

Stood-down.

414/72 - resumed.

Adjourned - 7th May, 1975.

A true copy of the original which I hereby certify.

Dated the 6th day of May, 1975.

Sgd. G. A. Edoo.

10 Deputy Registrar.

"D"

This is the exhibit marked "D" and referred to in the affidavit of George Anthony Edoo sworn to before this 7th day of May, 1975.

George A. Brown.
Commissioner of Affidavits.

Exhibit "D"

EXHIBITS

"D" Respondent's Exhibit - Notes of Evidence in High Court Action No. 564 of 1973.

Notes of Evidence in High Court Action No. 564 of 1973

17th April, 1975.

17th April, 1975.

564 of 1973 resumed.

Archibald Q.C. leading.

Panday (absent) for the plaintiff.

R. Maharaj for the defendants.

R. Maharaj:

I understood that Mr. Collymore and Dr. Mootoo gave evidence. I am asking the Court to recall them so that I could cross-examine them. I would like to cross-examine not only on the question of quantum but on liability. (Refers to paragraph 4 of the Defence) It may become necessary to rely on that paragraph 4.

R. Maharaj:

Having regard to what I submitted this morning and what I submitted yeaterday in the matter of Bachan I reserve the right to impeach those proceedings.

Court:

Are you suggesting that this Court is dishonestly and corruptly doing matters behing your back (because it is biased against you)

R. Maharaj:

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.

Court:

Mr. Maharaj, you are formally charged with contempt of Court and I now call upon you to answer the charge.

Exhibit "D"

Notes of Evidence in High Court Action No. 564 of 1973

17th April, 1975.

(Continued)

R. Maharaj:

I am asking to have an adjournment to retain a lawyer.

Application refused.

R. Maharaj:

I am not guilty. I have not imputed any bias or anything against Your Lordship.

Court:

Mr. Maharaj, do you have anything to say on the question of sentence?

10 R. Maharaj:

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

Court:

7 days simple imprisonment.

Action No. 564/73

Adj. 28/4/75.

A true copy of the original which I hereby certify.

Dated the 6th day of May, 1975.

20

G. A. Edoo

Deputy Registrar.

No. 8.

In the High Court

Affidavit of Sahadeo Toolsie.

No. 8.

Affidavit of Sahadeo Toolsie

8th May, 1975.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

I, SAHADEO TOOLSIE of Caratal, Via Sangre Grande, in the Ward of Tamana in the Island of Trinidad, Solicitor of the Supreme Court of Judicature in Trinidad and Tobago and Conveyancer, make oath and say as follows:-

1. I am a solicitor attached to the Department of the Crown Solicitor, Solicitor for the Respondent, the Attorney General, and I have the conduct of this matter on behalf of my department.

2. The document now produced and shown to me marked"S.T.1" is a true and correct copy of the Trinidad and Tobago Gazzette (Extraordinary) dated the 19th day of September, 1973, setting out the various departments coming under the Ministry of National Security and the Attorney General's Department and Ministry for Legal Affairs respectively.

Sworn by the said Sahadeo Toolsie at No. 32, St. Vincent Street, Port of Spain this 8th day of May, 1975.

Sgd. Sahadeo Toolsie

Before me,
Sgd. M.A. Mohammed.
Commissioner of Affidavits.

Filed on behalf of the Respondent, the Attorney General.

"S.T. 1"
This is the exhibit marked S.T.1
referred to in the affidavit of
sahadeo Toolsie declared to before
me this 8th day of May, 1975.
Sgd. M.A. Mohammed,
Commissioner of Affidavits.

EXHIBITS

"S.T. 1." Respondent's Exhibit
Copy of Trinidad & Tobago Gazette.
(Extraordinary). 19th September,
1973.

Exhibit "S. T. 1"

Trinidad and Tobago Gazette (Extra Ordinary)

19th Sept. 1973.

T R I N I D A D A N D T O B A G O G A Z E T T E

(E X T R A O R D I N A R Y)

12. Port of Spain, Trinidad, Wednesday, 19th September, 1973.
Price 18¢ No. 268.

SUPPLEMENT TO THIS ISSUE

THE DOCUMENT detailed hereunder has been issued and is published as a Supplement to this issue of the Trinidad and Tobago Gazette:-

Students' Revolving Loan Fund Act. 1973 - Notice - (Government Notice No. 151 of 1973)

2349

CENTRAL BANK OF TRINIDAD AND TOBAGO

DAILY FOREIGN EXCHANGE RATES.

Today and until further notice, the Central Bank announces the following exchange rates for the TT$.

	Selling
U.S. Dollar	200.372
Canadian Dollar	198.208
U.K. Pound	484.200
Deutsche Mark	83.816
Swiss Franc	67.002
French Franc	47.108
Japenese Yen	.755
Australian Dollar	299.056
Netherland Guilder	78.726
New Zealand Dollar	296.150
Guyana Dollar	92.393
Jamaica Dollar	219.181
E.C.C.A. Dollar	100.312

19th September,1973.

L. O. Farrell
Manager, Bank Operations.

Exhibit "S. T. 1"

Trinidad & Tobago Gazette (Extra Ordinary)

19th Sept. 1975.

(Continued)

2350.

MARRIAGE OFFICERS' LICENCES GRANTED

Licences dated 11th September, 1973, have been granted to the undermentioned Ministers of Religion to be Marriage Officers for the purposes of the Marriage Ordinance, Ch. 29. No. 2.

By Command

B. L. BASIL PITT
Attorney General and Minsiter for Legal Affairs.

Religious Denomination	Name	Where Residing	Place of Worship in which Officiating.
Cedros Missionary Baptiste Church Inc., 1966	Rev. Sentoma Jaggernauth	Fullerton Village, Cedros.	Cedros Missionary Baptiste Church
Baptiste Church	Philip Augustus Burton	Blas Cha Cha Trace, Basse Terre, Morgua.	Baptiste Church, Basse Terre, Morgua.

2351.

ASSIGNMENT OF RESPONSIBILITY TO MINISTERS

It is notified for general information that the Governor-General acting in accordnance with the advice of the Prime Minister under the provisions of Sections 58, 61 and 105 (6) of the Constitution of Trinidad and Tobago, has assigned to the following Ministers the responsibility for the matters and departments of government hereinafter mentioned.

Minister.	Matters and Departments of Government.	Designation
The Honourable Benjamin Llawellyn Basil Pitt. M.P.	Attorney General's Department and Ministry for Legal Affairs.	Attorney General and Minister for Legal Affairs.
	Parliament (Procedure)	
	Legal Drafting	
	Litigation, Civil and Criminal	
	Crown Solicitor	
	Administrator General	
	Public Trustee	
	Proper Officer in Prize	
	Official Receiver	
	Custodian of Enemy Property	
	Distributor of German Enemy Property	
	Registrar General	
	Appointments to Quasi Judicial Bodies.	

The Honourable Overand Rawson Padmore M.P.	Ministry of National Security	Minister of National Security	Exhibit "S.T. 1"
	National Security The Trinidad and Tobago Defence Force Immigration Prison Service Fire Service Police Service Public Order Public Safety Defence Aliens (Work Permits) Citizenship.		Trinidad & Tobago Gazette (Extra Ordinary) 19th Sept. 1975. (Continued)
The Honourable Shamshuddin Mohammed. M.P.	Ministry of the Prime Minister	Minister in the Ministry of the Prime Minister	
	Community Development Youth Affairs Public Relations and allotted matters falling within the Prime Minister's Portfolio.		
	Ministry of Public Utilities	Minister of Public Utilities.	
	Post Office (Excluding Post Office Savings Bank) Civil Aviation Meteorological Services Printing and Stationery Telecommunications Water and Sewerage Authority Public Utilities Commission Public Transport Service Corporation Port Authority Dredging Services Towage Services Harbour Master Navigational Aids Trinidad and Tobago Electricity Commission.		

15th September, 1973.

JOAN A. NESTOR
Secretary to the Governor General

GOVERNMENT PRINTERY, TRINIDAD, TRINIDAD AND TOBAGO -- 1973.

No. 9

In the High Court

Affidavit of Thomas Isles

No. 9.

Affidavit of Thomas Isles

13th May, 1975,

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No: 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

I, THOMAS ISLES of No. 4 Regent Lane, Belmont, in the City of Port of Spain, in the Island of Trinidad, further to my affidavit of the 1st day of May, 1975 make oath and say as follows:-

1. That the paper-writing hereto annexed and marked "T" is the Original Committal Warrant issued from the Sub-Registry, San Fernando, dated the 17th day of April, 1975 and directed to me.

SWORN by the within named THOMAS ISLES at Royal Goal Port of Spain, this 13th day of May, 1975.

/s/ T. Isles

Before me,

/s/ R. L. Bynoe

Commissioner of Affidavits:

EXHIBITS

"T" Respondent's Exhibit - Committal Warrant dated 17th April, 1975.

Exhibit "T"

Committal Warrant

17th April, 1975.

ELIZABETH 11, by the Grace of GOD, Queen of Trinidad and Tobago and of her other Realms and Territory Head of the Commonwealth.

W A R R A N T.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO.

TO: THE COMMISSIONER OF POLICE AND ALL POLICE CONSTABLES AND TO THE KEEPER OF THE ROYAL GOAL.

WHEREAS by an Order made by the Honourable Mr. Justice Maharaj on the 17th day of April, 1975, it was ordered that Ramesh Lawrence Maharaj, do stand committed to the Royal Goal for his contempt of Court on the said 17th day of April, 1975.

THESE ARE THEREFORE TO REQUIRE you the said Commissioner of Police, Assistants or others to take the body of the said RAMESH LAWRENCE MAHARAJ and him safely forthwith convey to the Royal Goal, in the City of Port of Spain in the said Island of Trinidad and there deliver him into the custody of the Keeper of the said Royal Gaol and you the said Keeper of the Royal Gaol to receive the said Ramesh Lawrence Maharaj and him safely keep in the said Royal Gaol for Seven (7) days from the arrest under this order or until he shall sooner be discharged by due course of law.

AND THIS shall be to you and any of you who do the same a sufficient warrant.

WITNESS: The Honourable Sir Isaac Hyatali, Chief Justice of Our Said Island of Trinidad at San Fernando, this 17th day of April, in the year of Our Lord one thousand nine hundred and seventy five.

/s/ S. Cross.

Assistant-Registrar, San Fernando.

This is the Original Committal Warrantreferred to as marked T in the affidavit of Thomas Isles sowrn before me this 13th day of May, 1975.

/s/ R. L. Bynoe.

Commissioner of Affidavits.

No. 10.

In the High Court

No. 10

Affidavit of Sahadeo Toolsie

13th May, 1975.

Affidavit of Sahadeo Toolsie.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No: 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

I, SAHADEO TOOLSIE of Caratal via Cumuto, in the Ward of Tamana, in the Island of Trinidad, make oath and say as follows:-

1. I am a Solicitor of the Supreme Court of Judicature, attached to the Crown Solicitor's Department, No. 7 St. Vincent Street, Port of Spain, and I have the conduct of these proceedings on behalf of my department.

2. That the paper-writing hereto annexed and marked "S" is a true copy of the Order of Mr. Justice Sonny Maharaj made in High Court Action No. 564 of 1973 - Samdaye Harripersad -v- Mini Max Ltd., and dated the 17th day of April, 1975.

Sworn by the within named SAHADEO TOOLSIE at No. St. Vincent Street, Port of Spain this 13th day of May, 1975.

/s/ Sahadeo Toolsie

Before me,

/s/ R. L. Bynoe.

Commissioner of Affidavits.

EXHIBITS

"S" Respondent's Exhibit - Order of Mr. Justice Sonny Maharaj in High Court Action No: 564 of 1973 made on the 17th April, 1975.

Exhibit "S"

Order of Mr. Justice Sonny Maharaj in High Court Action No. 563/73

17th April, 1975.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO.

No: 564 of 1973.

Between

SAMDAYE HARRIPERSAD Plaintiff

And

MINI MAX LIMITED Defendant

Dated the 17th day of April, 1975.
Before The Honourable Mr. Justice Maharaj.

WHEREAS at a Sitting of the High Court of Justice of Trinidad and Tobago held at San Fernando Before The Lordship The Honourable Mr. Justice Sonny Maharaj on Thursday the 17th day of April, 1975 Mr. Ramesh Lawrence Maharaj, Counsel for the above-named Defendant said that the Court was guilty of "unjudicial conduct" in matters in which he was engaged.

This Court being of the opinion that Counsel has been guilty of gross contempt of the Court DOTH ORDER that the said Ramesh Lawrence Maharaj do stand committed to the Royal Gaol for his said contempt for a term of seven (7) days simple imprisonment.

/s/ S. Cross.

Assistant Registrar, San Fernando.

A true Copy of the Original which I hereby certify.

Dated this 13th day of May, 1975.

/s/ G. A. Edoo.
Deputy Registrar.

This is the paper-writing referred to as marked "S" in the affidavit of Sahadeo Toolsie sworn before me this 13th day of May, 1975.

/s/ R.L. Bynoe.
Commissioner of Affidavits.

No. 11

In the High Court.

Notes of Evidence of the Honourable Mr. Justice Garvin Scott - in High Court Action No. 974 of 1975.

No. 11.

Judge Notes of Evidence

23rd April, 1975.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

Bo: 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION BY RAMESH L, MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975, BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

Before the Honourable Mr. Justice Garvin M. Scott.

NOTES OF EVIDENCE.

Dr. Ramsahoye, Q.C. with him Basdeo Persad Maharaj for the applicant.

Mr. Warner, Solicitor-General, with him Brooks for the respondent.

Ramsahoye:-

The applicant moves constitutional point in pursuance of Provisions of Section 6 of the Constitution - alleges Constitutional Infringment at time of his application, his right not to be deprived of his liberty except by due process of law - infringe.
Reads: Sec. 6 (1) Constitution (1) (2). Sec. 3 - Not relevant.

The applicant is a member of the Bar of Trinidad and Tobago and was in course of his duty as Counsel conducting a case when the Court ordered that he be committed to Prison for Contempt of Court. Oral direction that he be removed and taken to his incarceration. Following questions arise:-

(1) In what circumstances will law allow Counsel to be imprisoned while conducting case at the Bar?

(2) Whether circumstances arose to enable the Court to punish Counsel summarily for Contempt.

(3) Whether procedure followed at his trial and imprisonment in accordance with Principles of Law.

No doubts of rights of Courts to punish for contempt co-eval with foundation.

Right necessary for proper administration of Justice at Common Law as full and ample as situation warranted. Incident to proper administration of justice - immunity of Judges of Supreme Court while justice being administered.

Foundations of immunity (a) Independence and fearlessness of Judges. Similarly (b) Proper administration of Justice requiresCounsel at Bar also to be independent and fearless in the way duties are performed as Counsel- Judge no limits- Counsel oversteps when foul practice done - disgracing Law. Reads:- Hawking - Pleas of Crown Vol. 2 p. 131 (Writ of attachment) Not necessary for this Court to define foul practice - ciccumstances of each case to be considered.

My own research has failed to find any case where Counsel taken from the bar and sent to Prison. Unprecedented in English Law. Exercise of powers to fine and imprison for Contempt circumscribed. Limit - Necessary in particular cases for Court to protect itself and its own dignity.
Cases - Barristers committed to Prison for contempt acts done outside Court room, Acts - fraud or threats to disrupt Court of Justice. Cases - Punishment inflicted on Barristers while conducting cases as Counsel.
Punishment - fine or censure.
Necessary - deep and anxious consideration - why no occasion up to now for Courts to commit Barristers acting as Counsel.
Sierre Leone Case - 1852 - William Rainy v. Justices of Sierra Leone 14 E.R. p. 19. Barrister fined three times for Contempt at same trial. Finally struct off Rolls during trial. Order of striking off set aside.

In the High Court.

Judges Notes of Evidence.

23rd April, 1975.

(Continued).

13 E.R. p. 846 - Smith -v- Justicesof Sierra Leone - struck off Rolls for Contempt.
On appeal - Judgmenet by Lord Langley - Exercise to punich limited by Principle.

(1) Jurisdiction limited to what is necessary for vindication and authority of Court. (p. 848 grounds not specified - not called upon Appeal allowed.
Without affording any time to answer or consider position he was - will refer to that later.
Power - censure - fine - imprisonment.
Before Court exercises power opportunity to be given to offender to consider position in which he was.
View - to be given clear opportunity to make his peace with Court.

Submission -

(1) Applicant was removed from Bar without a warrant signed by Judge and detention from that point onwards unlawful.
Warrant exhibited - R.L.M. 3 - at back of affidavit of applicant. Form of warrant - p. 37, 20th Edn. Chitty's Queen's Bench Forms. Warrant was necessary to enable applicant to be removed from Bar Table and de-robe. (Refers to Form) Warrant signed by High Court Judge to enable contemnor to be removed from Court. Right of Barrister to be at Bar. Removed only by Warrant. Order has to be made after contemnor removed from precincts of Court.
Form of Order - Vol. 12 King's Court Forms 2nd Edn. at P.144
Order usually handed to prisoner.
P. 112 of Vol. 12 King's Court Forms - para 14. (Committal to be signed by Judge).
Copy of Order to be drawn up.
First - warrant to be signed by Judge for apprehension then Order made to be sent to Governor of Prisons. Normally Order made as conveniently as practicable. Any authority in law of Contempt for apprehending and incarcerating contemnor unless warrant signed by Judge. Nothing to suggest any other way. Incarceration on warrant not signed by Judge. invalid.
(Refers to Copy of Order - Order not exhibited). Court rules order not exhibited and it will not hear Counsel on that point.
Order does arise out of Criminal Proceedings - Due process to be observed. 5. W.I.R. p. 247 (1962 - Case) Re Bachoo.
Proceedings interrupted at San Fernando Magistrate's Court.
On appeal - Summary Court's Ordinance Proceedings - Contempt - Wilful Interruption of Court (p. 248) - offence to be distinctly stated and opportunity of answering offered).
Points arising:- (1) Court becomes Criminal Court when about to punish for Contempt. Necessary for specific offence to

stated to alleged contemnor. If case where words - positive factor - such words as alleged to constitute contempt to be clearly and distinctly put - alleged contemnor without this unable to deny, explain or retreat.

In this case Judge states he was charging applicant for Contempt of Court.

(1) Constitutional thing for contempt of Court to be put- to enable contemnor to make his peace - deny, retreat or explain.

(2) If specific charge put and alleged contemnor states Not Guilty to be given an opportunity to make his defence. Not sure of rectitude of this submission.

(3) Need for evidence to be taken so that any mistakes may be disputed or corrected and there can be no criminal trial without evidence.

Where Plea Not Guilty - Evidence given on oath - what Court records is not evidence unless it comes from the witness box.

In contempt no proper trial unless someone called to repeat on oath alleged nature of contempt.

(4) Right to Counsel. Under Sec. 1. (a) of Constitution. Constitutional violation in Criminal Case if defendant in Criminal Case denied Counsel.

(Right to liberty - due process of law includes right to Counsel) Sec. 2 of Constitution (c) (2).
No Act of Parliament being imposed but accepted by Constitution mamers of Contempt Proceedings - Criminal Trial - due Process of Law - Right of Counsel.
Case - when Court Proceeding of its own motion Court Prosecutor and Judge right to Counsel ought to be absolute.

(a) First thing that Counsel will do is make peace with Court and only if he fails to make peace with Court obliged to consider presenting a defence - only independent mind coming in at trial.

Judge and alleged contemnor - Parties to Proceedings - Denial of Counsel grave constitutional violation.
For centuries - Barristers and solicitors know they should not try to advise themselves. If member of bar seeks Counsel entitled to advise. Clear on Proceedings - Request for adjournment and for Counsel disallowed.

In U.S.A. - 5th and 14th amendment - men charged with serious crime allowed counsel - interpretation that State should pay for Counsel.

Gideon -v- Wainwright 1963 - U.S.A. Reports - p. 335.
Men charged with rape in Florida State asked for Counsel - not allowed - only indigent persons capital punishment.

In the High Court.

No. 11.

Judges Notes of Evidence.

23rd April, 1975.

(Continued)

On appeal to Supreme Court right of indigent accused to have trial essential 14th amendment.

Belts v. Brady 316 U.S.A. p. 430 (overruled p. 339 - 1963 U.S.A. Report - p. 341, p. 343. (P. 287, U.S. 245) 6th amendment - Guaranteed Counsel in Federal Cases. This country constitutional liberties to be preserved. Rights to Counsel if desired.
Sufficient - Criminal Proceedings - Counsel should have been allowed.
Gideon v- Wainwright - Proceedings set aside because denial of Counsel - Due Process of Law - Ensured by Sec. 6 of Constitution.

In this case - No evidence.
Logical commensense compels me to make that submission
Applicant - Entitle to Counsel guarantee entrenched in constitution.
Charge not specifically stated. Violation of Decision of Court of this Country. Re: Bachoo 1962 W.I.R. 5.
Common Law as developed by Courts in this area tend to give contemnor opportunity to make his peace with Court.
Court should exercise power after opportunity given to contemnor.
Balogh v. Crown Court 1974 - 3 A.E.R., p. 283 - Incident occuring connected with another Court.
Balogh asking for Counsel and refused.
P. 287.
(e) p. 288 - (a) Lord Denning

(h) p. 289; p. 291 - Lord Stevenson
p. 293 -

In this country Criminal Proceedings - safe guard provided by Constitution.
Contempt - Trial - Due Process of Law - Preferable that evidence on oath be taken. Affidavit filed today by Clerk of Supreme Court.
Affidavit of Sinanan filed 17th April, 1975. Para. 5 and Para. 3. Para 5 of Scott's affidavit of 23rd April 1975, corresponds with Para 3 of Sinanan's affidavit. Para. 6 of Scott's affidavit reference to Impeachment of proceedings and disqualification.
Applicant affidavit's of 21st April, 1975.
Para. 10 corrects para 4 of affidavit of Sinanan. Para 6 of Scott's affidavit supports para 4 of Sinanan's affitavit, but para 4 was not correct.
Affidavit filed today by Scott puts events in order which differs from Sinanan's.
Sub- para. 10 of Sinanan's affidavit - of para. 5 - omitted from Scott's affidavit.

Applicant stating not guilty and not imputing bias or anything against the Judge.
Para. 8 of affidavit of Scott does state Maharaj not guilty but no mention of applicant stating not imputing bias or anything against his Lordship. Omission of peace making part.
Statement of not imputing bias - peace making - affording Court an opportunity. Conflict of statements - formal evidence should be taken - also give evening off period to everyone.
Para. 11 of affidavit of Sinanan. Affidavit - No order entered by Court for Ex-Parte Van Sandau 41 E.R. p. 763, Vol 16 English and Empire Digest p. 86 para. 949. Order of committal for contempt under Seal of Court and if only signed by Court invalid.
Detention only justified by order with Seal of Court and signed by Judge - 1846 case.
No valid order.
No warrant.
Wrong procedure adopted.
Applicant is entitled to succeed on his motion.
In U.S.A. said Judge ought not to act on his own evidence but on the evidence of someone else.
SWANSON V. SWANSON
New Jersey Reported in 8 New Jersey p. 169, Proof of Contempt in face of Court depends on evidence of persons other than Judges.
Next point - difficult to meet one Barrister without respect for Judges and Courts in these parts.
Right of Counsel at Bar.
Counsel at the bar have every right and privilege necessary for performance of their duty to enable justice to be done without fear or favour - to be independent in discharge of duties - arose because of welfare of clients represented.
Mistaken in performance of duty not liable unless acting in bad faith. If overspeaking - grounds of protest - not liable civilly or criminally. Court can rebuke him - order his removal - censure - act must be foul before punishment invoked.
Counsel entitled to protest if something wrong.
Judge in command of his Court.
Law ofContempt in relation to Counsel different from ordering person in Court.
Subject to punishment when law brought into disgrace. Law unchanged since Hawkins pleas of Crown - Hodgson v. Scarlett. E.R. Vol. 106 at p. 85.
Dispute in Court - Re Pro-Note - Abbot J. at p. 89.
In this case application made to re-call two witnesses for cross-examination - application refused.
Protest elicited.
Counsel must use restraint.

In the High Court.

No. 11

Judge's Notes of Evidence.

(Continued)

Criticism when justifiable not in contempt of Court entitled to feel trial not fair if conducted on that basis.
I refer to Sinanan's affidavit and applicant's affidavit. I take these as being read.
Remarks of Counsel in Contempt only if remarks malicious and wholly unjustifiable.
If overspeaking - judge entitled to rebuke and request withdrawal of remarks.
Counsel - if proper counsel will make peace with Judge.
On day before application to Judge to disqualify himself and application refused.
On Monday 14th April - two matters in which applications refused.
Two sets of events.
Para. 6 of applicant's affidavit - Case dismissed - unreasonable grounds for dismissal.
Para. 8 of applicant's affidavit - when paras 6 and 8 read they give cause for Complaint. If complaint went too far no liability in Criminal Law or Civil Law.
Even if Counsel was in error in seeing grounds of complaint when none if acting Bona Fide not liable in Criminal Law.
Only when acting mala fide ever liable for anything said at Bar.
In each of cases - Counsel asked to retract or apologise.
Punishment not administered where Counsel makes fool of himself. Conduct must be wilful.
Where punishment inflicted a harsh punishment described as too severe.
Illegal punishment.
Smith v. Justices of Sierra Leone.
Ex Parte Pater 122 E.R. at p. 842.
Fine imposed for disturbing court - accusing jurymen of being unfair.
Right and privilege of Counsel (Juror - part of Court).
Suspension from Practice - committal of Counsel - it debars Counsel from practice for a while. In England disciplined by benchers.
This Country - Disciplinary Committee.
Para. 5 of Sinanan's affidavit - sub para. 5 - Statement of Court uncalled for and had not arisen.
Exercise of Contempt Jurisdiction - Common Law Courts never claimed right to imprison Counsel for what is said at Bar and right doesn't exist.
Not seen for 7 centuries in Ordinary Courts. Summary Punishment.
Nicholas Fuller's Case - 77 E.R. p. 1322 - only case, barrister not punished - early part of 17th century proceedings in Ecclesiastical Courts King and Government scandalised.
P. 1324 - indicited, fined and imprisoned.
(Days of James 1 and Charles I).
Adjourned 24/4/75 at 1.15 p.m.

Thursday 24th April, 1975.

In the High Court

No. 11

Judge's Notes of Evidence.

24th April 1975.

Appearances as before

Ex Parte Pater:
122 E.R. p. 842 (C.J.'s remarks - Barrister would not have been dealt with in same manner).

(1) Case attempts to make clear Counsel in Honest discharge of duties may be critical of Tribunal.
(2) Jurisdiction sought to be invoked was jurisdiction to fine Counsel and not to imprison (refers to Ex Parte Pater's Case)

Izoora v. Reginam 1953. I A. E. R. p. 827 (Nigerian Case)
Under Rule of Court for Counsel to be present till completion of case unless leave of Court granted. Barrister fined £10 or 2 months.
Appeal from W.A.C.A. to Privy Council - set aside.
Lord Tucker - Judgments p. 829 and p. 830.
Case decided - Nigerian Courts - Power of appeal on conviction not on conviction on indictment.
Interesting to note Lord Tucker at p. 829 - power to imprison not provided by Rules of Nigerial Law.
Whether common law ever claimed right for imprisonment for discharge of duties - Imprisonment where Counsel forged documents.
Sole case of imprisonment - Fuller's case, 77 E.R. p. 1322 (indictment here, Trial by Jury).
Where case of criticism - common law never claimed right to imprison. Counsel when Counsel arguing case.
Although Court has power summarily to fine and imprison for contempt- power must give way to privilege of Counsel when honestly performing duty to client.
Mala Fide - where no grounds of complaint or criticisms only then maliciouness and wantonness exist.
Finally, common law never claimed right to imprison Counsel at Bar for what he says in discharge of duty as Counsel.
Prayer - motion should be granted.

Warner - I ask for leave to cross-examine Barendra Sinanan and applicant. Notice of this application was served on other side.

Dr. Ramsahoye - Notice was received. I did not think application would be pursued as no application was made before my address began and in event of Court granting application I would seek leave of Court to address on any point raised.

Court grants application on understanding that Dr. Ramsahoye entitled to address further on any points raised.

BARENDRA SINANAN sworn states:-

(Cross-examined Warner)

In the High Court

No. 11

Judge's Notes of Evidence

24th April, 1975.

(Continued)

Solicitor of the Supreme Court of Trinidad and Tobago. Live 4 Norman Tang Street, San Fernando. I swore to an affidavit on 17th April, 1975, in these proceedings. Events earlier on 17th April, 1975 were fresh in my mind. I was present in Court when applicant appeared in Mini Max matter. I was present in San Fernando 2nd Court on 16th April, 1975 for a time. I did hear applicant invite Mr. Justice Maharaj to disqualify himself from all cases in which he the applicant appeared.

On that date applicant stated that Mr. Justice Maharaj was engaging in Unjudicial Conduct in his - the applicant's - matters. When I went into Court the applicant was addressing the Court, while I was there he was addressing the Court. I estimated for some five minutes. I did not form any opinion at that time.

Ramsahoye - I object on grounds that only Judge's impression would be relevant to determine matter. Opinion of witness irrelevant.

Objection sustained.

Continuing:-

On 17th April, 1975 applicant sought leave to recall Drs. Collymore and Mootoo. I was present in Court at hearing of same matter on 15th April, 1975, in which the Doctors gave evidence. That was only part of case taken on that day an application was made on behalf of applicant to have matter adjourned by Counsel holding papers for applicant. The entire case was not proceeded with. Doctors are busy men. Dr. Collymore is specialist Surgeon. Dr. Mootoo is a busy doctor and busy in public life. Evidence of the doctors was taken and matter was stood down. Judge did say he would take the evidence of the two doctors. I have experience of the Courts. It is nothing unusual for Court to facilitate busy medical practitioners. When Judge said he would take evidence of the two doctors, Counsel holding for the applicant waw still present. He did not make any application for cross-examination to be reserved. Basdeo Persad Maharaj holding for the applicant before doctors gave evidence, sought leave to withdraw from the matter. I was instructing Solicitor. I made no alternative arrangements. On 17th April, 1975, application was made by applicant to recall the two doctors - application was refused. Applicant did not make reference to previous day at that stage. When I swore to affidavit events were fresh in my mind. In para. 4 of affidavit I swore to, I did say after application was refused applicant did refer to the application made on the previous day, and invited the Judge to disqualify himself. The Judge at that stage did ask the applicant whether he was saying the Court had acted dishonestly and corruptly doing cases behind his back. I recall the Judge asked question once, but it could have been more than once. I do not remember exact words used by applicant. Applicant stated, "Irefer to application I made the previous day in matter of Bachan v

Caroni Ltd., in which I invited you to disqualify yourself in all matters in which I appear because of your unjudicial conduct." I believe applicant said, "I refer." I wouldn't quarrel if someone else stated applicant said, "I repeat." The Judge did tell the applicant to think carefully about the question which he the Judge was about to put to him. The Judge then asked applicant whether he was saying the Court had acted dishonestly and corruptly. Applicant did reply that he did not think it was the right place to answer the question. The Judge did then pose the question again.

To Ramsahoye:-

I did make a note at time of all that was taking place. I made notes in my handwriting - (Witness shown document - sheet of paper with writing thereon) Document shown me contains notes made at the time. At time applicant made application, he gave grounds for application. That it would prejudice the defence - applicant referred to para. 4 of statement of Defence in those particular pleadings. When application was refused, applicant stated - having regard to what was said yesterday in Bachan v. Caroni Ltd., he the applicant, reserved the right to impeach all proceedings before His Lordship. Thereafter His Lordship spoke and put the question about the Court acting dishonestly and corruptly. I recorded the question once.

Applicant - RAMESH LAWRENCE MAHARAJ sworn states:-

I am a Barrister-at-Law in Practice in Trinidad and Tobago. I live at 9 Park Street, San Fernando. I was absent for a few days in April during the sitting of High Court in San Fernando.

On 14th April, 1975, I was not present and was one of those days. Paras 6, 7 and 8 of my affidavit are not within my personal knowledge but are paras to the best of my information and belief. Case of Dindial v. Caroni Ltd., is a running down action. I learnt afterwards that my wife Mrs. Maharaj held my papers in Dindian v. Caroni Ltd. It was the first time the matter was being called. On Saturday before Solicitor on the other side informed me they will not be ready. I was for the defendant. Mrs. Maharaj informed me what took place in Court. I do not know that evidence of one of Plaintiff's witnesses was hotly challenged. I did enquire about what went on in Court in the case. I was informed by my wife that she was forced to hold my papers. I enquired of the circumstances I found out that evidence was taken. I knew that witness for plaintiff had given contradictory statement to Caroni Estate Police. I did not enquire how that witness fared. I discovered the Estate Constable of Caroni had given evidence. To a certain extent I found out how proceedings went. Judgment was delivered on the spot. I don't know if witness for plaintiff was discredited. Judgment did have some reasons I did not enquire into findings of Judge with regard to con-

In the High Court

No. 11

Judge's notes of Evidence.

24th April 1975.

(Continued)

tradictory statement. I did ask how the matter went on. I did not think it necessary to ask for reason. I placed the matter in the hands of Dr. Ramsahoye and an appeal was filed. My principal grounds of appeal was not dissatisfaction with refusal to grant adjournment, but because the pricipal witness who was employed with Caroni Limited, and driver of the vehicle involved in accident whose only address was Caroni Ltd., could not be served because of Industrial Strike. He was the only eye witness on behalf of the defendant. I no not know whether Judge stated he disbelieved plaintiff's witness. I was in Court on 16th April, 1975. I did not make any protest. I made an application. I had no grievance then against the Judge and I have none now. I did not feel pleased about Court's decision on 14th April, 1975. My client was very upset. When I got to Court on 16th April, 1975, I had not made up my mind that the Judge was carrying out unjudicial conduct in all matters in which I appeared. I did not know when I was going to Court I would ask the Judge to disqualify himself in all the matters in which I was concerned. When I made the application on 16th April, 1975 I had in mind the way in which the Judge had dealt with several of my matters before. I did not know when I went to Court I would make reference to several matters before about which I was dissatisfied. On 16th April, 1975 Harold Bachan v. Caroni Ltd. was called. I applied for an adjournment. I informed the Judge I was only told of the matter that morning and that I required an adjournment. Jenvy on the other side said it was an application for payment of certain monies out of Court. I reminded the Judge it was a matter done by him and there was an order for Costs and money should not be paid out. I said I was not properly briefed and I would like an adjournment. I reminded him it was a matter in which I appeared with de la Bastide and Panday appeared with T. Hosein and that he had pressed to go ahead in absence of de la Bastide and I would be glad for a short adjournment. It was refused. Court was about to make order when I invited the Judge to disqualify himself in any matter in which I was engaged as Counsel having regard to facts in Monday 14th April, 1975, in Taylor v. Texaco Trinidad. I had not prepared any speech in advance. When I made application I had briefs in my hand but I was not reading from any document. I found no difficulty remembering on 17th April, 1975 what happened on 14th April, 1975. I was not giving a history. I was giving ground for application and inviting him to disqualify. I did say his course of conduct was unjudicial having regard to all the submissions I made on 16th April, 1975. I did not mean the Judge was acting with partiality. When I said unjudicial I did not mean he was partial. I was seeking to convey it was unjudicial course of conduct and not in interest of my clients. I invited him to disqualify himself from all my cases. I did not want the Judge to preside over cases in which I was involved having regard to the interests of my clients. I was not telling him to lay off my cases.

I am not in charge of the Court of this Country. I was not suggesting his conduct was unbefitting a Judge. I thought the Court ought not to dismiss matters in way they were dismissed and proceed in matters in the way they were proceeded with. I used the word unjudicial after proper consideration. I know what unjudicial means. I do not understand it to mean lacking impartiality. I consider impartiality a Judicial attribute. I would say it is a foundation. I do not consider that unjudicial means not befitting a Judge. I would not say unjudicial would indicate that a Judge was not impartial. I consider unjudicial would mean acting in a way a Court not normally act. In filing appeals I have used both unjudicial and unreasonable. I used word unjudicial on 16th April, 1975. That was substance of my application. I did cases on 16th April, 1975, after my application was refused. Three cases were before the same Judge - two matters were dismissed and other adjourned because there was no time to be taken. I have no fault to find in those matters - nothing unjudicial. On 17th April, 1975 when Mini Max case was called I knew avidence of two doctors had already been taken. It is not extra ordinary for evidence of doctors to be taken if other side was represented. Papers had been held by B, P, Maharaj and he withdrew. I do not know at what stage, but it was the Judge who had stated he would take their evidence. On 17th April, 1975 I was in Court. the case was called and Archibald Q.C. was sitting ahead. I was behind. There was conversation between Archibald Q.C. and the Judge. I did not hear. Archibald left the Court. I followed Archibald Q.C. and he said the matter would be heard between 11 a.m. and 11.30 a.m. I was not making any fuss about that. I returned to Court. Matter was called. Archibald and I announced appearances and I asked leave to recall Collymore and Mootoo on ground that having regard to para. 4. of defence in respect of liability and quantum. I explained claim involved a lady falling in Supermarket and that she might have slipped due to the state of her own health and it was important that I cross-examine the doctors. Application was refused without Archibald being called upon. I made application. It was with discretion of Judge. He exercised his discretion against me. I said I would participate in proceedings but I reserve the right to impeach the proceedings. Today is the first time I am saying I told the Judge I would participate in proceedings. I gave no reason why I would impeach proceedings. At that stage the Judge said he would write a question in his note book and he would ask the question and he invited me to think carefully before I answered question. The Judge then asked, "Do you think that I am dishonestly and corruptly dismissing your actions behind your back? I was surprised at being asked the question and I answered that I did not think that was any place to answer that question because in any case that question does not arise in that I was merely saying he was pursuing an unjudicial course of conduct. The Judge asked what I meant yesterday when I said unjudicial course of conduct.

In the High Court

No. 11

Judge's Notes of Evidence.

24th April, 1975.

(Continued)

I cannot remember if this is the first time I am saying that I did not swear in my affidavit that the Judge asked me what I meant yesterday about unjudicial course of conduct. If I remember correctly that is what transpired. I regarded refusal to grant application, to have doctors recalled for cross-examination as unjudicial. When Judge asked me question about corruption that was provocation. I was not saying Judge was acting corruptly. I would never say that. I replied that it did not arise. I regarded his refusal of the application that day as part in a series of a course of unjudicial conduct. I could have withdrawn but I owed a duty to my client. Mini Max is a good client. I have several good clients. I would not like to lose any client. If I did not have any respect for the Judge I would not have continued. I did object to the Judge sitting on matters. I did not object to matters being dismissed and thrown out. I said my clients were not being treated properly. I was not telling the Judge to lay off my cases. I have appealed in cases where I believe justice was not done. I did not think absence of Justice was peculiar to that Judge. When I said interests of my clients, I said so as matters had proceeded in my absence.

To Court.

I felt that the other matters if determined by that particular Judge would not be in the interest of my clients and that would be so if I appeared for those clients in those matters. I did not on 17th April, 1975 state that I was repeating all I said the day before about unjudicial conduct and asked him to disqualify himself, but I referred to it but did not repeat it or adopt it. I cannot really remember if the Judge asked me about it or I referred to it. I heard Sinanan in answer to my Counsel. I did not hear Sinanan being asked "What did I mean about that yesterday by Judge". Sinanan made no reference to that. He did refresh his memory from notes he made at the time.

Warner:-

I wish to make a statement in respect of Orders made on 17th April, 1975 for purpose of the Record.
973/75 - Writ of Habeas Corpus issued on 17th April, 1975 not served personally on Commissioner of Prisons. Applicant was brought to Court Building. No opportunity for making return of writ of Habeas Corpus proceedings therefore remained incomplete.

On motion on 17th April, 1975 attempt of service of motion notice of motion was delivered at 4.20 p.m.

On hearing of motion the Attorney General not being properly served was not represented and an Order was made that the applicant be released from custody and that applicant

enter into personal recognizance in $1,000.00.

Orders appear to be invalid. On contempt of Court when committed - No question of Bail.
Adjourned to 1/5/75 at 1.30 p.m.

Thursday 1st May, 1975 - Appearances as before.

In the High Court
No. 11
Judge's Notes of Evidence
1st May 1975.

RAMESH LAWRENCE MAHARAJ re-sworn and continuing in cross examination to Warner:

I did not have my notes when I was addressing the Court on the 16th April, 1975, that the Judge disqualify himself. I had briefs and other papers. I may have looked at my briefs and papers when I was addressing the Court but I did not read from any papers. I did not have any documents then relating to matters on the 14th. I think I gave numbers of actions on the 14th. I am uncertain I gave numbers. If the Judge's notes show I gave numbers that would be correct. On 14th April, 1975 Mr. B. P. Maharaj held my papers in Texaco matter. He applied for an adjournment on my behalf.

I am informed he stated the documents and witnesses from Texaco were unavailable. I am unable to say he was invited by the Court to state what documents, but I am in no position to doubt that he was so invited. I do not know if he was asked to give names of the witnesses from Texaco. I am in no position to doubt he was asked for names of witnesses. I do not know he was unable to provide Court with names of witnesses. Manner in which Judge dealt with Texaco on 14th April, 1975 formed part of my complaint to Judge about unjudicial conduct. Information about Texaco I got from Basdeo Persad Maharaj and Clerk of Supreme Court. I further requested Seecharan, High Court Clerk of Laurence, Narinesingh & Co., my instructing Solicitors to get a report as to the outcome of Texaco matter and order made by the Judge. All enquiries were to the outcome and manner in which matters were dealt with. Allegation of unjudicial conduct against Judge can be considered very serious. I made enquiry. I considered it sufficient to justiry my submissions that course of conduct adopted by Mr. Justice Maharaj was unjudicial. I do not know if B. P. Maharaj was asked by the Court whether he was ready to go on with the manner. My grouse was that the plaintiffs who were in court were not even asked to start their case when there was application by the other side for an adjournment and the case was dismissed. I was in effect complaining about the result of the manner in those circumstances. I was making no complaint about motivation. I consider it a grave injustice to my clients. I was placing the responsibility for this squarely on the shoulders of the Judge. In Texaco matter as far as I know he did not withdraw or ask leave to withdraw. I think Court should have called on plaintiffs to start matter, through B. P. Maharaj or give the plaintiffs an opportunity to get other Counsel. There was joint application

In the High Court

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Judge's Notes of Evidence.

1st May, 1975.

(Continued)

for an adjournment. Application by either side was not granted. In para. 8 of my affidavit I did refer to Soochit and Deyalsingh specially fixed for 14th April, 1975 and part-heard, was adjourned because King, Counsel was absent. I was informed about these. On that date I was not Counsel in Soochit and Deyalsingh, but I did maintain that in my complaint to the Judge I have found out circumstances in which Soochit and Deyalsingh was adjourned. B. P. Maharaj informed me adjournment by Judge was granted to King as he was absent. I know Joseph Le Blanc was a material witness for King. I was informed that Le Blanc was available if he was needed. B. P. Maharaj told me this and that matter could be proceeded with: and that matter was adjourned because King was not present and there was no explanation for his absence. I am not saying the Judge showed favour to King, I am saying Texaco matter was determined in an unjudicial manner. Soochit's matter was brought to my attention and I mentioned it to show Texaco matter was not properly dealt with. Unjudicial I consider means unreasonable. I was not making comparison with what happened in King's matter. I was complaining about injustice done to my client by Mr. Justice Maharaj in his Court. I have annexed to my affidavit certain notices of Appeal. Appeal was filed on the afternoon of the 16th April, 1975 - Wednesday afternoon. I read about it in the Bomb on 17th April, 1975. I read article about Texaco case in the Bomb. I do not know how news of my appeal appeared in the Bomb. I do not know whether appeals in ordinary civil matters appear in the press. I was not mounting any campaign against Mr. Justice Maharaj. I would never mount any campaign against any High Court Judge. On 16th April, 1975 I placed greviances before the Court. Particulars given were in relation to Bachan and Caroni Ltd. I had applied for an adjournment and it was refused. At that stage I made submissions to the Court that having regard to his unjudicial course of conduct on 14th April, 1975 in the matter of Texaco and Caroni and the instant application I invited his Lordship to disqualify himself from sitting in all matters in which I was involved. In course of representing my clients in one case I was expressing grievance in respect of matters no longer before him. On 17th April, 1975 in Mini Max matter I was again addressing the Court. I made reference to and expressed complaint about the application on 16th April, 1975 after I said I reserve the right to impeach the proceedings although I would participate in the trial. On 17th April, 1975 I referred to application of 16th April, 1975. In application of 16th April, 1975, I had matters on the morning of the 14th April, 1975. After my application to cross-examine doctors was refused I referred to application of 16th April, 1975. I said words to the effect that I reserve the right to impeach proceedings having regard to his refusal to allow me to recall witnesses to have them cross-examined. Having regard to what I submitted this morning and what I submitted yesterday in

matter of Bachan I reserve the right to impeach the proceeding is gist of what I said. I consider I was complaining about injustice done to my client by the application being refused for recall of the doctors. In Mini Max Case I was not letting off grievances. Invitation for Judge to disqualify himself is not method of showing my dissatisfaction. I was prepared to go on with the case on the 17th April, 1975, even if the doctors were not recalled. I do not know whether B. P. Maharaj withdrew from the case after the Court indicated it was taking the evidence of the doctors. After the Judge wrote in his book and asked me to think carefully before answering he asked me whether I considered he was acting corruptly and dishonestly by dismissing actions behind my back. I did reply that I did not think that was the right place to answer the question. I was not concerned with motivation of the Judge. I did not think it was necessary or relevant at that state for the Court to ask me the question. I was complaining about the manner the matter was being proceeded with. I was so shocked I almost did not answer. After Court refused me opportunity to get lawyer I said I intended no sort of corruption or bias or anything against His Lordship. This was after I was convicted. I did not get the impression that the Judge was seeking assurance that I was not imputing corruption and dishonesty. I did say that I did not think the question arises. I don't think I said after that "that you are guilty of unjudicial conduct having regard to what I said yesterday". I am sure that at that state I did not say this. Up to now I feel that the Judge was guilty of unjudicial conduct in certainof my matters. At the time I was answering question of the Judge about corrupt and dishonest. I did not address my mind to that question. When the Judge charged me for contempt I felt he was offended. My first reaction was to make peace with the Court and I did apologise. Even at this state I unreservedly withdraw any remark because I did not intend to impute anything against the Judge. Result of matters did not show justice was done. I mentioned matter about King as I felt the Court exercised discretion wrongly in my matter. I felt the Judge had made some mistakes. I did make submissions about unjudicial course of conduct and this was about the Judge whom I was addressing. When the Judge charged me for contempt I made peace with the Judge. If the word unjudicial offended the Judge I unreservedly withdraw it. I did not consider using the word unjudicial to be offensive. I did not consider it an insult. I think I was very cool and calm not arrogant and rude. I made remarks on 17th April, 1975 in Open Court. On 16th April, 1975 I made remarks in Chamber Court, practitioners and law clerks were present. I made submissions on 17th April, 1975 I did not attack the Judge.

Not re-examined by Dr.Ramsahoye.

Dr. Ramsayoye - I did give notice that application to have Renrick Scott in attendance for cross-examination but I do not propose to pursue that application.

Warner: I ask that affidavit of Scott filed on 23rd April, 1975 be read, I have copy of Judge's notes of evidence.

Ramsahoye - all evidence should be sworn evidence.

In the High Court.

Adjourned to 8th May, 1975.

Thursday 8th May, 1975 - Appearances as before.

No. 11.

Judges Notes of Evidence

8th May, 1975.

Warner - Affidavit has been filed by Mr. Edoo, Deputy Regiatrar, and exhibited - A, B, C, D I ask that affidavit be taken as read.

Ramsahoye - I wish to submit in relation to Judge's Notes.

(1) It would only be in exceptional circumstances that affidavit is admitted after motion is opened. No exceptional circumstances alleged on this ground of application.
On authorities - Judge's Notes are altogether inadmissible.

Daniel's Chancery Practice - Vol 2, P. 1311 in respect of Submission. (1) - East Lancashire Railway Co. -v- Hattersley E.R.p. 278 at p. 283. If justice of case requires it additional affidavits acceptable.
(2) - Judge's Notes not admissible - R. v. Child 5 Cox's Criminal Law Cases at p. 197 - p. 203.
In this case sworn evidence from applicant and Solicitor and from Clerk of Court. Judge's Notes never admissible - Law of Evidence - same in civil as in criminal.

Warner - In respect of procedural point of admissions of affidavits.
(1) Material definitely in support of affidavit of registrar If affidavit filed subsequent to motion.
In the interest of justice record made by Judge in court of proceedings be available and be examined by Court. This Court Not Appelate Tribunal but being asked to carry out functions similar to appelate Tribunal, Court being asked to reserve decision in relation to committal of applicant. Issue raised as to whether conduct of applicant such as to amount in law to contempt. Paramount to interest of justice that record of Court giving rise to committal be available for examination Liberty of subject involved and from outset adjournment was not sought by respondent.

(2) Admissibility of Judge's Notes - Case referred to - case of perjury before Judge and Jury - Distinction to be drawn between criminal and civil proceedings. Applicant here has made allegations - Proceeding Civil. Conduct of Learned Judge called into question on behalf of applicant - Record should be available.

No rules formulated in motion when breach of constitution alleged - Judge carrying on duties - In Magistrate's Court notes are taken by clerk. In High Court notes taken by Judges. Vol. 22 - English and Empire Digest p. 1333, Para. 1741 - Judge's notes. Deo & Lonchester v. Murray 1848 1 ALL 216 (Canadian case).
1742 - Judge's notes - Kickson v. Phelan 1850 - 1 PR 24 (Canadian) Judges cannot be called to give evidence.

Ramsahoye:-

Sworn evidence by Clerk of Court in applicant and Soliciter. Judge's notes if to be truth of evidence given. Evidence must be sworn. Denial of Justice. Judge cannot be questioned. If no sworn evidence possibility of unsworn evidence being admissible.

Court:- Rules that affidavit and exhibits be admitted into evidence and taken as read.

Ramsahoye:- I object to admission of affidavit filed today. No relevance.

Warner:- Intend to refer to Crown Proceedings Act on liability of A.G. Relevant to this particular case.

Ramsahoye:- I do not intend to further object. Affidavit of Crown Solicitor never admitted. Leave to Ramsahoye to cross-examine Renrick Scott on Affidavit filed.

Adjourned to 12th May, 1975:

Monday 12th May, 1975 - Appearances as before.

RENRICK SCOTT sworn states - cross-examined by Ramsahoye:-

12th May, 1977

I was a Clerk in Court of Monday 14th April, 1975, when case of Texaco was called before Maharaj J. On that occasion Hosein and De la Bastide for defendant was absent. Misir held for them. I can't recall if Misir made application for adjournment but he did tell the Judge that Hosein and De La Bastide were absent. I can't recall if Misir said they were not ready to go on. I can't remember what else Misir said. Misir made no application for dismissal of plaintiff's case.

In the High Court.

No. 11

Judge's Notes of Evidence

12th May, 1975.

(Continued)

Misir did not say he was ready to go on. Later on the 14th April, 1975 case was heard against Caroni when counter claim was dismissed and the plaintiff granted Judgment. In that case Mrs. Maharaj held for the applicant. She was sent for by Maharaj J. That case, the hearing was concluded at 1.50 p.m.

On 15th April, 1975. Samdaye Harripersad and Mini Max was begun. B.P. Maharaj held for the applicant and applied for adjournment which was refused. Archibald and Panday appeared for the Plaintiff. Their views on the application was not taken. Evidence of two medical evidence was taken B. P. Maharaj had already been granted leave to withdraw and defendants were unrepresented. Matter was adjourned to the 17th but I can't say whether Judge said he had an appointment and at which time Court was adjourned. After the two doctors had given evidence, a part-heard case was resumed. I do not know why case in which medical evidence had been taken was not continued on that date.

On Monday 16th April, 1975, the Judge sat in Chambers and in the case of Bachan v. Caroni - applicant appeared applied for an adjournment, the matter was stood down and subsequently adjourned to the 7th May, 1975. When application was made, it was refused and matter stood down. At time application was made proceedings were not before the Judge. Proceedings were never there and matter was adjourned to 7th May, 1975 then matters in Court were nearly concluded. When applicant made application for adjournment and it was stood down, applicant asked Judge to disqualify himself after the application for adjournment had been refused. There were no proceedings then and I was not aware what the proceedings were concerned with. Applicant had indicated to Judge it was a case where money had been deposited in Court. Application for adjournment was made and refused. I can't remember other side having anything to say.

To Court:-

There were no proceedings before the Court.

Continuing:- After application to disqualify was refused by Judge applicant waited and case was later adjourned to the 7th May, 1975. During that period applicant did two matters before the Judge, contested matters.

On 17th April, 1975 Samdaye Harripersad v. Mini Max was resumed. Applicant made application to have two medical witnesses recalled. Judge refused application without calling on other side. Ramesh Maharaj then said having regard to the outcome of that application and to what he had said the previous day he reserved the right to impeach the proceedings but that he would take part in the trial.

After Ramesh Maharaj said he would take part in trial, Judge spoke. Judge asked Ramesh Maharaj to think carefully before answereing his question. Judge asked Ramesh Maharaj whether he was saying Court was biased and corrupt by taking matters behind Counsel's back. Last word in question was back. I can't remember all that passed. There was a lot of talk but Judge did say he charged him for contempt of Court. Judge asked Ramesh Maharaj to answer the charge. Ramesh Maharaj applied for adjournment to have a lawyer. That application was refused. Ramesh Maharaj said he was not guilty of the charge. I do not remember Ramesh Maharaj saying he was not imputing bias or any thing. At that stage I became scared. I recalled the Judge making order for 7 days imprisonment. I assumed that the Judge found Ramesh Maharaj guilty but I don't remember if the Judge pronounced Maharaj guilty. Judge had asked Ramesh Maharaj from Bar Table to answer the charge and he went to side of Bar Table. He left the Bar Table at the request of Judge when he was adked to answer the charge.

After sentence was pronounced, Policemen removed him from Court. I can't recall if he had on his wig and gown. He was robed when he made application to recall witnesses.

Re-examined Warner:-

When Maharaj was asked to remove from Bar Table he stood aside to answer charge. No one touched him. On 14th April, 1975 in case of Caroni, Mrs. Maharaj held for Ramesh Maharaj - evidence was taken on both sides and Judge gave decision at end of case and stated reason for his decision.

On 16th April 1975 when proceedings could not be found efforts were made to locate them. Efforts were made before and after Ramesh Maharaj's application for adjournment. I swore to affidavit in this matter on 23rd April, 1975. I do not wish to retract anything I said in affidavit. I did not remember when I swore to affidavit who made application for adjournment and I crossed out that portion in para. 2 of my affidavit.

Ramsahoye - I am applying for Judge's Note Book to be allowed to inspect. I already made application to Solicitor General and he said he could not arrange it. I ask that Court ask that Note Book be produced for inspection.

Warner:-

My friend saw me on Saturday last, late afternoon, and asked if I could arrange to have Judge's Note Book. I communicated with the Deputy Registrar who said he did not have it in his possession and if application was made to him it

In the High Court

No. 11

Judge's Notes of Evidence

12th May, 1975.

(Continued)

13th May, 1975.

would be conveyed to proper quarter. Court rules that it will make no such Order.

Ramsahoye:-

When matter was first called on 17th April, 1975 order was made for service on Attorney General. Mr. Justice Maharaj was never served, and as far as these proceedings are concerned only one repsondent the Attorney General.

Adjourned to 13th May, 1975.

Tuesday 13th May, 1975 - Appearances as before

Warner:- Two affidavits filed today.

(1) Commissioner of Prisons with original Committal warrant annexed and marked "T".

(2) Crown Solicitor with "S" true copy of Order of Maharaj J. of 17th April, 1975.

Ramsahoye:-

I did not intend to take objection to warrant. In respect of Order date Order entered not made.

Warner:- I never asked that affidavit of 1st May, 1975 and 13th May, 1975 Commissioner of Prisons be taken as read.

Ramsahoye:- I have no objection. Ordered accordingly.

Warner:- I ask that affidavit of Toolsie dated 13th May, 1975 with Order annexed be taken as read. Date entry ordered no ground for holding that affidavit and what annexed it not admissible.

Ramsahoye:- I object to the admission of the Order. Court rules affidavit and exhibit "T" admissible. Ordered that affidavit be taken as read.

Warner:- Submit

(1) First question which falls to be determined in respect of application is whether the Attorney General is sole respondent in proceedings necessary to look at nature of allegation made, against when they are made and nature of relief sought, and against whom that relief is sought. Whether reliefs sought applicable at all ot Attorney General in circumstances of this case.

In the High Court

Judge's Notes of Evidence

13th May, 1975.

(Continued)

Substance of complaints which refers to constitutional rights is that torts have been committed as against the applicant. Relief sought includes damages as against Attorney General. Co-ercive relief against Attorney General and declaratory Orders. First Hurdle which is submitted- applicant must surmount and cannot surmount lies in provisions of Crown Liability and Crown Proceedings Act 1966.
Common Law Rule that the Sovereigh can do no wrong remains unaffected by Provisions of Constitution of Trinidad and Tobago.
Crown not liable in Tort - only statutory provisions of 1966 Act. Supported by Provisions of Sec. 3 of Constitution (p. 13).
Sec. 3. S.S. 1 (Serving as to certain laws)
Law defined by S 105 of Constitution (p.62)
Common Law Rule (Unwritten Rule of Law)
Crown not liable in Tort.
Substance of complaint - (false imprisonment, wrongful order of imprisonment made by Judge and wrongful carrying out of Order by Police and the Prisons).
Tortious Liability being alleged.
No Tortious Liability in respect of any of acts complained of can be brought home to Crown as represented by Attorney Generel - Sec. 4 of Crown Proceedings Act 1966 made Crown liable for first time in Trinidad and Tobago. Sub-section 6 - Discharge of responsibility of Judicial Nature excluded. No liability could be attached to Crown and in this application Crown only respondent.
Judge of High Court not servant of Crown for purposes of Crown Proceedings and Liability Act - Servant defined by Sec. 2 (h) of Act.
Judge cannot be liable. 1974 - 3 W.L.R., p. 459; p. 463, Sirros v. Moore; p. 467 - 8 Denning M.R.
No action maintainable against Judge. No Civil Proceedings for judicial act of Judge. P. 471. Liability of Crown strictly limited. Sec. 4 (6) of Crown Proceedinga Act 1966 - (any connection with act done in Judicial Process). No responsibility for Attorney General to answer in these proceedings (Even if Police or Prison Officers had been parties no liability would attach as carrying out Judicial Process on direction of Judge). Attorney General could not be respondent in Writ of Habeas Corpus. Para. 4. of Notice of Motion filed on 17th April, 1975. Affidavit of Sahadeo Toolsie of 8th May, 1975 with S.T.1 Gazette showing department after which Attorney General responsible. 1964 - WIR p. 500 - (Guayana) Re. Benn p. 505 - Luckhoo C.J. Prerogative Writ - coercive - compelling. Not granted against Crown. (Guayana Jaundoo v. Attorney General - conferred by Privy Council. Coercive Relief not granted against Crown. No liability resting on Crown re alleged tortious acts. 1965 - Police Service Act - Police to execute judicial process - Sec. 35 (t).
Warrant from Registrar directed to Prisons. Duty to obey.

In the High Court.

No. 11
Judge's Notes of Evidence

13th May, 1975.

(Continued)

(2) Type of relief sought - (a) Order for release (b) Writ of Habeas Corpus. Persons against whom these should have been issued not before Court. Relief by declaratory Order - Only appropriate when persons whose action or contemplated action is being questioned or challenged - are servants of Crown acting as such. Judge making order not servant of Crown. In appropriate to seek relief by way of declaration of acts done by him of a Judicial nature. Judge acted ex proprio moto. No declaration can lie and not against the Crown. Declaration in matters where officers acting on behalf of Crown where Crown has interest. Police Officers and Prison Officers servants of Crown but acting not on behalf of Executive but carrying out duties in connection with execution of Judicial Process. Where Breach of Constitution illegal - Sec 13 of Judicature Act. 1962 - Right of Audience of Attorney General in proceedings of Protective Rights of Constitution - Attorney General ought not to be respondent. None of reliefs sought can be granted against Crown in circumstances of this case. Habeas Corpus no substitution for appeal. P. 594 - de Smith Judicial Review of Administration action P. 591. Proper parties in Habeas Corpus. Person having custody of person detained could not be Attorney General. This case not detention by executive under emergency powers. Here detention on order of Judiciary. Constitutional Rights Generally, Sec. 3 of Constitution. Relevant - Breaches of Constitution alleged. Law under which action complained of taken. Whether law subject to tests of Sections 1 and 2 of Constitution. Law of Contempt in Trinidad and Tobago is same as Common Law of England which is part of law of Trinidad and Tobago at time Constitution comes into force so that in considering the constitionality of acts complained of, once it is established that acts properly done under common law of England as it stood immediately before 31st August, 1972, one cannot go further and apply test under Sec. 1 or Sec. 2 of the Constitution. Rights set out in Sec. 1 of Constitution declared that those rights always existed. Series of complaints as to procedure employed in dealing with applicant for contempt of court. Duty of Judge before sentencing applicant to find him guilty of contempt, to hear evidence of facts of which Judge was well seized having seen and heard and all taking place in his presence. Submissions by Counsel on the other side would make nonsence of principles of Law re contempt in face of Court. All authorities show that Powers of Superior Court to deal with contempt in its face is absolutely necessary for proper administration of Justice and to ensure public have due respect and confidence in that administration. Consequently, Judge empowered in cases of contempt in face of Court to decide whether swifft and summary punishment merited and nature and extent of punishment according to Laws. Balogh v. St. Albans Court - 1974 3 A.E.R. p. 283 (Acts not done in sight of Judge) In this case

all took place in view of Judge - contempt in face of Court one exception to rule Judge not sitting on matters within his personal knowledge. Tone of voice; manner in which remark made can be taken into account by Judge in determining whether contempt committed. Canterbury v. Joseph - 6 W.I. R. - p. 205. Evidence taken by Court not confirmed to sworn evidence - matters can go beyond. In this case Judge not only heard but recorded and noted accordingly. No need for sworn evidence that submissions should be rejected. Second complaint - applicant should have been informed of charge. Evidence available on all sides that he was told he was charged with Contempt of Court; record shows that he was told this just after he had made a direct and forceful accusation of unjudicial conduct against the Judge. Record states:- "I say you are guilty of unjudicial conduct". When called upon with regard to sentence - "I am not imputing bias or anything to Your Lordship" - shows it was clear to him and everyone that gist of offence - charge levelling - unjudicial conduct was known to him. Hearkening back by applicant to what he had said the previous day. Oration of previous day culminated on the following day. Repeated by reference. Where person charged, must have known substance of what he was being accused is not necessary to formulate a charge. Opportunity to be given to confirm or deny or explain. Applicant was given opportunity.

Adjourned to 21st May, 1975 at 2 p.m.

21st May, 1975

Wednesday 21st May, 1975 - Appearances as before.

Warner: On last hearing dealing with question of any special words required in order to bring notice to person charged with contempt - Particulars of Charge. Would like to refer to point again - that Attorney General be sole respondent question relates not only to damages but to whole case of wrong party brought to Court - applicant out of Court - Whether damages or declaratory Judgment. Must be proper respondent where rights are affected, or against whom directly or vicariously charges made. (1911 - 1. K.B. P. 410- Dyson v. A.G.) Applicant may rely on that. Authorityfor proposition possible to obtain declaratory Judgment against Attorney General as to whether or not offences of Crown acting in accordance with their duties under particular statute. That case - no application here. (Head note - Dyson v. Attorney General). (Action for petition of right - Crown directly interested - notices issued by Commissioner of Income Tax. Revenue at state - whether notices issued properly). (P. 415 of Judgment - 1 K.B. 1911). In instant casecourt acting ex proprio moto. Rights of Crown not directly or indirectly affected by order sought to be challenged. Held Attorney General not proper party or necessary 1901 - A.C. p. 561 at p. 576 - p. 580 Mireaha Tamaki v. Baker.

In the High Court.

No. 11

Judge's Notes of Evidence

21st May, 1975.

(Continued)

Issue - Commissioner of tort acts alleged to be tortious. Action for declaratory Judgment against Attorney General not appropriate. Liability by legislation does not impose liability on Crown for acts done by Judge in discharge of his duties as Judge, or acts in exercise of Judicial Process. Not caught by Crown Proceedings Act of U.K. - 1947. Kynaston v. A.G. - T.L.R. Vol 49 - 1933 at p. 300 at. p. 302. (Action in declaratory Judgment being sought) Judge - no officer of Crown. Position same at law here. Liability of Crown not altered by Act. Groebei v. Administrator of Hungarian Property - Vol. 70 of Solicitors' Journal 1926 at p. 345 Practice - claim to fund in hands of administrator of Hungarian Property - Held A.G. not proper party. Liability of officers of Superior Courts. Salmond on Torts - 16th Edition, p. 416 - para. 152. Judges an absolute exception from Civil Liability for acts doen in pursuance of Judicial acts; Nor is Crown vicariously liable. No need for Judge to call evidence before committing for contempt (3 A.E.R. 1974- Balogh v. St. Albans Crown Court p. 283 at p. 293. No precise charges are put - call for contempt without any witness being called - p. 287 - Blackstone Commentaries - Contempe in face of Court - Common Law of England in relation to contempt formed part of law of Trinidad and Tobago immediately before 31st August, 1962 and cannot be subjected to Section 1 or Section 2 of the Constitution. Written Constitution in Trinidad and Tobago all recent cases - Principle that Court has power to deal with contempt in its face instantly. Whether detailed and specific charge should have been put to applicant? Power to commit - contempt in face of Court is power exercisable without a trial. Re: Bachoo 5 W.I. R. p. 247; (Chang Hang-Kiu V. Piggott 1909 A.C. p. 312, p. 1249 - failure to give opportunity to answer. No special formulated issue. No statement or trial). In this case context in which applicant told charged with Contempt. Accusation made by applicant -"But I say, you are guilty of Unjudicial Conduct" Clear to applicant that his accusation is the cause of his being called upon to answer. Judge's Notes - after being called upon as to what he had to say in respect of sentence. Applicant's answer - "I have not imputed bias or anything to Your Lordship". Clear again applicant know for what he had been called to book (1909) - A.C. p. 312 (Chang Hang -Kiu v. Piggott. No opportunity for explanation given there, but as to charge supported by Privy Council). Opportunity given here for explanation by applicant before sentence. In the case two opportunities given to explain.

Warner Submits:-

(1) No formulation or special formulation of charge required.

(2) What was done by Judge was adequate compliance

with principles relating to bringing charge to notice of applicant and giving of opportunity for explanation.

No opportunity to be represented by Counsel - Submits - Person who was prisoner of Judge does act or make statements in Court amounting to contempt in face of Court has no constitutional right to an adjournment for the purpose of representation by Counsel. Test to be applied - whether if application for adjournment for representation of Counsel had been made by person charged with contempt in face of Court on 30th August, 1962 that person could have said he was entitled to an adjournment at common law - answer surely would be no. Same summary Procedure - Swiftness - Instant punishment by imprisonment or otherwise deep rooted in manner of dealing with offence of contempt in face of Court makes it clear that person whose actions warrant summary punishment immediately, not entitled to adjournment for purpose of representation by Counsel.

Re Balogh - view expressed that it would sometimes be necessary to deal with instances of contempt in face of Court with representation of person charged.

No time allowed for Counsel (L. J. Stephenson p. 293 (Morris -v- Crown Office) (Balogh v. St. Albans Crown Courts).

Position even stronger in this case. Judge under attach by accusation of lack of impartiality,

Duty of Court to act in such circumstances. Blow against whole administration of Justice. Forceful attack against administration of Justice.

Reference to Sec. 2 of Constitution - Right to Counsel C (ii) Subject to provision of Sections 3, 4, 5.

Here (c) - Person not arrested or detained.

Sec. 2. Barrier to enactment of laws in future - does not enact new laws.

Here common law applicable.

Sec. 3 - Serving as to certain laws - Common law saved.

(Bazie v. Attorney General cited in Lasalle v. Crown Vol. 19; Part 5 Judgment of Trinidad and Tobago p. 3. at p. 18)

Purpose of Sec. 2 - to prohibit enactment of legislation).

American cases referred to in support on contention. Right to Counsel integral part of due process of law.

(a) Courts of Trinidad and Tobago not bound by American Cases. Sections 1 and 2 - Language of Canadian Bill of Rights and of American Constitution, does not of necessity imply that American interpretation of due process of law should be followed by Courts of Trinidad and Tobago.

Sec. 1 of Constitution cannot be used for purpose of altering common law, having regard to Section 3 of Constitution.

Expression - due process of law.

Adjourned 3rd June, 1975:

In the High Court.

No. 11

Judge's Notes of Evidence

3rd June, 1975.

Tuesday 3rd June, 1975 - Appearances as before.

Warner:- Representation by Counsel - no right at common law or ever was, or can be claimed under Section. 2 (c) (ii) of Constitution if inconsistent with position before 31st August, 1962 at common law. Contempt in face of Court - instant nature of committal inconsistent with right to adjournment. Counsel not allowed - (Morris v. Crown Office - Disorderly conduct by a student in Court). Not as grave as attach on impartiality of court.

Form of Order and Warrant Attacked:

(1) Complaint - No order written up on 17th April, 1975, Submits - Order of Court whether written or not took effect when pronounced by Maharaj J. Authority - In re Harrison's Settlement 1955, 2 W.L.R. : p. 256 at p. 260 p. 262.

(2) Complaint - Absence of Order under seal - argument based on misreading of Ex Parte Van Sandau 41 E.R. p. 763 p. 765,

Order not really in issue but warrant.

No authority for Order to be in existence and written up before taking into custody of contemnor.

Based on General Rule - English Rule in application at time not to contempt Proceedings.

Order has been drawn up and is in evidence Ex. S.

Re: Committal for contempt - Practice is order drawn after contemnor removed and while in prison order delivered.

In Re. Evans and Noton - L.R. 1893 1 Chancery - p. 252, p. 259 - (What happened in this case - applicant in Court - Warrant of Registrar acted upon).

Complaint - Signing of warrant by Registrar and not by Judge. All warrants in respect of Criminal Convictions signed by Registrars. Contemplated by Rules of Supreme Court (R. 1. O.62 R. 7 - Commitments) Warrant "T" carries seal of Registry. No obligation to follow English Practice introduced in 1961 by way of a direction andno statutory force. Not a matter of Fundamental Justice - that due process of law breached. No binding force in this country. Complaint of procedure not being followed not necessarily complaint of substance. Bazie v. Attorney General Vol. 18 - W.I.R. p. 113. Palko v. State of Connecticut - 1937, 302 U.S. 319, p. 43 found in Lasalle v. Crown Vol. 19, Trinidad and Tobago Judgments, p. 43 Assuming but not admitting warrant to be signed by Judge - no matter of fundamental justice to be breach of due process of law.

Issue Raised: Legality of committing Barrister at Law for contempt. Power of Superior Courts to commit for contempt coeval with foundation of Courts. Barristers not immune even when wearing robes. Complaint here that applicant committed when wearing robes. (16 E.R. p. 457, re. Pollard).

Submission - Vol. 2 Hawkins' Pleas of Crown. Barrister only dealt with for Foul Practice - p. 219 - Unjustified conclusion) p.4, S. 15. Power of Judge always there to commit use of approbious language, foul practice. Stephen's Commentaries Vol. 3. p. 263. Barrister not Officers of Court - Power of Court however to fine or imprison Barrister. (Smith v. Justices of Sierra Leone mentioned by Counsel for applicant, but then abnormal punishment by striking off roll. Peculiar circumstances) Mc Dermott v. Judge of British Guyana - L.R. Privy Council - Vol. 2 - 1867 - 1969 p. 341 at p. 363. (Held striking off Rolls. No Proper punishment for contempt)

Warner - This Court has no jurisdiction to entertain this application where acts complained of forms part of a decision of the High Court. (P. 14) - Sec. 6 (3) of Constitution. Special provision for referrable to High Court in any proceedings in any Court other than High Court of Court of Appeal. Power of High Court to review action of Parliament or executive but not to review power of High Court itself or Court of Appeal. No acts of redress in High Court to Federal acts done in High Court of Court of Appeal. (Judgment of Cross J. Re. Chokolingo - p. 5) Obiter - in Privy Council Judgment, reference to Parliament and Executive not Judiciary. (1971) - L.R. - A.C. cases p. 972. Jaundoo -v- Attorney General. On reasonable construction of Sec. 6 of Constitution - no power allocated to High Court to sit on Judgment on itself and on Court of Appeal. Barristers have duly to clients and to Court. At times must be frank and firm in course of duty but not in conduct deleterious to Justice; conduct insulting to Court. Duty to uphold dignity of Court not to diminish it). /Hawkins Pleas of Crown - p. 147 (Vol. 97 - E.R. p. 94) The King v. Almon p. 99, p. 100 - Authority of Court. Words - "I say you are guilty of unjudicial conduct" - highly contemnous p. 101. Dangerous stab to authority of High Court to accuse Judge of course of unjudicial conduct. Circumstances in which words used show applicant not confining himself to looking after interest of Mini Max but attacking Judge relating to Judge's conduct not only in Mini Max case on 17th April, 1975 but in relation to matters of day before and matters of days before - not then before Judge and matters which the Judge had concluded - some had been subject of appeals. Morris v. Crown Office - 1970 - 2 K.B. p 114 - p. 119 contempt Sui Generis - p. 122 - Lord Denning. Power of Court to deal with contempt at once. Even if Court has power to deal with application of this nature - some matters must be left to Trial Judge - gestures, inter nation of words - only seen and heard by Trial Judge.

Carus Wilson - State Trials New Series Vol. 6, p. 183 at p. 196 - Contempt by language and manners - No one not present; competent Judges.
Adjourned 4th June, 1975.

In the High Court.

No. 11.
Judge's Notes of Evidence.

4th June, 1975.

Wednesday 4th June, 1975 - Appearances as before.

Warner: Gravity of offence. Important to note what said on 17th April, 1975 definite adoption of detailed castigation administered by applicant on 16th April, 1975.
Clear - applicant hearkened back to discourse of 16th April, 1975.
Criticism made ofJudge's conduct went beyond entitlement of reasonable comment re Administration of Justice.
Criticism (Appearing in News Paper) 1936 A.C. p. 335
Judgment of Lord Atkin - Ambard v. Attorney General of Trinidad and Tobago - Right to comment - no right to impute motives - applicant had opportunity to make it clear not imputing bias or corruption. Reaction - "This is not the place for me to answer that question". Something sinister in that reply. On looking at entire matter in respect of Texaco case - doubts could have arisen in Judge's mind as to bona fides of grounds for adjournment. Argued that comment by Barrister inspired by malicious intent only case where Barrister guilty of contempt. Intent not necessary ingredient in contempt in face of Court - where words used amount to insult to Court. 122 E.R. p. 842 Ex-Party - Pater.
Counsel making insulting remarks to member of Jury - measure of difference between member of Jury and Judge.
If necessary for Judge to find intent before committing - presumption could that Judge so satisfied.
In this case the applicant was called upon and stating he reserved right, applicant stated he did not impute anything but never resided from his portion of accusing Judge of unjudicial conduct. Did not withdraw one IOTA of Condemnation conduct - persisted in accusation. It is held - High Court has jurisdiction to test constitutionality of judicial act of High Court Judges - this Court not sitting as Court of Appeal in dealing with matter from Inferior Tribunal - not supervisory Tribunal - p. 847.
High Court not to interfere where open to Judge who saw or heard coming to conclusions. On the facts - if necessary to find intent,open to Judge to so find and if necessary to find intent, presumption must be that he did so find. Whole substance whole burden of applicant's complaint on 16th April, 1975 and adopted on 17th April, 1975 that he was discriminated against.
In substance adjournment granted to A and B but not to him.
Allegation of lack of impartiality. Facts taken together and applicant's stating "I say you are guilty of unjudicial conduct".

Detailed catalogue of cases, comparison of instances where adjournment granted.
Clear imputation of improper motives.
Assuming that this Court has jurisdiction ought not to be exercised as though Court sitting as appelate Tribunal.
Re: Corke - 1954 - 1 W.L.R. p. 899.
Writ of right not of course - para. 4 of application. Writ of Habeas Corpus sought.

Ramsahoye: Writ of Habeas Corpus not now sought.

Warner: Habeas Corpus cannot be used as substitute of appeal. Show of seeking constitution remedies should not be made when in effect what is being done is to seek to appeal.
Warrant - warrant from Superior Court - no duty togive particulars of crime or offence in relation to which it has been issued. No duty to state facts on which contempt arose.
Sheriff of Middlesex - 113 E.R. p. 419. p. 424.
Ex Parte - Fernandes - 10 Common Bench Reports 1961 p.3. at p.26.
(Jaundoo v. A.G. of Guyana - Particular passage deserves Notice - Thinking of Lord Diplock - 1971 - 3. W.L.R. p. 28 (Word Redress).
(Confined - beinging Notice to Legislative authority or executive - redress against judicial acts of Judges of Superior Courts not contemplated).

Warner:- (1) Court has no jurisdiction to entertain application for relief under section 6 of Constitution where alleged constitutional rights infringed by Judge of High Court of Trinidad and Tobago acting as such.

(2) That in any event - wrong that Attorney General was made sole respondent in the matter. That Attorney General ought not to have been respondent in matter at all.
If that submission correct, Proceedings must fail as no proper respondent before Court.

(a) Relief sought against Attorney General by way of damages is contrary to provisions of Crown Liability and Proceedings Act, 1966.

(b) Relief sought against Attorney General by way of declaratory Judgment allegedly relates to tortious acts in respect of which he is free from liability under Crown Proceedings Act and cannot be granted.

(c) In so far as any coercive orders are sought against Attorney General it will be contrary to Principles of Common Law and Statute Law of Trinidad and Tobago to grant such relief.

(3) That if Court has jurisdiction in this case - Jurisdiction does not entitle Court to enter into examination of merits of case in way in which appellate Tribunal would be entitled to.

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Judge's Notes of Evidence

4th June, 1975.

(Continued)

(4) Presumption that Court which made the Order now being challenged acted out of a proper appreciation of the relevant law applying that law to facts perceived by it.

(5) On enquiring as to constitutionality in relation to Sections 1 and 2 of the Constitution does not involve a complete review of the Judge's decision.

(6) Law in contempt applicable to Trinidad and Tobago is law of England as it stood before 31st August, 1962 - so that obiter dicta on right to Counsel indicating new line of thinking in English Court after 1962 inapplicable in Trinidad and Tobago.

(7) That no new rights and fundamental freedom came into existence on the 31st August, 1962 in Trinidad and Tobago Sec. 1 of Constitution is declaratory ofrights existing immediately before 31st August, 1962.

(8) That in all the circumstances and on the evidence, the manner in which the applicant was called upon to answer charge of contempt was adequate compliance with requirements of the Common Law.

(9) Alternatively - the manner in which the applicant was called upon to answer the charge involve no breach of fundamental rights set out in Section 1.

(10) That submission before committing the Judge should have heard evidence from persons present, runs counter to all known principles of Common Law in relation to contempt in the face of the Court.

(11) That at Common Law a person committing contempt in the fact of the Court has no legal right to an adjournment for purpose of representation by Counsel.

(12) That refusal of Court to grant applicant adjournment to retain Counsel no infringment of fundamental rights and freedoms as expressed in Sections 1 and 2 of the Constitution.

(13) That if there was no order written up at the time of removal of the applicant from the bar or at any stage of his incarceration - no breach of Common Law.

(14) Alternatively that the absence of non-existence of such order at times complained of involved no breach of fundamental rights and freedoms set out in Sections 1 and 2 of the Constitution.

(15) That the warrant on which the applicant was conveyed to Prison was a lawful warrant in accordance with law in force in Trinidad and Tobago.

(16) Assuming but not admitting warrant not signed by person lawfully entitled to do so - no breach of fundamental rights or freedoms contained in Constitution.

Warner:- To complete record I now seek leave of Court to put if affidavit of Gerald Aubrey Steward, State Counsel in Attorney- General's Ministry, relating to delivery to him of

Notice of Motion in this matter on the afternoon of the 17th April, 1975 at 4.20 p.m. and my learned friend Dr. Ramsahoye had no objection.

4th June, 1975.

(Continued)

Dr. Ramsahoye: I can say from Bar affidavit was handed in at 4.20 p.m.

Warner: If Court decides against application on ground of Jurisdiction I would ask that Court hold that any order presumably of a conservatory nature made in proceedings on the 17th April, 1975 would be nullities.

If without holding that Court has no jurisdiction the Court on other grounds reject the application, Court should hold that orders made on 17th April, 1975, in this proceedings or otherwise in relation to applicant cease to be of any effect or validity upon the determination of this application and that Judgment of Mr. Justice Maharaj be restored to full force and effect.

Court grants leave for affidavit of Stewart to be filed by 5th June, 1975.

Adjourned to 11th June, 1975.

11th June, 1975.

Wednesday the 11th June, 1975 Appearances as before.

Ramsahoye: First question whether Attorney-General proper party to motion. Did not say whom he thought was proper party.

Sec. 6 of Constitution under which motion brought -

(1) Jurisdiction vested in High Court.

(2) Original Jurisdiction in High Court.

Order made by Braithwaite J. that proceedings be served on Attorney General and that order complied with. Whether order made by Braithwaite J. bad in law - service on Attorney-General.

Attorney-General as representative of Crown, proper party to proceedings.

In English Constitution Law - Crown Legislature, Execution, Judicial. Crown Proceedings Act 1966. Commencement of Act. Executive - Sec. 56 of Constitution - Vested in Her Majesty's name.

Judtice administered through Judges and other officials.

Trinidad and Tobago - Constitutional Monarchy Jaundoo v. Attorney General of Guyana 1971 - 3 W.L.R. p. 13 at p. 21 (c). (Executive act impugned) Incongrous that Court should give orders to itself.

Act of Judge in Her Majesty's Supreme Court - act of Crown itself.

Redress - person to be sued - Attorney General - Representative of Crown. Second Edition Haldbury's - Vol 6 at p. 663 Et Seq. Para. 865 Attorney General, officerof Crown and Officer of Public - Crown and Austen 9 Price Reports at p. 142. In Note -

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Judge's Notes of Evidence

11th June, 1975.

(Continued)

also in 147 E.R. at p. 48 (Note at bottom) Notices to be served on Attorney General save where Statutory Provision.
Authority for bringing proceedings brought not under common law but under Sec. 6 of Constitution.
Judge entitled to order service on Attorney General.
Sec. 19 (2) of Crown Proceedings Act 1966 - Now Statutory reflects ancient common law position.
Sec. 4 Sub-section 6 of Crown Liability and Proceedings Act 1966 - mis-read.
Acts done of judicial nature.
(By virtue - N.B.) Claim not being brought by Sec. 4 of 1966 act but by Sec. 6 of Constitution - No redress by 1966 Act.
Where alleged contravention Court must investigate.
(Judgment of Cross. J. - reliance on that Judgment.)
Right of redress contained in Sec. 6 of Constitution - Constitution overrules (Sec. 44 of Constitution - grant of legislative power) 81/75 -
Application of Patrick Chokolingo - Judgment of 28th April, 1975.
Cross J. - Provision of Sec. 6 at p. 5 of Judgment (Cyclo-styled). Sec 6 (1) - Inserted to prevent violation of entranched right. Judicature Act - application to be served on Attorney General and Attorney General entitled to be heard - Sec. 13 of Act 12 of 1962.
Attorney General as representing Crown - proper party.
Second: Not disputed Judge in English Law not liable for anything done in exercise of Jurisdiction. Crown has no exemption under Sec. 6.
Sec. 6. (2) If Court to make such orders appropriate - Writ includes prorogative Writs - Habeas Corpus, Certiorari, Mandamus and Prohibition. Court had right to issue writ of Habeas Corpus.

Ramsahoye: Seek order to set aside and declare unconstitutional; order of Maharaj J.
Three - Solicitor General - interpretation of Sec. 3 of Constitution.
Concede - once something done in law before commencement of Constitution that something valid without precision of Section 1 and 2.
Complaint that things done for outside scope of extant law on 31st August, 1962.
Sec. 3 of Constitution - Privy Council Appeal No. 20 of 1974 delivered by Lord Diplock on 1st May, 1975 at p. 2.
In this case violation of right detailed in Sec. 2 of Constitution which are elaborations of Sec. 1.
Law of Contempt does obtain but what occurred not within rules and circle of contempt.
Contempt - criminal offence - entitled to safeguards under

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Judge's Notes of Evidence

11th June, 1975.

(Continued)

Sec. 2 of Constitution and denial.
Four: Submits - Because Counsel havespecial privileges to practice laws, rules of contempt by Counsel special to them.
Barristers' duties.
Conduct and Etiquette at Bar 4th Edn. p. 5 Boulton Acting with due courtesy uphold interests of clients. Here Barrister committed to prison for contempt while conducting case on behalf of client. Committal totally unprecedented. No case reported since 1066. No barrister ever imprisoned.
Necessities which warrant imprisonment of Barrister. 9 Cox Criminal Case - p. 544 - Pater's case. P. 548 - Court may fine after affording opportunity to Barrister for explanation or apology. (Fine or committal if necessary). p. 554.
Questions to be determined in law whether committal necessary.
Words - "If necessary" refer to possibility of continued obstruction of course of Justice to extend when fine not likely to inhibit.
William Rainy v. Justices of Sierra Leone - Suspension of Barrister - 14 E.R. P. 19.
Fines imposed - 3 - fines in one trial. No Prison sentence imposed.
Magnus Smith v. Justices of Sierre Leone - 13 E.R. p. 846 at p. 849.
Barrister struck off from Rolls - Set aside by Privy Council.
Punishment necessary to vindicate authority of Court.
Adjourned to 13th June, 1975.

13th June, 1975.

Friday 13th June, 1975 - Appearances as before.

Ramsahoye - Summing up of authority of Pater. Power to commit if necessary. View of Solicitor-General - Power to fine or convict not the law. Law only necessary when nothing else suffices. Committal - suspension from Practice for period.
Committal to Prison - Suspension of practitioner from Court or practice.
No such situation arose. In this case wholly arbitrary and not justified.
Australian case. Barrister committed for three hours to Watch Tower.
Committal set aside and find lifted.
Lloyd v. Biggin 1962 Victorian Reports at p. 593. Barrister not informed of charge.
King v. Foster - Victorian Report - 1941 at p. 77 at p. 81. Was there a contempt at all?
Contempt - 3rd Edition Halsbury's; Vol. 8, p. 3 para. 4.
Command Paper 5794 - Report of Committee on Contempt of Court - (Philmore Committee) p. 2.
Fundamental supremacy of law to be challenged for contempt.
1945 - Privy Council - Parashuram Detaram Sham Dawsani v. The King Emperor.
Vol. 173 of L.T.R. at p. 400 (apology tendered).

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13th June, 1975.

(Continued).

Words amounting to contempt tend to interfere with course of justice. Obstruction of course of justice if Judge set at difference. Perfunctory manner in which Barrister sent to Prison. From 14th April, 1975 to 17th April, 1975. Barrister's struggle for right and in course of struggle Barrister imprisoned. Refers to facts of 14th April, 1975 Ex "A" of affidavit of George Edoo - No note made of reason for dismissal for want of prosecution. Judge did not act judicially. Paras. 7 and 8 of affidavit of applicant filed on 21st April, 1975. Applicant's wife called to carry on case in which she had not been instructed. Refers to facts on 15th April, 1975 - case of Mini Max - para 9 of applicant's affidavit. Refer to facts on 17th April, 1975 - Ex "C" of Edoo's affidavit. On Ex "C" - There is no note of application for adjournment made by R. Maharaj and when it was refused. Proceedings were not before the Court.

Court: Application for adjournment not refused but stood down. Judge fully within power to refuse to disqualify himself. Barrister accepted and continued before the Judge. Refers to 17th April, 1975 Ex. "D" to Edoo's affidavit.

Application to recall medical witnesses refused, without calling on other side. Applicant after stating he reserved the right to impeach the proceedings stated he would carry on. Unjudicial conduct gave rise to whole case. On 17th April, 1975 when applicant said he reserved the right to impeach Proceedings he referred to proceedings then before Court.

Submits: At time Judge addressed applicant no question of dishonesty or corruption had arisen. P. 2 of Ex. "D" - applicant formally charged with contempt. Judge did not say what he thought amounted to contempt of Court when he formally charged him.

Judge should have told applicant what he was calling on him for. Day before application refused by Judge to disqualify himself; accepted by applicant and he continued.

Re: Pollard (Hong Kong) 1868 16 E.R. p. 457 at p. 464. Barrister fined for contempt.

Specific offence to be distinctly stated and opportunity to deny given. (Referred to by S.G. (Trinidad) - Re: Bachoo - 5 W.I.R. p. 247 at p. 248.

Magistrate had to sign warrant under his hand - p. 249.

Exact nature of charge to be told by Court to contemnor.

Before conviction for contempt opportunity for explanation or correction must be given.

When explanation made or correction given no conviction follows - cannot be convicted.

Conviction in this case improper - Safeguards should be allowed in cases of contempt. Trial by Judge himself.

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13th June, 1975.

(Continued)

Appuhamy v. Regina - 1963 - 1 A.E.R. 762 at p. 765 (Main precident in relation to charge not fulfilled. Specific offence not distinctly stated and no opportunity to deny or explain what was meant).
Hatcher v. Critchlow St. Lucia) 14 W.I.R. p. 426 at p. 431.
(Jamaica) Re: Pershadsingh 2 W.I.R. p. 341 at p. 342 - 343.
Crown and Pitter 1963 - 6 W.I.R. p. 167 at p. 169.
Lloyd v. Biggin again referred to -
Report of Phillmore Committee p. 16, paras 34 and 35. Since 1960 - appeal as of right.
In this case denial of Counsel - Court acting unjudicially.
1973 - p. 21 - Gorrie and Contempt - Rights of Barristers - (advocates) In this case Judge committed for use of words.
Unjudicial conduct whether it carried unjust or corrupt connotation.
Judge's action over period of days adverse to clients of apllicant.
Sec. 2 of Constitution in full force when applicant charged.
Guarantee ignored by Judge.
P. 4. of Privy Council Report - Re: Michael Abdul Malick - para 2.
Once Barrister removed from Bar Table applicant denied right of Counsel.
Violation of constitution.
P. 3. of Privy Council Report.
Denial of right to Counsel - Clear violation of Constitution and ground alone to vitiate conviction.
(Canada) Regina and Magistrate Taylor Ex Rund - 50 Dominion Law Report (2) d p. 444.
Allette v. Chief of Police 1967 10 W.I.R. p. 243 (Windward & Leeward Islands - Field C.J).
Adjourned to 20th June, 1975 - 20th June, 1975 - Appearances as before.

20th June, 1975.

Ramsahoye - Right of applicant to Counsel. Refers to Diplock in Malick - Judgment 20/74 - Judgment of Georges J.
2675A/1973 Re Application of Thornhill. Thornhill seeking to have statement expunged - at p. 5.
ResistingJudgment in U.S.A. - Betts v. Brady 316 U.S. Report at p. 466 Right to Counsel.
May, 1965 - Georgia State Bar Journal - W.R. at p. 442 - Right to Counsel.
Warner - My friend has raised a new matter and I would wish to reply at a later stage.
Right to Counsel - Vol. 2 - Constitution of India p. 96.
Basu. Article 22 (1). No person arrested denied right to Counsel, at p. 99.
Violation of Right to Counsel. Violated Trial.
Sec. 2 of Constitution explained by George J. in Thornhill's case.
Denial of due Process.

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Judge's Notes of Evidence.

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(Continued)

Warrant - Order.
Warrant bad - arrested and removal of applicant without warrant signed by Judge. Bad - not cured by subsequent warrant.
Solicitor General - Rules of Court authorise Registrar to sign documents.
No statute governs Criminal Contempt governed by Common Law.
(Ex Parte - Van Sandau: 41 E. R. p. 701) - cited by Solicitor General.
Clifford v. Middleton 1974. Victorian Reports at p. 737
Oswald - 3rd Edn. p. 210 - 211.
Judge had to sign order and warrant.
Annual practice 1963 at p. 1079 Vol.1 - O 44. R. 2.
(practice direction in U. K. in 1961)
English Practice has statutory effect.
Judicature Act 1962 - Sec 14 of 12/62. Where no provisions in relation to practice; practice to be followed by that of former Judicature Ordinance - Vol 1, Ch. 3, No. 1 Sec. 20 (c)
Statute of this country - proposition that practice of Judge signing warrant, be followed.
No finding of guilt. No date appears when order was entered.
Order not drawn up in accordance with practice. P. 112 - Vol. 12 of Atkins's Forms - Producure set out. Rules relate to civil proceedings and not apply to Criminal Contempt.
Fundamental mistake. Criminal Contempt - Procedure as in England.
Rule 62 - cited by Solicitor General wrong for Contempt.
Criminal Contempt - misdemeanour at law.
Consolidated Press Ltd. and No. Rae. 93 C.L.R. at p. 325 (Commonwealth Law Reports) at p. 346.
Order is authority for gaoler to keep person incarcerated.
Warrant - authority for arrest.
Strick Proof - McIllraith v. Mc Grade 1967 - 3 A. E. R. p. 625, p. 627. Every requirement of law to be strictly complied with.
Applicant incarcerated without order signed and sealed by Court.
Order not perfected until sealed.
Allan v. Byfield 1964 - 7 W.I.R. at p. 69 and 71. at p. 76
Procedure - in contempt warrant drawn up first and order entered after. Procedure different in other case.
Regina -v- Phillips: 7 New Zealand Reports 1889 at p. 749 p 754. Habeas Corpus Proceedings re. Debtors.
Strick procedure not followed in this application.
1974. - New Law Journal, Vol. 124 of 15th August, 1974 at p 768.
Wosley v. Wosley.
Kelshall v. Brown & ors.
Unlawful imprisonment.
des Iles J. - initial arrest without warrant p. 31 of 68/72.
Only authority in contempt case must be warrant signed by Judge.
Warrant - Crown v. Purdy - 1973 3 A. E. R. p. 465 at p. 472 (a. and b.)

Common Law - Valid Warrant not Warrant in possession of person carrying out arrest.
Redress - Jaundoo's Case P. 22 - Jaundoo -v- Attorney General 1971 - W. L. R. at 1. 13 at p. 22, Compensatory Damages.
In this case custodial sentence severest penalty.
Jurisdiction - applicant for redress - application either succeeds or fails.
In constitutional matters - Conservatory order by Braithwaith J. made in those proceedings to pressure matters in status quo. On Basis of authority of Diplock in Jaundoo's case. Constitutional Court has full jurisdiction to make conservatory order even in cases of appeal under Sec. 6 Motion - Pars (i); Pars (2) and Pars (3).
Warner - Solicitor General - In view of considerable new matters raised by Ramsahoye I would like to be heard briefly on new matters.
Adjourned 27th June, 1975.

Friday 27th June, 1975 - Appearances as before.
Ramsahoye - No authority for Court after fixed sentence of criminal contempt past to order earlier discharge.
Attorney-General v. James & Ors. 1962 1 A.E.R. at p. 255
Only 3 addresses.
Warner - New Case. Queen v. Austin cited in support of proposition.

27th June, 1975.

Attorney-General can be brought as respondent on behalf of Crown.
In this Case - in relation to acts of judiciary, Attorney General not answerable.
Agreed - Judge not liable in respect of any act done judicially. No authority to show crown vicariously liable.
Several cases referred to in formulation of charge - Lloyd v. Riggin 1962 Victorian Reports p. 563 p. 595 - Need for formulation there.
Distinction in instant case - facts different. No need for formulation.
Mind of applicant brought to matter by question by Court in this matter. Applicant declined to answer and then Court charged him.
Every opportunity given here.
Hackshaw v. Critchlow - Ratio Decidendi. No opportunity to answer.
Right to Counsel.
Case cited are distinguishable. Not one contempt in face of Court where person called upon summarily- there and then.
Contempt in face of Court - offence. Sui generis - and procedure different from other criminal matters.
Difference in case - 50 Dominion Law Reports - Regina v. Magistrate Taylor - Right to Counsel of choice - bias.
(W.I.R. - Allette v. Chief of Police)

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Different factsagain - Case of Thornhill - Judgment of George J. (Subject of Appeal) but facts different from instant case.
Malick Judgment of Privy Council.
Judgment reaffirms that Sec. 2 of Constitution mainly deals with future enactment and assist in construing Section 1.
Applicant must come within Sec. 1 and identify what part is broken.
Neither Sec. 1 nor Sec. 2 gives right to adjournment for services of Counsel for contempt in face of Court.
Common Law at 31st August, 1962 gave no right to adjournment for service of Counsel in case of contempt of Court. No such right today exists. Signature on warrant - Local Rules inapplicable because criminal nature of offence and Counsel for applicant relying on English Rules of Court basically of English Procedure.
Where clear provision in Local Rules, English Provisions displeced.
Old Judicature Ordinance so reads -
Several cases cited as to strictness of application for Rules of Committal.
Difference again - Breach of fundamental rights alleged here.
Minor breach of procedure can never amount to violation of fundamental rights and freedoms.
Proposition of false imprisonment as applicant removed from Bar without warrant of Court.
Submission unrealistic and impractical.
Case of Jaundoo v. Attorney-General of Guyana relied upon.
No part in Privy Council Judgment making Crown answerable in respect of Judicial Acts.
Jaundoo - Action by executive.

Case of Parashuram
Distinction drawn between insult to Barrister and insult to Court.
Accusation against taxing master amounting to contempt.

Case of Kelshall:
Difference again - Action by executive. Before State of Emergency - arrest without warrant. No question of Order of Court. County Court - Judge - Confined to Statute - Mc Ilv and Rayton.
Difference again.
Adjourned for Judgment.
Parties to be notified by Registrar of date of delivery.
Wednesday 23rd July, 1975.

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23rd July, 1975.

Wills states Karl Hudson-Phillip Q.C. will be holding for Dr. Ramsahoye S.C. and he is with him.
Warner S.C. with him Brooks for A.G.

Judgment delivered

Hudson-Phillips - I crave Court's indulgence before contemnor returned to Prison.
For whatever reason release in error, lawfully or otherwise.
Released in error. Time of committal would have continued to run for 7 days. Order - 7 days. Seven days have expired.

Church Trustee v. Hibbard 1902 - 2 Ch. Div. p. 784.
Proceedings of attachment for debt.
Punishment for Debt - punishment cannot be awarded for same offence.
Release by mistake.
No Jurisdiction can make second order.
P. 792 - L. J. Matthews.
Bury on Law or contempt p. 284.
Its release had been made by mistake.
Solicitor General - Instant case not mistake on part of Prison Authorities.
Acting on Order of Court.
Different in case of attachment. No Conservatory Order can be made in this case.
Situation not governed by case cited. Order stands.

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WRITTEN JUDGMENT OF SCOTT J.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 74 of 1975

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

In the High Court

No. 12

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23rd July, 1975.

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975, BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

Before the Honourable Mr. Justice

Garvin M. Scott.

J U D G M E N T.

Dr. Ramsahoye, Q.C. with him Basdeo Persad Maharaj for the Applicant.
Mr. Warner, Solicitor-General, with him Brooks for the respondent.
By a Notice of Motion dated the 17th day of April, 1975, the applicant, a Barrister-at-Law, sought the following reliefs:-

(1) A declaration that the Order of the Honourable Mr. Justice Sonny Maharaj made on this day committing the applicant to prison for contempt of Court for a period of seven days is unconstitutional, illegal, void and of no effect;

(2) An Order that the applicant be released from custody forthwith;

(3) An Order that damages be awarded against the second named respondent for wrongful detention and false imprisonment;

(4) All such Orders, Writs, including a Writ of Habeas Corpus and directions as may be necessary or appropriate to secure redress by the applicant for a contravention of the human rights and fundamental freedoms guaranteed to him by the constitution of Trinidad and Tobago;

(5) Such further or other relief as the justice of the case may require;

(6) Costs.

And the applicant further seeks upon the hearing of this motion the following conservatory orders to await the final hearing and determination of this motion in the event that this application is not heard on this day:-

(a) An order directing the release of the applicant from custody upon his own recognisance or upon such terms as may be just or appropriate;

(b) Such further or other order as may be appropriate to preserve the status quo of the applicant.

Counsel for the applicant declared that the motion was brought under Sub-sections 1 and 2 of Section 6 of the Constitution of Trinidad and Tobago which is set out as the Second schedule to the Trinidad and Tobago Constitution Order in Council 1962 (hereinafter referred to as the Constitution) which reads as follows:-

Enforcement of protective provisions

6. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the foregoing sections or section 7 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 -

(a) to hear and determine any application made by any person in pursuance of sub-section (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 7 to the protection of which the person concerned is entitled.

In respect of Sub-section 3 of Section 6 of the Constitution, this he added was not relevant to the motion. In support of the application was the affidavit of the 17th April, 1975, of

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(Continued)

Mr. Barendra Sinanan, a Solicitor of the firm of Hobson and Chatoor, which is in the following terms:-

I, Barendra Sinanan, a Solicitor employed with the firm of Hobson &Chatoor, Solicitors of 9B1 Harris Promenade, San Fernando having been duly sworn make oath and say as follows:-

1. I am a Solicitor of the High Court of Justice of Trinidad and Tobago and I am duly authorised to swear to this affidavit on behalf of the applicant who is in custody pursuant to the execution of a warrant more particularly referred to herein.

2. I am Solicitor for the defendants in action No. 564 of 1973 between Samdaye Harripersad (Plaintiff) and Mini Max Ltd. (Defendants) which was being heard in the High Court, San Fernando today 17th April, 1975 by the Honourable Mr. Justice Maharaj.

3. The case commenced before the said Judge on Tuesday the 15th day of April, 1975 when two medical witnesses for the plaintiff, Doctors H. Collymore and Romesh Mootoo were heard while the defendant was unrepresented their Counsel the applicant having been engaged in a special fixture in the Court of Appeal in the case of Trinidad Islandwide Cane Farmers Association and the Attorney General -v- Prakash Seereeram Maharaj, an adjournment having been applied for on behalf of the defendants and having been refused by the Judge.

4. On the 15th day of April, 1975 the two witnesses for the plaintiff were heard. The hearing was adjourned to the 17th April, 1975.

5. Upon the resumption of the hearing on the 17th April, 1975 the following events took place before the judge:-

1. Mr. Archibald Q.C. and Mr. Panday appeared for the Plaintiff instructed by Mr. Jack.

2. The applicant instructed by Messrs. Hobson & Chatoor, Solicitors appeared for the defendant.

3. The applicant asked leave of the judge to recall Doctors Collymore and Mootoo to be cross-examined in order to have an investigation into the plaintiff's medical history and to assist the defendants in the establishment of paragraph 4 of the defence which related to an allegation that the plaintiff who sued in negligence after falling

on a floor alleged to be slippery had not taken care to observe the condition of the floor and to exercise reasonable care for her own safety. The application was refused by the judge.

4. The applicant then referred to an application made on the previous day in the case of Bachan-v- Caroni in the High Court when he invited the Judge to disqualify himself from hearing that case and said he reserved the right to impeach the entire proceedings.

5. The Judge then asked the applicant whether he was saying that the Court had acted dishonestly and corruptly in doing cases behind Counsel's back.

6. The applicant replied that he did not think it is the right place to answer that question. Further he did not think the question arose having regard to what he said to the Judge the previous day and that was that the Judge's conduct had been "Unjudicial" in certain matters in which the applicant was Counsel.

7. The Judge then formally charged the applicant with having committed contempt of Court and called upon the applicant to answer the charge.

8. The applicant then asked the judge to grant an adjournment to enable him to retain a lawyer.

9. The judge refused the application.

10. The applicant then said that he was not guilty and that he had not imputed bias or anything against his Lordship.

11. The Judge then asked the applicant whether he had anything to say on the question of sentence.

12. The applicant replied that he had nothing to say but that he wanted to consult Dr. Ramsahoye of Counsel upon whose advice he had filed two appeals in matters heard by his Lordship.

13. The Judge then committed the applicant to seven days simple imprisonment.

6. The facts and matters recited above are true to the best of my knowledge I having been present throughout the hearing.

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(Continued)

7. The applicant was advised that the facts and matters alleged did not permit the exercise of the jurisdiction of the High Court to commit summarily and of its own motion for contempt of Court and that in any event the offence of contempt of Court had not been committed by the applicant during the hearing.

8. The judge did not provide the applicant with particulars of the offence of contempt of Court and the applicant is advised that he was entitled to be charged formally even though orally and not in general terms.

9. The applicant is further advised that the denial of Counsel for the applicant rendered the proceedings invalid and that the said proceedings which led to the imprisonment of the applicant was a grave miscarriage of justice.

10. The applicant is further advised that he has been denied his liberty under and by virtue of an order which is a nullity and that the order of imprisonment and the execution thereof is a denial of the right of the applicant under section 1 (a) of the constitution of Trinidad and Tobago not to be deprived of his liberty except by due process of law. He is further advised that the said order and imprisonment are a denial of his right to equality before the law and to the protection of the law in terms of section 1 (b) of the said constitution.

11. No order was entered by the Court for the committal of the applicant before he was detained and imprisoned and at the time of the swearing of this application no order has yet been made under the seal of the Court.

12. The judge signed a warrant committing the applicant to prison without an order having been made under the seal of the Court and the applicant is advised that the said warrant is a nullity.

13. The applicant has been the subject of harsh, arbitrary and oppressive action leading to his confinement and is in the premises entitled to aggravated damages.

14. Unless released the applicant who is confined will continue to be confined in Her Majesty's Prison at Port of Spain and be denied his liberty by the servants and/or agents of the Government of Trinidad and Tobago who are responsible for his unlawful detention and imprisonment.

15. In the premises the applicant prays for the relief sought in the motion in exercise of the powers vested in the Court by Section 6 of the Constitution of Trinidad and Tobago and in

pursuance of all other powers enabling the Court in that behalf.

In further support was the affidavit dated the 21st April, 1975 deposed to by the applicant in which were admitted as R.L.M. 1 Copy ofNotice of Appeal filed in Caroni Ltd -vs- Dindial - R.L.M. 2. Copy of Notice of Appeal filed in Henry & Ors. -v- Texaco and R.L.M. 3 Copy of Warrant and which affidavit reads as follows:-

I, RAMESH LAWRENCE MAHARAJ, of 3 Penitence Street, San Fernando having been duly sworn make oath and say as follows:-

1. I am a barrister-at-law lawfully practising my profession in Trinidad and Tobago.

2. On the 17th April, 1975 while I was standing at the Bar repereenting the defendant as Counsel in Action No. 564 of 1973 between Samdaye Harripersad (Plaintiff) and Mini Max Ltd (Defendant) I was on the oral direction of the Honourable Mr. Justice Sonny Maharaj herein referred to as "the Judge" taken into custody by a member of the Trinidad and Tobago Police Force and was removed to the San Fernando Police Station where I was placed in a cell with other prisoners. I was later on the same day removed from the Police Station at San Fernando and was imprisoned in Port of Spain at the Royal Gaol.

3. The following facts and matters relate to the circumstances which arose before and after the detention and are true to the best of my knowledge, information andbelief.

4. On the 14th April, 1975 I was engaged as Junior Counsel for the Respondent in the Court of Appeal in the case of Trinidad Island wide Cane Farmers Association and the Attorney General of Trinidad and Tobago v. Prakash Seereeram Maharaj. The hearing of that appeal commenced on the 2nd April, 1975 and was completed on the 15th April, 1975. The hearing had been expected to last for about five days but in the events which occurred it took a longer time and I was unavailable for the cases in which I was briefed to appear as Counsel in San Fernando.

5. In the month of April, 1975 the judge sat in the High Court in San Fernando. In accordance with the practice of the Court its sitting commenced at 9 o'clock in the forenoon and the Court rose between 12.30 and 1 o'clock in the afternoon of every sitting day. Except on the 14th April, 1975 the judge rose between 12.30 and 1 p.m. on each sitting day.

6. On the 14th April, 1975 I was Counsel for the Plaintiffs in two consolidated actions numbered 572 and 875 of 1971 in

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(Continued)

which Clarence Henry, Mary Taylor, Viola Joseph and Rita Callder were claiming damages against Texaco Trinidad Incorporated and Mr. Chen for property lost in a fire. Mr. M. De La Bastide, Q.C. was Counsel for Texaco Trinidad Incorporated and Mr. Tajmool Hosein, Q.C. and Mr. Ewart Thorne Q.C. were Counsel for Mr. Chen. None of the Counsel engaged in the case appeared. Mr. Basdeo Persad Maharaj held my brief. Mr. Frank Misir, Q.C. held the briefs of Senior Counsel on the other side. Counsel on both sides agreed that an adjournment should be sought and both sides made applications to the Court to that effect. The grounds of the application were that witnesses from Texaco Trinidad Incorporated were not available because of a strike at the refinery which had been completely shut down and because of the engagement of Counsel in the Court ofAppeal. The Judge refused the application by Mr. Basdeo Persad Maharaj and dismissed the action without calling upon the plaintiffs who were personally in Court to proceed personally or to retain other Counsel to represent them. The two actions were called for hearing for the first time on the 14th April, 1975.

7. On the same day there were two other actions on the list being heard by the Honourable Mr. Justice Maharaj in which I was Counsel. One was Action No. 822 of 1972 between S. Dindial (Plaintiff) and Caroni Limited (Defendant). I was Counsel for Caroni Limited. The other was Action No. 564 of 1973 between Samdaye Harripersad (Plaintiff) and MiniMax Ltd. (Defendant). I was Counsel for Mini Max Ltd.

8. After the dismissal of the consolidated actions mentioned in paragraph 6 hereof the case of S. Dindial -v- Caroni Limited was called. My brief was held by Mr. Basdeo Persad Maharaj who sought an adjournment on the ground that witnesses were not available because of a strike at Caroni Limited which had also been shut down. Mr. Hendrikson Seunath held the brief of Mr. Allan Alexander for the Plaintiff and he informed the Judge that Mr. Alexander was unable to be present to conduct his case. Mr. Basdeo Persad Maharaj also informed the Judge that he could not proceed because he had signed the statement of claim for the Plaintiff. The Judge refused the application for an adjournment and sent for my wife Mrs. Lynette Maharaj who was appearing before the Honourable Mr. Justice Narine in another Court. When Mrs. Maharaj appeared in answer to his summons the Judge said he was sorry to do so but the case had to be proceeded with and she was obliged to represent Caroni Limited even though she had not been retained or had any instructions. The hearing commenced immediately. The claim of the Plaintiff was for damages for negligence arising out of a motor accident and

there was a counter-claim by the Defendant. At the close of the case for the Plaintiff which Mr. Seunath conducted Mrs. Maharaj applied for an adjournment to enable the witnesses for the Defendant to be called. Her ground was that there was industrial unrest at Caroni Limited and it was found impossible to have process served on the witnesses there and that she had no other addresses for them. The Judge said he noted the application and refused it. Two formal witnesses were called for the Defendant and it being then 1 o'clock in the afternoon Mrs. Maharaj again applied for an adjournment to the following day to enable her to call the driver of one of the vehicles concerned and other witnesses to establish her case but the Judge refused her application and called upon Mrs. Maharaj to address the Court. She addressed the Judge on the material available, Mr. Seunath then addressed him. Judgment was entered for the Plaintiff and a counter-claim by the defendant was dismissed. The hearing was completed at 2 o'clock. A special partheard fixture listed for that date Soochit and Deyalsingh was postponed for the next day to accommodate Mr. Nathaniel King Counsel for the Plaintiff who was not in attendance in Court.

9. Earlier in the day Mr. Basdeo Persad Maharaj held my brief for the Defendant in Samdaye Harripersad v. Mini Max Ltd. Mr. Rupert Archibald, Q.C. and Mr. Basdeo Panday appearing for the Plaintiff. Mr. Archibald applied for an adjournment on the ground that he was not ready to proceed because his witnesses were not available. Mr. Basdeo Persad Maharaj also said that the Defendant's witnesses were not available and he also sought an adjournment. Mr. Justice Maharaj adjourned the hearing to Tuesday 15th April, 1975 and said the hearing would be taken after a part heard matter Soochit v. Deyalsingh was completed on that day. On the same day in Edward Lee On v. Profit Cooper in which Mr. Archibald Q.C. appeared for the Plaintiff and Mr. Haricharan for the Defendant Mr. Archibald applied for an adjournment on the ground that the Plaintiff was not in attendance and an adjournment was granted by the Judge to the 16th April, 1975. On the 15th April 1975 Mr. Basdeo Persad Maharaj again held my brief for Mini Max Ltd., Two doctors were present in Court to give evidence for the Plaintiff. Mr. Basdeo Persad Maharaj said the Defendant was objecting to his representing them and that I was still engaged in Port of Spain in the Court of Appeal. The hearing proceeded and the two medical witnesses were heard while the defendant was unrepresented and the hearing was adjourned to a time later in the day. At 12.30 o'clock in the afternoon the Judge said that he had an appointment and he further adjourned the hearing to the 17th April, 1975.

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10. At the resumed hearing on the 17th April, 1975 I appeared for Mini Max Ltd., when the events mentioned and referred to in the affidavit of Barendra Sinanan occurred except that as was explained to the Court by Counsel upon the hearing of this motion I did not invite the Judge to disqualify himself from sitting in the proceedings as is mentioned in paragraph 4 thereof. I only said that I reserved the right to impeach the proceedings. The reference to the day previously was made because on that day in Chambers I made application to the Judge to disqualify himself in all proceedings in which I appeared and referred to the cases which are mentioned herein. The Judge refused the application and I continued to appear while he heard and determined two of my cases and adjourned the others. The deposition in paragraph 12 of Barendra Sinanan's affidavit is also in error because no warrant was signed by the Judge. It was signed by the Registrar and although I asked that it be shown to me the member of the Police Force who escorted me to prison refused to show it to me or to read it to me. At the Police Station my fingerprints were taken and kept by the Police.

11. I was removed from the Bar at the request of a policeman in Court on the oral direction of the Judge who signed no warrant to authorise my removal and I was asked by the Policeman to remove my robes before I was taken to the Police Station.

12. The appeals to which I referred before the Judge pronounced the sentence for my alleged contempt of Court were filed on the 16th April, 1975 and copies are hereto annexed amd marked R.L.M. 1 and R.L.M. 2,

13. A copy of the warrant was signed after my removal from the bar and while I was in police custody at the San Fernando Police Station is hereto annexed and marked R.L.M. 3.

14. At the Police Station at San Fernando I was placed in an unclean cell with about eight other prisoners one of whom had been under a charge of murder and another appeared to be a mental defective. I remained in custody in San Fernando and Port of Spain for approximately seven hours and during a part of that time I was being conveyed by Police Land Rover from San Fernando to Port of Spain.

15, I repeat my claim for redress made in the motion filed herewith and I wish to rely upon this affidavit, upon the affidavit of Mr. Barendra Sinanan and upon such other evidence as the Court may admit.

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In reply to these affidavits was the affidavit of Mr. Renrick Scott a Clerk attached to the Judiciary, Supreme Court, San Fernando in which he stated:-

I, RENRICK SCOTT, of 47 St. Vincent Street, in the Town of San Fernando, in the Island of Trinidad, Public Servant, make oath and say as follows:-

1. I am an acting Clerk III attached to the Judiciary, Supreme Court, San Fernando, Sub-Registry, and I sometime act as Clerk to the Court.

2. On the 16th day of April, 1975 Mr. Justice Sonny Maharaj was presiding over the Chamber Court as Chamber Judge, and I was taking notes as his Court Clerk. On that day Action No. 414 of 1972 between S. Dindial (plaintiff) and Caroni Limited (defendant) was called for hearing and stood down. Mr. Ramesh L. Maharaj appeared as Counsel for the defendant, and during the course of his address to His Lordship, Mr. Ramesh L. Maharaj requested His Lordship to disqualify himself from sitting as trial Judge in any matters in which he, Mr. Maharaj was appearing.

3. The request for disqualification was refused by His Lordship and Mr. Ramesh L. Maharaj then told his Lordship, the trial Judge that his conduct in certain matters in which he, Mr. Maharaj was appearing was "unjudicial".

4. On the morning of the 17th April, 1975, I was taking notes in the Court presided over by His Lordship Mr. Justice Sonny Maharaj. It was an open Court hearing civil matters. At about 10. 53, part heard action No. 564 of 1973 between Samdaye Harripersad and Mini Max Limited was called. Mr. R. Archibald, Q.C. appeared for the plaintiff and Mr.Ramesh L. Maharaj for the defendant.

5. Counsel for the defendant, Mr. Ramesh L. Maharaj applied to the Court for leave to recall, for cross-examination, Doctors Harry Collymore and Romesh Mootoo who had given evidence in chief in the said action on the 15th day of April in the absence of Counsel. This application for leave to recall the witnesses was refused.

6. Mr. Ramesh L, Maharaj then stated that in view of the present application and of the one he had made to his Lordship the previous day, he would like to impeach the proceedings, but that he would be appearing for the defendant. Mr. Ramesh Maharaj then stated that he was repeating all that he had said the day before about "unjudicial" conduct and disqualification of His Lordship.

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7. His Lordship then asked Mr. Ramesh L. Maharaj to think carefully before answering the question which His Lordship was about to put to him. His Lordship then asked Mr. Maharaj if he was saying that the Court was biased or corrupt by taking matters behind hisback. Mr. Maharaj replied that he did not think that the Court was the right place to answer the question and reserved the right to answer same. His Lordship then repeated the said question to Mr. Maharaj requesting an answer.

8. After some exchange of words between His Lordship and Mr. Maharaj, His Lordship charged Mr. Maharaj with having committed a contempt of Court and asked him to answer the charge. Mr. Maharaj asked for an adjournment so that he could consult his Counsel. This application was refused and His Lordship told Mr. Maharaj to answer the charge. Mr. Maharaj said that he was not guilty of the charge and requested an adjournment to consult his Counsel Dr. Fenton Ramsahoye. This application was refused and His Lordship found Mr. Maharaj guilty and sentenced him to 7 days simple imprisonment and the action was adjourned to the 28th day of April, 1975.

There were also the following further affidavits in reply; that of Mr. Tom Isles firstly in affidavit of 1st May, 1975 exhibiting A - copy of Committal Warrant, and secondly an affidavit of 13th May, 1975 at T - the Original, Committal Warrant.

That of Mr. George Anthony Edoo, Deputy Registrar of theSupreme Court of Judicature exhibiting 7 pages of type-script document marked A, B, C and D respectively, which contained certified copies of the notes taken by Mr. Justice Maharaj in his Court Note Book on the 14th, 15th, 16th and 17th days of April, 1975.

Those of Mr. Sahadeo Toolsie, Solicitor attached to the Crown Solicitor's Department dated the 8th May, 1975, exhibiting as S.T. 1 a copy of the Trinidad and Tobago Gazette (extraordinary) dated the 19th day of September, 1973 setting out the various departments coming under the Ministry of National Security and the Attorney General's Department and Ministry for Legal Affairs, and affidavit of the 15th May, 1975 , exhibiting as "S" a copy of the Order made in High Court Action No. 564 of 1973 - Samdaye Harripersad v. Mini Max Ltd., and dated the 17th April, 1975.

And finally the affidavit dated the 28th May, 1975 of Mr. Gerald Stewart, State Counsel IV in the Ministry for Legal affairs, exhibiting as "G.S. 1" a Notice of Motion handed to him at 4.20 p.m. on the 17th day of April, 1975.

Mr. Barendra Sinanan on being cross-examined by the Solicitor General stated he had been in Court on the 16th April, 1975, and had heard the applicant invite Mr. Justice Maharaj to disqualify himself from all cases in which he, the applicant appeared as Mr. Justice Maharaj was engaging in Unjudicial Conduct in his, the applicant's matters.

On the 15th April, 1975, Mr. Basdeo Maharaj, Counsel holding for the applicant, had requested an adjournment, the Court indicated that it proposed to take the evidence of the medical witnesses, at which stage Counsel holding for the applicant who was still present sought leave of the Courtand withdraw from the matter. He agreed that it was nothing unusual for a Court to faciliate medical witnesses by taking their evidence and further agreed that before Counsel holding for the applicant had departed he had made no application that the corss-examination of the medical witnesses be reserved. He was instructing Solicitor in the matter and had himself made no alternative arrangements.

On the 17th April, 1975 the applicant had made an application that the medical witnesses be re-called for corss-examination and that application had been refused. At that state the applicant had not referred to the previous day. He was, however, reminded of his affidavit in which he had sworn that after the application had been refused, the applicant had referred to the previous day and had invited the Judge to disqualify himself. He agreed that the facts were fresh in his mind when he had sworn to his affidavit and that in his affidavit he had so stated. The Judge at that stage had told the applicant to think carefully about the question which he, the Judge was about to put to the applicant and then asked the applicant whether he the applicant was saying that the Court had acted dishonestly and corruptly doing cases behind his back. He recalled the Judge asked the question once, but it might have been more than once. He could not remember the exact words used by the applicant before the Judge posed the question. The applicant had stated, "I refer to the application I made the previous day in the matter of Bachan v. Caroni Ltd., in which I invited you to disqualify yourself in all matters in which I appear, because of your Unjudicial Conduct". In respect of the word "Refer" he would not dispute that the applicant might have said "Repeat".

After the Judge had posed the question, the applicant replied that he did not think it was the right place to answer the question and the question was posed once more by the Judge.

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In answer to Senior Counsel for the applicant Mr. Sinanan admitted that at the time of the happenings on the 17th April, 1975 he had been taking notes, that at the time the application had been made the applicant had given grounds of his application and had referred to para. 4 of his Statement of Defence in those particular pleadings. After the application had been refused, the applicant stated that having regard to what was said yesterday in Bachan and Caroni Limited he, the applicant reserved the right to impeach all proceedings before the Judge. Thereafter the Judge spoke and posed the question about the Court's acting dishonestly and corruptly. The question posed by the Judge he had recorded once.

Mr. Ramesh Lawrence Maharaj on being cross-examined by the Solicitor General asserted that on the 14th April, 1975 he was not present in Court and that paras, 6,7 and 8 of his affidavit were not matters within his personal knowledge, but were to the best of his information and belief. His wife had held his papers on that day in the matter of Dindial v. Caroni Limited. His wife had informed him that she had been compelled to hold his papers and to a certain extent he had found out how the proceedings had gone. He had not thought it necessary to ask for the reasons for the decision. He had filed an appeal in that matter, his principal ground of appeal being that his main witness could not be served and was not in attendance due to the industrial strike in the Country then prevailing. He had not been pleased about the Court's decision on the 14th April, 1975, and his client had been very upset.

On the 16th April, 1975 when he got to Court, he had not made up his mind that the Judge was carrying out unjudicial conduct in all the matters in which he appeared. He did not know when he was going to Court that he would ask the Judge to disqualify himself in all the matters in which he was concerned. When he did make the application on the 16th April, 1975, he did have in mind the way in which the Judge had dealt with several of his matters before. He had not known when he had gone to Court that he would have made reference to several matters before about which he was dissatisfied.

On the 16th April, 1975 the matter of Harold Bachan v. Caroni Ltd,, was called, he requested an adjournment as he had only been informed that morning that the matter was on for hearing and he had not been properly briefed. He had further drawn the attention of the Court to the fact that the application was one for payment of certain monies out of Court, that Mr. Justice Maharaj had previously dealt

with the matter, there was an Order forcosts and the monies should not be paid out.

His application for an adjournment was refused. The Court was about to make an Order when he invited the Judge to disqualify himself in any matters in which he was engaged as Counsel having regard to what had occurred on Monday 14th April, 1975 in Taylor v. Texaco Trinidad. He had asked the Judge to disqualify himeelf when his application had been refused. He had not prepared any speech in advance. When he had made the application he had briefs in his hand but he had not read from any document. He had found no difficulty in remembering on the 17th April, 1975, what had transpired on the 14th April, 1975. He had not been giving a history, he had been giving the grounds of his application and had invited the Judge to disqualify himself. He had said that the Judge's course of conduct was unjudicial having regard to all the submissions he had made on the 16th April, 1975. He had not meant that the Judge was acting with partiality. He had been seeking to convey that it was an unjudicial course of conduct and not in the interest of his clients.

He had invited the Judge to disqualify himself from all his cases as he did not desire that the Judge should preside over cases in which he had been briefed, having regard to the interest of his clients. He was not telling the Judge to lay off his cases nor was he in charge of the Courts of the Country. He had used the word unjudicial after proper consideration and knew what unjudicial meant. He did not understand unjudicial to mean lacking impartiality. He considered impartiality a Judicial attribute. He considered unjudicial meant acting a way a Court would not normally act. In filing of appeals he had used both unjudicial and unreasonable.

On the 16th April, 1975 afterthe refusal he had appeared in three matters before the said Judge, two matters had been determined and the other had been adjourned because there was not time for that matter to be taken. He had found no fault in those matters, nothing unjudicial.

On the 17th April, 1975, when the Mini Max matter was called he knew that the evidence of two doctors had already been taken. It was not unusual for medical evidence to be taken if the other side was represented. Mr. B. P. Maharaj had held his papers in that matter and had withdrawn from the matter, but he was unaware at what stage.

On the 17th April, 1975 he had asked leave to recall the medical witnesses on the ground of para. 4 of his Statement

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of Defence in respect of liability and quantum. The application was refused without the other side being called upon. He agreed that the application was within the discretion of the Judge and that the Judge had exercised his discretion against him. At that stage he had declared that he would participate in the proceedings but reserved the right to impeach those proceedings. He admitted that it was the first time that he was saying he told the Judge he would participate in the proceedings. He had advanced no reason for his stating he would impeach the proceedings.

At that stage the Judge had told him he would write a question in his note book, he would ask him the question and wanted him to think carefully before he answered that question.

The Judge then asked, "Do you think that I am dishonestly and corruptly dismissing your actions behind your back"? He was surprised at being asked that question and answered that he did not think that was any place to answer that question because in any case that question did not arise in that he was merely saying the Judge was pursuing an unjudicial course of conduct. The Judge asked what he meant yesterday about unjudicial course of conduct. He was not sure whether he was saying this for the first time and admitted that this had not appeared in his affidavit. He had regarded the refusal of his application to have the doctors recalled for cross-examination as unjudicial and considered it provocation when he was asked the question by the Judge about corruption. He had not been saying the Judge had been acting corruptly but regarded his re fusal of his application on that day as part in a series of a course of unjudicial conduct.

Mini Max was a good client of his, amoung several others. He did not object to the Judge sitting on matters, but he objected to matters being dismissed and thrown out. He had appealed in the cases where he considered justice had not been done. He thought that other matters determined by that particular Judge would not be in the interests of his clients and that would be the position if he appeared for those clients in matters. He denied that on the 17th April, 1975, that he had stated that he was repeating all he had said the day before about unjudicial conduct and had asked the Judge to disqualify himself. He had referred to it, but did not repeat or adopt it. He could not really remember whether the Judge had asked him about it or he had referred to it.

After the Court had refused him an opportunity of having Counsel, he had stated he had intented no suggestion

of corruption or bias or anything against the Judge. This took place after he was convicted. He had not got the impression that the Judge was seeking an assurance that he was not imputing corruption and dishonesty. He admitted that he had stated he did not think the question arose, but he did not think that he had said thereafter, "You are guilty of unjudicial conduct having regard to what I said yesterday". He was sure that at that stage he had not replied in those terms. Up to the present time he considered that the Judge had been guilty of unjudicial conduct in certain of his matters. At the time where he was answering the question of the Judge about corrupt and dishonest, he had not addressed his mind to the question.

When the Judge had charged him with contempt he felt the Judge had been offended, his first reaction had been to make peace with the Court and he had apologised. He at this stage unreservedly withdrew his remarks because he had not intended to impute anything against the Judge. The results of his matters did not show that justice had been done and he had mentioned the matter in which Mr. King had been Counsel as he considered the Court had exercised its discretion wrongly.

He had not considered using the word unjudicial to be an insult or offence. On the 16th April, 1975 when he had used the remarks in the Chamber Court, practitioners and law clerks were present.

On the 17th April, 1975, when he had made the remarks, that had been done in open Court.

Mr. Renrick Scott, Clerk in the Supreme Court, San Fernando, on being cross-examined by Senior counsel for the applicant stated that on the 14th April, 1975, he was the Clerk of the Court when the case of Texaco was called. Misir, Q.C. held for Hosein, W.C. and De La Bastide, Q.C. for the defendant. Misir stated that both Counsel were absent but had made no application for dismissal of the plaintiff's claim nor had he said that he was ready to go on.

Later that day a case in which Caroni Ltd., was a party was heard when the counter-claim was dismissed and the plaintiff granted judgment. In that case Mrs. Lynette Maharaj, Barrister-at-Law had been sent for by the Court, and had held for the applicant for Caroni Limited.

On the 15th April, 1975 the matter of Samdaye Harripersad and Mini Max Ltd. was called. Mr. Basdeo Persad Maharaj held for the applicant for the defendant company and applied for an adjournment which was refused. Archibald, Q.C. and

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Panday appeared for the plaintiff and their views on the application were not sought. Mr. Basdeo Persad Maharaj sought leave to withdraw from the matter and leave was granted by the Court. The evidence of the two medical witnesses was taken at a time when the defendant company was unrepresented.

On Wednesday 16th April, 1975, in the Chamber Court in which Mr. Justice Maharaj presided the matter of Dachan v. Caroni Limited was called. The applicant applied for an adjournment at a time when the relevant proceedings were not before the Court.

Efforts had been made to locate those proceedings both before and after the application for an adjournment made by the applicant. When the application for an adjournment was made the Court ordered that the matter be stood down. At that stage the applicant requested that the Judge disqualify himself. He himself was not aware with what the proceedings were concerned. The proceedings not having been located, the Court before rising adjourned the matter to the 7th May, 1975.

On the 17th day of April, 1975 the case of Samdaye Harripersad and Mini Max Ltd., was resumed. The applicant made application to have the medical witnesses recalled and this application was refused by the Court.

The applicant then stated that having regard to the outcome of that application and to what he had said the previous day he reserved the right to impeach the proceedings but that he would take part in the trial.

After the applicant had said this, the Judge told the applicant to think carefully before answering his question. The Judge then asked the applicant whether he, the applicant was saying the Court was biased and corrupt by taking matters behind Counsel's back. He could not remember all that was said, but the Judge did tell the applicant he was charged with contempt and called upon him to answer the charge. The applicant requested an adjournment for a lawyer and that application was refused. The applicant said he was not guilty of the charge,. He recalled the Judge ordering that the applicant serve 7 days imprisonment. The applicant had been called from the Bar Table at the request of the Judge to amswer the charge and had done so. After sentence had been pronounced the applicant was removed from the Court by a policeman. He did not wish to retract anything which appeared in his affidavit sworn to on the 23rd April, 1975.

The grounds on which the applicant relied are as follows:-

1. That the warrant Ex. R.L. M. 3 was invalid as not signed by the Judge and the applicant's detention from that point onwards was unlawful.

2. That the applicant's detention could only be justified by an Order with the Seal of the Court and signed by the Judge. The Order was invalid as it was not signed by the Judge.

3. That the committal of a Barrister for contempt while conducting a case on behalf of a client was totally unprecedented.

4. That the circumstances which arose were not such as to enable the Court to punish Counsel summarily for contempt.

5. That in criminal contempt:-

(a) It was necessary for the specific offence to be stated to the alleged contemnor;

(b) That an opportunity of answering the charge had to be afforded to the alleged contemnor.

No specific offence had been stated to the applicant and the applicant had been denied an opportunity of answering the charge.

6. That sworn evidence should have been taken so that any mistakes made could be disputed or corrected.

7. The denial of Counsel to the applicant was a grave constitutional violation of Section (1) (a) of the Constitution and the request for an adjournment for Counsel had been disallowed.

8. Due process of law had not been observed.

9. The procedure followed at the trial of the applicant and his imprisonment were not in accordance with principles of law.

10. Jurisdiction vested in the Court under Section 6 of the Constitution to entertain motion and to make appropriate Orders such as Habeas Corpus, Certiorari, Mandamus, Prohibition.

11. That the Attorney-General was the proper and correct party to be named as respondent.

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12. That the Court was empowered to make a conservatory Order to preserve the status quo.

At the close of submissions made by Counsel for the applicant and before the reply, Counsel for the Attorney-General enquired whether the Attorney-General was sole respondent in the matter.

Counsel for the applicant replied that while Mr. Justice Maharaj had been named as a respondent, no notice of motion had ever been served on him and that in the present proceedings the Attorney-General was the sole respondent.

On the 24th April, 1975, before the close of the second day's hearing, the Solicitor-General declared that he wished to make a statement for the purpose of the record in respect of the Orders made on the 17th day of April, 1975.

In Proceedings 973/75 connected with the present proceedings as Writ of Habeas Corpus had been issued on the 17th April, 1975. That Writ had not been served personally on the Commissioner of Prisons, the applicant had been brought to the Court without any opportunity having been afforded to make a return and no return had in fact been made.

In his view the Habeas Corpus Proceedings therefore remained incomplete and the Order was invalid.

In respect to the motion in these proceedings, the notice of motion was delivered at the Attorney-General's Chambers at 4.20 p.m. The Attorney-General not being properly served was not represented and on the 17th April, 1975, an Order was made that the applicant be released from custody, the applicant being ordered to enter into a personal recognizance in the sum of $1,000.00.

On committal for contempt, there was no power to grant Bail and the Order granting Bail was therefore invalid.

Let me say here and now that the orders referred to were made by Courts of equal and commensurate jurisdiction, and not having any appellate jurisdiction in this matter I do not propose to make any comment whatever and in any event as of today the order in respect of bail which was extant now terminates.

At a later stage Counsel for the applicant stated that the Writ of Habeas Corpus was no longer being sought in these proceedings as one of the reliefs, consequestly it is no longer necessary for this Court to concern itself with either the question of Mr. Justice Maharaj being named as a respondent or that of a Writ of Habeas Corpus being sought as one of the reliefs.

The following were the submissions made in reply by the Solicitor-General:-

(1) That the Attorney-General was not a proper party to these proceedings, that no liability attached to the Attorney General and he could not be made a respondent.

(2) That the applicant was informed of the charge and that there was no need for any formulation or specific formulation of the charge.

3. That the applicant was given an opportunity to answer the charge.

(4) In cases of contempt in the face of the Court applicant was not entitled as of right to adjournment or representation by Counsel.

(5) That the Committal warrant signed by the Registrar was proper and valid as in accordance with Rules of the Supreme Court of Trinidad and Tobago.

(6) That the Order whether written or not took effect when it was pronounced by Maharaj J.

(7) That it was perfectly proper for the Order to be drawn up after and in any event the Order with the Seal of the Court had been drawn up and was exhibited as "S" in the proceedings.

(8) That the Order as signed by the Registrar was valid as in accordance with the Rules of the Supreme Court of Trinidad and Tobago.

(9) That a Superior Court is empowered to commit a Barrister-at-Law for contempt and that the applicant was not immune even when wearing Robes.

(10) That there was no jurisdiction in this Court to entertain the present motion. The power existed to review the action of Parliament or the Executive but not to review the power of the High Court itself or

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the Court of Appeal.

(11) In matters of contempt no duty to set out Warrant details of Criminal Offences in relation to which it has been used.

(12) That Orders made on the 17th April, 1975, were nullities and in any event cease to be of any effect and that Court is not entitled to make a Conservatory Order.

It might be convenient in the first place to examine the evidence in these proceedings to ascertain whether there was in fact contempt in the face of the Court.

Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the Court into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation. Where the contempt consists in disrespect or insult offered to the Judge or the dignity of the Court, it may be punished at once by the offended Court. A Court of Justice without power to vindicate its own dignity, to enforce obedience to its mandates to protect its officers, or to shield those who are entrusted to its care would be an anomaly which could not be permitted to exist in any civilized community R. v. Almon (1765) Wilm 243.

It is abundantly clear from the affidavit of the applicant himself that the applicant was dis-satisfied with the decisions of the Court on the 14th April, 1975, in matters in which he, the applicant had been retained as Counsel. As was his entitlement the applicant has appealed in those matters. Those matters being the subject of appeals it would be completely unrealistic on my part to make any further reference to them, and I do not propose now so to do.

We now come to the events of the 16th April, 1975, in the Chamber Court.

From the evidence of the Court Clerk, Mr. R. Scott, efforts - without succes - had been made to locate the proceedings in the matter in which the applicant appeared, both before he had made his application and after his application had been refused.

The applicant in his affidavit has admitted that when his application for an adjournment in the Chamber Court was

refused, he requested the Judge to disqualify himself in all proceedings in which he, the applicant appeared.

Mr. Renrick Scott in his affidavit goes a step further in that he asserts that on the Judge's refusal to disqualify himself, the applicant then told the Judge that his conduct in certain matters in which he, the applicant was appearing was unjudicial.

Annexed to the affidavit of Mr. George Anthony Edoo in Ex. "C" is a certified copy of the Notes of Evidence taken by Mr. Justice Maharaj in the Chamber Court on the 16th April, 1975, at p. 2 of Ex. "C" after the applicant had referred to matters on the previous days, the following appears:-

> "I submit that you have pursued an unjudicial course of conduct. Having regard to what I have stated I am asking you to disqualify yourself in all my cases".

On the 17th April, 1975, the applicant appeared as Counsel for the defendant company in the case of Samdaye Harripersad v. Mini Max Limited.

The applicant made application to have the medical witnesses recalled for cross-examination and this application was refused.

At that stage according to the affidavit of Mr. Barendra Sinanan and again under cross-examination, the applicant referred to his application made the previous day in Bachan v. Caroni Limited, when he invited the Judge to disqualify himself from hearing that case and reserved the right to impeach the entire proceedings. He further added in cross-examination that the applicant had on the previous day invited the Judge to disqualify himself in all matters in which he, the applicant appeared because of the Judge's unjudicial conduct.

The Judge then told the applicant to think carefully about the question he was about to put to him and then asked the applicant whether he, the applicant was saying the Court had acted dishonestly and corruptly doing cases behind his back. The applicant had replied he did not think it was the right place to answer the question.

Mr. Renrick Scott's version of the incident after the refusal of the application on the 17th April, 1975, was to the effect that the applicant stated that he was repeating all he said the day before about "unjudicial conduct" and

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disqualification of the Judge.

The applicant was then told by the Judge to think carefully before answering the question and the question then put by the Judge was whether he, the applicant was saying the Court was biased and corrupt by taking matters behind his back.

The applicant admitted that ater the Judge's refusal of his application to recall the madical witnesses for cross-examination he stated he reserved the right to impeach the proceedings and had made reference to the previous day because on that day in Chambers he had requested the Judge to disqualify himself in all matters in which he appeared. He further admitted that before the Judge posed the question, the Judge told him he would write a question in his note book, he would ask him the question but wanted him to think carefully before he answered that question. The Judge then asked him, "Do you think I am dishonestly and corruptly dismissing your actions behind your back"? He had answered that he did not think that was any place to answer that question. He considered the question provocative. After he had been charged and had been convicted he had stated he had intended no suggestion of corruption or bias or anything against the Judge. Up to the present time he considered the Judge had been guilty of unjudicial conduct.

When the Judge had charged him with contempt he felt the Judge had been offended and he had apologized.

He at this stage in this Court unreservedly withdrew his remarks because he had not intended to impute anything against the Judge.

Annexed to the affidavit of Mr. George Anthony Edoo is Ex. "D" which is a certified copy of the Notes of Evidence of Mr. Justice Maharaj of the 17th April, 1975. At. p. 1 of Ex. "D" after the question put by the Court - "Are you suggesting that this Court is dishonestly and corruptly doing matters behind your back because it is biased against you?" The applicant replied, "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".

It is abundantly manifest that on the 17th day of April, 1975 the applicant told the Judge that he was guilty of Unjudicial Conduct.

In Oswald on Contempt, 3rd Edition - 190 at P. 49 - it is stated:-

> "To charge a Judge with unjustice is a grevious contempt (3 Hawk P.C. b. 2, c. 22, s. 35) To accuse him of corruption might be a worse insult, but a charge of Injustice is as gross as insult as can be imagined short of that. (R. v. Stafford (County Court Judge) (1888) 57 L. J. Q.B. 483). The arraignment of the Justice of the Judges is arranging the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the minds of his people a general dis-satisfaction with all judicial determinations, and indisposes their minds to obey them. (R. v. Almon (1765) Wilm 243 at p. 255)"

I find on the clearest possible evidence and on the authority herebefore cited that the applicant did commit an act of contempt in the face of the Court.

The next question that falls to be determined is whether the Court was entitled in the circumstances to proceed and punish summarily for contempt. Wilmot J. in a celebrated opinion expressed himself in the following terms:-

> "The power which the Courts in Westminister have of vindicating their own authority, is coeval with their first foundation and institution, it is a necessary incident to every Court of Justice, whether of Record or not to fine amd imprison for a contempt in the face of it."

(R. v. Almon 1765. Wilm 243 at . 254)

In the case of Morris v. Crown Office (1970) 2 Q.B. 114, Lord Denning M. R., affirmed Wilmot J's statement that the power to punish contempts committed in the face of the Court was a necessary incident to every Court and continued:-

> "The phrase 'contempt in the face of the Court' has a quaint old fashioned ring about it; but the importance of it is this; of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it, strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power atonce to deal with those who offend against it. It is a great power - a power instantly to imprison a person without a trial - but it is a necessary power."

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The inherent power of the Courts to protect the public in the administration of justice and to punish by way of fine or imprisonment had existed in the Courts from time immemorial.

It has been illustrated by a long line of authorities among which are:-

Rex v. Davis (1901) 1 K.B. 32 per Wills J. at p. 40

R. v. Lefroy (1873) L.R. 8, Q.B. 134

In Re Johnson (1887) 20 Q.B. 68; Shipworth's case (1873) L.R. 9 Q.B. 230, 233, 234.

The law has armed the High Court of Justice with the power and imposed on it the duty of preventing Brevi Manu and by summary proceedings any attempt to interfere with the administration of Justice. It is on that ground and not on any exaggerated notion of the dignity of individuals, that insults of Judges are not allowed. It is on the same ground that insults to witnesses or to jurymen are not allowed. The principle is that those who have duties to discharge in a Court of Justice are protected by law, and shielded on their way to the discharge of such duties, and on their return therefrom in order that such persons may safely resort to Courts of Justice.

In Re Johnson (1887) 20 Q.B. 68 at p. 74 per Bowen L.J.)

It cannot be denied that Counsel at the Bar have every right and privilege necessary for the performance of their duty to enable Justice to be done without fear or favour and tobe independent and fearless in the discharge of their duties. While in the course of their duty to their clients they must be firm and frank, this does not extend to licence to engage in conduct deleterious to the Court, their duty being to uphold the dignity of the Court and not to diminish it.

That the Court has power to punish any person summarily for contempt in the face of the Court by fine or imprisonment admits of no doubt.

It has however been laid down and firmly established that when a contemnor is being dealt with summarily, the offence being of a criminal nature, the contemnor must be informed of the charge against him and be afforded an opportunity of answering that charge. Re Pollard 16 E.R. p.

457 at p. 464; Chang Kang Kiu v. Piggott 1909 A.C. p. 312 Re Bachoo 5 W.I.R. p. 247

On his application to recall the medical witnesses being refused on the 17th April, 1975, the applicant as appears on Ex. "D" the certified copy of the Notes of Evidence taken by Mr. Justice Maharaj in the matter, stated:-

> "Having regard to what I submitted this morning and to what I submitted yesterday in the matter of Bachan, I reserve the right to impeach these proceedings."

The applicant has himself admitted that the Judge at that stage told him he was writing a question in his note book and desired that the applicant should think carefully before replying. The question posed was:-

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

The reply given by the applicant is as follows:-

> "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."

The Court then formally charged the applicant with contempt and called upon him to answer the charge.

The applicant then requested an adjournment to retain Counsel, which was refused. His application for Counsel having been refused, the applicant stated:-

> "I am not guilty. I have not imputed any bias or anything against Your Lordship."

The applicant was then asked whether he wished to say anything on the question of sentence. The applicant replied that he wished to consult Counsel.

In Balogh v. Crown Court - 3 A.E.R. 1974 at p. 293 Stephenson L.J. states:-

> "There may be cases where it is proper because it is necessary to commit a contemnor without giving him legal representation."

and Stephenson L.J. at p. 290 :-

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"The power of a Superior Court to commit a contemnor to prison without charge or trial is very ancient, very necessary but very unusual, if not indeed unique. It is old as the courts themselves and it is necessary for the performance of their functions of administering justice. whether they exercise criminal or civil jurisdiction."

and Lawton L. J. at p. 293 :-

"For nearly the whole of this century those accused of contempt of Court, which is a common law misdemeanour, have been tried and sentenced in a way which is far removed from the ordinary processes of the law. No precise charges are put; sometimes when the Judge has himself seen what happened, the accused is asked to explain his conduct, if he can, without any witnesses being called to prove what he has done; often the accused is given the opportunity of consulting lawyers or of an adjournment to prepare a defence, and there is no jury. The Judge, who may himself have been insulted or even assaulted, passes sentence. Some aspects of proceedings for contempt of Court in Blackstone's phrase, (Commentaries - 16th Edn. 1825 Bk. 4, Ch. 20, pp. 283 - 288) are not agreeable to the genuis of the Common Law. Yet Judges have this unusual jurisdiction.

No special formulation of the charge or no precise charge need be put to the contemnor but the specific offence must be brought home to the contemnor."

It is 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.

Counsel for the applicant has submitted that the due process of law was not observed, that the applicant's request for an adjournment was refused and that the applicant was denied Counsel which was a grave constitutional violation. Sections 1 and 2 of the Constitution reads as follows:-

Recognition and declaration of rights. and freedoms.

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, or religion of 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 be 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;

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(g) freedom of movement;

(h) freedom of conscience and religious beliefs and observance;

(i) freedom of thought and expression;

(j) freedom of association and assembly; and

(k) freedom of the press.

Protection of rights and freedoms

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 -

(a) authorise or effect the arbitrary detention, imprisonment or exile of any person

(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

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

(i) of the right to be informed promptly

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and with sufficient particularity of the reason for his arrest or detention;

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

(iii) of theright to be brought promptly before an appropriate judicial authority;

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

(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;

(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 a independent and impartial tribunal, or of the right to reasonable bail without just cause;

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted; and

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and

and protection to the aforesadid rights and freedoms.

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In Rex Lasalle v. The Crown, Vol. 19 Part 5 of Judgments of the High Court and Court of Appeal of Trinidad and Tobago and of the Privy Council in England at p. 17, Phillips J.A. - in respect of "Due Process of Law" as it is used in section 1 (a) of the Constitution.

"The concept of "due process of law" is the antithesis of arbitrary infringement of the individual's right to personal liberty, it asserts his right to a free trial, to a pure and unbought measure of justice. While it is not desirable and indeed may not be possible to formulate an exhaustive definition of the expression, it seems to me that as applied to the criminal law it connotes adherence to the following principles:-

(1) Reasonableness and certainty in the definitation of criminal offences.

(2) Trial by an independent and impartial tribunal.

(3) Observance of the rules of natural justice."

and at page 18:-

"As I said in Bazie v. The Attorney-General (Civil Appeal No. 72 of 1970 decided by this Court on March 10th 1971). The object of Section 2 is to ensure the protection of all the rights and freedoms which are enshrined in Section 1. Since the administration of Justice is the instrument by means of which the citizen seeks to enforce or prevent encroachment on his rights. The scheme of Section 2 is to protect the enactment of legislation which may have the effect either of (a) abrogating, abridging or infringing any of those rights, or (b) depriving the citizen of the benefit of any of several procedural safeguards established for the purpose of ensuring the due administration of justice. The observance of these safeguards is, in my view, an essential requirement for the preservation of all the substantive rights and freedoms guaranteed by Section 1 of the Constitution."

and at P. 23:-

"The effect of the due process clause is to entrench not the particular form of legal procedure existing at the date of the commencement of the Constitution for adjudication of the rights of the individual, but rather his fundamental

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right to such adjudication by a fair, independent and impartial tribunal in accordance with legal principles that have come to be well understood in our democratic society - in a word, his right to justice as we know it."

The fundamental rights and freedoms guaranteed by the Constitution are rights which existed previously, and were largely derived from the Common Law. The continuation of which is sought to be protected by the Constitution for the purpose of serving the rule of law. I hold that the law relating to contempt in the face of the Court in this country is governed by the Common Law as it stood in England before this country attained its independence on the 31st August, 1962.

Contempt in the face of the Court is Sui Generis, the prodedure is summary, instant and swift and a contemnor is not as of right entitled to Counsel or any adjournment.

Blackburn J. in Ex-Parte - Pater; Cox's Criminal Cases Vol. 9 (1861 - 64) at p. 554

"I do not doubt that if Counsel under colour of addressing the Court, takes the opportunity of obstructing the course of Justice by insulting a juryman or the Court, that would be a contempt of Court and would justify the imposition of a fine and committal if necessary."

In the recently published report of the Committee on Contempt of Court in England under Lord Justice Phillimore (H.M.S.O. Cmnd. 5794) hereinafter referred to as the Phillimore Report in Part 11 Contempt in Court, Capter 3, Para. 3, at p. 14, there appears:-

"We have come to the clear conclusion that the present practice whereby the Judge deals with contempt in the face of the Court himself should continue. Judges are very conscious that their summary powers exist for the protection of the administration of Justice and for the orderly running of the Courts and not for the protection of their own or any other individual's liberty. In addition, in most cases the presiding Judge will have seen or heard the incident himself and will be aware of other relevent factors, such as the nature of the case being tried at the time. He will thus be in the best position to know how to deal with it."

Again in the Phillimore Report, Part V - Summary of Conclusions and Recommendations p. 95, para. 28 -

"In cases of contempt in the face of the Court the

following recommendations appear:-

(a) The Judge should always ensure that the contemnor is in no doubt about the nature of the conduct complained of, and give him an opportunity of explaining or denying his conduct, and of calling witnesses;

(b) before any substantial penalty is imposed there should be a short adjournment with power to remand the contemnor in custody. The Judge should have power to obtain a background report on the contemnor, and the contemnor should be entitled to speak in mitigation of sentence;

(c) for the purpose of defending himself and of making a plea in mitigation the contemnor should be entitled to legal representation and the Court should have power to grant legal aid immediately for this purpose when appropriate."

No right of appeal exists in this country against a conviction for contempt of Court. In England such a right only arose in 1960 with the enactment of the Administration of Justice Action 1960.

From the recommendations of the Phillimore Committee, I am further fortified in my view that no right to Counsel or right of adjournment ever existed at Common Law in England and that no such right to Counsel or adjournment exists in this Country in cases of Criminal Comtempt.

Counsel in submitting that sworn evidence should have been adduced to obviate the possibilities of error and mistake declared that he was unsure of the rectitude of that submission. Again, criminal contempt being in its nature sui generis there is no necessity whatever for sworn evidence.

The Order has been challenged on the ground that it was not drawn up and was not signed by the Judge. The Order was in fact drawn up and was not signed by the Judge. The Order waw in fact drawn up and has been exhibited as Ex. "S"in the proceedings under the Seal of the Court and is signed by the Asst. Registrar, Mr. Cross.

An Order is normally made as soon as practicable. The Order is drawn up after it has been pronounced. In Re Evans v. Noton L.R. 1893, 1 ch. p. 252, the contemnor was removed and while in prison the order was delivered. When pronounced the order took effect (In Re Harrison's Settlement 1955, 2 W.L.R. p. 256, at p. 260, p. 262)

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The oral sentence pronounced by the Court was authority for the removal of the applicant from the Court.

In Carus Wilson State Trials New Series, Vol. 6 p. 195, Patteson J. held than an oral sentence was sufficient to commit for contempt, and again Patteson J. at p. 196;

> "Courts of Contempt Jurisdiction can commit for contempt by oral sentence. At the Assizes no warrant issues for the detention of a party sentenced to imprisonment."

The validity of the warrant was also challenged on the ground that it was not signed by the Judge.

Original Committal warrant bearing the Seal of the Registry Ex. "T" in these proceedings was signed by Mr. Cross, the Asst. Registrar at San Fernando.

The former Judicature Ordinance, Ch. 3, No. 1 (Sec. 20 Sub-Section 2) stipulates -

> "The jurisdiction hereby vested in the Court shall be exercised as nearly as possible in accordance with the practice and procedure for the time being in force in the High Court of Justice in England so far as such practice and procedure is not displaced by rules of Court made in pursuance of this Ordinance, and whether the cause of action arose before or after the commencement of this Ordinance."

It has been replaced by Section 14 of the Judicature Act No. 12 of 1962, which prescribes -

> "The Jurisdiction vested in the High Court shall so far as regards procedure and practice be exercised in the manner provided by the Act or by Rules of Court and where no special provision is contained in this Act or in Rules of Court with reference thereto any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which it ought to have been exercised by the former Supreme Court under the Judicature Ordinance."

It has been contended that in consequence of this provision the English practice of a Judge signing the Order and warrant should have been followed and that as a consequence the Order and Warrant are both invalid.

Order 62, Rule 6 of the Orders and Rules relating to the General practice and Procedure of the Supreme Court of Trinidad and Tobago empowers all Deputy-Registrars and Sub-Registrars to

perform the duties of the Registrar.

Order 62, Rule 7 which deals with documents requiring signature stipulates inter alia -

"The Registrar shall not be required to sign any documents other that the following -

All Judgments pronounced and orders;

All Writs and Orders for execution of whatever nature;

Criminal subpoenas;

Commitments.

Accordingly, the Registrar at San Fernando was fully entitled to sign as he did the Order Ex. "S" and the Warrant Ex. "T"

Counsel for the respondent has submitted that the Attorney-General is not a proper party to the proceedings and should not have been made a respondent.

As is stated in Anderson v. Gorrie 1895, 1 Q.B., p. 669 -

"No action lies against any Judge of the Supreme Court in respect of any act done by him in his Judicial Capacity".

and again followed in Sirros v. Moore C.A. 1974, 3 W.L.R. p. 459 (Sec. 4 (b) of the Crown Liability and Proceedings Act, No. 17 of 1966) states:-

"No proceedings shall lie against the Crown by virtue of this section in respect of anything done or ommitted 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 a judicial process".

Thus it would appear that the relief sought against the Attorney-General is contrary to the provisions of the Crown Liability and Proceedings Act, 1966.

In the caseof Dyson v. The Attorney-General, 1911.- 1 K.B, at p. 415. The Crown was directly interested, revenue being at stake the question under consideration being whether the notices issued by the Commissioner of Income Tax were notices properly issued.

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In Groebel v. Administrator of Hungarian Property, Vol. 70 Solicitor's Journal, 1926,at p. 345, Tomlin J. held that the Attorney General was not a necessary party where the sub-stantiel relief sought was a claim in the hands of the Administrator and the subsidiary clause for a declaration to nationality was added.

In the Crown v. Austen 147 E.R. at p. 48, an order for the release of a debtor, it was ordered that all notices in the case of the Treasury or other department of Revenue should be served on the Attorney-General.

In Kynaston v. The Attorney General - T. L.R. 1933 - p. 300, at p. 302 it is stated:-

> "But another objection to this note of proceedings was that it was a leading principle that the King could do no wrong, and the Court could not deviate from it. If a wrong had been done to the Plaintiff that was a tort executed against him by some person or persons for whom there was no responsibility on the head of the departments. The action being for a tort must be against the person who had committed it whether he did so in the service of the Crown or not. On that ground the action was misconceived, and the appeal must be dismissed".

In the instant case no rights of the Crown are directly or indirectly affected by the Order sought to be challenged.

A Judge of one of the Superior Courts is absolutely exempt from all civil liability for acts done by him in the execution of his judicial functions. Nor is the Crown vicariously liable for his acts. 16th edn. Salmond on Torts - p. 416.

In Sec. 2 (2) of the Crown Liability and Proceedings Act, 17 of 1966 a Judge is specifically excluded in the definition of Servant in relation to the Crown.

I accordingly hold that the Attorney-General ought not to have been made and is not a proper party to these proceedings.

The question of Jurisdiction has been raised by the Solicitor General somewhat laterly and he has referred to Sec. 6 (3) of the Constitution which reads:-

> "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 said foregoing sections or section 7 of 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 vexations".

In support of his contention that Jurisdiction is vested in this Court to deal with the motion under Secs. 6 (1) and (2) of the Constitution. Counsel for the applicant has relied on Jaundoo v. Attorney General of Guyana, 3 W.I.R. 1971.

In the Judgment of the Privy Council - Oliver Casey Jaundoo v. The Attorney General of Guyana reported in L.R. 1971 AC in the Judgment of Lord Diplock at p. 978 -

"These procedural questions which have resulted in such diversity of opinion in the High Court and Court of Appeal, have arisen because neither Parliament nor the rule making authority of the Superme Court has chosen to exercise the power conferred upon them by Article 19 (6) of the Constitution 'to make provision with respect to the practice and powers conferred upon it by and under' that article. If such provisions had been made the landowner could not have been deprived for a period which cannot now fail to exceed five years of a hearing upon the merits of her claim. Their Lordships, however, feel reluctantly compelled to refrain from any determination of the substantive question of law raised by the landowner's claim. This might involve their Lordships in an investigation, which could not be confined to constitutional questions, ranging over a wide field of the enacted and common law of Guyana upon which their Lordships have not had the benefit of the considered views of any Guyanan Court. They will accordingly confine themselves to the procedural questions which alone have been the subject of consideration by the Courts in Guyana".

It would appear from this Judgment that the Courts in Guyana and the Privy Council dealt purely and solely with procedural questions.

Again at p. 982 of the Judgment, Lord Diplock continue -

"The clear intention of the Constitution that a person who alleges that his fundamental rights are threatened should have unhindered access to the High Court is not to be defeated by any failure of Parliament or the rule making authority to make specific provisions as to how that access is to be gained. What Warrington J said in Re Meister Lucius and Bruning (Ltd). (1914) 31 T.L.R. 28, 29 is in their Lordships view applicable also to the

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the instant case: viz -

"Where the act," (See Constitution) "merely provides for an application and does not say in what form that application is to be made, as a matter of procedure it may be made in any way in which the court can be approached".

There is only one qualification needed to this statement. It is implied in the word "redress". The procedure adopted must be such as will give notice of the application to the person or the legislative or executive authority against whom redress is sought and afford to him or it an opportunity of putting the case why the redress should not be granted. This would not, however, prevent the court from making such conservatory orders ex-parte pending the giving of such notice, if the urgency of the case so require".

And again at p. 984 -

" at the relevant time, the executive authority was vested in Her Majesty and exercised by the Governor-General on her behalf under article 33 of the Constitution. At the time of the hearing of the motion in the High Court an injunction against the Government of Guyana would thus have been an injunction against the Crown. This court in Her Majesty's Dominions had no jurisdiction to grant. The reason for this inconstitutional theory is that the Court exercises its judicial authority on behalf of the Crown. Accordingly any orders of the Court are themselves made on behalf of the Crown and it is incongrous that the Crown should give orders to itself".

It is perhaps of some significance that in the judgment of Lord Diplock in the passage dealing with redress, mention is made of notice of the application to the person or legislative or executive authority against whom redress is sought.

It would seem that in this Judgment no redress against Judicial authority was ever contemplated and indeed it is inconceivable and perhaps not remotely possible that such was ever the case.

In the instant case against whom is redress sought? Originally Mr. Justice Maharaj was named as a respondent and this course subsequently was not pursued. The sole respondent now named is the Attorney-General. The representative of the

Crown in these proceedings, the Crown against whom vicarious liability does not and cannot attach.

Counsel for the applicant has submitted that in Sub-Section 2 (a) of Sec. 6 of the Constitution "any application made in pursuance of sub-section (1) of Sec. 6" must be construed in the widest possible terms, and that consequently this Court is empowered with the necessary jurisdiction to hear this application. On the assumption that this submission is a sound proposition of law it would of necessity indicate that the High Court having jurisdiction any person alleging an infringment of his rights in a matter determined in the High Court itself of the Court of Appeal would be entitled to apply to the High Court for redress.

At the outset Counsel for the applicant stated that Sub-Section 3 of Section 6 of the Constitution was not relevant to his application. Sub-Section 3 of Section 6 of the Constitution, however, states:-

> "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 said foregoing sections or section 7, the person presiding in that Court may, and shall if any party to the proceedings so request, refer the question to the High Court unless in opinion the reising of the question is merely frivolous or vexatious".

This Court is not vested with any appellate Jurisdiction in regard to this motion and in my view has no power to deal with a matter of this nature arising in the High Court of Justice. It would seem with respect that Sub-Section 3 of Section 6 having envisaged that any matter of a constitutional nature could be referred from a Court of Inferior Jurisdiction to the High Court, and that an appeal would be to the Court of Appeal from any decision of the High Court, that the incongruous situation was not contemplated of the High Court dealing with a matter from the High Court itself or from the Court of Appeal.

Accordingly, I am of the view that this Court has no jurisdiction to entertain this motion.

The applicant quite commendably albeit somewhat belatedly declared in this Court that he unreservedly withdrew any remark made in the Court of Mr. Justice Maharaj and considered offensive by that Judge.

Had this Court the appellate jurisdiction with the requisite, necessary and enabling powers seemingly ascribed to it in the

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course of the hearing of this motion, this Court would have unhesitatingly accepted the apology tendered, considered the contempt purged and there the matter would have ended as far as this Court is concerned. No such power, however, resides in this Court.

Holding as I do that the Attorney-General should not have been made and was not a proper party to these proceedings, that this Court has no jurisdiction to entertain this motion and further that the ingredients necessary to constitute the offence of contempt in the face of the Court were present, that an opportunity was afforded him of answering the charge, that due process of law was fully observed and that the Order and Warrant in these proceedings are perfectly valid, I find the application misconceived, accordingly it must fail and stand dismissed.

Counsel for the applicant has submitted that in the event of the Court finding against the applicant the Court should make a conservatory order to preserve the status quo.

In Burdett v. Abbott (14 East 1, 148) Lord Ellenborough states:-

> "When the House of Commons adjudges anything to be a contempt or breach of privilege this adjudication is a conviction and their commitment in consequence is execution; and no Court can discharge or bail a person that is in execution by any other Court".

Again in Burst v. Bridge (1880) 29 W.R. 117 -

> "Open disrespect to the Court was usually followed by Committal. This process prevented the escape of the contemnor, and as the Court has cognizance of the facts, it was unnecessary to follow the more elaborate process of attachment. Committal was never bailable".

It would appear from all the authorities that this Court is not empowered to grant bail and I accordingly refuse the grant of bail.

In the result the applicant will be ordered to serve the remnant of the term imposed upon him by Mr. Justice Maharaj.

I make no order as to Costs.

Dated this 23rd day of July, 1975.

Garvin M. Scott.
Judge.

No. 13.

FORMAL ORDER OF SCOTT J.

In the High Court.

No. 13.

Formal Order of Scott J.

23rd July, 1975.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No: 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

Before the Honourable Mr. Justice Garvin Scott.

On the 23rd July, 1975.

UPON Motion made into this Honourable Court by Counsel for the applicant Ramesh L. Maharaj for the following relief:

(1) A declaration that the order of the Honourable Mr. Justice Sonny Maharaj made on this day committing the Applicant to prison for contempt of court for a period of seven (7) days is unconstitutional, illegal, void and of no effect;

(2) An order that the Applicant be released from custody forthwith;

(3) An order that damages be awarded against the second-named Respondent for wrongful detention and false imprisonment;

(4) All such order, writs, including a Writ of Habeas Corpus, and directions as may be necessary or appropriate to secure redress by the Applicant for a contravention of the human rights and fundamental freedoms guaranteed to him by the constitution of Trinidad and Tobago.

(5) Such further or other relief as the Justice of the case may require.

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(Continued)

(6) Costs.

And the applicant further seeks upon the hearing of the Motion the following conservatory orders to wait the final hearing and determination of this motion in the event that this application is not heard on this day:-

(a) An order directing the release of the Applicant from custody upon his own recognizance or upon such terms as may be just or appropriate;

(b) Such further or other order as may be appropriate to preserve the status quo of the Applicant.

AND UPON Reading the affidavit of Barendra Sinanan sworn on the 17th April, 1975 and the affidavit of Ramesh Lawrence Maharaj sworn to on the 21st April, 1975 together with exhibits attached thereto, the affidavit of Renwick Scott sworn to on the 23rd April, 1975, the Affidavit of Thomas Isles sworn to on the 1st May, 1975 together with the exhibits attached thereto, the affidavit of George Anthony Edoo sworn to on the 7th May, 1975 together with exhibits attached thereto, the affidavit of Sahadeo Toolsie sworn to on the 8th May, 1975 together with exhibits attached thereto, the affidavit of Thomas Isles sworn to on the 13th May, 1975 together with exhibits attached thereto and affidavit of Gerald A. Stewart sworn to on the 28th May, 1975 together with exhibit attached thereto all filed herein.

AND UPON hearing Counsel for all parties herein.

THIS COURT DOTH ORDER that the Notice of Motion filed herein on the 17th April, 1975 be and the same is hereby dismissed with no order as to costs.

AND THIS COURT DOTH FURTHER ORDER

that the Applicant Ramesh L. Maharaj be committed to prison to serve the remainder of the sentence of Seven (7) days.

George Benny.

Registrar:

No. 13A

JUDGMENT OF BRAITHWAITE J.

In the High Court.

No. 13A

Judgment of Braithwaite J.

26th June, 1975

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 974 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTEROF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT.

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975, BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

Before the Honourable Mr. Justice J.A. Braithwaite.

REASONS FOR DECISION.

Dr. Fenton Ramsahoye S.C. and Mr. Basdeo Persad Maharaj for the applicant instructed by Mr. Carlyle Kangaloo.

I have been asked by a letter sent to me by the Registrar and written by solicitor for the applicant to make available to him and to the legal profession the reasons for the decision whereby upon the motion by the applicant under section 6 of the Constitution I made a conservatory order in the applicant's favour pending the hearing and determination of the motion which sought redress for an alleged judicial violation of the constitutional rights of the Constitution of Trinidad and Tobago.

I have decided to accede to this request. The text of the letter referred to above is set out in a Schedule hereto.

On the 17th April, 1975, the applicant, a Barrister, practising in the Courts of Trinidad and Tobago moved the High Court for redress under Section 6 of the Constitution following an order made by Maharaj J. on the same day that he be committed to prison for seven (7) days for having

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(Continued)

committed a Contempt of Court. By his motion the applicant sogght a conservatory order directing his release until the final hearing and determination of the Application. The Court was informed by Counsel appearing for the applicant that the Notice of Motion and Affidavit in support thereof had been served on the Attorney General at 4.20 p.m. on the same day but before this Court heard the Application. No one appeared on behalf of the Attorney General and the proceedings were commenced ex-parte.

By his Affidavit in support of the applicant's motion, Mr. Barendra Sinanan, Solicitor, swore that on the 17th April, 1975 he was Solicitor for the Defendant in Action No. 564 of 1973 between Samdaye Harripersad (Plaintiff) and Mini Max Limited (Defendant) which was being heard in the High Court, San Fernando by Mr. Justice Maharaj. The applicant was appearing as Counsel for Mini Max Ltd., on that day upon the resumed hearing of the Action. The applicant applied for leave to cross-examine two medical witnesses, Dr. H. Collymore and Dr. R. Mootoo who had given evidence for the plaintiff on the 15th April, 1975, at a hearing at which the Defendant Company was not represented. Upon the Application having been made it was refused by the Judge, whereupon the applicant made reference to a matter which had arisen the previous day in Court before the same Judge and to an Application made to the Judge to disqualify himself from sitting. Mr. Sinanan further swore that the applicant further said that he reserved the right to impeach the entire proceedings. Thereupon as the Affidavit related the Judge asked the applicant whether he was saying that the Court had acted dishonestly and corruptly in doing cases behind Counsel's back, whereupon the applicant answered that he did not think it the right place to answer that question and that he did not think the question arose. The applicant then referred to what he had said the previous day that the Judge's conduct had been "unjudicial" in matters in which the applicant was Counsel. The Judge thereupon charged the applicant with having committed contempt of Court and called upon the applicant to answer the charge. The applicant then asked the Judge to grant an adjournment to enable him to retain a lawyer, The application was refused. The applicant then said he was not guilty and was not imputing bias or anything against His Lordship. The Judge then asked whether the applicant had anything to say in respect to sentence, whereupon the applicant said he had nothing to say but wished to consult Dr. Ramsahoye upon whose advice he had filed two Appeals in matters heard by the Judge. The Judge then committed the applicant to a term of seven (7) days simple imprisonment.

In the High Court.

No. 13A

Judgment of Braithwaite J

26th June 1975.

(Continued)

Before the hearing of this Motion commenced, the applicant had already been taken to prison pursuant to the committal and the Application for a conservatory order which would have the effect of staying further imprisonment until the hearing and determination of the motion was made upon two main grounds and the authority submitted to justify the procedure was the case of JAUNDOO V. THE ATTORNEY GENERAL OF GUYANA (1971) 3 W.I.R. 13, where Lord Diplock took the view that upon applications to enforce fundamental-rights guarantees conservatory orders may be made ex-parte. The first ground was that the applicant was entitled to have particulars of the charge put to him to enable him to have an opportunity to answer them and that it was wrong in law for the Judge to charge the applicant for a contempt of Court without specifically saying what the alleged Contempt consisted of.

The learning on this matter set out in several cases:-

RE: POLLARD (1868) L.R. 2 P.C. 106.

APPHAMY V.R. (1963) 1 A.E.R. 762

RE: BACHOO (1962) 5 W.I.R. 246.

CHANG HANG KIU V. PIGGOTT (1909) A.C. 312.

RE: PERSHADSINGH 2 W.I.R. 340

LLOYD V. BIGGIN (1962) T.L.R. 593 (Victoria Supreme Court).

The Privy Council as long ago as 1869 in RE: POLLARD L.R. 2 P.C. 106 at 120 stated:-

> "No person should be punished for Contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated and an opportunity of answering it given to him".

However the position appears to be as stated in BORRIE and LOWE at page 268:-

> "This, however, is no more than a general requirement. There is no specific requirement allowing adequate time for the accused to prepare an explanation or even for the Court to obtain information as to previous convictions. Accordingly the only limitation upon the Courts power of punishment is that the offence should be made clear".

Nevertheless, there are, as indicated in RE: POLLARD, certain minimum requirements. For example, in LLOYD V. BIGGIN (1962)

In the High Court.

No. 13A.

Judgment of Braithwaite J

26th June, 1975.

(Continued)

T.L.R. 593, the Victoria Supreme Court quashed the sentence upon a Barrister by a Magistrate for contempt stating at page 594:-

> "Mr. Lloyd did not have any formulation presented to him, either in a formal or an informal manner, of the precise nature of the contempt of which the Magistrate considered him to be guilty or allow him to put any matter in defence or in mitigation".

I have no doubt that on the evidence before me, Maharaj J. did not particularise his allegation of contempt.

The other main ground was that the applicant suffered a clear violation of his constitutional rights when he was denied Counsel and that this denial when taken with the fact that the charge had not been particularly stated, caused his imprisonment to be a denial of liberty without due process of law and without allowing him the protection of the law in terms of Sections 1 and 2 of the Constitution. Upon a proper reading to have particulars of the charge given and to retain and instruct Counsel of his choice is assumed to exist and to have existed always prior to the commencement of the Constitution. That the right to Counsel has existed even at the stage where an accused or suspect is being interrogated and before charges appear from the decision of GEORGE J. in THORNHILL'S CASE, Action No. 2765A of 1973. More recently the Privy Council in MALIK V. BENNY & OTHERS P.C. Appeal No. 20 of 1974, examined the meaning and effect of Sections 1, 2 and 3 of the Constitution and concluded that the matters in Section 2 were a more detailed enumeration of the provisions in Section 1 relating to due proceds and the protection of the law, Lord Diplock observed:-

> "Chapter 1 of the Constitution of Trinidad and Tobago, like the corresponding Chapter 111 of the Constitution of Jamaica (See D.P.P. V. NASRALLA (1967) 2 A.C. 238) proceeds on the presumption that the human rights and fundamental freedoms that are referred to in Sections 1 and 2 are already secured to the people of Trinidad and Tobago by the law in force there at the commencement of the Constitution. Section 3 debars the individual from asserting that anything done to him that is authorised by a law in force immediately before 31st August, 1962 abrogates, abridges or infringes any of the rights or freedoms recognised and declared in Section 1 or particularised in Section 2. Section 2 is not dealing with enacted or unwritten laws that were in force in Trinidad and Tobago before that date. What it does is to ensure that subject to three exceptions no future

enactment of Parliament established by Chapter IV of the Constitution shall in any way derogate from the rights and freedoms declared in Section 1. The three exceptions are Acts of Parliament passed during a period of public emergency and authorised by Section 5 and passed by majorities in each House that are specified in that Section; and Acts of Parliament amending Chapter 1 of the Constitution itself and passed by the majorities in each House that are specified in Section 38.

The specific prohibitions upon what may be done by future Acts of Parliament set out in paragraphs (a) to (h) of Section 2 and introduced by the words "in particular" are directed to elaborating what is meant by "due process of law" in Section 1 (a) and the "protection of the law" in Section 1 (b). They do not themselves create new rights or freedoms additional to those recognised and declared in Section 1. They merely state in greater detail what rights declared in paragraphs (a) and (b) of Section 1 involve".

Unless, therefore, there is some law which was in force at the commencement of the Constitution which authorised in terms of Section 3 the denial of Counsel to any person charged with a criminal offence, the law of Trinidad and Tobago is clear on the question that a person charged with a criminal offence is entitled to be defended by Counsel of his choice. On the Affidavit of Mr. Sinanan there was a clear denial of Counsel to the Applicant when he was called upon to answer the charge and again when the Judge refused to allow the applicant to consult with Dr. Ramsahoye before he imposed a custodial sentence. Both grounds urged in support of the conservatory order that is, that particulars of the charge were not stated and that there was an improper denial of Counsel, appeared to me to be substantial to the degree that they amounted to violations of the rights of the applicant not to be denied his liberty without due process of law and to the protection of the law in terms of Sections 1 and 2 of the Constitution and on those grounds I grant a conservatory order in terms of $1,000.00 and I ordered that the applicant be present at the further hearing of his Application fixed for the 23rd April, 1975. I further directed that the Notice of Motion should be again served on the Attorney General to provide him with due notice of the hearing on the adjourned date.

Dated this 26th June, 1975.

J.A. Braithwaite,

Judge.

In the High Court.

No. 13A

Judgment of Braithwaite J

26th June, 1975.

(Continued).

THE SCHEDULE

CARLYLE M, KANGALOO
Solicitor and Conveyancer.

Phone 3316
P.O. Box 115

3, Lord Street,
San Fernando,
Trinidad W.I.

17th June, 1975.

The Registrar,
The Supreme Court,
Red House,
PORT OF SPAIN:

In the matter of the Application of

Ramesh L. Maharaj No. 974 of 1975.

Dear Sir,

I shall be grateful if you will be good enough to ask the Honourable Mr. Justice Braithwaite if he will be so kind as to make available to the applicant and the legal profession his reasons for the decision whereby upon the motion by the applicant under section 6 of the Constitution a conservatory order was made in the applicant's favour pending the hearing and determination of the motion which sought redress for an alleged judicial violation of the constitutional rights guaranteed to all persons by the fundamental rights provisions of the Constitution of Trinidad and Tobago.

The reasons for making the order if made public will serve the interests of justice if the applicant later becomes obliged to exercise the rights of Appeal which are guaranteed by Section 6 (3) of the Constitution for in that event the applicant will wish to rely upon the reasons for the decision of the Honourable Mr. Justice Braithwaite as well as such further grounds as may be appropriate in support of a further application to the Court now hearing the motion to make a new or to continue the existing conservatory order until the hearing and determination of the appeal. I am also to observe that the conservatory order was the first made pursuant to Section 6 of the Constitution following observations made by the Lord Diplock in Jaundoo v. The Attorney General of Guyana (1971) 3 W.L.R. 13 of page 20, letter B, and it is therefore a matter of great importance to the public and the legal profession.

Yours faithfully,

Sgd. Carlyle M. Kangaloo.

c.c. The Honourable Mr Justice Braithwaite.

No. 14.

WARRANT.

In the High Court.

No. 14

Warrant.

23rd July, 1975.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

To the Keeper of the Royal Gaol of Our said Island.

Whereas by an Order of this Court pronounced this day it was ordered that the above named Ramesh Lawrence Maharaj do stand committed to the Royal Gaol Port of Spain for his Contempt in the said Order mentioned.

These are therefore to Command you and every one of you in Her Majesty's Name to apprehend the said Ramesh Lawrence Maharaj and him safely convey to the Royal Gaol Port of Spain and there to be detained and kept in safe custody.

Now therefore, these are to Command you, the said keeper of the Royal Gaod, to receive the said Ramesh Lawrence Maharaj in your custody in the said Royal Gaol and there to imprison him for the remainder of the term of 7 days from the date hereof.

And for so doing this shall be your sufficient warrant.

Witness: Your Lordship Sir. Isaac Hyatali Chief Justice of the said Island, and President of the said Court at Port of Spain, in the said Island this 23rd day of July, One Thousand Nine Hundred and Seventy Five.

George Benny

Registrar.

No. 15.

In the High Court.

No. 15

Haebas Corpus Writ by Mc Millan J.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 973 of 1975.

IN THE MATTER OF RAMESH LAWRENCE MAHARAJ AND THOMAS ISLES COMMISSIONER OF PRISONS

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AND SUBJICIENDUM

No. 15.

HABEAS CORPUS WRIT BY MC MILLAN J.

In the High Court.

No. 15.

Haebas Corpus Writ by Mc Millan J.

(Continued)

QUEEN ELIZABETH THE SECOND BY THE GRACE OF GOD OF GREAT BRITAN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, QUEEN, DEFENDER OF THE FAITH

TO: THOMAS ISLES ESQUIRE, COMMISSIONER OF PRISONS. GREETINGS:

WE COMMAND YOU that you have before a Judge in Chambers at the High Court of Justice, Port of Spain, immediately after receipt of this Our Writ the body of Ramesh Lawrence Maharaj being taken and detained under your custody as is said together with the day and cause of his being taken and detained by whatsoever name he may be called therein to undergo and receive all such matters and things as our Judge shall then and there consider of concerning him in this behalf: And you have there then this our Writ.

Witness: Sir I. Hyatali Chief Justice of Trinidad and Tobago Thursday the 17th day of April, 1975.

By order of His Lordship The Honourable Mr. Justice K. Mc Millan.

This writ was issued by Messrs. Capildeo and Capildeo of No. 25, St. Vincent Street, Port of Spain, Solicitors for the Applicant herein.

Applicant's Solicitors.

In the High Court.

No. 16.

Recognizance for Appearance.

No. 16.

RECOGNIZANCE FOR APPEARANCE.

TRINIDAD AND TOBAGO:

IN THE HIGH COURTOF JUSTICE

No. 974 of 1975.

In the Matter of an Application by Ramesh Lawrence Maharaj.A Barrister.

Recognisance for appearance of the Applicant where a Motion has been adjourned and not at once proceeded with.

Be it remembered that on the 17th day of April, in the Year of Our Lord OneThousand Nine Hundred and Seventy-Five Ramesh Lawrence Maharaj personally came before me the undersigned Justice of the Peace for Trinidad and Tobago and acknowledged himself to our Sovereign Lady the Queen the sum following, name the sum of One Thousand Dollars to be levied on my several movable and immovable property

respectively, if I the said Ramesh Lawrence Maharaj fail in the condition herein endorsed.

In the High Court.

No. 16.

Recognizance for Appearance.

The condition of the within written recognizance is such that if the within bourden Ramesh Lawrence Maharaj appears before the Judge in the High Court of Justice in Port of Spain on Wednesday the 23rd April in the Year of Our Lord One Thousand Nine Hundred and Seventy-Five at the hour of nine thirty (9.30) in the forenoon, and at every time and place to which during the course of the proceedings against the said Ramesh Lawrence Maharaj may be from time to time adjourned and to be dealt with according to law, then the said recognizance shall be void, but otherwise shall remain in full force.

Sgd. Ramesh Lawrence Maharaj

Sgd. Kent Reynold.
Justice of the Peace.

No. 17.

NOTICE OF APPEAL.

TRINIDAD AND TOBAGO:

No. 17.

Notice of Appeal.

IN THE COURT OF APPEAL

NOTICE OF APPEAL

11th August, 1975.

Civil Appeal No. 75 of 1975.

B E T W E E N

RAMESH LAWRENCE MAHARAJ Applicant/Appellant

A N D

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent

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1. TAKE NOTICE that the Applicant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of the Honourable Mr. Justice Scott dated the 23rd day of July, 1975 and given upon the Motion of the Applicant/Appellant No. 974 of 1975 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the names and addresses including his own of the persons directly affected by

No. 17

Notice of Appeal.

11th August, 1975.

the Appeal are those set out in paragraph 5.

2. The Applicant's Motion is dismissed with no order as to costs and the Applicant is hereby ordered to serve the remnant of the term of imprisonment ordered by the Honourable Mr. Justice Sonny Maharaj. Stay of execution refused.

3. GROUNDS OF APPEAL:

(a) The learned trial Judge erred in holding at the end of the trial that the court has no jurisdiction to entertain the Motion and that the Attorney General was not the correct party to the Motion.

(b) The Learned trial judge erred in holding that the Appellant was not denied his liberty without due process of law by reason of his having committed a Contempt of Court.

(c) The learned trial judge further erred in holding that the Court had a jurisdiction to commit the Appellant to prison in the circumstances established by the evidence. Alternatively the learned trial judge ought to have held that Mr. Justice Maharaj acted without jurisdiction or in excess of jurisdiction.

(d) The learned trial judge ought to have held that the trial, conviction and committal were illegal, unconstitutional null and void for the reasons that:-

(i) No Contempt of Court was committed;

(ii) The nature and/or particulars of the charge was not specified.

(iii) The Appellant was denied Counsel in violation of the provisions of Section 1 and 2 of the Constitution of Trinidad and Tobago when the Appellant so requested after having been charged and before sentence of committal was pased.

(iv) No warrant was signed by the Judge or at all before the Appellant was taken into custody and the warrant signed by the Registrar of the Court subsequently was bad in any event; and

(v) The order authorising the committal was not signed by the Judge and was illegal, null and void.

No17.

Notice of Appeal.

11th August, 1975.

(e) The learned trial judge ought to have held that neither the exercise of the summary power to commit nor the exercise of the summary jurisdiction to punish in facie curiae without the Appellant having an opportunity to prepare his defence with the assistance of Counsel of his choice or to speak in relation to sentence without the assistance of Counsel of his chouce was justified in the circumstances of the case.

(f) The order of the learned trial judge directing that the Appellant be further imprisoned after the hearing and determination of the Motion was made without jurisdiction and was unconstitutional, illegal, null and void and of no effect.

(g) The warrant and order made pursuant to the order of the said judge referred to in (f) above were illegal, void and of no effect.

(h) The imprisonment of the Appellant was in any event unconstitutional and illegal.

(i) The learned trial judge ought to have awarded the Appellant damages for false imprisonment.

(j) The procedure at the hearing of the Motion was irregular and unlawful in that:-

(i) Evidence by cross examination of the Appellant was received after the Court had been moved by Counsel for the Appellant.

(ii) Counsel for the Respondent was permitted a further address to the Court after Counsel for the Appellant had replied to him.

(iii) Unsworn and/or inadmissable evidence was admitted upon the hearing of the Motion after the Appellant had been cross examined.

(iv) The learned trial judge refused to extend the conservatory order made by the Hon. Mr. Justice Braithwaite so that execution can be stayed in order to maintain the status quo of the Appellant until the determination of the Appeal although the learned judge extended the said conservatory order on the 23rd April, 1975 until the determination of the Motion.

No. 17.

Notice of Appeal.

11th August, 1975.

4. The relief sought from the Court of Appeal.

(i) That the judgment of the Hon. Mr. Justice Scott dismissing the appellant's Motion be set aside and judgment be entered in favour of the Appellant in terms of the prayer in the Motion with costs of the hearing in the Court of Appeal and in the Court below.

(ii) That the Appellant be awarded punitive damages for the full period of the Appellant's imprisonment.

(iii) Such further or other relief as may be just. 10

5. Persons directly affected by this appear are:-

N A M E S	ADDRESSES:
Ramesh L. Maharaj	3, Penitence Street, San Fernando.
The Attorney General of Trinidad and Tobago	Red House, Port of Spain.

Dated this 11th day of August, 1975.

Sgd. Carlyle Meade Kangaloo.

Carlyle Meade Kangaloo of 3, Lord Street, San Fernando whose address for service is the same and in Port of Spain in care of Mr. L. Ramcoomarsingh of 36 Sackville Street, Solicitor for the Applicant/Appellant. 20

To: The Hon. Attorney General
Red House, Port of Spain.

and

TO: The State Solicitor:

No. 18.
NOTICE OF AMENDMENT OF NOTICE OF APPEAL.

In the Court of Appeal.

No. 18.

Notice of Amendment of Appeal.

28th October, 1975.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

NOTICE OF AMENDMENT OF

NOTICE OF APPEAL MOTION.

Civil Appeal No. 75 of 1975.

Between

RAMESH LAWRENCE MAHARAJ Applicant/Appellant

and

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. Respondent.

TAKE NOTICE that pursuant to the provisions of Rule 7 (1) (b) of the Court of Appeal Rules, 1962 the Appellant has amended the grounds of Appeal in his Notice of Motion in terms of the amended Notice of Appeal Motion annexed hereto,

AND FURTHER TAKE NOTICE that the amendments will be included in the Record of Appeal herein.

DATED this 28th day of October, 1975.

Carlyle M. Kangaloo
Solicitor for the Appellant
Carlyle Meade Kangaloo of 3, Lord Street, San Fernando, whose address for service is the same and in Port of Spain in care of Mr. L Ramcoomarsingh of 36, Sackwille Street.

To: The Crown Solicitor:

And To: The Registrar,
Court of Appeal,
Port of Spain.

In the Court of Appeal.

No. 19.

Amended Notice of Appeal

29th October, 1975.

No. 19.

AMENDED NOTICE OF APPEAL.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

NOTICE OF APPEAL

Civil Appeal No: 75 of 1975:

Between

RAMESH LAWRENCE MAHARAJ Applicant/Appellant

and

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent. 10

AMENDED NOTICE OF APPEAL MOTION amended pursuant to Rule 7 (1)b of the Court of Appeal Rules 1962.

---

1. TAKE NOTICE that the Applicant/Appellant being dissatisfied with the decision more particularly stated in paragreph 2 hereof of the High Court of Justice contained in the judgment of the Honourable Mr. Justice Scott dated the 23rd day of July, 1975 and given upon the Motion of the Applicant/Appellant No. 974 of 1975 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the names and addresses including his own of the persons directly affected by the Appeal are those set out in paragraph 5. 20

2. The Applicant's Motion is dismissed with no order as to costs and the Applicant is hereby ordered to serve the remnant of the terms of imprisonment ordered by the Honourable Mr. Justice Sonny Maharaj. Stay of execution refused.

3. GROUNDS OF APPEAL:

(a) The learned trial judge erred in holding at the end of the trial that the court had no jurisdiction to entertain the Motion and that the Attorney General was not the correct party to the Motion. 30

(b) The learned trial judge erred in holding that the Appellant was not denied his liberty without due process of law by reason of his having committed a Contempt of Court the judge having so held in violation of the Appellant's constitutional rights.

(c) The Learned trial judge further erred in holding that the Court had a jurisdiction to commit the Appellant to prison in the circumstances established by the evidence. Alternatively the learned trial judge ought to have held that Mr. Justice Maharaj acted without jurisdiction or in excess of jurisdiction.

(d) The learned trial judge ought to have held that the trial, conviction and committal were illegal because the proceedings were unconstitutional and accordingly null - - - - - - and void for the reasons that:-

~~(i) No Contempt of Court was committed;~~

~~(ii) The nature and/or particulars of the charge was not specified.~~

(iii) The Appellant was denied his constitutional rights in violation of the provisions of Section 1 and 2 (a), (b), (c), (d), (e), (f) and (h) of the Constitution of Trinidad and Tobago, ~~when the appellant as requested after having been charged and before sentence of committal was passed.~~

~~(iv) No warrant was signed by the Judge or at all before the Appellant was taken into custody and the warrant signed by the registrar of the Court subsequently was bad in any event; and~~

~~(v) The order authorising the committal was not signed by the Judge and was illegal, null and void.~~

~~(e) The learned trial judge ought tohave held that neither the exercise of the summary power to commit nor the exercise of the summary jurisdiction to punish in facie curiae without the appellant having an opportunity to prepare his defence with the assistance of Counsel of his choice or to speak in relation to sentence without the assistance of Counsel of his choice was justified in the circumstances of the case.~~

(f)(e) The order of the learned trial judge directing that the Appellant be further imprisoned after the hearing and

In the Court of Appeal.

No. 19.

Amended Notice of Appeal.

29th October, 1975.

(Continued)

determination of the Motion was made without jurisdiction and was unconstitutional, illegal null and void and of no effect.

~~(g) The warrant and order made pursuant to the order of the said judge referred to in (f) above were illegal void and of no effect.~~

(h)(f) The imprisonment of the Appellant was in any event unconstitutional and therefore illegal.

(i)(g) The learned trial judgeought to have awarded the Appellant damages for false imprisonment, the appellant having been imprisoned in breach of the provisions of the Constitution.

(j) The procedure at the hearing of the Motion was irregular and unlawful in that:-

(i) Evidence by cross examination of the Appellant was received after the Court had been moved by Counsel for the Appellant.

(ii) Counsel for the Respondent was permitted a further address to the Court after Counsel for the Appellant had replied to him.

(iii) Unsworn and/or inadmissable evidence was admitted upon the hearing of the Motion after the Appellant had been cross examined.

~~(iv) The learned trial judge refused to extend the conservatory order made by the Hon. Mr. Justice Brathwaite so that execution can be stayed in order to maintain the status quo of the Appellant until the determination of the Appeal although the learned judge extended the said conservatory order on the 23rd April, 1975 until the determination of the Motion.~~

4. The relief sought from the Court of Appeal.

(i) That the judgment of the Honourable Mr. Justice Scott dismissing the appellant's Motion be set aside and judgment be entered in favour of the Appellant in terms of the prayer in the Motion with costs of the hearing in the Court of Appeal and in the Court below.

(ii) That the Appellant be awarded damages including punitive damages for the full period of the

Appellant's imprisonment.

(iii) Such further or other relief as may be just.

5. Persons directly affected by this Appeal are:-

NAMES	ADDRESSES:
Ramesh L. Maharaj	3, Penitence Street, San Fernando.
The Attorney General of Trinidad and Tobago.	Red House, Port of Spain.

DATED this 29th day of October, 1975.

Carlyle Meade Kangaloo of 3, Lord Street, San Fernando whose address for service in the same and in Port of Spain in care of Mr. L. Ramcoomarsingh of 36, Sackville Street, Solicitor for the Applicant/Appellant.

To: The Hon. Attorney General
Red House, Port of Spain

and

To: The State Solicitor:

EXHIBITS "G.S." NOTICE OF MOTION:

Exhibits "G.S.".

This is the Notice of Motion referred to as marked "G.S". in the affidavit of Gerald Aubrey Stewart sworn before me this 28th day of May, 1975.

Sgd. R.L. Bynoe.
Commissioner of Affidavits.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 974 of 1975.

Notice of Motion.

17th April, 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962.

IN THE MATTER OF AN APPLICATION BY RAMESH L. MAHARAJ FOR REDRESS IN PURSUANCE OF SECTION 6 OF THE CONSTITUTION OF TRINIDAD AND TOBAGO FOR CONTRAVENTION OF THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF IN RELATION TO THE APPLICANT

AND

IN THE MATTER OF AN ORDER MADE ON THE 17TH DAY OF APRIL, 1975 BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ COMMITTING THE APPLICANT TO PRISON FOR CONTEMPT OF COURT.

TAKE NOTICE that this Court will be moved on the 17th day of April, 1975 as soon as Counsel may be heard or at such time as the Registrar may thereafter appoint for the following relief in favour of the Applicant:-

(1) A declaration that the order of the Honourable Mr. Justice Sonny Maharaj made on this day committing the applicant to prison for contempt of court for a period of seven days is unconstitutional, illegal, void and of no effect:

(2) An order that the applicant be released from custody forthwith:

(3) An order that damages be awarded against the second named respondent for wrongful detention and false imprisonment:

(4) All such orders, writs, including a writ of habeus corpus, and directions as may be necessary or appropriate to secure redress by the applicant for a contravention of the human rights and fundamental freedoms guaranteed to him by the constitution of Trinidad and Tobago:

(5) Such further or other relief as the justice of the case

Exhibits
"G.S."

Notice of Motion.

17th April, 1975.

may require:

(6) Costs:

And the applicant further seeks upon the hearing of this motion the following conservatory orders to await the final hearing and determination of this action in the event that this application is not heard on this day:-

(a) An order directing the release of the applicant from cusdody upon his own recognisance or upon such terms as may be just or appropriate.

(b) Such further or other order as may be appropriate to preserve the status quo of the applicant.

Dated this 17th day of April, 1975.

Sgd. Carlyle M. Kangaloo

Carlyle M. Kangaloo of No. 3 Lord Street, San Fernando and in Port of Spain c/o Mr. L. Ramcoomarsingh of 36 Sackville Street, Port of Spain. Solicitor for the Applicant.

To: The Honourable Mr. Justice Maharaj, High Court of Justice.

And To:

The Honourable Attorney General of Trinidad and Tobago,
"Chambers",
Red House,
Port of Spain.

No. 20.

JUDGMENT OF SIR ISAAC HYATALI C.J.

In the Court of Appeal.

No. 20.

Judgment of Sir Isaac Hyatali, C.J.

29th April, 1977.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL.

Civil Appeal No. 75 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL 1962

Between

RAMESH LAWRENCE MAHARAJ — Appellant/Applicant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO — Respondent

Coram: Sir Isaac E. Hyatali, C.J.
C.E.G. Phillips J.A.
M.A. Corbin J.A.

April 29, 1977.

David Turner-Samuels, Q.C. and Dr. F. Ramsahoye, S.C. (Basdeo Persad-Maharaj with them) - for the appellant

J.A.Wharton , S.C. and the Ag. Solicitor -General, Clinton Bernard (C. Brooks, State Counsel, with them) - for the respondent.

JUDGMENT

Delivered by Sir Isaac Hyatali, C.J.:

The appellant Ramesh Lawrence Maharaj, a member of the Bar, was found guilty of contempt in the face of the Court by Maharaj, J. on 17 April, 1975, and committed to serve a term of seven days' simple imprisonment. He was aggrieved by that order, but as it was one made by a Judge of the High Court in a criminal cause or matter, there was then no right of appeal against it, by virtue of s. 38 (3) of the Supreme Court of Judicature Act 1962. He however sought to avoid that disability, by pursuing the right available to him, to apply for redress under section 6 of the 1962 Constitution, which was then in force, and is referred to hereafter as "the Constitution of Trinidad and Tobago" and where the context so admits, "the Constitution". (See new . 3 of the Constitution of the Republic of Trinidad and Tobago Act 1976 and ss. 14 and 118 (e) of the Constitution of the Republic of Trinidad and Tobago set out in the Schedule thereto).

In the event, he issued a Notice of Motion, to which he named Maharaj, J. and the Attorney General as respondents intimating that the High Court will be moved on that very day, pursuant to s. 6 of theConstitution for the following relief:

(1) a declaration that the order committing him for contempt, was unconstitutional, void and of no effect; (2) an order that he be released from custody; (3) an order for damages against the Attorney General for wrongful detention and false imprisonment; (4) all such orders as may be necessary or appropriate for him to obtain redress for contravention of the rights and freedoms guaranteed to him under the Constitution; (5) further and other relief: and (6) a "conservatory" order providing for his release from custody pending the final hearing and determination of his motion.

On the ex parte application of counsel for the appellant on the same day, Braithwaite, J. considered the terms and an affidavit in support of the motion, granted the "conservatory" order sought thereby, (See Jaundoo v Attorney General of Guyana (1971) A.C. 978; 982 per Lord Diplock), and adjourned the hearing thereof to 23 April, 1975. The Attorney General was, but Maharaj, J, was not served with the Notice of Motion.

Scott, J. began hearing the motion of that day, completed it on 27 June 1975 and reserved his decision. In a considered judgment delivered on 23 July, he held that the appellant (i) had committed a contempt in the face of the court; (ii) was made aware of the specific offence he committed; (iii) was given an opportunity to answer the charge made against him; and (iv) was committed to prison for his contempt by due process of law. The learned judge dismissed the motion however, on the ground that he had no jurisdiction to entertain it and, in addition, ruled that the Attorney General was improperly made a party to the proceedings. The"conservatory" order made by Braithwaite, J. thereupon became spent and, in the event, Scott, J. committed the appellant to serve the remanet of the sentence imposed on him by Maharaj, J.

Following his release, the appellant moved to obtain a review of his case by the Privy Council. In reliance upon a ruling given by the Board in Ambard v The Attorney General of Trinidad and Tobago (1936) 1 All E.R. 704, that it was competent for Her Majesty in Council to give leave to appeal, and to entertain appeals against orders of courts of records overseas, imposing penalties for contempt of court, the appellant on 2 February, 1976 sought, and on 18 February, obtained from, the Privy Council, special leave to appeal against his order of committal. On 27 July 1976, the Privy Council advised Her Majesty to allow the appeal. The relevant facts leading up to the appellant's committal, are fully set out in the opinion of the Board, and as they coincide with the facts considered by Scott, J. it is only necessary for me to record the salient aspects therefrom for present purposes.

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On 14 April, 1975, while the appellant was engaged in the Court of Appeal, Maharaj, J. sitting in the High Court refused to grant adjournments in two cases in which the appellant was briefed to appear and, in the result, his clients suffered prejudice. In both of them, judgment was given against his clients on 14 April 1975, without their having had any reasonable opportunity of being heard. On 15 April 1975, a third case, in which the appellant was briefed to appear for the defendant, was called on for hearing. An application was made for an adjournment on the ground that the appellant was still engaged in the Court of Appeal but the learned judge refused it. Material evidence was then taken from two doctors called for the plaintiff while the defendants were unrepresented. The case was then adjourned to 17 April 1975.

On 15 April, the appellant's engagement in the Court of Appeal ceased. On 16 April, he appeared before Maharaj J. in the Chamber Court to conduct certain cases before him. The appellant took the opportunity then, to recite what had occurred before the learned judge on 14 April, and "tactlessly and no doubt discourteously" requested the learned judge to disqualify himself from hearing any further cases in which he, the appellant, was engaged, On the ground that the learned judge had behaved "unjudicially" in dealing with the appellant's cases on 14 April 1975. The learned judge refused his application and went on to hear two matters in which the appellant was briefed to appear.

On 17 April, hearing of the third case referred to, was resumed. The appellant applied to have the two doctors recalled, to enable him to cross-examine them on the evidence they had given on 15 April 1975, while his clients were unrepresented. The learned judge refused the application. The appellant /in a fit of dismay, it would appear/, then repeated in open court what he had said to the learned judge on the previous day, and stated that he reserved the right to impeach the entire proceedings. The learned judge then asked the appellant, whether he was suggesting that the court was dishonestly and corruptly doing matters behind his back, because it was biased against him. "Tactlessly" the appellant answered as follows:

> "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."

The learned judge then formally charged the appellant with

contempt of court and called upon him to answer the charge. The appellant applied for an opportunity to retain a lawyer, but the judge refused the application. The appellant then stated he was not guilty and that he had not "imputed any bias or anything" against the judge. The appellant was then asked whether he wished to say anything against sentence, to which he replied that he wished to consult Dr. Ramsahoye, S.C., whose advice he had taken and lodged appeals in the other cases. The learned judge then sentenced him to 7 days' simple imprisonment.

In his written reasons for making the order of committal, the learned judge stated, inter alia, that the appellant "had not only abused his privileges as a Barrister" in the Chamber Court on 16 April, but had on 17 April made a "vicious attack on the integrity of the Court". These written reasons, it may be noted here in parenthesis, were not given when Scott J. heard the appellant's motion, but they were by consent made part of the record in the proceedings before this court. The Board was satisfied that the appellant had made no such attack, and that the learned judge had mistakenly persuaded himself that the appellant had done so. The Board was further satisfied from the learned judge's reasons, that the "vicious attack on the integrity of the court", was the contempt he had in mind when he charged the appellant for contempt, that he failed, as justice demanded in the particular case, to make plain to the appellant the specific nature of the contempt with which he was charged, and that the learned judge's failure so to do, vitiated the appellant's committal for contempt.

The appellant appealed against the Judgment of Scott, J. on 11 August 1975. He challenged the judgment on several grounds, but leading counsel, Mr. Turner-Samuels of the English Bar, to whom the court is indebted for a careful and interesting argument confined himself to the agitation of four issues, which he framed in these terms:

(1) Was the imprisonment of the appellant for contempt, which the Privy Council held to be imsupportable in law, also effected in a manner which was an infringement of the fundamentsl rights of the appellant under the Constutition;

(2) if there was such an infringement, did it give rise to any, and if so, what redress;

(3) if the answer to the second question was in favour of the appellant, was the Attorney General named as a respondent in these proceedings, the, or a proper party, against whom redress

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should be sought, and if not, who if any was the proper party; and

(4) if the answer to the first three questions was favourable to the appellant, what order should the court make.

The Privy Council's ruling that the learned judge's failure aforesaid vitiated the appellant's committal for contempt, leaves four questions for consideration on the judgment of Scott, J.: (1) was the appellant's imprisonment for contempt tantamount to a depriviation of his liberty without due process of law; (2) if so, is 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. The fourth question may be disposed of at once. The decision of Scott, J. was based on his interpretation of s.6 (3) of the Constitution which provides:

> "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 said foregoing sections /i.e. sections 1 - 57 or section 7, 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".

The subsections preceding this however prescribe:

> "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 7 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
>
> (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 7 to the protection of which the person concerned is entitled".

Section 6(3) is, clearly, an enabling provision, which empowers courts of inferior jurisdiction to refer to the High Court, any question arising in the course of proceedings before them as to the contravention of any of the provisions of ss. 1 - 5 and s. 7 of the Constitution. Accordingly this provision is not relevant here. But Scott, J. was of opinion, that the High Court was not vested with an appellate jurisdiction and, consequently, he had no power to deal with a motion in which an applicant alleged that his rights and fundamental freedoms were contravened by the order of a judge of equal jurisdiction in the High Court. Moreover, he thought that s. 6(3) did not contemplate the situation "of the High Court dealing with a matter from the High Court itself or from the Court of Appeal".

Section 6(1) however, is the provision which confers jurisdiction on the High Court. In my opinion, its language is sufficiently wide and general to permit an applicant to pursue a claim for redress in any case in which he alleges in relation to himself, that a person exercising the plentitude of legislative, executive or judicial power, has contravened or threatens to contravene the provisions securing the applicant's rights and fundamental freedoms. A judge of the High Court is therefore not excluded from the purview of s.6(1),

It is true that in dealing with such an application, a judge may be required to consider the merits and validity of an order made by another judge of equal jurisdictionbut, in so doing, he would be sxercising no more that the original jurisdiction, expressly vested in him by the provisions of s. 6(1). In my judgment, an application thereunder in respect of a judge's order is, strictly speaking, a complaint that such an order is unconstitutional on the ground that it infringes the applicant's rights and fundamental freedoms and cannot be regarded as an appeal stricto sensu, to the High Court against the validity of an order made in the same court by another judge. I am satisfied and so hold, that Scott, J.

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placed a wrong construction on the provisions of s.6 and erred in deciding that he had no jurisdiction to entertain the motion. The other questions raised by his findings have a direct bearing on the first three issues as defined by Mr. Turner-Samuels, and it would be convenient to consider these together.

Except for the heavy penalties fixed by the Habeas Corpus Act 1679 (which applies in Trinidad and Tobago by virtue of the Habeas Corpus Ordinance Ch. 5 No. 10) on any Judge who, in vacation time, denies the writ of habeas corpus to an applicant, it is a well and firmly established principle of the common law and indeed, a rule of the highest antiquity, that no action lies against a judge of a superior court for acts done or words spoken in his judicial capacity in a Court of Justice. And this is so, even if his motive is malicious and the acts or words are not done or spoken in the honest exercise of his office.

A series of respected and unchallenged decisions from the time of Lord Coke in Floyd v Barker (1607) 12 Co. Rep. 23, to that of the Court of Appeal in Anderson v Gorrie &Ors. (1895) 1 Q.B. 668 (Lord Esher, MR., Kay and A.C. Smith, L.JJ.) have so entrenched this vital principle in the fabric of the common law, that it has come to be regarded as an indispensable watershed in the administration of justice. The recent decision of the Court of Appeal in England in Sirros v Moore (1974) 3 ALL E.R. 776 (Denning, MR., Buckley & Orrmod, L.JJ.) fortifies this principle and, in my judgment, no attempt now to whittle it down, or to avoid its application, or to render it nugatory can or ought to be entertained.

The object of judicial privilege (if privilege be the right word) as the distinguished authors of 1 Halsbury's Laws (4th Edn.) 207 state -

> "is not to protect malicious or corrupt judges, but to protect the public from the danger to which the administration of justice would be exposed if the persons concerned therein were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. It is necessary that such persons should be permitted to administer the law not only independently and freely without favour, but also without fear".

The learned authors of Clerk and Lindsell on Tort (13th Edn.) 1975 suggest a reason for the principle which recommends itself to me as incontrovetrtible.

"It is well settled", they state, "that no action lies in respect of any mere abuse of jurisdiction of a court of record. The reason for this appears to be that it is less evil that corrupt or malicious judges should be protected than that honest judges should be exposed to the risk of frivolous and vexatious proceedings".

The late Dr. P.H. Winfield in his learned monograph on the law of Tort (3rd Edn.) 89 vindicated the immunity of Judges on these grounds:

"If it were otherwise", he stated, "the administration of judtice would lack one of its essentials - the independence of the judges. It is better to take the chance of judicial incompentence, irritability, or irrelevance, than to run the risk of getting a Bench warped by apprehension of the consequences of judgments, which ought to be given without fear or favour. . . . . "

"This exception from liability to civil proceedings has been rather infelcitously styled a "privilege". But that might imply that the Judge has a private right to be malicious whereas its real meaning is that in the public interest it is not desirable to inquire whether acts of this kind are malicious or not. It is rather a right of the public to have the independence of the Judges preserved than a privilege of the Judges themselves." (emphasis mine)

(See Bottomley v Broughham (1908) 1 K.B. 584 - 586 - 7 per Channel, J.)

And in the 10th Edn. of Salmond on Torts 614, the last to be edited by that distinguished lawyer, the late Dr. W.T.S. Stallybrass, the principle and its justification are stated in these terms:

"A Judge of one of the superior Courts is absolutely exempt from all civil liability for acts done by him in the execution of his judicial functions. So long as the jurisdiction of the Court is not exceeded, his exemption from civil liability is absolute, extending not merely to errors of law and fact, but to the amlicious corrupt or oppressive exercise of his judicial powers. For it

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> is better that occasional injustice should be done and remain unredressed under cover of immunity, than that the independence of the judicature and the strength of the administration of justice should be weakened by the liability of /Judges/ to unfounded and vexatious charges of error, malice, or incompetence brought against them by disappointed litigants. The remedy for judicial errors is some form of appeal to a higher court, and the remedy for judicial oppression or corruption is a criminal prosecution or the removal of the offending judge, but in neither case is he called on to defend his judgment in a suit for damages brought against him by an injured litigant."

With minor modifications, which are not material, the same principles are repeated at p. 416 of the 16th Edn. of Salmond on Torts by Dr. R.F.V. Heuston.

These impeccable principles of the common law, articulating the scope, object and significance of judicial immunity, merit solemn and deliberate repetition in this case, for the purpose of emphasizing the truism, that if judges are denuded of this protection, then not only will it have the disastrous consequence of shattering the independence of the Judiciary, enshrined in the very Constitution under which the appellant has moved the Court, but the rueful day will have descended upon this country when, if I may respectfully borrow the memorable quip of Lord Gifford, in Miller v Hope (1824) 2 Sh. Sc App. 125, 143 (H.L.) "no man but a beggar or a fool would be a judge".

Having regard to the facts of the instant case, Sirros v Moore (suppra) is of particular interest. There, a judge of the Crown Court in England, ordered the detention of the plaintiff after his appeal was dismissed in circumstances which made it unlawful. He did so in the mistaken belief that he had power to do so. The Plaintiff sued the judge and others for assault and false imprisonment, but it was held, inter alia, by the Court of Appeal that he had no cause of action against the judge because -

> "Every judge of the superior and inferior courts, including a justice of the peace, was entitled to protection from liability in damages in respect of what he had done while acting judicially and under the honest belief that his act was within his jurisdiction, although in consequence of a mistake of law or fact, what he had done was out-

side his jurisdiction. The judge was therefore protected since although he had been mistaken in his belief that he had power to detain the plaintiff he had acted judicially and in good faith." (emphasis mine).

Neither the bona fides of Maharaj, J. in the instant case, nor his jurisdiction to commit for contempt in the face of the Court, was ever doubted or questioned by the appellant. On the contrary, Mr. Turner-Samuels expressly accepted them in the course of his submissions to the Court. But the learned judge made two errors of fact and law in committing the appellant to prison. Firstly, he mistakenly inferred from the appellant's answer to the specific question put to him, that he had made "a vicious attack on the integrity of the Court"; and secondly, he found the appellant guilty of contempt before, and without specifying to him the precise nature of it. Two questions therefore, of crucial importance to the due administration of justice, arise for decision: (i) was the appellant in the circumstances hereinbefore narrated, deprived of his liberty without process of law; and (ii) if so, in his motion to the Court for redress under s. 6 of the Constitution, an attempt to penetrate the immunity and undermine the independence of the Judges of this country, one of the essentials of the due administration of justice as Dr. Winfield described it; or, to put in another way, is his application for redress an attempt to subvert the rule of law in our society by displacing the chief corner-stone that sustains it, to wit, the independence of the judiciary? Let me take the second question first.

Mr. Turner-Samuels was at pains to maintain that the application before the Court was not to be confused with an action against Maharaj, J. or the Attorney General for the tort of false imprisonment. Rather, it was one by the appelant against the State for redress for what was termed his "unconstitutional detention", for seven days. It was unconstitutional, he said, because firstly, the appellant's detention was not authorised by any law in force within the meaning of s. 3 of the Constitution; and secondly, it was effected in an arbitrary manner without due process of law, in that, the learned judge convicted him of contempt without specifying to him the precise nature of it.

In reference to the first proposition, Ipause here to observe that, as formulated, it is somewhat misleading. The question is not whether the appellant's unlawful detention was authorised by a law in force, (indeed, no valid law in force could be held to authorise an unlawful detemtion), but whether

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a law in force, authorised or conferred jurisdiction on the judge to convict the appellant for contempt in the face of the Court and to sentence him to prison therefor. The answer to this is indisputably, in the affirmative. And in reference to the second proposition, I would only observe that it is hardly reasonable, or fair, to condemn as arbitrary, an order which is the offspring of a regrettable error of fact and law, made in good faith by a judicial officer in the course of discharging his judicial functions.

Counsel's submission that the appellant was entitled to redress under s.6, was founded on the proposition that the rights and freedoms enshrined in s. 1 and particularised in s.2 of the Constitution, were a new species of rights and freedoms derived from and created by Constitutional Law. As such, they were sui generis and stood above the common law, which, he pointed out, was not concerned with rights and freedoms, but with the prohibition of different kinds of wrongs stemming from tort, breach of contract and criminal conduct.

Being a new species of rights and freedoms, he argued, they were not subordinate to, or qualified by, the principles of the common law, and consequently neither the doctrine of judicial immunity developed thereunder nor the State Liability Act 1966 (which I note, en passant, gives statutory sanction both to that doctrine and to the exemption of the Crown from vicarious liability for acts done or words spoken by judges in their judicial capacity), had any application to the appellant's claim. Counsel's contention therefore, came to this: the common law in force at the commencement of theConstitution (and it must necessarily follow the law other than the common law likewise in force), had no effect upon the rights and freedoms enshrined in ss.1 and 2 of the Constitution and accordingly, was no barrier to the appellant's claim for redress for his 'unconstitutional detention'.

Counsel's submissions were both novel and interesting, but I trust that I do not injustice to him by discounting them with the observation, that they failed utterly, to grasp the full significance and effect of two vital considerations: (i) the recital in Chapter 1 of the Constitution, by which it was declared and recognised, that the rights and freedoms enshrined in s.1 and particularised in s.2 thereof, have existed in Trinidad and Tobago prior to the commencement of the Constitution and that the self-same rights and freedoms shall continue to exist thereafter; and (ii) the provisions of s.3 in Chapter 1 aforesaid, which expressly and in perfectly clear terms stipulate that ss. 1 and 2 containing, what might be conveniently called the Bill of

Rights of the people of Trinidad and Tobago, shall not apply in relation to any law in force at the commencement of the Constitution.

In D.P.P. v Nasralla (1967) 2 All E.R. 161, the Privy Council had occasion to consider the provisions of Ch. III of the Constitution of Jamaica, the scope, intention and effect of which, are for all practical purposes the same as those of Chapter 1 of the Constitution of Trinidad and Tobago, in reference to fundamental rights and freedoms, the protective provisions which shield them against perfunctory alterations, and the status of the laws in force at the commencement of independence. In delivering the opinion of the Privy Council, Lord Devlin stated at p. 165:

> "Whereas the general rule, as is to be expected in a Constitution .... is, that the provisions of the Constitution should prevail over other law, an exception is made in Ch. III. This Chapter, proceeds on 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 object of these provisions is to ensure that no future enactment shall in any matter which the Chapter covers derogate from the rights which at the coming into force of the Constitution the individual enjoyed'. (emphasis mine).

Lord Devlin then quoted the provisions of s.26(8) of Ch. III of the Jamaica Constitution (the counterpart of s.3 of the Constitution of Trinidad and Tobago which provided that ss. 1 and 2 thereof shall not apply in relation to any law in force at its commencement), referred to the respondent's argument that "law" in s. 26(8) was confined to enacted law, and continued:

> "Notwithstanding that 'law' is in s. 1(1) of the /Jamaica/ Constitution defined as including 'any instrument having the force of law and any unwritten rule of law' /the same as s. 105 of the Constitution of Trinidad and Tobago/ the respondent has argued that 'law' in s.26(8) is confined to enacted law and excludes the common law so that if on its true construction, s. 20(8) expressed the law of autre fois differently from the common law, s. 20(8) must prevail. In their Lordships' opinion this argument clearly

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fails and was rightly rejected by Lewis, J.A. in the Court of Appeal".

The Privy Council adverted once more to the presumption under reference in the later case of de Freitas v Benny and Ors. (1976) A.C. 239. On that occasion, Lord Diplock spoke for the Board and said at p. 244.

> "Chapter 1 of the Constitution of Trinidad and Tobago, like the corresponding Chapter 111 of the Constitution of Jamaica (See D.P.P. v Nasralla (1967) 2 A.C. 238) proceeds on the presumption that the human rights and fundamental freedoms that are referred to in sections 1 and 2 are already secured to the people of Trinidad and Tobago by the law in force there at the commencement of the Constitution. Section 3 debars the individual from asserting that anything done to him that is authorised by a law in force immediately before August 31, 1962 abrogates, abridges, or infringes any of the rights or freedoms recognised and declared in section 1 or particularised in section 2." (emphasis mine).

Lord Devlin's dictum received renewed confirmation in Baker v The Queen (1975) 3 All E.R. 55, another decision of the Privy Council, in which Lord Diplick, delivering the opinion of the Board, held that a statute in force at the commencement of Jamaica Constitution prevailed over s.20(7) thereof with which the said statute was at variance.

Proceeding then on the footing, as I must, that the fundamental rights and freedoms specified in Chapter 1 of the Constitution, were already secured to the people of Trinidad and Tobago by the law in force at its commencement, I have arrived at the conclusion and so hold, that Chapter 1 contains what is essentially a codification of the rights and freedoms developed under the common law of England which, in so far as it was not at variance with or abrogated by enacted law, was introduced with effect from 1 March 1848 in Trinidad, and 1 January 1889 in Tobago. (See s.12 of the Supreme Court of Judicature Act 1962).

Prior to the commencement of the Constitution, these rights and freedoms were labelled "the liberties of the subject". They continue to be so labelled in England. As such they owe their origin and development to (i) the four great charters or statutes declaring the fundamental laws of England, namely, Magna Carta of Edward 1 (1297); the

Petition of Right 1627; the Bill of Rights 1688, confirmed by the Crown and Parliament Recognition Act 1689); the Act of Settlement 1700; and (ii) decisions of the Judges embodied in the law reports with the reasons which they assigned for their decisions, that is to say, the common law. (see 8 Hals. Laws of England (4th Edn.) 828; Hood & Phillips Constitutional and Administrative Law (3rd Edn.) 40 and the definition of "Common Law" in Jowitt's Dictionary of English Law.

Apart from the force of public opinion, the liberties of the subject in England owe their main protection to the action of trespass; the prerogative orders, and particularly the writ of habeas corpus as reinforced by the Habeas Corpus Acts of 1679, 1803 and 1816; trial by jury; the fact that except in the case of the sovereign who can do no wrong in the eyes of the law, and whose person is inviolable, and excepting too, the protection afforded to the judiciary whilst acting in their judicial capacity, and the limited protection afforded to magistrates and justices of the peace, all persons are equally subject to the jurisdiction of the courts, and may be made liable for any infringement of the rights and liberties of others; and the rule of construction, that statutes and other legislative acts are so far as possible to be interpreted, so as not to cause interference with the vested rights of the subject. (See 8 Hals. Laws (4th Edn.) 829).

Under the British Constitution, the liberties of the subject are not and have never been regarded as fundamental rights in the strict sense, because being unwritten, any part of the Constitution can be changed by an ordinary Act of Parliament. As Lord Wright said in Liversidge v Anderson (1942) A.C. 206, in the Constitution of England "there are no guaranteed or absolute rights".

It cannot be disputed, in my judgment, that the "main protection" not only remained attached to the liberties of the subject when they were translated to the Constitution, but that it was fortified in a special way, This was achieved firstly, by spelling out the said liberties of the subject therein and labelling them "human rights and fundamental freedoms"; secondly, by providing machinery tokeep them entrenched thereunder; and thirdly, by conferring on the citizens an additional means of gaining prompt access to the Court, to secure their enforcement.

In this connexion, the opinion of the Privy Council expressed by Lord Diplock in Hinds & Ors v Reg. (1976) 1 All E.R. 361 in reference to the entrenchment provisions of the Jamaica Constitution, may be referred to with advantage, since it applies with equal force to Trinidad and Tobago.

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"the purpose served by this machinery for entrenchment", he stated, "is to ensure that those provisions which were regarded as important safeguards by the policical parties in Jamaica, minority and majority alike, who took part in the negotiations which led up to the Constitution should not be altered without mature consideration by the parliament and the consent of a larger proportion of its members, than the bare majority required for ordinary legislation".

The history of these rights and freedoms, and the authoritatives dicta of the Lords of the Privy Council on the provisions of the Constitution under reference, impel me to the conclusion that the codification and entrenchment of these rights and freedoms in Chapter 1, did no more than to give them a "constitutional shine", to use the picturesque description of Mr. Wharton for the respondent, and I would add, encircle them with an extraordinary sancity to protect them against capricious or facile alterations or removal, to which they were vulnerable, prior to the commencement of the Constitution. To borrow a phase from de Smith's monograph on The New Commonwealth and its Constitutions (1964) 109, they became, on their codification, and insertion in Chapter 1, a "constitutionally entrenched bill of rights, fortifying the basic rights and freedoms of the individual".

I am prepared therefore, to go as far as to accept that their codification and entrench ment set them apart, but I cannot agree that they were thereby invested with qualities or characteristics, which made them one wit different from those which they possessed prior to the commencement of the Constitution. In both worlds, they were and continue to be, in my opinion, the same rights and freedoms, enjoying the same protectiân from invasion afforded by the common law, save that after the commencement of the Constitution, the citizen is given, as I have pointed out, the additional advantage thereunder of enforcing that protection by an application under s.6 thereof.

If these are held to be new rights and freedoms, then it must necessarily be held also that the common law actions and remedies devised and developed for their protection are inapplicable to them. Such an interpretation would make nonsense of the provisions of section 6 which, it is to be notes, preserves the protection of the common law by the stipulation, that "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".

Another consequence of holding that these rights and freedoms are sui generis is, that 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 infringe such rights and freedoms. Mr. Turner-Samuels was forced, albeit reluctantly, to concede this. The argument therefore leads to this rather odd and illogical result. Whereas, prior to the commencement of the Constitution, the unlawful imprisonment of the appellant by a judge was not redressible at common law by an action against the judge or the Crown, the position after the commencement of the Constitution is, that such unlawful imprisonment is redressible by damages against the judge or the Crown, even though the common law which debarred such redress continues to be a law in force and prevails over the Constitution, by reason of s.3. The reason for this, it is said, is that the former right not to be imprisoned unlawfully, and which has always existed in Trinidad and Tobago assumed a different existence because of its entrenchment in the Constitution. It was thereby converted into a new right not to be imprisoned unconstitutionally and freed from the limitation of the common law. The argument, in my judgment, is plaintly untenable. Such a radical departure from the principle of judicial and Crown immunity would require the use of clear words in the Constitution to effect it. It is sufficient to say that no such words appear therein. For these reasons I reject the contention that Chapter 1 of the Constitution gave birth to a new species of rights and freedoms and that they are not subject to or qualified by the law in force within the meaning of s.3 thereof.

In my view, the appellant's claim for redress, as counsel for the respondent rightly contended, is in reality one for damages against the learned judge for unlawful detention or false imprisonment, however one might chose to describe the unlawful deprivation of the appellant's liberty, and the fact that he did not serve the learned judge with the motion, and proceeded only against the Attorney General, makes 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. (See Salmond on Torts (16 Edn) p.416).

In the premises, I answer the second of the crucial questions, which I posed earlier in this judgment, in the affirmative. Mr. Turner-Samuels submitted that if his contentions found favour with the Court, then its decision could well be a watershed in the administration of justice. To accept his contentions however would not, I am convinced, create, but annihilate a watershed of great antiquity and, in

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in the result, wreck the independence of the Judiciary, and the rule of law in our society. I cannot possibly lend my support to the creation of such an intolerable situation in the administration of justice.

And if it be said, as indeed counsel for the appellant submitted, that it would be a scandalous defect in the law, if someone imprisoned contrary to law by judicial authority, cannot obtain redress under the Constitution, then the answer must surely be that there are times when an individual is expected to yield, and indeed must subordinate his own interest to, a greater and higher public interest; "when it is better than an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who administer it". In this case the public interest is one which demands the preservation of one of the essentials of the due administration of justice, to wit, the independence of the judges.

Mr. Turner-Samuels stated, arguendo, that he was unaware of any instance where there was no remedy for the infringement of a legal right. I would remind him however, that the maxim ubi jus ibi remedium has its limitations; for there are various cases in which the maxim does not apply or at least an action will not lie on the grounds of public policy for a wrongful act. For the protection of justice, for example, the common law has been astute to develop and bestow immunities in several important directions, of which those given to juries in respect of their verdicts (Bushell's case (1670) 6 St. Tr. 999); parties to litigation (Astley v Younge (1759) 2 Burr. 807); witnesses (Seaman v Netherclift (1876) 2 C.P.D. 53) and most important of all, advocates (Munster v Lamb (1883) 11 Q.B.D.); Rondel v Worsley (1969) 1 A.C. 19) are well known. It cannot be denied that these immunities are indispensable to the dispensation of justice in our Courts and that without them, it would be impossible to sustain the rule of law in our society.

My conclusions make it unnecessary for me to express a firm view on the question whether the appellant was imprisoned 'without due process of law'. But I should like to sound a note of caution on the meaning and effect of that expression. It is of importance to note, that in the Constitution of Trinidad and Tobago "due process of law" does not carry the same meaning or have the same significance or history as that expression in the Constitution of the United States of America. The Supreme Court of the

United States of America, has vigorously employed that expression to develop concepts of liberty of speech, press, religion, assembly, association and other rights and freedoms (substantive due process), as well as procedural safeguards (procedural due process) in their system of justice. The Courts of America have also developed a novel theory of State Liability based on the wording of the Fourteenth Amendment of the American Constitution.

In the Constitution of Trinidad and Tobago however, most, if not all of these liberties and safeguards, are expressly set out and entrenched therein. Moreover, there is no provision in it which can properly be described as the counterpart of or has the same effect as the Fourteenth Amendment aforesaid. The decisions of the American Courts must therefore be read and considered against and subject to, the history, background and particular provisions of the Constitution of America.

In this connexion, I would invite attention to, and a close study of, the views expressed by Barwick, C.J. in Attorney General v Commonwealth (1976) A.L.R. at 593, 695. In comparing the Australian and American Constitution he noted material differences between them which, in my view, are most relevant to the construction and interpretation of the Constitution of Trinidad and Tobago and supports, if I may so with respect, the note of caution, I have sounded. He said:

> "It must always be borne in mind that the American Colonies had not only made unilateral declarations of Independence, but had done so in revolt against British Institutions and methods of government. The concept of the Sovereignty of Parliament and of ministerial responsibility were rejected on the formation of the American Constitution. Thus, not only does the American Constitution provide for a presidential system but it provides for checks and balances based on the denial of complete confidence in any single arm of government.
>
> In high contradistinction, the Australian Constitution was developed not in antagonism to British methods of government, but in complete co-operation with and to a great extent, with the encouragement of the British Government".

Care must also be taken in seeking guidance on constitutional questions determined by the Supreme Court of India, since the words "according to law" were deliberately substituted

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in the Constitution of India, for the expression "due process of law" appearing in the American Constitution, to avoid no doubt, the American experience in the interpretation of that expression.

To this note of caution I would add, that after giving consideration to the question raised in the case on due process, I entertain grave doubts in my own mind 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. The other questions raised by counsel for the appellant do not, in the circumstances, call for an answer.

I would dismiss the appeal with costs here and in the court below.

Isaac E. Hyatali
Chief Justice.

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IN THE COURT OF APPEAL

Civil Appeal
No. 75 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL 1962

Between

RAMESH LAWRENCE MAHARAJ — Appellant/Applicant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO — Respondent.

Coram: Sir Isaac E. Hyatali, C.J.
C,E,G, Phillips, J.A.
M.A. Corbin, J.A.

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David Turner-Samuels, Q.C., and Dr. F. Ramsahoye, S.C. (Basdeo Persad-Maharaj with them) - for the appellant.

J.A. Wharton, S.C, and the Ag. Solicitor-General, Clinton Bernard (C. Brooks, State Counsel, with them) - for the respondent.

J U D G M E N T

Delivered by Phillips, J.A.:

The facts of the case out of which this appeal arises have been adequately set out in the judgment of the learned President. I accordingly commence this judgment by referring to the following extracts from the reasons for the advice to Her Majesty of the learned Lords of the Judicial Committee of the Privy Council allowing the appellant's appeal against the order of Maharaj, J. committing him to seven days' simple imprisonment for contempt in the face of the Court:

> "In charging the appellant with contempt, the learned Judgedid 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 contemnor 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 reasons as 'a vicious attack on the integrity of the Court' vitiates the committal for contempt. Had the learned judge given these particulars to the appellant, as he should have done, the appellant would no doubt have explained that the unjudicial conduct of which he complained had nothing to do with the judge's integrity but his failure to give the appellant's clients a chance of being heard before deciding against them".

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The order thus set aside by the Privy Council was made on April 17, 1975. On the same day the appellant issued a n notice of motion in the High Court whereby he claimed (inter alia):

(a) A declaration that the said order was "unconstitutional, illegal, void and of no effect."

(b) An order for damages for wrongful detention and false imprisonment.

(c) All such orders, writs, including a writ of habeas corpus, and directions as may be necessary or appropriate to secure redress by the applicant for a contravention of the human rights and fundamental freedoms guaranteed to him by the Constitution of Trinidad and Tobago.

This motion was made in pursuance of the provisions of s. 6 of the former Constitution (hereafter called "the Constitution), being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962. So far as is material they are in the following terms:

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 7 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 -

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

"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 7 to the protection of which the person concerned is entitled."

Hearing of the motion took place before Scott, J. on various dates commencing on April 23 and ending on June 27, 1975. In a considered judgment delivered on July 23, 1975 the learned judge dismissed the application, holding (inter alia):

(1) that the High Court had no jurisdiction to entertain the motion;

(2) that, in any event, the applicant was guilty of contempt of Court and accordingly not entitled to the redress claimed;

(3) that, even on the assumption that he was not guilty, he was precluded from obtaining redress as a result of the operation of the common law principle which confers immunity upon High Court judges for acts done in the performance of their duties.

The reason why the judge held that he had no jurisdiction to entertain the motion is to be gleaned from the following excerpt from his judgment:

"This Court is not vested with any appellate jurisdiction in regard to this motion and in my view has no power to deal with a matter of this nature arising in the High Court of Justice. It would seem with respect that sub-section 3 of section 6 having envisaged that any matter of a constitutional nature could be referred from a court of inferior jurisdiction to the High Court, and that an appeal would be to the Court of Appeal from any decision of the High Court, that the incongruous situation was not contemplated of the High Court dealing with a matter from the High Court itself or from theCourt of Appeal".

It appears from this passage as well as from one which will be referred to later that the judge was of opinion that as the motion was made in relation a matter decided by the High Court it was in effect requesting him to exercise an appellate jurisdiction. This opinion, however, fails to take into account the extreme generality of the language of s.6 of the Constitution which is applicable to any case where

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"any person alleges that any of the provisions of the foregoing sections ..... has been, is being or is likely to be contravened in relation to him." Prima facie, no exception is made in respect of any alleged contravention by any person or class of persons.

The appellant's allegation was that the manner of his committal to prison by Maharaj, J. was in contravention of his fundamental rights enshrined in s. 1(a) of the Constitution viz:

> "the right of the individual to ..... liberty, security of the person . . . . and the right not to be deprived thereof except by due process of law."

Section 6 contains no words of limitation and, in my judgment, it is manifest that, purely as a matter of construction, the making of such an allegation is 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. I am fortified in this view by certain observations of Lord Morris of Borth-y-Gest speaking on behalf of the Privy Council in Olivier v. Buttigieg, (1967) A.C. 115. With reference to s. 16(1) and (2) of the Constitution of Malta, the terms of which were substantially similar to those of s.6(1) and (2) of the Constitution under review, Lord Morris stated (ibid. at p. 127):

> "It is to be observed that an application may be made by a person who alleges that any of the provisions referred to 'has been, is being, or is likely to be contravened in relation to him.' The respondent so alleged. He alleged that the provisions of s.13 and s.14 had been and were being contravened and that they were so contravened' in relation to him'. He therefore invoked the enforcement procedure laid down in s.16".

It appears to me that support for this view is also provided by Jaundoo v. The Attorney-General of Guyana (1971) A.C. 972, in which the Privy Council had to determine whether an originating notice of motion was a proper procedure for the invocation by a land-owner of the jurisdiction of the High Court for the purpose of adjudication of the question as to whether the compulsory acquisition of her property by the Government contravened her fundamental rights under article 8 (1) of the Constitution of Guyana. Delivering the

judgment of the Judicial Committee, who reserved the dicision of the Court of Appeal of Guyana and remitted the motion to the High Court for hearing on its merits, Lord Diplock said (ibid. at pp. 982-983):

> "To'apply to the High Court for redress' was not a term of art at the time the constitution was made . . . . . It was a newly created right of access to the High Court to invoke a jurisdiction which was itself newly created by article 13 (2) of the 1961 Constitution now replaced by article 19(2) . . . . . The clear intention of the Constitution that a person who alleges that his constitutional rights are threatened should have unhindered access to the High Court is not to be defeated by any failure of Parliament or the rule-making authority to make specific provision as to how that access is to be gained."

(The italicisation is my own).

I now pause for the purpose of setting out the second extract from the judgment of Scott, J. to which I earlier made reference. It is as follows:

> "the applicant quite commendably although somewhat belatedly declared in this Court that he unreservedly withdrew any remark made in the Court of Mr. Justice Maharaj and considered offensive by that judge.
>
> Had this Court had the appellate jurisdiction with the requisite, necessary and enabling powers seemingly ascribed to it in the course of the hearing of this motion, this Court would have unhesitantingly accepted the apology tendered, considered the contempt purged and there the matter would have ended as far as this Court is concerned, No such power, however, resides in this Court."

This statement illustrates the extremely unfortunate consequences of the error made by the learned judge. The result was that having (inter alia) held that he had no jurisdiction to entertain the motion and, accordingly, the apology tendered by the appellant, the judge felt that he had no alternative

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but to order the appellant to serve the remainder (i.e. six days) of the term of seven days' simple imprisonment imposed upon him by the committal order.

That order having been declared unlawful by the Judicial Committee of the Privy Council, the first issue that arises for consideration is whether (to use the words of counsel for the appellant) the order "was effected in a manner which infringed any of the appellant's constitutional rights". The rights that are primarily in question here are those expressed in s.(1 (a) and (b) of the Constitution 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,
>
> (a) the right of the individual to . . . liberty, security of the person . . . . . and the right not to be deprived thereof except by due process of law;
>
> (b) the right of the individual to . . . the protection of the law."

In Lassale v. The Attorney-General (1971) 18 W.I.R. 379, this Court had occasion to give a brief historical review of due process and, more particularly, the requirements of procedural due process in a case in which the validity of the Defence (Amendment) Act, 1970 was unsuccessfully impugned. I then made certain observations which I believe may usefully be applied to the present case. I said (ibid)at p. 391) that in relation to the criminal law the expression "due process of law"

> "connotes adherence, inter alia, to the following fundamental principles -
>
> (i) reasonableness and certainty in the definition of criminal offences;
>
> (ii) trial by an independent and impartial tribunal;

(iii) observance of the rules of natural justice.

It is worthy of notice that the observance of two of these safeguards is expressly provided for by s.2, paras. (e) and (f) of the Constitution . . . . . ."

Section 2 of the Constitution guaranteed the continuance of independent Trinidad and Tobago of the fundamental rights and freedoms declared in s.1 by providing that, subject to certain exceptions, no future law should abrogate, abridge, or infringe or authorise the abrogation, abridgment or infringement of any of those rights, and among the specific prohibitions laid down by the section is that contained in para. (e), viz, that no Act of Parliament shall -

(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."

The observance of this right, although not specifically declared to be a fundamental right by s.1, is clearly intended to procure (and indeed is a sine qua non of) the observance of the fundamental rights declared in s.1 (a), hereafter sometimes described as "the due process clause" of the Constitution. This point was amply elucidated by the PrivyCouncil on May 15, 1975, in the reasons for their dismissal ofthe appeal of Michael de Freitas also called Michael Abdul Malik against the sentence of death imposed upon him for murder on the ground that it was a "cruel and unusual punishment" within the meaning of s. 2(b) of the Constitution. I respectfully adopt the observations of Lord Diplock, who then said /(1976) A.C. 239 at p. 245/:

"The specific prohibitions upon what may be done by future Acts of Parliament set out in paragraphs (a) to (h) of section 2 and introduced by the words 'in particular', are directed to elaborating what is meant by 'due process of law' in section 1(a) and 'the protection of the law' in section 1(b). They do not themselves create new rights or freedoms additional to those recognized and declared in section 1. They merely state in greater detail what the rights declared in paragraphs (a) and (b) of

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section 1 involve."

This opinion was, if I may say so with great respect, adumbrated by this Court in Lassalle v. The Attorney-General (supra) and in Bazie v. The Attorney-General, 18 W.I.R. 113 when I said (ibid. at p. 123):

> "The observance of these /procedural/ safeguards is, in my view, an essential requirement for the preservation of all the substantive rights and freedoms guaranteed by s.1 of the Constitution."

It is against this background that the determination of the first issue raised by this appeal must be approached. As clearly appears from the reasons of the Judicial Committee for holding that the appellant's committal to prison was unlawful, the basic error that was made (albeit unwittingly) by Maharaj, J. was his failure to give the appellant full particulars of the offence 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. Contempt in the face of the Court is sui generis. It is a common law criminal offence of which cognizance is taken by a swift and summary procedure. It is, therefore, of paramount importance that any judicial officer who seeks to exercise such a power should do so with the utmost caution and restraint.

It has not been suggested that any mistake whatever made by a judge in the conduct of judicial proceedings would provide a proper basis for a claim that the due process clause of the Constitution has been infringed. A single example will suffice to illustrate this - the case of the conviction of a defendant resulting from mis-direction on the law by a judge conducting a criminal trial before a jury. In such a case, while the alleged misdirection may be sufficient to procure the acquittal of the defendant on an appeal, it would normally not be such as to found an allegation of an infringement of the defendant's fundamental rights under s.1 of the Constitution.

It is, however, clear both from principle and authority that an essential ingredient of procedural due process is that an individual should have a full opportunity of being heard. This requirement is often described as being one of the two cardinal rules of natural justice - the audi alteram partem rule. On this topic I can do no better than quote certain illuminating extracts from Professor de Smith's monograph

on the Judicial Review of Administrative Action, (3rd edn,). The learned author introduces the topic by stating (at p.134):

> "In English Law the rules of natural justice perform a function, within a limited field, similar to the concept of procedural due process as it exists in the United States, a concept in which they lie embedded . . . . . ."

After referring to the fact that the expression "natural justice" has met criticism in certain quarters and that there are in use other terms of similar import, e.g. "substantial justice", "fundamental justice", he continues (at pp. 135 - 136) as follows

> " . . . the term expresses the close relationship between the common law and moral principles and it has an impressive ancestry. That no man is to be judged unheard was a precept known to the Greeks, inscribed in ancient times upon images in places where justice was administered, proclaimed in Seneca's Medea, enshrined in the scriptures, mentioned by St. Augustine, embodied in Germanic as well as African proverbs, ascribed in the Year Books to be the law of nature, asserted by Coke to be a principle of divine justice, and traced by an eighteenth-century judge to the events in the Garden of Eden."
>
> . . . . . .
>
> "No proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him, unless the Legislature has expressly or impliedly given an authority to act without that necessary preliminary,"
>
> (Bonaker v. Evans (1850) 160.B. 162, 171, per Parke, B.)

The first ten Amendments to the Constitution of the United States of America were adopted in 1791, the Fourteenth in 1868.

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The Fifth Amendment prohibits by necessary implication state action resulting in an infringement of due process of law. The Fourteenth does so in express terms. The material provisions are as follows:

The Fifth Amendment (1791)

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . . . nor shall /any person/ be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment (1868)

"Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the Unites States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In Twining v. New Jersey, 211 U.S. 78, (at pp. 110 -111) Mr. Justice Moody, delivering the majority opinion of the Supreme Court, stated the requirements of procedural due process in the following terms:

"The essential elements of due process of law, already established . . . are singularly few, though of wide application and deep significance . . . . . We need notice now only those cases which deal with the principles which must be observed in the trial of criminal and civil causes. Due process requires that the court which assumes to determine the rights of the parties shall have jurisdiction, and that there shall be notice and opportunity for hearing given the parties. Subject to these two fundamental conditions, which seem to

be universally prescribed in all systems of law established by civilised countries, this court has up to this time sustained all state laws, statutory or judicially declared, regulating procedure, evidence, and methods of trial, and held them to be consistent with due process of law."

In Hovey v. Elliott, 167 U.S. 409, Mr. Justice White, speaking for the Supreme Court, said at pp. 417 -418)

"Can it be doubted that due process of law signifies a right to be heard in one's defence? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution? If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment, to compel obedience to law and to enforce justice courts possess the right to inflict the very wrongs which they were created to prevent."

I consider that enough has been said to demonstrate that the manner of the appellant's committal to prison by Maharaj J. was prima facie a contravention of the right enshrined by s.2(e) of the Constitution, viz:

". . . the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations",

and, therefore, a contravention of his fundamental rights

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conferred by s.1(a) and (b).

It is necessary, however, to deal with the main submission of counsel for the respondent which was to the effect that s.3 (1) of the Constitution protects the proceedings under review against the taint of unconstitutionality. That provision is in the following terms:

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 the Constitution."

The gist of the argument was that, since the common law relating to contempt in the face of the Court was a law in force at the date of the commencement of the Constitution (August 31, 1962) s.1 was not applicable to it and, accordingly, it was not susceptible of constitutional infringement. With great respect, I hasten to express my opinion that this proposition has only to be stated in order to be rejected.

A clear illustration of the object os s.3 of the Constitution is to be found in the case of The Trinidad Island-Wide Cane Farmers' Association AND The Attorney General v. Prakash Seereeram (Civil Appeals Nos. 11 and 14 of 1975) in which this Court, in a judgment delivered on December 5, 1975, pronounced against the constitutional validity of the Cane-Farmers Incorporation and Cess Act, 1965 on the ground that its provisions contravened s.2 of the Constitution by reason of the imposition on cane-farmers of compulsory membership in the Association as well as the payment of a cess deductible from moneys payable to them as the price of canes sold to sugar manufacturers. On behalf of the appellants it was contended that the Act was substantially a reproduction in identical form of the Cane-Farmers Incorporation and Cess Ordinance, 1961, (which it repealed and revived with amendments) and was therefore continued in existence by s.3(2) of the Constitution, notwithstanding the fact that the impugned provisions violated the respondent's prima facie constitutional right not to be deprived of his property except by due process of law (s.1(a) as well as his right to freedom of association (s.1(j)). This argument was unanimoulsy rejected by the Court; but it was not in dispute that, had it prevailed, the appeal would have succeeded despite the alleged infringements. It was clearly recognised that had the 1961 Ordinance not be repealed there could not have been a successful challenge to its validity.

The kernel of the matter is that a clear distinction must of necessity 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 my opinion, the flaw in counsel's submission is its failure to recognise this distinction. The object of s.3 (1) is to continue the existence of substantive laws per se and not to exempt the procedure for their administration from the constitutional restraints imposed by s.1(a) and (b) and s2. It is not in dispute that by reason of s. 3 (1) of the Constitution as well as s. 12 of the Supreme Court of Judicature Act, 1962 there was in existence at the date of the committal order a common or "unwritten" law relating to contempt in the face of the Court. This was the substantive law which conferred on Maharaj, J. the jurisdiction which he purported to exercise. It is equally, however, not open to dispute that neither this nor any other law authorized him when adjudicating on the matter to depart from a strict adherence to the principles of natural or "fundamentsl justice" as required by s.2(e) of the Constitution. As stated in the PrivyCouncil's judgment allowing the appellant's appeal:

> "justice certainly demanded that the learned judge should have /adhered to those principles/ in this particular case."

The next issue for determination is the nature of the redress, if any, to which the appellant is entitled, including the question as to whether the respondent is a proper party against whom redress may be claimed. On behalf of the respondent it was submitted that the appellant's complaint is made in relation to the act of a judge of a superior Court of Record done in pursuance of his judicial authority and is, accordingly, not justiciable. The principle of judicial immunity is expressed in Salmond on The Law of Torts, (14th edn.) p.580 para. 167 in the following words:

> "A judge of one of the superior courts is absolutely exempt from civil liability for acts done by him in the execution of his judicial functions. His exemption from civil liability is absolute, extending not merely to errors of law and fact, but to the malicious, corrupt, or oppressive exercise of his judicial powers. For it is better that occasional injustice should be done and remain unredressed under the cover of this immunity than that the independence of the judicature and the

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> strength of the administration of justice should be weakened by the liability of judges to unfounded and vexatious charges of error, malice, or incompetence brought against them by disappointed litigants. The remedy for judicial errors is some form of appeal to a higher court, and the remedy for judicial oppression or corruption is a criminal prosecution or the removal of the offending judge; but in neither case can he be called upon to defend his judgment in an action for damages brought against him by an injured litigant. Nor is the Crown vicariously liable for his acts."

This principle is amply illustrated by the well-known case of Anderson v. Gorrie and others (1895) 1 Q.B. 668, in which the English Court of Appeal had occasion to invoke it in an appeal against the judgment of Lord Coleridge, C.J., in favour of Cook, J., one of three defendants who were judges of the Supreme Court of the then Colony of Trinidad and Tobago.

The continued existence of this principle after the commencement of the Constitution of independent Trinidad and Tobago is acknowledged in the Crown Liability and Proceedings Act, 1966, the object of which is (inter alia) "to amend the law relating to the civil liabilities and rights of the Crown and to civil proceedings by and against the Crown". What may be regarded as the major innovation effected by the Act is the vicarious liability of the Crown for torts committed by its servants or agents. /See s.4 (1) and (2)/. In respect, however, of acts of judicial officers the vicarious liability of the Crown is expressly excluded by s.4(6) which provides that:

> 4.(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."

It is obvious that the raison d'etre of this exception is the common law exemption of judicial officers from civil liability for acts committed in the performance of their duties. It

was strenuously contended by counsel that it was not competent for the appellant to maintain the present proceedings. The argument ran as follows. The act which is the subject matter of complaint is that of Maharaj, J. in committing the appellant to a term of imprisonment without legal justification. Even on the assumption that it may properly be held to be a contravention of any of the appellant's fundamental rights conferred by s. 1 or 2 of the Constitution, it does not in substance cease to be the tort of false imprisonment for which no liability can attach either to the Judge or, vicariously, to the respondent.

It is convenient at this point to quote the following brief statement relating to "the domains of the law of tort" that appears in 37 Halsbury's Laws of England (3rd Edn.) para. 187:

> "The scope of the rights to relief so made available by English Law constitutes what has been termed the province of the law of tort. The historical origins of English jurisprudence and the consequential importance which was formerly attached to particular forms of actions have led to the division of the province into distinct domains, for example, trespass, nuisance, detinue, negligence, so that some jurists have preferred to consider this branch of the law as a body of rules establishing specific injuries and unconnected by any general principle of liability. Whichever of those alternative analyses is preferred, however, it seems indisputable that, from time to time in the past, the common law has created new duties and liabilities and has the capacity to do so in the future, founded either in principle or authority if it is to be upheld."

I consider this passage relevant for the purpose of elucidating what appears to me to be a clear juridical distinction between a tort, whether arising from the infringement of a common law right or breach of a statutory duty, and the contravention of an individual's fundamental rights within the meaning of ss. 1 and 2 of the Constitution. A tort is conceptually a creature of the common law, which gradually developed the principle of judicial immunity in relation to acts of judicial officers performed in their official capacity. (See Holdsworth, History of English Law,

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Vol.6 pp. 234 - 240). Any such act is not subject to judicial enquiry for the purpose of the imposition of civil liability within the province of the law of torts. It has not, however, been submitted that there is any general principle of law which exempts any such act from the scrutiny of a competent Court of Judicature for the purpose of establishing whether it is a contravention of an individual's fundamental rights conferred upon him by the Constitution. The untenability of any such argument is, in my respectful view, clearly borne out by the opinion so felicitously expressed by Lord Diplock, delivering the majority judgment of the Judicial Committee of the Privy Council in Hinds and others v. The Queen, /1976 2 W.L.R. 366 at p. 373/ to the following effect:

> "The more recent constitutions on the Westminister model, unlike their earlier prototypes, include a Chapter dealing with fundamental rights and freedoms. The provisions of this Chapter from part of the substantive law of the state and until amended by whatever special procedure is laid down in the constitution for this purpose, impose a fetter upon the exercise by the legislature, the executive and the judiciary of the plenitude of their respective powers."

A useful description of a fundamental right is provided in Basu's Commentary on the Constitution of India, (5th Edn,) Vol. 1, pp. 126 - 127, where the author states:

> "A legal right is an interest which is protected by law and is enforceable in the courts of law. While an ordinary legal right is protected and enforced by the ordinary law of the land, a fundamental right is one which is protected and guaranteed by the written Constitution of a State. These are called 'fundamental' because while ordinary rights may be changed by the Legislature in its ordinary process of legislation, a fundamental right, being guaranteed by the Constitution, cannot be altered by any process shorter than that required for amending the Constitution itself. Nor can it be suspended

> or abridged except in the manner laid down in the Constitution itself."

In my judgment, the contravention of a fundamental right conferred by the Constitution lies outside the province of the law of torts, even though the consequences arising from it maybe identical with a class of acts that fall within that province. It follows, therefore, that such a contravention must be justiciable in the manner provided for by the Constitution.

Reference has already been made in another context to certain observations of Lord Diplock in Jaundoo v. The Attorney General of Guyana (supra). I am of the view that they are equally applicable to this issue now being considered and I would respectfully adapt them by expressing my opinion that the right newly created by s.6 of the Constitution for the purpose of enabling an individual to obtain redress in the prescribed circumstances is not to be defeated by any failure of Parliament or the rule-making authority to make specific provision as to the identity of the party from whom redress is to be sought. This conclusion is the logical result of the application of the rule that instruments are to be construed ut res magis valeat quam pereat. In these circumstances it appears to me to be incredible that the Constitution should, in conformity with the desire of the people of Trinidad and Tobago, solemnly expressed in its preamble, enshrine certain fundamental rights and freedoms, make express provision for juridicial redress for a contravention of those rights, and yet be open to the construction that no effective remedy should be available in respect of any such contravention. Even the common law, originally fettered by the constraints imposed by the forms of action, has for a long time acknowledged the predominance of the principle - "ubi jus ibi remedium". It is manifest that this principle applies a fortiori to the precepts of a written Constitution, the supreme law of the land.

It is in the light of these considerations that it is necessary to approach counsel's submission that the appellant is not entitled to redress and that, in any event, the Attorney-General is not a proper party to the proceedings. It should here be stated, in parenthesis, that in my opinion the appellant adopted the correct course in not making Maharaj J. a parto to the originating motion. There is nothing in the Constitution which requires that a judicial officer should be held personally liable for a contravention of the due process clause, and it seems to me that the principle of judicial immunity from civil liability for acts done in the exercise of judicial functions is one of universal application and must

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be held applicable to the present case for the same reasons for which it applies to ordinary civil litigation. This, however, does not mean that the appellant is not entitled to redress.

Counsel's submission was based on the proposition that the appellant's claim to redress is in essence founded upon an allegation of the commission of the tort of false imprisonment in a situation in which there was no right of appeal as such, although the appellant had (and exercised) the right, founded upon the Sovereign's prerogative power, of applying for special leave to appeal to the Judicial Committee of the Privy Council. The argument appeared to be that the appellant had already obtained from the Judicial Committee all the redress to which he is legally entitled, viz: a declaration of the unlawfulness of his imprisonment. It must, however, be emphasized that the PrivyCouncil's decision does not purport to be a declaration that the appellant's fundamental rights under the Constitution have been contravened, and that the redress envisaged by s. 6 is "without prejudice to any other action with respect to the same matter which is lawfully available."

As to the claim for damages which was not a subject matter of adjudication by the Privy Council, the contention was that since judicial immunity did not permit the grant of this remedy against Maharaj, J. in respect of the tort of false imprisonment, it was not competent for the appellant to seek it from the respondent under the guise of constitutional proceedings. The Attorney-General,it was said, had no connection whatever with the proceedings, nor could the State (formerly "the Crown") be held to be vicariously liable to pay damages for a tort alleged to result from the act of a judge of the High Court.

I am unable to accept this contention. In addition to the juridical distinction which I have already sought to draw between the mere commission of a tort, which is amenable to the ordinary law of the land, and a contravention of an individual's constitutional rights, I would advert to the fact that in the present case the alleged contravention was the direct result of an act of the State authority specifically enjoined by the Constitution to secure the enforcement of its provisions and to give redress in respect of any contravention. In this connection it is pertinent to call attention to the essential nature of a written Constitution which is described in Wade and Phillips, Constitution Law , (8th edn.) (at p. 1) as follows:

"By a constitution is normally meant a document having a special legal sanctity which sets out the framework and the principal functions of the organs of government of a State and declares the principles governing the operation of those organs. Such a document is implemented by decisions of the particular organ, normally the highest court of the State, which has power to interpret its contents. In addition there are gradually evolved a number of conventional rules and practices which serve to attune the operation of the constitution to changing conditions and thereby avoid, in the main, alterations to a written document which is designed to be permanent in its operation. It is thus that a document framed in 1787 remains in force today, with few important amendments, as the constitution of the United States of America."

In order to ensure a full appreciation of the true nature of the fundamental rights declared by Chapter 1 of the Constitution it is necessary not to lose sight of the fact that the Chapter is preceded by a preamble which may compendiously be described as an assertion by the People of Trinidad and Tobago of their belief in the principles of "liberty, equality, fraternity" and an expression of their desire that "their Constitution should enshrine /those/ principles and beliefs." For the purpose of giving effect to this objective s.1 provides as follows:-

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,

(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;

(b) the right of the individual to

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equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(g) freedom of movement;

(h) freedom of conscience and religious belief and observance;

(i) freedom of thought and expression;

(j) freedom of association and assembly; and

(k) freedom of the press,"

What is immediately noticeable is the extreme generality of the language of these provisions, the two most striking characteristics of which are as follows:

(1) Most of the rights and freedom declared by these provisions are prima facie not susceptible of infringement by a mere private individual.

(2) All the rights and freedoms are susceptible of infringement by the State of some other public authority.

Section 2 expressly prohibits the enactment by the State (except in certain cases which need not now detain us) of any law having the effect of abrogating, abridging or infringing any of the said rights and freedoms or of authorising their abrogation, abridgment or infringement.

The combined effect of these sections, in my judgment, gives rise to the necessary implication thatthe primary objective of chapter 1 of the Constitution is to prohibit the contravention by the State of any of the fundamental rights or freedoms declared and recognised by s.1.

Reference has already been made to theFifth and Fourteenth Amendments to the Constitution of the United States of America, which establish prohibitions against any person being deprived of life, liberty or property without due process of law. These prohibitions are directed against actions of the State or any organ of the State, whether executive, legalislative or judicial. By parity of reasoning it is, in my opinion, clear that the similar prohibitions contained in ss. 1 and 2 of the Constitution are by necessary implication similarly directed against State action carried out through the instrumentality of any of the organs of the State. It is pertinent to observe that this fact is implicitly recognized by rule 2 Order 55 of the Rules of the Supreme Court, 1975, to which reference will be made at a later stage.

In Shelley v. Kraemer, (1948) 334 U.S.1, Chief Justice, Vinson, delivering the opinion of the United States Supreme Court said (at pp. 14 - 15):

> "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cases involving the construction of the terms of the Fourteenth Amendment. Thus, in Virginia v. Rives, 100 U.S. 313, 318 (1880), this Court stated:
>
> > 'It is doubtless true that a State may act through different agencies - either by its legislative, its executive or its judicial authorities; and the prohibitions of the amendment extent to all action of the State denying equal protection of the laws, whether, it be action by one of these agencies or by another.'

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In Ex parte Virginia, 100 U.S. 339, 347 (1880), the Court observed:

> 'A state acts by its legislative, its executive, or its judicial authorities. It can act in no other way.'

In the Civil Rights Cases, 109 U.S. 3, 11, 17, (1883), this Court pointed out that the Amendment makes void 'State action of every kind' which is inconsistent with the guarantees therein contained, and extends to manifestations of 'State authority in the shape of laws, customs, or judicial or executive proceedings.' Language to like effect is employed no less than eighteen times during the course of that opinion."

I have quoted this passage because it assist, in my view, in establishing the proposition that the "human rights and fundamental freedoms," declared by s.1 and specially protected by s.2 of the Constitution, are primarily justiciable as against the State. To use the words of Basu (op. cit., p.127):

> ". . . the fundamental rights being guaranteed by the fundamental law of the land, no organ of the State - executive, legislative or judicial, can act in contravention of such rights, and any State act which is repugnant to such rights must be void."

This principle, in my judgment, serves to elucidate the fact that the committal order made by Maharaj J. cannot be held to be the act of an ordinary tort-feasor. It was in fact a State act - an act performed by the judicial arms of the State. While it is correct to say that

> "the right of the individual to . . . liberty, security of the person and . . . the right not to be deprived thereof except by due process of law"

existed prior to the commencement of the Constitution, its entrenchment as a fundamental constitutional right has indubitably conferred on it a new status, not only by reason

of the formalities required for its abrogation or abridgment but also as a result of the creation by s.6 of a new right of redress in respect of its contravention. It must be reiterated that this new right is primarily intended to be invoked in cases of contraventions arising from actions of any organ of the State and not of mere private individuals.

In such circumstances it seems to me that no real problem as to vicarious liability arises either in respect of the State (formerly "the Crown") or the Attorney-General. The Crown Liability and Proceedings Act, 1966, which imposes on the Crown vicarious liability for the commission of a tort by its servants or agents is, ex hypothesi, not applicable to the present case and, therefore, cannot be invoked for the purpose of reliance on the statutory immunity of judges from liability for the commission of a tort. It is worthy of observation that the true basis of the doctrine of vicarious liability in relation to the law of tort "still awaits final determination".

See Winfield on Tort, (6th Edn.) pp. 173 et seq.
Salmond on Torts, (14th edn.) pp. 643 et seq.
Glanville Williams, "Vicarious Liability", (1956) 72 L.Q.R. 522.
Barak, "Mixed and Vicarious Liability", (1966) 29 M.L.R. 160.

In any event, whatever the true basis of that doctrine may be, it seems to me that the conferment upon judges of immunity from civil proceedings in the interests of the proper administration of justice cannot per se be a valid reason for exempting the State from its primary liability in any cases of a contravention of an individual's constitutional rights by the judicial arm of the State.

Cf. Broom v. Morgan, (1953) 1 Q.B. 597.

As far as the Attorney-General is concerned, there has been no suggestion that any remedy is sought against him personally. The proceedings instituted by the appellant are in effect proceedings against the State, and it seems to me that, although the respondent was not in any way responsible for the lamentable errors which, counsel conceded, were made by Maharaj J., the fact that makes him both the necessary and proper party to the proceedings is the appellant's claim to redress under s.6 of the Constitution in respect of a contravention of his fundamental rights by a member of the Judiciary, and organ of the State.

Actually, there is an abundance of authority for this

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proposition. In cases, for example, where the constitutional validity of an Act of Parliament is challenged it is the recognised practice to name the Attorney-General as respondent to the proceedings. The reason for this is not that he is to be held personally responsible either for the drafting of the impugned legislation or for its being passed by Legislature or for its being assented to by the Head of State. Although the Attorney-General is the Government's chief legal adviser the executive decision to bring any proposed law into being is the collective responsibility of the Cabinet.

The institution of proceedings falling within the provisions of the Crown Liability and Proceedings Act, 1966 is governed by s. 19, which is the following effect:

> 19.(1) "Subject to this Act and to any other enactment, proceedings by the Crown may be instituted by the Attorney-General.
>
> (2) Subject to this Act and to any other enactment, proceedings against the Crown shall be instituted against the Attorney-General"."

While this section is not applicable to the present case, it nevertheless provides a solid basis for the submission of counsel for the appellant that this Court should hold that the respondent has been properly named as a party to the proceedings. It appears to me, however, that the question is finally put beyond doubt by the provisions of the Rules of the Supreme Court, 1975, Order 55, which prescribe the procedure to be followed in cases of applications under s.6 (1) of the Constitution. Rule 1(1) provides that an application to obtain redress in pursuance of that section must be made by originating motion, while rule 2 (1) stipulates (inter alia) that:

> "Notice of the motion and a copy of the supporting affidavit must be served on -
>
> (a) The Attorney-General in the manner provided by section 20(1) of the Crown Liability and proceedings Act, 1966, for service of the first document required to be served on him in civil proceedings instituted against the Attorney-General; and

(b) such other persons as the Court may direct".

While it is correct to say that these rules came into operation on January 2, 1976 and were accordingly not in force when the appellant served notice of his motion on April 17, 1975, I am of opinion that their existence amply demonstrates the propriety of the Attorney-General being named as the sole respondent to the motion.

Finally, I must register my profound dissent from the proposition that whilst a citizen is legally entitled to recover from another citizen damages for a wrongful deprivation of his liberty, he is 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 is in contravention of his fundamental rights solemnly declared by the Constitution. It is perhaps hardly necessary to observe that not only is it in the interest of the State but also its paramount duty to uphold the Constitution which affirms the recognition by the People of Trinidad and Tobago that -

> "men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law."

The recognition of this duty is exemplified by the following provision contained in s.13 of the Supreme Court of Judicature Act, 1962:

> 13. "In any action or proceedings brought by any person alleging that any of the provisions of sections 1, 2, 3 4, 5 and 7 of the constitution has been, is being or is likely to be contravened in relation to him, the High Court shall give notice of the question arising in such proceedings to the Attorney-General who shall be entitled as of right to be heard either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceedings."

By Article 8 of the Universal Declaration of Human Rights, proclaimed in 1948 by the United Nations of which this country is a member, it is provided that -

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"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law."

It seems to me that, in accordance with this article, it is the express object of s.6 of the Constitution to enable the Courts to give effective redress in situations of the kind now being considered. To hold otherwise would, in my opinion, be to undermine the Rule of Law which is recognised by the Constitution as being essential to the freedom of the people of Trinidad and Tobago.

For the reasons which I have endeavoured to state I propose to follow the course which I believe is plainly dictated by the requirements of justice in this case.

I would, accordingly, allow the appeal with costs here and below and make the following orders:-

(1) A declaration that the order of committal of the appellant made by Maharaj, J. on April 17, 1975 is unconstitutional, void and of no effect.

(2) An order for assessment by a Judge in Chambers of damages claimed by the appellant as resulting from the said order of committal; with liberty to the appellant to supply the respondent within 21 days with full particulars of the said claim for damages.

C.E.G. Phillips
Justice of Appeal.

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JUDGMENT OF CORBIN J.A.

TRINIDAD AND TOBAGO.

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IN THE COURT OF APPEAL

Civil Appeal
No. 75 of 1975.

In the Matter of the Constitution of Trinidad and Tobago being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council 1962

Between

RAMESH LAWRENCE MAHARAJ Appellant/Applicant

and

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent

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Coram: Sir Isaac Hyatali, C.J.
C.E.G. Phillips, J.A.
M.A. Corbin, J.A.

April 29, 1977.

D. Turner-Samuels, Q.C., and Dr. F. Ramsahoye, S.C. (Basdeo Persad-Maharaj with them) - for the appellant.

J. A. Wharton, S.C., and the Ag. Solicitor-General, C. Bernard (C. Brooks, State Counsel, with them) - for the respondent.

J U D G M E N T.

Delivered by Corbin, J.A.:

By a Notice of Motion filed in the High Court on 17th April 1975 Ramesh Lawrence Maharaj (the appellant) sought the following relief:

(1) A declaration that the order of the Honourable Mr. Justice Sonny Maharaj made on this day committing the applicant to prison for contempt of court for a period of seven days is unconstitutional, illegal, void and of no effect:

(2) An order that the applicant be released from custody forthwith:

(3) An order that damages be awarded against the second named respondent for wrongful detention and false imprisonment.

(4) All such orders, writs, including a writ of habeas corpus, and directions as may be necessary or

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appropriate to secure redress by the applicant for a contravention of the human rights and fundamental freedoms guaranteed to him by the constitution of Trinidad and Tobago.

(5) Such further or other relief as the justice of the case may require.

(6) Costs.

The train of events leading up to the filing of that Motion started on 17th April 1975 when the appellant a practising member of the Bar, in the course of appearing for a client, was committed to prison for seven days for contempt of Court by Maharaj, J. On the same day, proceedings were commenced by the Motion and the matter came on interlocutarily before Braithwaite, J. who released the appellant pending the hearing. The Motion came on for substantive hearing on 23rd April 1975 before Scott, J. who mistakenly concluded that he would be assuming an appellate jurisdiction if he entertained the Motion. I think that in so deciding he unfortunately did not take into account the wide terms used in section 6 of the Constitution. In the event, by order dated 23rd July 1975 he dismissed the Motion and ordered the appellant to serve the remainder of the term of imprisonment imposed upon him. The appellant appealed.

Since the date of the filing of that appeal the question of the merits of the committal of the appellant has been decided by the Judicial Committee of Her Majesty's Privy Council, and argument was addressed to this Court only on the constitutional issue and on the question of damages, which matters were not considered by Privy Council.

It was submitted that there are four issues to be determined - viz, (1) Whether the imprisonment, which has now been held by Privy Council to be unsupportable in law, was also effected in a manner which was an infringement of the appellant's fundamental rights under the constitution. (2) If there was such an infringement does it give rise to any, and if so what, redress? (3) Is the Attorney General the, or a proper, party against whom to seek redress, and, if not, who if anyone is the proper party? and (4) If the answer to the first three questions is favourable to the appellant what order should this Court make?

I think it would be accurate to summarise Counsel's submissions in answer to these questions thus: (a) Not

only was the imprisonment unsupportable in law, but it also infringed the appellant's constitutional right not to be deprived of his liberty, except by due process of law, in that he was not told with sufficient particularity what was the charge made against him; (b) section 3 of the Constitution does not apply because no law in force entitled the judge to act as he did; (c) section 6 provides redress for such an infringement; (d) the judge would be an appropriate party to seek redress against but since it is undesirable to join him then the Attorney General as Minister of Justice is the proper party; and (e) since Privy Council has declared that the appellant's imprisonment was unlawful this Court should hold that the appellant is entitled to damages and remit the matter to the High Court for assessment.

Section 1 of the Constitution of Trinidad and Tobago, which is set out as the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council 1962 (the Constitution), recognises and declares that there have existed and shall continue to exist inter alia the following human rights and fundamental freedoms:

> "(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."

Section 2, which has been expressed both in the Privy Council and in this Court as being in effect further and better particulars of section 1 reads, so far as is material:

> "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 effect the arbitrary detention, imprisonment or exile of any person;
>
> (b) . . . . . .
>
> (c) . . . . . .
>
> (d) . . . . . .

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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.

Section 6 provides for the protection and enforcement of these rights and freedoms in these terms:

> "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 7 of this Constitution has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action to the same matter which is lawfully available, that person may apply to the High Court for redress . . . . . .

But section 3 declares that:

> "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."

In order to succeed on this Motion, therefore, the appellant must show that his imprisonment was not carried out in accordance with the due process of law and that he is entitled to recover damages.

The meaning of the expression "due process of law" and its historical origin have been dealt with by this Court in more than one recent decision, /See especially Lassalle v The Attorney General (1974) 18 W.I.R. 379/ and it will be sufficient for the purposes of this judgment to trace briefly the way in which its usage has developed in our legal terminology.

Its roots are to be found in Magna Carta (1215), Clause 39 of which declared: "No free man shall be seized or imprisoned or stripped of his rights or possessions . . . . except by the lawful judgment of his equals or by the law of the land."

This declaration was confirmed in 1354 in the Statute Edw. III Cap. 3 in these terms: "No man, of whatever estate or condition that he be, shall be put out of land or tenement, nor taken, imprisoned, nor disinherited, nor put

to death, without being brought in answer by due process of law."

These doctrines and principles were adopted into the common law of Trinidad and Tobago by virtue of section 12 of the Supreme Court of Judicature Act 1962 which prescribes that the principles in force in England in 1848 are deemed to have been in force in Trinidad and Tobago from that date in so far as they have not been abrogated by enacted law. It will be seen, therefore, that these freedoms and rights existed here before they were referred to in the Constitution.

The expression in our Constitution has its counterpart in the Canadian Bill of Rights 1960 after which ours was in substance modelled, but the term is rarely seen in English jurisprudence perhaps because there is no written Constitution in England. There is not much therefore in the line of English authority to guide us and little assistance will be obtained from the American decisions because of the very wide concept they have placed on it. There is, however, an interesting dictum by Mc Donald J.A. in the Canadian case of R - v - Martin (1961) 35 W.W.R. at p.399 where he said:

> "It would be difficult, indeed unwise, to attempt an inclusive definition of the phrase 'due process of law' except to state that in my view in the case at bar it means the law of the land as applied to all the rights and privileges of every person in Canada when suspected of or charged with a crime, and including a trial in which the fundamental principles of justice so deeply rooted in tradition apply."

Prof. Holdsworth in his History of English Law Vol. 2 at ps. 215 and 216 dealing with the clauses in Magna Carta expressed the opinion that :

> "These clauses do embody a protest against arbitrary punishment, and against arbitrary infringements of personal liberty and rights of property; they do assert a right to a free trial, to a pure and unbought measure of justice."

Applying that concept to the expression as it is used in the Constitution I turn now to consider whether the appellant has succeeded in showing that he has been deprived of any of the safe guards declared therein and in particular in Section 1(a).

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Section 1 declares that certainrights have always existed and are preserved.

The effect of section 2 is twofold. It declares that no law shall abrogate, abridge or infringe any of those rights and freedoms, and also it particularises them. It is now well settled that "no law" in this context means "no future law".

/See D.P.P. -v- Nasralla (1967) 2 All E.R. - 161 and de Freitas -v- Benny and Others (1976 A.C. 239/

Section 6 is the one which enables an aggrieved person to seek redress, and which provides the machinery for so doing. Anyone who invokes this section must show a breach of one or more of the sections 1 - 5. The appellant in this case alleges a contravention under section 1(a), and of section 2 in so far as the matters particularised therein constitute examples of a breach of sections 1(a) and (b). Since the complaint here arises out of the appellant's committal to prison for contempt of court it will be helpful to look at the law relating to contempt.

The jurisdiction of the courts in this country to commit for contempt is inherited from the English common law. It is a very special power, not exercised like ordinary powers and from which there was no appeal until the Constitution declaring this country a Republic was introduced in 1976. A concise review of its development is to be found in the judgment of Lawton L.J. in Balogh -v- Crown Court (1974) 3 All E.R. 283 at p. 294 where he said :

> " What then is the jurisdiction at common law to commit for contempt? In the 18th century it was a jurisdiction in which the judges of all courts of record generally, but more especially those of Westminister-Hall, and above all the Court of King's Bench, may proceed in a summary manner, according to their discretion: / see Hawkins, Pleas of the Crown./ By "summary manner" Hawkins meant 'without any Appeal, Indictment, or Information.' It is clear both from Hawkins and Blackstone thatthis summary jurisdiction was not confined to cases where the contempt occurred in the court itself. From the way these authors expounded the law (and they did so in similar terms) the inference is that at the time they wrote there was no doubt

> whatsoever about the existence and extent of the jurisdiction and that it was no innovation; and there can have been no doubt amongst lawyers during the first quarter of the 19th century, as the editions from which I have quoted were published in 1824 (the 8th edition of Hawkins) and 1928 (the 16th edition of Blackstone). As far is I am aware, no statute has ever limited this jurisdiction."

The need for legislation relating to the law of contempt was recognised for many years but none was actually passed although several bills were introduced, and the matter is still governed by the common law principles, which as we have seen are applicable in Trinidad and Tobago. Therefore, when Maharaj, J. committed the appellant to prison he was exercising a jurisdiction at common law in force at the commencement of the Constitution in 1962.

Counsel for the respondent submitted that, as a consequence, the committal cannot be said to have infringed sections 1 and 2 of the Constitution as in law under which the judge acted was saved by section 3. Further, that under that law in force it was not competent for a person to bring proceedings against a judge - which, he said, this application in substance is all about - nor to institute proceedings to obtain redress against the judge under the guise that it is being brought against the Attorney General as representing the State.

Since this Chapter of the Constitution recognises and declares that the rights have existed previously, the provisions in section 3 which state that sections 1 and 2 shall not apply to existing law must be taken to presume that the existing laws do not infringe those rights. In the case of D.P.P. -v- Nasralla (supra) where a similar question was considered in relation to the Constitution of Jamaica Lord Devlin at p.165 expressed the opinion that:

> " 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 Ch. III. This chapter, as their lordships have already noted, proceeds on 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 pro-

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tective provisions. The object of these provisions is to ensure that no future enactment shall in any matter which the chapter covers derogate from the rights which at the coming into force of the Constitution the individual enjoyed."

Counsel for the appellant on the other hand contended that the provisions of section 3 would not apply in these circumstances for two reasons. Firstly, he argued, the definition of the word "law" in section 105 of the Constitution which includes "any unwritten rule of law" would embrace the common law, and the correct interpretation of section 2 would therefore, be that no law and no common law principle shall abrogate any of the rights therein recognised.

I am not persuaded by this contention which, it seems to me, is contrary to the opinion expressed by Lord Devlin. If section 2 is interpreted in that way it would be in conflict with section 3. Moreover, if that meaning is to be applied to the word in section 2 it must also be applied in section 3 which would then read: "Sections 1 and 2 shall not apply in relation to any common law that is in force at the commencement of the Constitution," which is the interpretation contended for by the respondent.

His second reason was that, even if there was a law under which the judge could commit the appellant to prison, there had been a failure by the judge to commit in accordance with due process, and that this was an arbitrary exercise of the power.

I do not understand the Board's opinion to mean that the judge acted arbitrarily. They said that the judge was mistaken in thinking there was contempt, and that his failure to make clear to the appellant what was the precise nature of the charge against him vitiated the committal. Even though the judge was mistaken in thinking there was contempt it does not necessarily follow that he acted without any reason, or that he purported to exercise the power given him by law in a manner which could be described as arbitrary. It is not every error made by a judge which could be said to amount to a breach of due process. However, for reasons which will appear, I do not consider it necessary in this Judgment to decide whether or not the appellant's committal was without due process. At common law even if a judge was shown to be oppressive in a matter of contempt there was no right of appeal from his decision, and no action was maintainable for any act done by him. As the learned author of the 16th Edn. of Salmond on Torts points out at p. 416:

" A judge of one of the superior courts is absolutely exempt from all civil liability for acts done by him in the execution of his judicial functions. His exemption from civil liability is absolute, extending not merely to errors of law and fact, but to the malicious corrupt, or oppressive exercise of his judicial powers. For it is better that occasional injustice should be done and remain unredressed under the cover of this immunity than that the independence of the judicature and the strength of the administration of justice should be weakened by the liability of judges to unfounded and vexatious charges of error, malice, or incompetence brought against them by disappointed litigants. The remedy for judicial errors is some form of appeal to a higher court, and the remedy for judicial oppression or corruption is a criminal prosecution or the removal of the offending judge; but in neither case can be be called on to defend his judgment in an action for damages brought against him by an injured litigant. Nor is the Crown vicariously liable for his acts."

In Trinidad and Tobago the State Liability Act 1966 specifically provides that the State is not liable for any tort committed by a judge, although it is to be noted that this appellant is not alleging a tort.

The extent of the immunity is very clearly set out by Lord Denning M.R. in his judgment in Sirros -v- Moore (1974) 3 All E.R. 776 at p. 781 :

" Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belings to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes cannot be made the subject of civil proceedings atainst him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a court of appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. Of course,

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if the judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable to an action for damages. The reason is not because the judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear. It was well stated by Lord Tenterden CJ in Garnet v Ferrand:

' This freedom from action and question at the suit of an individual is given by the law to the judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be.'

Those words apply not only to judges of the superior courts, but to judges of all ranks, high or low. Lord Tenterden CJ spoke them in relation to a coroner. They were reinforced in well-chosen language in relation to a county court judge by Kelly CB in Scott -v- Stansfield, (1868) LR 3 Exch. 220 at 223 and to a colonial judge by Lord Esher MR in Anderson -v- Gorrie, 1895 P.B. 668 at 671."

The judgment continues at p. 783:

" There is no case in our books where a judge of a superior court has ever been held liable in damages. Even though a judge of a superior court has gone outside his jurisdiction, nevertheless, he is not liable, so long as he is acting judicially."

A like opinion was expressed by the learned author of Holdsworth History of English Law, Vol 6, pp. 234 - 240.

Counsel for the appellant submitted that no man should be considered to be above the Constitution and that if a judge contravenes in respect of any citizen one of the liberties enshrined therein redress may be sought under section 6 in the way as if the infringement had been by another citizen.

But it has also been long accepted that no man should be above the law and, nevertheless, the immunity of a judge from civil process has been preserved all through the years, though as was pointed out by Lord Denning the remedy for judicial

oppression or corruption is a criminal prosecution or the removal of the offending judge.

The reason for this seems very clearly to be, as Counsel for the appellant conceded, that it would be extremely unfortunate if in conducting the fundamental task of dispensing justice a judge should have at the back of his mind the question whether his decision might be the subject of legal proceedings. It would strike at the very roots of the administration of justice and redound to the great disadvantage of the entire community whose confidence in the judiciary would be be adversely affected. No doubt, it is because of these very important consideration that the common law immunity has survived even without specific legislation.

In my opinion, even though the appellant has abandoned the claim for damages for false imprisonment based on tort made in his Motion the nature of the redress sought here under Section 6 is in effect and substance the same thing, because the rights enshrined in sections 1 and 2 are common law rights and freedoms and not new ones or rights sui generis as was contended for. To hold that they are new rights would, it seem to me, render meaningless the declaration in the Constitution that they have always existed and shall continue to exist.

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 is still the law here because the common law was preserved by the Constitution, and has been given statutory effect by the State Liability Act, 1966.

In my judgment, therefore, neither the judge nor the Crown (now the State) can be held liable for damages even though the claim is brought under section 6 of the Constitution.

For the reasons I have sought to set out, and for those expressed in the judgment of the learned President with which I agree I, too, would dismiss the appeal and make the order proposed by him.

M. A. Corbin.

Justice of Appeal.

No. 23

REASONS OF MAHARAJ J.

In the High Court.

No. 23.

Reasons for Decision.

Maharaj J.

20th July, 1976.

IN THE PRIVY COUNCIL.
ON APPEAL FROM THE HIGH COURT OF JUSTICE
OF THE SUPREME COURT OF JUDICATURE FOR
TRINIDAD AND TOBAGO:

B E T W E E N:

RAMESH LAWRENCE MAHARAJ — Petitioner

AND

THE ATTORNEY GENERAL FOR TRINIDAD AND TOBAGO — Respondent

Before the Honourable Mr. Justice Sonny G. Maharaj.

REASONS FOR DECISION.

On April 17, 1975, I had the unpleasant task of committing to prison Mr. Ramesh Lawrence Maharaj, a barrister, for his contempt in the face of the Court. I now give my reasons for proceeding as I did.

Mr. Maharaj had on the previous day launched a vicious attack on the integrity and impartiality of the Court when I sat in what we call the Chamber Court, a Court in which assessment of damages, summones of various kinds and the bulk of the interlocutory applications are heard. On that day an application in Action No. 414 of 1972, came up for hearing before me. I believe it was the plaintiff Bachan's application for payment out of monies deposited into Court by the defendant, a sum which the plaintiff had only agreed to accept during the course of the hearing of his summons for assessment of damages. On that summons, which I had heard sometime before, Mr. T. Hosein, Q.C. appeared for the plaintiff, while Mr. M. de la Bastide, Q.C. led Mr. Maharaj for the defendants. As I indicated before that summons was disposed of when I approved and recorded a consent order whereby the plaintiff accepted the sum deposited into Court.

Upon the application then before me on April 16, 1975 Mr. Ramesh Maharaj announced his appearance for the defendants, and Mr. O. Jenvy, a Solicitor, appeared for the plaintiff. Mr. Maharaj then proceeded to inform the Court that the application before it concerned an assessment in which the Court "had pressed to go on." I immediately interrupted Mr. Mah raj and pointed out to him that he ought not in my view to make reference to the Court as "pressing to go on". Such language, I said, was unbecoming and discourteous

in reference to the Court and that in addressing the Court Counsel ought to be more polite. In response to what I had said Mr. Maharaj looked me in the face and said defiantly, "I say you pressed to go on".

Mr. Maharaj then proceeded to make an application in which he asked the Court to disqualify itself from sitting on all matters in which he was engaged. Counsel then read from two sheets of paper the details of the grounds upon which he said his application for disqualification was founded. I had occasion from time to time to request him to read slowly so that I could record what he was saying.

Mr. Maharaj then related how the Court had on April 14, 1975 dismissed two consolidated actions Nos. 572 of 1971 and 875 of 1971: that on that very day I had proceeded to hear and determine another action No. 822 of 1972, notwithstanding the defendant's application for an adjournment and had in the end given a decision in favour of the plaintiff and dismissed the defendant's counter-claim. Counsel then went on to refer to another action, No. 707 of 1968: which he said was part heard and also fixed for hearing on April 14, 1975. He said that Counsel for the plaintiff, Mr. King, did not attend on that day and the Court adjourned that action to the 15th but that a similar concession was not afforded to him. Mr. Maharaj continued that on April 14, 1975, another action - Samdaye v. Mini Max Ltd was also listed for hearing and that that action was postponed to the 15th with his consent but on the 15th another matter was in progress. At the end of all this Mr. Maharaj then submitted that having regard to what he had said the Court had pursued a course of unjudicial conduct and consequently he was asking the Court to disqualify itself from hearing all cases in which he was engaged. I should mention here that Mr. Maharaj did not at any time on April 14, appear personally before the Court. Other Counsel held papers for him in those matters in which he was engaged.

Mr. Maharaj in my opinion had made very grave and offensive charges against the integrity and impartiality of the Court in a Courtroom full with litigants and in the presence of numerous barristers and solicitors who, during this attack upon the Court, all seemed nervous and dumbfounded at what was taking place. I myself was flabbergasted as I too had never before witnessed such conduct in a Court of law. I paused for a few moments and then merely refused Mr. Maharaj's application with the comment that I thought he had abused his privileges as a barrister that morning. I did not take any action against Mr. Maharaj on that morning shocking as I thought his conduct was as I felt that, given a chance, he would see the folly of his ways. He was a young practitioner whose outbursts I was prepared to attribute to youthful impetuousity. I sincerely

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hoped that even if Mr. Maharaj was not big enough to retract what he had so unfairly alleged and apologised to the Court, he would have had nevertheless on reflections, realised the enormity of his conduct and perhaps mend his ways in future.

Before I pass on to the events of April 17, 1975, there are some matters I think I ought to clarify. The first of these concerns the system of listing actions for trial which obtained at the relevant time. Reference has been made to a number of actions all fixed for hearing on April 14, 1975. That was in fact so. Under that system which was introduced as an experiment to avoid judicial time being wasted, eight or ten actions were fixed before the Court on the Monday of each week of the Term. It was the duty of the Court to get on with what it could on the Monday and allocate days later in the week for the hearing of the others. April 14, 1975, was a Monday. In the consolidated actions to which Mr. Maharaj referred other Counsel appeared before the Court holding his papers on behalf of the plaintiffs. I had in fact dismissed the plaintiffs' claim for want of prosecution, an order against which the plaintiffs' appealed. This appeal is pending before the Court of Appeal and my reasons for that decision have been forwarded to that Court. A copy of these reasons is hereto annexed. Mr. Maharaj complained that I proceeded to hear and determine action No. 822 of 1972 in spite of the defendant's application for an adjournment to call a witness and proceeded to give judgment for the plaintiff. That was in fact so but what Mr. Maharaj conveniently failed to acknowledge was that I had earlier also refused the plaintiff's application for an adjournment. Again Mr. Maharaj alleged that I favoured Mr. King by postponing the part heard action No. 707 of 1968 from the 14th to the 15th. He again omitted sufficient of what transpired in Court so as to give a false impression to those listening or later reading what he had said. When that action was called an application was made on behalf of Mr. King for the plaintiff on two grounds. First I was told that Mr. King was on his legs in the High Court in Port of Spain in another matter and secondly Mr. Joseph Le Blanc, a Solicitor who was the plaintiff's next witness to be called was unable to come to San Fernando as he could not obtain petrol for his car. During this period the oilfield workers were on strike and petrol was in fact in short supply. This was the second case called for the morning. I told Counsel who held papers for Mr. King that I was not impressed with the application and that the matter would proceed. I stood the action down and indicated that I intended to continue the hearing when I come to it, Mr. King and Mr. Le Blanc's absence notwithstanding. Later on the 14th when it became apparent that there would be no time to continue the hearing of this action, I put it to the following day - the 15th.

On the 15th I resumed the hearing of this action and disposed of it. Both Mr. King and the witness Le Blanc promptly appeared in Court that morning when hearing was resumed. This was actually the case in progress when the case of Samdaye v Mini Max Ltd. was adjourned from the 15th to the 17th. Finally, I should like to give briefly the background against which Mr. Maharaj alleged that the Court "had pressed to go on" in Bachan's case.

As I said before the first summons to come up before me in this action was one for the assessment of damages. I recollect that Mr. Jenvy, the plaintiff's Solicitor, with the Registrar's permission came to see me on the question of a firm time for the hearing of this assessment. I saw Mr. Jenvy who informed that he had the permission of the other side (for whom Mr. Ramesh Maharaj was Counsel) to enquire of me whether I would accomodate the parties by fixing a firm date for the hearing of this assessment. Mr. Jenvy explained that it was somewhat inconvenient for his leading Counsel Mr. Tajmool Hosein, Q.C. to come to San Fernando to attend to this matter if it was not likely to proceed and that the chances were that the Court would not take it on an ordinary assessment day because of the large number of other matters to be dealt with. This assessment, he said, was one of some complexity and was likely to engage the Court's attention for several days. I acceded to Mr. Jenvy's request in which he assured me that other side had concurred and fixed a firm date for the commencement of the hearing of this assessment.

When this summons came up for hearing on the day in question, Mr. T. Hosein Q.C, appeared with junior Counsel on behalf of the plaintiff. Mr. Ramesh Maharaj appeared for the defendants. Mr. Maharaj then applied to the Court to have this assessment stood-down until 11.00 a.m. by which time he said Mr. Michael de la Bastide, Q.C. who was now leading him for the defence was expected to arrive from Port of Spain. Mr. Hosein objected to this application. He protested that he had come all the way from Port of Spain that morning so as to be present when the Court commenced as he knew the Court had undertaken to commence the hearing promptly. Surely, he said, if such an application was contemplated the other side should have indicated this in advance. The Court thought the application unreasonable in the circumstances and accordingly disallowed it and commenced the hearing. Mr. de la Bastide did in fact arrive at about 11.00 a.m. He sought and obtained from the Court a short respite to acquaint himself with the evidence that had been led by then after which he took over the defence. These are the facts upon which the Court was accused of "pressing to go on".

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While I do not consider that the Court is under any obligation, as it were, to defend itself in the sense of seeking to answer the grave imputations levelled against its integrity I have nevertheless thought it appropriate to set out the facts for the purpose of accuracy, especially as the few utilised by Mr. Maharaj in course of his abuse of the Court were advanced in such a way as to give a false picture of the whole.

During the course of April 17, 1975. I resumed the hearing of action No. 564 of 1973. Mr. Rupert Archbald, Q.C. led for the plaintiff. Mr. Ramesh Maharaj appeared for the defendants. I had commenced the hearing of this action on April 15, 1975 to which date I had put it from the 14th. On this day (15th) Mr. Basdeo Panday Junior Counsel for the plaintiff appeared while Mr. Basdeo Maharaj held papers for Mr. Ramesh Maharaj for the defendants. There were two medical practitioners present in Court waiting to testify on the plaintiff's behalf. As is unsual in such cases I indicated to Counsel that I was disposed to taking the evidence of the doctors so as to relieve them as early as possible to attend to their other duties. Counsel holding papers for Mr. Ramesh Maharaj then made an application for an adjournment of the trial on the ground that he (Ramesh Maharaj) was in the Court of Appeal. I told Counsel I could not accede to that request as the business of the Court had to proceed and that Counsel must make arrangements where necessary as apparently he had done, as he (Basdeo Maharaj) was holding papers. In any event I said that I merely wanted to take the doctors' evidence so as to relieve them from further attendance. At this stage I believe Counsel then replied that the defendants wanted Mr. Ramesh Maharaj and no one else. The trial commenced but just before the first of the doctors took the stand Counsel holding papers for Mr. Ramesh Maharaj informed the Court that he did not wish to take any further part in the proceedings. He then sought and obtained the Court's leave to withdraw. I heard the evidence of the two doctors and relieved them from further attendance. This action was then stood down as the Court resumed the part heard matter which was put to this date from the 14th - the one in which Mr. King was engaged. After disposing of this action there was no time to resume the hearing of action No. 564 of 1973 so I adjourned it to April 17, 1975.

At the commencement of the resumed hearing of this action on the 17th Mr. Ramesh Maharaj, who as I said before now appeared for the defendants, informed the Court that he understood that two doctors (whom he named) had given evidence and that he was seeking to have them recalled so that he could cross-examine them. I refused the application and called upon Counsel for the plaintiff to call his next witness.

Mr. Maharaj then said to the Court that having regard to

what he had submitted yesterday in the matter of Bachan he reserved the right to impeach the proceedings before the Court. It was in Bachan's case that Mr. Maharaj had viciously attacked the integrity of the Court. At that stage it became clear to me that Mr. Maharaj had misinterpreted the Court's attitude to his previous day's misconduct as a sign of weakness so much so that he felt able to renew the vile charges he had then made against Her Majesty's Court. In my opinion Mr. Maharaj had carried his insolence and contumely much too far now and the time had come for the Court to take a firm hand of the situation. At this stage I told Mr. Maharaj that he had indeed made very grave allegations against the Court and that I was going to ask him a question which I proposed to record in my notebook. I then asked him whether he was suggesting that the Court was dishonestly and corruptly doing matters behind his back because the Court was biased against him. I explained to Mr. Maharaj that the situation had become very serious and I wanted him to think very carefully before giving his answer to the Court. I also told Mr. Maharaj that if he was not making any such suggestion and had not intended to do so then I wanted him to assure the Court of that in the clearest possible terms. Even at this late stage I thought I would give Mr. Maharaj an opportunity to retract what he had said. He obviously had no intention to retract from the stand he had taken. Instead he impudently replied,

> "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".

The undoubted high standing of the Courts of this country is due in large measure to the respect and esteem in which they are held by the citizens of this country. This very respect and esteem is a source of great strength and allows the Courts frequently to ignore misguided criticisms and sometimes emotional outbursts. It is always therefore a matter of regret when the Court has to take action to preserve its dignity and authority. But on the rare occasions when the Court has to take such action, it must not falter but must meet the attack in a way that demonstrates the majesty of the law and the authority of the Court.

I charged Mr. Maharaj with contempt in the face of the Court and called upon him to answer the charge. When called upon to answer he sought an adjournment to retain a lawyer which I refused. Mr. Maharaj then said he was not guilty as he did not impute any bias against the Court. I then enquired of him whether he wanted to address the Court on the question of

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sentence and again he repeated his application for time to consult counsel. I did not accede to Mr. Maharaj's request for an ajournment to retain Counsel as I did not think he was entitled to an adjournment in the circumstances of the case. This was a Contempt in the face of the Court which had in my opinion to be dealt with summarily. The nature of the attack on the Court and the insistence with which it was pursued made the case one which called for immediate punishment of the contemnor. Mr. Maharaj is a barrister whose duty at all times is to protect and preserve the dignity, authority and impartiality of the Court. But instead, he stood in open Court and sought to destroy those very attributes which it was his solemn duty to protect and preserve. Taking all the factors into account I considered Mr. Maharaj's conduct so outrageous as to merit a term of seven days simple imprisonment and I so ordered.

Dated this 20th day of July, 1976.

Sonny G. Maharaj,

Judge.

No. 24.

FORMAL ORDER OF COURT OF APPEAL

In the Court of Appeal.

No. 24.

Formal Order of Court of Appeal.

5th May, 1977.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 75 of 1975.

Between

RAMESH LAWRENCE MAHARAJ Applicant/Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent

Dated and Entered the 5th day of May 1977
Before THE HONOURABLES The CHIEF JUSTICE
Mr. JUSTICE C. PHILLIPS
Mr. JUSTICE M. CORBIN

UPON READING the Notice of Appeal filed on behalf of the above-named Appellant dated the 11th day of August, 1975 and the Judgment hereinafter mentioned

AND UPON READING the Judge's Notes of Evidence

AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED

that this Appeal be dismissed and that the Judgment of The Honourable Mr. Justice Garvin M. Scott dated the 23rd day of July 1975 whereby he dismissed the Appellant's Motion be affirmed except in so far as he declared that the Court had no jurisdiction to hear the said motion

IT IS FURTHER ORDERED

that the costs both here and in the Court Below be taxed and paid by the Appellant to the Respondent.

./s/ C. Best.
Temp. Asst. Registrar.

No. 25.

In the Court of Appeal.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

No. 25.

Order granting Conditional Leave to Appeal to the Judicial Committee of the Privy Council.

19th May, 1977.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 75 of 1975.

RAMESH LAWRENCE MAHARAJ Applicant/Appellant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent/Respondent

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Coram: The Hon Sir Isaac Hyatali, C.J., Phillips, J.A., Rees J.A.

Made the 19th day of May, 1977.
Entered the 19th day of May, 1977.

Upon the Motion of the above named Applicant/Appellant dated the 29th day of April, 1977 for leave to appeal to the Judicial Committee of the Privy Council against the judgment of the Court of Appeal (the Hon. Chief Justice, Sir Isaac Hyatali and Corbin, J.A., Phillips J.A. dissenting) delivered herein on the 29th day of April, 1977

AND UPON Reading the Notice of Motion and the Affidavit of the Applicant/Appellant sworn on the 29th April, 1977 filed in support thereof;

AND UPON HEARING Counsel for the Applicant/Appellant and for the Respondent

THE COURT DOTH ORDER that subject to the performance by the said Applicant of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to the Judicial Committee of the Privy Council against the said judgment of the Court of Appeal be and the same is hereby granted to the Applicant.

AND THIS COURT DOTH FURTHER ORDER that the Petitioner do within six (6) weeks from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of two thousand dollars ($2,000.00) with one or more securities or deposit into Court the said sum of two thousand dollars ($2,000.00) for the due prosecution of the

said appeal and for the payment of all such costs as may become payable to the Respondent in the event of the Applicant not obtaining an order granting final leave to appeal and for the payment of all such costs as may become payable to the Respondent in the event of the Applicant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or for part of such costs as may be awarded by the Judicial Committee of the Privy Council to the Respondent on such appeal.

AND THIS COURT DOTH FURTHER ORDER THAT all costs of and occasioned by the said Appeal shall abide the event of the said Appeal to the Judicial Committee of the Privy Council if the said Appeal shall be allowed or dismissed or shall abide the result of the said appeal in case the said appeal shall stand dismissed for want of prosecution.

AND THIS COURT DOTH FURTHER ORDER THAT the Petitioner do within four (4) months from the date of this Order in due course take out all appointements that may be necessary for settling the record in such appeal to enable the Registrar of this Court to certify that the said record has been settled and the provisions of this order on the part of the Respondent have been complied with:

AND THIS COURT DOTH FURTHER ORDER that the Petitioner be at liberty to apply within five (5) months from the date of this order for final leave to appeal as aforesaid on production of a certificate under the hand of the Registrar of this Court of due compliance on his part with the conditions of this order.

AND THIS COURT DOTH FURTHER ORDER that there be a stay of execution of the order for costs made by this Court on the determination of the appeal on the 29th April, 1977 and that the costs of and incidental to this application be costs in the cause.

Liberty to Apply.

By the Court.

C. Best.

Temp. Asst. Registrar.

In the Court of Appeal.

No. 26.

Order granting Final Leave to Appeal to the Judicial Committee of the Privy Council.

8th June, 1977.

No. 26.

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 75 of 1975.

Between

RAMESH LAWRENCE MAHARAJ Applicant/Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent

Before: The Honourable Chief Justice Sir Isaac Hyatali
Mr. Justice C. Phillips J.A.
Mr. Justice M. Corbin J.A.

Made the 8th day of June, 1977.
Entered the 8th day of June, 1977.

UPON the Application of RAMESH LAWRENCE MAHARAJ preferred unto this Court by Motion on the 20th day of May, 1977 for final leave to appeal to the Judicial Committee of the Privy Council against the judgment of this Court dated the 29th day of April, 1977.

AND UPON HEARING Counsel for the Applicant and for the Respondent and upon being satisfied that the terms and condition imposed by the said Order dated the 19th day of May, 1977 have been complied with.

THIS COURT DOTH ORDER that final leave be as is hereby granted to the said Petitioner to Appeal to the Judicial Committee of the Privy Council.

By the Court

/s/ C. Best.

Temp. Asst. Registrar.