Privy Council Appeal No. 21 of 1977

Ramesh Lawrence Maharaj - - - - - *Appellant*

v.

The Attorney General of Trinidad and Tobago - - *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH FEBRUARY 1978

Present at the Hearing:

LORD DIPLOCK
LORD HAILSHAM OF SAINT MARYLEBONE
LORD SALMON
LORD RUSSELL OF KILLOWEN
LORD KEITH OF KINKEL

[*Majority Judgment delivered by* LORD DIPLOCK]

The unfortunate misunderstandings that resulted in the appellant, a member of the bar of Trinidad and Tobago, being committed to seven days imprisonment for contempt of Court on 17th April 1975, upon the order of Mr. Justice Maharaj, are narrated in the reasons for judgment delivered by the Judicial Committee on 11th October 1976 in the previous appeal to which they have given rise, *Maharaj v. A.G. for Trinidad and Tobago* [1977] 1 A.E.R.411. That was an appeal against the committal order. It was allowed and the order of Maharaj J. was set aside. The grounds for doing so were that:

> " In charging the appellant with contempt, Maharaj J. did not make plain to him the particulars of 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 (Re Pollard (1868) L.R.2.P.C.106). In their Lordships' view, justice certainly demanded that the 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 written reasons as 'a vicious attack on the integrity of the Court' vitiates the committal for contempt."

This was a finding that the judge, however inadvertently, had failed to observe a fundamental rule of natural justice; that a person accused of an offence should be told what he is said to have done plainly enough to give him an opportunity to put forward any explanation or excuse that he may wish to advance.

The question in the instant appeal is whether this constituted a deprivation of liberty otherwise than by due process of law, within the meaning of s.1(*a*) of the Constitution of Trinidad and Tobago of 1962, for which the appellant was entitled to redress by way of monetary compensation under s.6.

In 1975 there was no right of appeal to the Court of Appeal from an order of a judge of the High Court finding a person guilty of contempt of Court and ordering him to be punished for it. An appeal did lie to the Judicial Committee of the Privy Council but only by special leave of that Committee itself. So the appellant sought an immediate means of collateral attack on the order of Maharaj J. On the very day of his committal he applied *ex parte* by notice of motion to the High Court in purported pursuance of s.6 of the Constitution, claiming redress for contravention of his constitutional rights under s.1 of the Constitution and for a conservatory order for his immediate release on his own recognisances pending the final determination of his claim. The nature of the redress that he claimed was (*a*) a declaration that the order committing him to prison for contempt was unconstitutional, illegal, void and of no effect; (*b*) an order that he be released from custody forthwith; and (*c*) an order that damages be awarded him against the Attorney General "for wrongful detention and false imprisonment;" together with a claim for all such other orders etc. as might be appropriate. Both the Attorney General and Maharaj J. were named as respondents to the notice of motion but only the Attorney General was served and from the outset the motion has been proceeded with against him alone.

The *ex parte* application came before Braithwaite J. on 17th April 1975 He granted the conservatory order; and the appellant was forthwith released, after suffering imprisonment for part of the day. It is not without interest to note that Braithwaite J. on 26th June 1975 gave reasons in writing for his decision. In these he expressed the view that upon the evidence before him, the appellant had made out a *prima facie* case that his right under s.1(*a*) of the Constitution not to be deprived of his liberty without due process of law had been contravened.

The substantive motion, however, did not come before Braithwaite J. but before Scott J. After an intermittent hearing extending over thirteen days he dismissed the motion on 23rd July 1975 and ordered the appellant to serve the remaining six days of his sentence of imprisonment. His ultimate ground for dismissing it was that the High Court had no jurisdiction under s.6 to entertain the motion since to do so would, in his view, amount to the exercise by one judge of the High Court of an appellate jurisdiction over another judge of the High Court. This would be inconsistent with the "equal power, authority and jurisdiction" which by s.5(2) of the Supreme Court of Judicature Act, 1962, is vested in all the judges of the High Court.

Despite his disclaimer of jurisdiction to entertain the motion Scott J. did express his own view that the appellant not only had been guilty of contempt of court but also had been told with sufficient particularity the nature of the contempt of which he was accused.

From the dismissal of his originating motion the appellant appealed to the Court of Appeal; but that appeal was not heard until April 1977. In the meantime he had sought and obtained from the Judicial Committee special leave to appeal to them against the original order of Maharaj J. committing him to prison for contempt of court. By July 1976 this appeal had been heard and determined in his favour by the Judicial Committee upon the grounds which were stated later in their judgment of 11th October 1976 (*ubi sup.*). So by the time the appeal fro

judgment of Scott J. on the originating motion came to be decided by the Court of Appeal the invalidity of the order of committal had been established as *res judicata* and the only questions then to be determined by the Court of Appeal were:

(1) whether the High Court had jurisdiction under s.6 of the Constitution (now s.14 of the republican Constitution) to grant the appellant redress for an alleged contravention of his constitutional rights resulting from something done by a judge when acting in his judicial capacity;

(2) whether the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged before committing him to prison for it, contravened a constitutional right of the appellant in respect of which he was entitled to protection under s.1(*a*) of the Constitution (now s.4(*a*) of the republican Constitution); and, if so,

(3) whether the appellant was entitled by way of redress to monetary compensation for the period that he had spent in prison.

All three members of the Court of Appeal (Hyatali C.J., Phillips J.A. and Corbin J.A.) answered question (1) " Yes ". Hyatali C.J. and Corbin J.A. answered the question (2) " No "; so for them the question (3) did not arise. Phillips J.A., in a dissenting judgment, answered questions (2) and (3) " Yes ".

From that judgment by a majority of the Court of Appeal the appellant now appeals once more to the Judicial Committee. In addressing themselves to the questions raised it would seem convenient to set out the most important of those provisions of the Constitution upon which in their Lordships' view the answers turn.

> " Whereas the People of Trinidad and Tobago . . . .
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> . . . .
>
> (*e*) desire that their Constitution should . . . make provision for ensuring the protection in Trinidad and Tobago of fundamental human rights and freedoms;
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> . . . .

CHAPTER I

THE RECOGNITION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL 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, 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;
>
> . . . .
>
> 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—
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> (*a*) authorise or effect the arbitrary detention, imprisonment or exile of any person;

(*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;

. . . .

3.—(1) Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution.

. . . .

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

(2) The High Court shall have original jurisdiction—

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

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

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

(3) If 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 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.

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

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

Question (1)

Their Lordships can deal briefly with the question of jurisdiction. The notice of motion and the affidavit in support of the application for the conservatory order for the immediate release of the appellant pending the final hearing of his claim, made it clear that he was, *inter alia*, invoking the original jurisdiction of the High Court under s.6(2)(*a*), to hear and determine an application on his behalf for redress for an alleged contravention of his right under s.1(*a*). It is true that in the notice of motion and the affidavit which, it may be remembered, were prepared with the utmost haste, there are other claims and allegations some of which would be appropriate to a civil action against the Crown for tort and others to an appeal on the merits against the committal order of Maharaj J. on the ground that the appellant had not been guilty of any contempt. To this extent the application was misconceived. The Crown was not vicariously liable in tort for anything done by Maharaj J. while discharging or purporting to discharge any responsibilities of a judicial nature vested in him; nor for anything done by the police or prison officers who arrested and detained the appellant while discharging

responsibilities which they had in connection with the execution of judicial process. S.4(6) of the State (formerly "Crown") Liability and Proceedings Act, 1966, so provides. At that time too there was no right of appeal on the merits against an order of a High Court judge committing a person to imprisonment for contempt of court, except to the Judicial Committee by special leave which it alone had power to grant. Nevertheless, on the face of it the claim for redress for an alleged contravention of his constitutional rights under s.1(*a*) of the Constitution fell within the original jurisdiction of the High Court under s.6(2). This claim does not involve any appeal either on fact or on substantive law from the decision of Maharaj J. that the appellant on 17th April 1975 was guilty of conduct that amounted to a contempt of court. What it does involve is an inquiry into whether the procedure adopted by that learned judge before committing the appellant to prison for contempt contravened a right, to which the appellant was entitled under s.1(*a*), not to be deprived of his liberty except by due process of law. Distasteful though the task may well appear to a fellow judge of equal rank, the Constitution places the responsibility for undertaking the inquiry fairly and squarely on the High Court.

It was argued for the Attorney General that even if the High Court had jurisdiction, he is not a proper respondent to the motion. In their Lordships' view the Court of Appeal were right to reject this argument. The redress claimed by the appellant under s.6 was redress from the Crown (now the State) for a contravention of the appellant's constitutional rights by the judicial arm of the State. By s.19(2) of the Crown Liability and Proceedings Act, 1966, it is provided that proceedings against the Crown (now the State) should be instituted against the Attorney General, and this is not confined to proceedings for tort.

Question (2)

The structure and the presumptions that underlie Chapter I of the Constitution of Trinidad and Tobago and the corresponding chapters in other constitutions on the Westminster model that provide for the recognition and protection of fundamental human rights and freedoms, have been referred to in a number of previous cases that have come before the Judicial Committee—notably in *D.P.P. v. Nasralla* [1967] 2A.C.238; *Baker v. The Queen* [1975] A.C.774; and *de Freitas v. Benny* [1976] A.C.239. In the first of these authorities Lord Devlin, speaking for the Board, said of the corresponding chapter in the constitution of Jamaica:

> "This chapter . . . proceeds upon 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." (p. 248)

That the same presumption underlies Chapter I of the Constitution of Trinidad and Tobago was stated by the Judicial Committee in *de Freitas v. Benny* (*ubi sup*. at p.244). In s.1 the human rights and fundamental freedoms which it is declared, (by the only words in the section that are capable of being enacting words,) "shall continue to exist" are those which are expressly recognised by the section to "have existed" in Trinidad and Tobago. So to understand the legal nature of the

various rights and freedoms that are described in the succeeding paragraphs (*a*) to (*k*) in broad terms and in language more familiar to politics than to legal draftsmanship, it is necessary to examine the extent to which, in his exercise and enjoyment of rights and freedoms capable of falling within the broad descriptions in the section, the individual was entitled to protection or non-interference under the law as it existed immediately before the Constitution came into effect. That is the extent of the protection or freedom from interference by the law that s.2 provides shall not be abrogated, abridged or infringed by any future law, except as provided by ss. 4 or 5.

What confines s.2 to future laws is that it is made subject to the provisions of s.3. In view of the breadth of language used in s.1 to describe the fundamental rights and freedoms, detailed examination of all the laws in force in Trinidad and Tobago at the time the Constitution came into effect (including the common law so far as it had not been superseded by written law) might have revealed provisions which it could plausibly be argued contravened one or other of the rights or freedoms recognised and declared by s.1. S.3 eliminates the possibility of any argument on these lines. As was said by the Judicial Committee in *de Freitas v. Benny* (*ubi sup.* at p.244):

> "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."

But s.3 does not legitimise for the purposes of s.1 conduct which infringes any of the rights or freedoms there described and was *not* lawful under the pre-existing law. There was no pre-existing law which authorized that of which complaint is made in this case: s.3(1) therefore does not over-ride the constitutional right of the appellant under s.1. True, he had no remedy, other than appeal for infringement of his right. Insofar as s.6 supplies a remedy where pre-existing law said there was none, s.3(1) does not deny it, since it does not refer to s.6.

S.6(1), to which it will be necessary to revert in greater detail when dealing with question (3), is not expressed to be subject to s.3. It is general in its terms. So it applies to any interference with a right or freedom recognised and declared by s.1, except in so far as that interference would have been lawful under the law in force in Trinidad and Tobago on 31st August 1962. If it would not have been lawful under that previously existing law, s.6 creates a new right on the part of the victim of the interference to claim a remedy for it described as " redress ". This remedy of " redress " co-exists with any other remedy to which the victim may have been entitled under the previously existing law.

To revert then to the legal nature of the rights and freedoms described in paragraphs (*a*) to (*k*) of s.1, and, in particular, to the question: against whom is the protection of the individual in the exercise and enjoyment of those rights and freedoms granted? In his dissenting judgment Phillips J.A. said:

> "The combined effect of these sections [sc.1, 2 and 3], in my judgment, gives rise to the necessary implication that the primary objective of Chapter I 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."

Read in the light of the recognition that each of the highly diversified rights and freedoms of the invidual described in s.1 already existed, it is in their Lordships' view clear that the protection afforded was against

contravention of those rights or freedoms by the State or by some other public authority endowed by law with coercive powers. The chapter is concerned with public law, not private law. One man's freedom is another man's restriction; and as regards infringement by one private individual of rights of another private individual, s.1 implicitly acknowledges that the existing law of torts provided a sufficient accommodation between their conflicting rights and freedoms to satisfy the requirements of the new Constitution as respects those rights and freedoms that are specifically referred to.

Some of the rights and freedoms described in s.1 are of such a nature that for contraventions of them committed by anyone acting on behalf of the State or some public authority, there was already at the time of the Constitution an existing remedy, whether by statute, by prerogative writ or by an action for tort at common law. But for others, of which "(*c*) the right of the individual to respect for his private and family life" and "(*e*) the right to join political parties and express political views" may be taken as examples, all that can be said of them is that at the time of the Constitution there was no enacted law restricting the exercise by the individual of the described right or freedom. The right or freedom existed *de facto*. Had it been abrogated or abridged *de facto* by an executive act of the State there might not necessarily have been a legal remedy available to the individual at a time before the Constitution came into effect—as, for instance, if a government servant's right to join political parties had been curtailed by a departmental instruction. Nevertheless *de facto* rights and freedoms not protected against abrogation or infringement by any legal remedy before the Constitution came into effect are, since that date, given protection which is enforceable *de jure* under s.6(1) cf. *Olivier v. Buttigieg* [1967] 1 A.C.115.

The order of Maharaj J. committing the appellant to prison was made by him in the exercise of the judicial powers of the State; the arrest and detention of the appellant pursuant to the judge's order was effected by the executive arm of the State. So if his detention amounted to a contravention of his rights under s.1(*a*), it was a contravention by the State against which he was entitled to protection.

Whether it did amount to a contravention depends upon whether the judge's order was lawful under the law in force before the Constitution came into effect. At that time the only law governing contempt of Court in Trinidad and Tobago was the common law; and, at common law it had long been settled that

> "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." *In re Pollard* (1868) L.R. 2 P.C. 106 at p.120.

That the order of Maharaj J. was unlawful *on this ground* has already been determined in the previous appeal; and in their Lordships' view it clearly amounted to a contravention by the State of the appellant's rights under s.1(*a*) not to be deprived of his liberty except by due process of law.

It is true that under the law in force at the coming into effect of the Constitution the only remedy available to the appellant against an order for committal that was unlawful on this or any other ground, would have been an appeal to the Judicial Committee of the Privy Council, by special leave, to have the order set aside. No action in tort would have lain against the police or prison officers who had arrested or detained him since they would have acted in execution of judicial process that was valid on its face; nor would any action have lain against the judge himself

for anything he had done unlawfully while purporting to discharge judicial functions. See *Sirros v. Moore* [1975] 1Q.B. 118, in which many of the older authorities are cited. But ss. 1 and 2 are concerned with rights, not with remedies for their contravention.

Accordingly their Lordships in agreement with Phillips J.A. would answer question (2): "Yes; the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged did contravene a constitutional right of the appellant in respect of which he was entitled to protection under s.1(*a*)."

Question (3)

S.6 (1) and (2) which deal with remedies, could not be wider in their terms. While s.3 excludes the application of ss.1 and 2 in relation to any law that was in force in Trinidad and Tobago at the commencement of the Constitution it does not exclude the application of s.6, in relation to such law. The right to "apply to the High Court for redress" conferred by s.6(1) is expressed to be "without prejudice to any other action with respect to the same matter which is lawfully available." The clear intention is to create a new remedy whether there was already some other existing remedy or not. Speaking of the corresponding provision of the Constitution of Guyana, which is in substantially identical terms, the Judicial Committee said in *Jaundoo v. A.G. of Guyana* [1971] A.C.972 at p.982:

> "To 'apply to the High Court for redress' was not a term of art at the time the Constitution was made. It was an expression that was first used in the Constitution of 1961 and was not descriptive of any procedure which then existed under Rules of Court for enforcing any legal right. It was a newly created right of access to the High Court to invoke a jurisdiction which was itself newly created. . . ."

As has been already mentioned, in his originating motion in the High Court of 17th April 1975 the appellant did allege that the provisions of s.1(*a*) had been and were being contravened in relation to him. He was thus entitled under s.6(1) to apply to the High Court for redress, without prejudice to his right also to pursue his remedy of appealing to the Judicial Committee against the judge's order.

What then was the nature of the "redress" to which the appellant was entitled? Not being a term of legal art it must be understood as bearing its ordinary meaning, which in the Shorter Oxford Dictionary is given as:

> "Reparation of, satisfaction or compensation for, a wrong sustained or the loss resulting from this."

At the time of the original notice of motion the appellant was still in prison. His right not to be deprived of his liberty except by due process of law was still being contravened; but by the time the case reached the Court of Appeal he had long ago served his seven days and had been released. The contravention was in the past; the only practicable form of redress was monetary compensation.

It was argued on behalf of the Attorney General that s.6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in *Jaundoo v. A.G. of Guyana* (*ubi sup.*). Reliance was placed upon the reference in the subsection to "enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections" as the purpose for which orders etc., could be made. An order for payment of compensation, it was submitted, did not amount to the *enforcement* of the rights that had been contravened. In their

Lordships' view an order for payment of compensation when a right protected under s.1 " has been " contravened is clearly a form of " redress " which a person is entitled to claim under s.6(1) and may well be the only practicable form of redress—as by now it is in the instant case. The jurisdiction to make such an order is conferred upon the High Court by paragraph (*a*) of s.6(2), viz. jurisdiction " to hear and determine any application made by any person in pursuance of subsection (1) of this section;". The very wide powers to make orders, issue writs and give directions are ancillary to this.

It has been urged upon their Lordships on behalf of the Attorney General that so to decide would be to subvert the long established rule of public policy that a judge cannot be made personally liable in court proceedings for anything done by him in the exercise or purported exercise of his judicial functions. It was this consideration which weighed heavily with the Chief Justice and Corbin J.A. in reaching their conclusion that the appellant's claim to redress should fail. Their Lordships, however, think that these fears are exaggerated.

In the first place, no human right or fundamental freedom recognised by Chapter I of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law—even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. When there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of the rights protected by s.1(*a*); and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event.

In the second place, no change is involved in the rule that a judge cannot be made personally liable for what he has done when acting or purporting to act in a judicial capacity. The claim for redress under s.6(1) for what has been done by a judge is a claim against the State for what has been done in the exercise of the judicial power of the State. This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the State, not of the judge himself, which has been newly created by s.6(1) and (2) of the Constitution.

In the third place, even a failure by a judge to observe one of the fundamental rules of natural justice does not bring the case within s.6 unless it has resulted, is resulting or is likely to result, in a person being deprived of life, liberty, security of the person or enjoyment of property. It is only in the case of imprisonment or corporal punishment already undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on appeal to an appellate court. It is true that instead of, or even as well as, pursuing the ordinary course of appealing directly to an appellate court, a party to legal proceedings who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under s.6(1) with a further right of appeal to the Court of Appeal under s.6(4). The High Court, however, has ample powers, both inherent and under s.6(2), to prevent its process being misused in this way; for example, it could stay proceedings under s.6(1) until an appeal against the judgment or order complained of had been disposed of.

Finally, their Lordships would say something about the measure of monetary compensation recoverable under s.6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone. Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration. Counsel for the appellant has stated that he does not intend to claim what in a case of tort would be called exemplary or punitive damages. This makes it unnecessary to express any view as to whether money compensation by way of redress under s.6(1) can ever include an exemplary or punitive award.

For these reasons the appeal must be allowed and the case remitted to the High Court with a direction to assess the amount of monetary compensation to which the appellant is entitled. The respondent must pay the costs of this appeal and of the proceedings in both courts below.

[*Dissenting Judgment by*
LORD HAILSHAM OF SAINT MARYLEBONE]

In this appeal I find, to my great regret, that I cannot concur in the judgment of the majority. The proceedings have their origin in an incident the circumstances of which have already been explored before the Judicial Committee, and are reported sub nomine *Maharaj v. Attorney-General for Trinidad and Tobago* in [1977] 1 All ER 411; they therefore do not require to be repeated in detail. Suffice it to say that the present appellant, a barrister, was committed for seven days on a charge of contempt in the face of the court by a judge of the High Court of Trinidad and Tobago, a conviction against which he appealed by special leave. In the result his appeal was allowed and his conviction set aside on two substantive grounds, the first of which is not, and the second of which is, relevant to the present appeal. The first, of great importance to the appellant, but no longer relevant, was that, as I understand it, on a correct analysis of the facts, he had not in fact committed the contempt of which he was charged. The second which is at the heart of the present appeal was, in effect, that he had been deprived of his liberty without due process of law. This was because the learned judge never explained to him with sufficient clarity or in sufficient detail the nature and substance of the contempt of which he stood accused. We are clearly bound by the decision in the earlier appeal, and in the present appeal it was never argued that the proceedings before the committing judge were not a contravention of the Constitution of Trinidad and Tobago in the form in which it was then in force.

On the same day as his committal, the appellant commenced the present proceedings by notice of motion under section 6 of the Constitution (of which more later) and Order 55 of the Rules of Court. They were at first adjourned, but when they came on for hearing were dismissed by Scott J. on a number of grounds. As a result of Scott J.'s decision the appellant served his sentence and has therefore been deprived of his liberty for seven days without redress other than the subsequent declaration of his innocence contained in the decision of the Judicial Committee above referred to and their conclusion that he had been convicted without a proper opportunity to defend himself.

On appeal from the decision of Scott J., the Court of Appeal (Sir Isaac Hyatali C.J. and Corbin J.A., Phillips J.A. dissenting) though differing in part from the learned judge dismissed the appeal and from their decision the appellant now appeals, by leave, to their Lordships acting as they now do as an appellate court by virtue of section 109 of the 1976 Constitution of Trinidad and Tobago.

The notice of motion claims a variety of different types of relief, but, in view of the events which have supervened, it seems to me that the only one which can do the appellant substantial service is that in which he claims monetary compensation as "damages for wrongful detention and false imprisonment".

The respondent to this appeal is the Attorney General of Trinidad and Tobago sued as the representative of the State by virtue of section 19 of the Crown (now the State) Liability and Proceedings Act, 1966. The original notice named in addition the committing judge, but he was never served with the notice and no remedy is now sought against him. Accordingly the only question in this appeal is whether the State is liable to pay monetary compensation to the appellant. It is common ground between the parties that any right to compensation which may exist can only arise by virtue of the Constitution in force at the time of the appellant's committal. That is the Constitution of 1962. Apart from the enacting sections of the order the relevant provisions are contained in Chapter I, sections 1, 2, 3 and 6, and of these sections 1, 3 and 6 are of critical importance. The respondent placed in the forefront of his argument two contentions, which I mention only to dismiss them because I agree entirely with the reasons given by the majority for their rejection. They were accepted by Scott J., but not by any member of the Court of Appeal. They were (1) that the High Court, in which the proceedings originated, had no jurisdiction to entertain them and (2) that, in any event, they failed since the Attorney General was not an appropriate party. On the assumption (which I make for this purpose) that the remedy of damages is otherwise available to the appellant against the State, it appears to me that the Attorney General is the appropriate party by virtue of section 19 of the Crown (State) Liability and Proceedings Act, 1966, and that whatever other proceedings may have been available, the notice of motion to the High Court is an appropriate, though not necessarily the only, means of procedure by virtue of section 6 of the 1962 version of the Constitution, and Order 55 of the Rules of Court. The case therefore stands or falls entirely upon the availability of a remedy by way of damages or compensation against the State in respect of the action of the judge in so far as this was a contravention of the entrenched rights or freedoms guaranteed by the Constitution of 1962. Since in my opinion such a remedy is not so available, it would follow that in my view the appeal should be dismissed.

The 1962 Constitution is one of a family of constitutions similar, but not now identical, in form, enacted for former colonial dependencies of the Crown on their attaining independence, as the result of negotiations and discussions relating to the terms on which independence should be granted. Many of them (including that of Trinidad and Tobago) have been amended since independence (sometimes more than once), but they still retain strong family resemblances. One of the main features of those constitutions is the enumeration and entrenchment of certain rights and freedoms. In the 1962 version of the Constitution of Trinidad and Tobago these, referred to as "human rights and fundamental freedoms", are contained in Chapter I, and, in the words of section 1 of this Chapter include:

> "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".

The nature of these rights and freedoms and the purpose of their entrenchment has been discussed more than once in reported cases. The first point to observe is that they do not claim to be new. They already exist, and the purpose of the entrenchment is to protect them against encroachment. In a Jamaican case Lord Devlin put it thus: they proceed

> "upon the presumption that the fundamental rights . . . are already secured to the people [of Jamaica]. 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"; per Lord Devlin in *D.P.P. v. Nasralla* [1967] 2 A.C. 238, 247,

or, as Lord Diplock put it in *de Freitas v. Benny* [1976] A.C. 239, referring to the 1962 Constitution of Trinidad and Tobago itself:

> "Chapter I of the Constitution of Trinidad and Tobago, like the corresponding Chapter III of the Constitution of Jamaica (see *D.P.P. v. Nasralla* [1967] 2A.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." (p.244.)

The purpose of entrenchment was also described by Lord Diplock in another case relating to Jamaica (*Hinds v. R.* [1977] A.C. 195 at 214E) as follows:

> "The purpose served by this machinery for 'entrenchment' is to ensure that those provisions which were regarded as important safeguards by the political 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 laws."

and again:

> "The provisions of this chapter form part of the substantive law of the state and until amended by whatever special procedure is laid down . . . impose a fetter upon the exercise by the legislature, the executive, and the judiciary of the plenitude of their respective powers." (p.213E.)

In other words the entrenchment is designed to preserve and protect what already exists against encroachment, abrogation, abridgement or infringement. It is concerned with future abuses of authority, usually State authority, and it is largely preoccupied with the possibility of abuse of authority by the legislature (see section 2), or the executive, though doubtless as Lord Diplock said it binds also the judiciary and inferior authority, and presumably also individuals. Except in so far as it protects against future abuse, entrenchment does not purport to alter existing law.

That this is so is clear from the Constitution itself. So far from creating new law, section 1, in identifying the rights and freedoms entrenched begins with the words:

"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" (emphasis mine)

and section 3 provides

"Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution".

By the interpretation section (section 105) the expression "law" includes "any unwritten rule of law" and section 6 (of which more later) relates only to proceedings for alleged contravention of sections 1 and 2 (the second of which is mainly framed to invalidate legislation which contravenes section 1), and to this extent must be read as subject to section 3 in so far as this limits the application of section 1 to existing rules of law.

It follows that, in order to construe the meaning and extent of the rights and freedoms protected by sections 1 and 2 of the Constitution one must look first at the extent of these rights as they existed at the date of the commencement of the Constitution. They may be extended or improved after that date by subsequent acts of the State acting appropriately through any of its branches. But they are only protected against encroachment in the form in which they existed at the commencement date. This applies even to the right to life where the death penalty was in force at the commencement. Granted due process of law, the right to life is not infringed by judicial execution (cf. *de Freitas v. Benny*, supra).

It thus becomes important to discuss in what form the rights to liberty and security of person and to due process existed in Trinidad and Tobago at the commencement of the 1962 Constitution, and for this purpose, the extent both of State (then Crown) and judicial immunity is relevant. At common law the Crown could not be impleaded at all. Before the U.K. Crown Proceedings Act 1947 (the analogue of which in Trinidad is the Crown (State) Liability and Proceedings Act, 1966, enacted after the Constitution of 1962) a petition of right would lie against the Crown for certain types of remedy, but only by consent of the Crown signified by the Attorney General's fiat (though in practice this was granted as of course in a proper case). This immunity from suit was no technicality of procedure. It was part of the prerogative and universally insisted upon. Apart from the petition of right procedure and some statutory exceptions the Crown was neither liable itself nor vicariously bound to answer for wrongs committed by its servants.

These servants however, from the highest Minister to the private soldier driving a truck, were personally liable for their own misdoings, negligences and crimes. Superior orders, even from the Sovereign himself, afforded no excuse or immunity from process civil or criminal, and although the Crown ordinarily ensured the satisfaction of civil judgments it did so of grace and not of necessity. A judge, of course, is not in the ordinary sense a servant. But he had a further immunity of his own. Judges, particularly High Court judges, were not, and are not, liable to civil actions in respect of their judicial acts, although, of course, in cases of corruption or criminal misconduct, they have never been immune from criminal process or impeachment. This is trite law, and I need do no more than refer to the very full and interesting discussion on the subject in the Court of Appeal in *Sirros v. Moore* [1975] 1 Q.B. 118. This civil immunity protected the judge whether he committed a mere error of law, or, in the case of a High Court judge, and perhaps not only then, if he exceeded his jurisdiction, or if he committed a breach of natural justice, or, subject to what I have said about criminal liability,

if he acted maliciously or corruptly. There could therefore be no kind of action against a judge in circumstances like the present, and the State could not be liable either. It could neither be impleaded itself nor could it be vicariously liable in respect of a matter for which the principal wrongdoer was not himself liable, and was acting in a judicial capacity and not as a servant.

Until the U.K. Crown Proceedings Act 1947 and its analogue in Trinidad and Tobago of 1966 the right of redress for judicial error was therefore limited to appeal (if any), and, since the right of appeal by way of rehearing is largely, if not entirely, the creature of modern statute, was at common law largely confined to technical procedures like writ of error or motion in arrest of judgment. In cases, like the present, for committal for contempt the right of redress was even more restricted. In the United Kingdom a general right of appeal was conceded only in 1960. It seems that in Trinidad (*Maharaj v. Attorney General,* supra) an appeal always lay by special leave to the Privy Council, and we were told that a general right of appeal to the Court of Appeal has now been conceded. But, apart from these qualifications, the right of redress in cases of contempt was limited to application to the committing judge for release, or, presumably, application for a writ of error for any error on the face of the record. In no case did it extend to damages.

Nor did the legislation of 1947 or 1966 make any relevant difference. True, it admitted actions against the Crown (State) for tort. But judicial error is not a tort, and the draftsmen of the Act of 1966 were careful to exclude liability whether direct, personal or vicarious for judicial acts, and the office of judge from the definition of servant of the Crown (see section 2(2)(*h*)(v) and section 4(6)). There is no reference, of course, to judicial immunity for acts contravening the entrenched rights and freedoms. But I do not myself believe that this was because no such immunity existed (as must be the case if the majority decision in this case be correct). Personally I find it impossible to believe that, if a right of action for damages in such a case did exist, as the result of the Constitution of 1962, either against the judge or against the State, the draftsman of the Act of 1966 would have allowed it to pass *sub silentio,* and would not have made express reference to it. At all events, what is certain is that no such right of action against the State or a judge was conferred by the Crown (State) Liability and Proceedings Act, 1966.

We now reach the Constitution of 1962 itself. The first sections to construe are sections 1 and 3, and, of these, section 1 is the more important, though I think they are to be read together. As I read section 1, it means that the right to liberty and security of person as it existed at the commencement of the Constitution and therefore in the form in which it is entrenched did not extend to give a right of damages for unlawful judicial acts, nor, if I am right in my analysis, did a contravention by a judge of the right of due process give any such right. I am quite willing to concede that for whatever reason a failure to formulate a criminal charge including one for contempt correctly was not authorised by law at the time (which included the Bill of Rights 1688), and that failure to do so would result in a conviction being set aside on appeal where one was available. I do not find the expression "due process" (although it is a phrase familiar to English lawyers at least as far back as the Statute 28 Edward 3 c. 3, repeated in the Petition of Right Act 1627 and the Habeas Corpus Act 1640) any easier to define exhaustively than have the American courts, but I am very ready to assume that any failure of natural justice such as conviction by or before a biased, interested, or corrupt tribunal is struck down by the prohibition or even that a complete misdirection as to the burden of proof as in *Woolmington* [1935] A.C. 462 would do so, or that repeated

interruptions by a judge if carried too far, might also be affected, since this would disrupt the conduct of the defence. If so, I can see no reason to exclude a failure sufficiently to formulate the charge. Exactly at what stage deprivation of due process fades into mere judicial error I do not find it easy to say and if I am right it probably never occurred to the framers of the Constitution to ask themselves this question. The results to the individual can be equally obnoxious whichever side of the line such errors fall. From the point of view of judicial integrity, judicial dishonesty is by far the most serious. From the point of view of the liability of the State to pay compensation, I am not sure that any consideration of public policy justifies these distinctions, logically unassailable as all, or some at least of them, may be. What is certain is that if I am right it does not matter for the purpose in hand, since neither class of error gives a right of damages, but if I am wrong and the majority decision correct, a new, and probably unattractive branch of jurisprudence is almost certain to arise in Trinidad and elsewhere, based on the distinction between those judicial errors which do, and those which do not, constitute a deprivation of due process of law.

Since it appears to lie at the heart of the argument which has appealed to the majority, the time has now come to examine the effect of section 6 of the 1962 Constitution. Does it make any difference? Does it grant what had hitherto been withheld, a right to damages in cases of judicial misbehaviour, albeit limited to deprivation of due process? The majority decision involves an affirmative answer. Section 6 provides:

> " 6—(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections or section of this Constitution has been, is being, or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.
>
> (2) The High Court shall have original jurisdiction
>
> (*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section; [(*b*) omitted as irrelevant]
>
> and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections or section to the protection of which the person concerned is entitled.
>
> (3) [omitted as irrelevant]
>
> (4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal.
>
> (5) Nothing in this section shall limit the power of Parliament to confer on the High Court or the Court of Appeal, such powers as Parliament may think fit in relation to the exercise by the High Court or the Court of Appeal, as the case may be, of its jurisdiction in respect of matters arising under this Chapter ".

It is perhaps worth remarking that the side note to the whole section reads:

> " Enforcement of protective provisions ".

This is the section which is alleged to have made by necessary intendment fundamental changes in the long standing rules of law conferring immunity on the judges, on servants of the executive acting on a judge's warrant, and on the Crown or State, and providing that the State should pay damages in respect of judicial misconduct, even though the judge himself remains immune, a possibility I discuss later.

The first comment which I feel myself constrained to make is that I find it more than a little surprising that a section giving a totally new cause of action against the State (particularly prior to the enactment of the Crown Liability and Proceedings Act, 1966, and in the light of section 3 set out above) should begin with the somewhat anodyne expression "for the removal of doubts it is hereby declared". An expression of this kind is not unusual in Westminster model legislation, but I must say that if the section be intended to create a fundamental change in the accepted law of State liability (as it must be if the appellant's case and the majority decision be correct) it will be the first time that I have seen this particular phrase used in such a context, and it is particularly odd, since in 1962 the Crown Liability and Proceedings Act had not yet been passed.

The second point is that the section does not at first sight purport to do anything of the kind. What it purports to do in subsection (1) is to provide a forum and a procedure independent of any other remedy available for persons desiring to secure redress against contraventions of section 1 and section 2. It does not specify the type of relief which may be granted in any one case. But subsection (2) does give examples—the making of orders, the issuing of writs, and the giving of directions—of the kind of remedy which may be available to an applicant seeking redress. It is by no means obvious, at least from these examples, that a totally new type of action for damages against the State in respect of actions by a High Court judge, was in the forefront of the legislators' minds, or in their minds at all.

I take it that the most obvious construction of subsection (2) is not that it provides new types of relief where none would otherwise exist, but that it gives the High Court power to spell out the legal consequences of contravention by providing the appropriate orders, whether by declaration or otherwise, to give effect to those consequences whatever they may be.

A great deal of argument necessarily turned on the meaning to be attached to the word "redress" in section 6(1) and "enforcement" in section 6(2). It was contended for the appellant, and it is accepted by the majority decision, that either or both of these words is sufficiently wide, or at least sufficiently indeterminate in meaning, to include a right to damages or a direction for the assessment of damages as one of the remedies available to the High Court. Not unnaturally the attention of the Board was directed to its decision in *Jaundoo v. Attorney-General of Guyana* [1971] A.C.972, a decision based on the substantially analogous provisions of the Guyana Constitution. In that case, in allowing the applicant's appeal, the Board remitted the motion to the court of first instance with a direction to hear and determine it on its merits, and, if these were found to be favourable to the applicant, to assess and give a direction for the payment of damages or compensation. This, it was contended, entirely supports the appellant's argument in the instant appeal to the effect that the references in section 6 to "redress" and "enforcement" include, or at least may include, a right to damages as a form of relief.

Though the contrary was contested strongly on behalf of the respondent, I see no reason to differ from the majority conclusion in this. Unhappily, I am unable to see that this disposes of the matter. On the contrary, I find that *Jaundoo's* case (supra) aptly illustrates the difficulty that I feel. In *Jaundoo* the applicant was seeking redress which would have had the effect of preventing the taking of her land for the making of a road. At the time of her application the land had not been taken. By

the time of the appeal to the Privy Council, the land had been taken and the road built and no compensation paid. But the right to the enjoyment of landed property is, and for a long time has been, subject to the right of the State to acquire it compulsorily on payment of compensation. This is part of the statute law of virtually every civilised country. An attempt by the executive, or, under a written Constitution, by the legislature, to acquire compulsorily land without compensation is unlawful, and, if the applicant's case in *Jaundoo* were established, the act of the executive in doing so, whether or not under the purported authority of an act of the legislature contravening the Constitution, would, in the case of a written Constitution on the models we are discussing, be a trespass, giving a right to damages at common law. At the time of the appeal the lawfulness of the acquisition was not determined, and the case was therefore remitted to the court of first instance to determine the merits. A necessary consequence of the merits being determined in the applicant's favour would have been a right of action for damages against the executive for trespass, that is in an ordinary action of tort. Since the Constitution provided what was intended as a speedy remedy by way of notice of motion, it was, so far as I can see, wholly appropriate for the Board to order compensatory damages as part of the redress in the event of the merits being determined in favour of the applicant. In my view it is quite another thing to contend that a section of essentially a procedural character which embraces the possibility of damages where damages have always been due (e.g. where a trespass has been committed) confers a right of damages against the State for a judicial error where damages have never been available, and even if available, have not been available against the State.

I am, of course, not to be understood as suggesting that a notice of motion under section 6 was an inappropriate procedure in so far as it claims a declaration. It was in fact an alternative to the appeal to the Privy Council. It was not as beneficial to the appellant, as the appeal to the Privy Council ultimately proved, as the Privy Council has jurisdiction to declare (as the High Court probably would not have had) not merely that the appellant had been deprived of due process, but that he was actually innocent of the charge. I am simply saying that, on the view I take, the expression " redress " in subsection (1) of section 6, and the expression " enforcement " in subsection (2), although capable of embracing damages where damages are available as part of the legal consequences of contravention, do not confer and are not in the context capable of being construed so as to confer, a right of damages where they have not hitherto been available, in this case against the State for the judicial errors of a judge. This, in my view, must be so even though the judge has acted as the committing judge was held to have done in the instant case. Such a right of damages has never existed either against the judge or against the State and is not, in my opinion, conferred by section 6.

The third point I make on the majority construction of section 6 is that, in my view at least, it proves too much. Both parties, and, as I understood it, the majority in their conclusion, have shied away from the possibility that damages might equally have been claimed against the judge personally. But I do not at present understand why. If sections 1, 2 and 6 of the Constitution give a right of action for damages against the State for an action by the judge in circumstances in which the State would have had absolute immunity prior to the Constitution, it can only be on grounds equally applicable to the judge himself. These grounds are that the judge was guilty of a contravention of section 1, that he is not in the circumstances protected by section 3, that redress under section 6 must include damages in such a case, and that the prior rule of law giving immunity has in consequence no application. If this

be correct, in order to save the judge's immunity, further legislation would be urgently necessary, and, since this would involve an amendment to the Constitution, such legislation might not be particularly easy to obtain.

I must add that I find it difficult to accommodate within the concepts of the law a type of liability for damages for the wrong of another when the wrongdoer himself is under no liability at all and the wrong itself is not a tort or delict. It was strenuously argued for the appellant that the liability of the State in the instant case was not vicarious, but some sort of primary liability. But I find this equally difficult to understand. It was argued that the State consisted of three branches, judicial, executive and legislative, and that as one of these branches, the judicial, had in the instant case contravened the appellant's constitutional rights, the State became, by virtue of section 6 responsible in damages for the action of its judicial branch. This seems a strange and unnatural way of saying that the judge had committed to prison the appellant who was innocent and had done so without due process of law and that someone other than the judge must pay for it (in this case the taxpayer). I could understand a view which said that because he had done so the State was vicariously liable for this wrongdoing, even though I would have thought it unarguable (even apart from the express terms of the Crown Liability and Proceedings Act, 1966) that the judge acting judicially is a servant. What I do not understand is that the State is liable as a principal even though the judge attracts no liability to himself and his act is not a tort. To reach this conclusion is indeed to write a good deal into a section which begins innocently enough with the anodyne words "for the removal of doubts it is hereby declared".

If I were at all of the opinion that section 6 did unambiguously confer a right of damages in circumstances like the present, I would not, of course, be deterred from saying so in view of any inconveniences of public policy which might ensue from this conclusion. But, since I am not of this opinion, I feel that I am entitled to point to some of the inconveniences which I believe to exist.

In the first place, as I understand the decision of the majority it is that a distinction must be drawn between a mere judicial error and a deprivation of due process as in the instant appeal, and that the former would not, and the latter would, attract a right of compensation under the present decision, even though in each case the consequences were as grave. I have already touched on this. I do not doubt the validity of the distinction viewed as a logical concept, though the line might be sometimes hard to draw. But I doubt whether the distinction, important as it may be intellectually, would be of much comfort to those convicted as a result of judicial error as distinct from deprivation of due process or would be understood as reasonable by many members of the public, when it was discovered that the victim was entitled to no compensation, as distinct from the victim of a contravention of section 1 of the Constitution who would be fully compensated.

As a result of the majority decision the case will return to the High Court with a direction to assess damages. I doubt whether their task is as easy as might be supposed. We are told that this is not an action of tort. Indeed, if it were, the appellant would be out of court as the result of the provisions of the Crown (State) Liability and Proceedings Act, 1966, already noticed, unless, of course, that Act were itself to be attacked as violating the Constitution *quoad* torts which were also contraventions of the Constitution. But if it is not a tort, but something *sui generis*, the question arises on what principles are damages to be

assessed. Are punitive damages available on the basis of *Rookes v. Barnard* [1964] A.C. 1129 at 1223, 1224, *Cassell & Co. Ltd. v. Broome* [1972] A.C. 1027 at 1078, 1134, and if not why not? How far may aggravated damages be awarded in as much as the judge is not a servant, and the State's liability said not to be vicarious? Are damages to include an element for injured feelings or damage to reputation? No doubt all these questions are capable of solution, especially if tort is taken to be a sound analogy. But on what principle is it a sound analogy? At present the sea is an uncharted one, as no similar case has ever been brought, and the action is not in tort.

There is, of course, nothing in the Constitution of Trinidad and Tobago to prevent the legislature from improving on the rights and fundamental freedoms guaranteed by the Constitution if they wish to do so and though I might well not be of their number I can well understand that the members of a legislature inspired by a zeal to compensate the victims of an injustice committed by judicial officers of the State might well wish to make such an improvement. What I venture to question is whether they have done so in Trinidad and Tobago by section 6 of the Constitution of 1962, and if they have not, as I feel myself constrained to believe, it would follow that this appeal should be dismissed.

310269—2 Dd 119941 80 3/78

In the Privy Council

RAMESH LAWRENCE MAHARAJ

v.

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Printed by HER MAJESTY'S STATIONERY OFFICE
1978