

Privy Council Appeal No. 39 of 1947

Chenard and Company and others - - - - - *Appellants*

v.

Joachim Arissol - - - - - *Respondent*

FROM

THE SUPREME COURT OF SEYCHELLES

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 30TH NOVEMBER, 1948

Present at the Hearing :

LORD SIMONDS

LORD UTHWATT

LORD MORTON OF HENRYTON

LORD REID

[*Delivered by* LORD REID]

The defendant and respondent in this case is a Member of the Legislative Council of Seychelles. The plaintiffs and appellants are merchants in Seychelles and the present action was brought by them in consequence of statements admittedly made by the respondent in the course of a speech in the Legislative Council on 28 December, 1946. These statements are alleged to be defamatory of the appellants and it is further alleged that the respondent abused his position as a Member of the Legislative Council for the purpose of making false malicious and defamatory statements against the appellants. The respondent while denying these allegations pleaded *in limine litis* that no action lay in law against him as a Member of the Legislative Council on the averments of the statement of claim. This plea was sustained by the Supreme Court of Seychelles on 20 March, 1947.

The only question raised in this appeal is whether absolute privilege attaches to statements made in the Legislative Council of Seychelles by a member of the Council. The Seychelles Penal Code (Ordinance No. 10 of 1904) was enacted by the Governor by and with the consent of the Legislative Council and received Royal Assent on 1st December, 1904. Sec. 192 (1) (a) of this Code provides that no prosecution or action for defamation shall be competent against the President or a member of the Legislative Council for anything said or written by him in such capacity from his place in such Council. It was admitted by Counsel for the appellants that if this provision is *intra vires* the present appeal must fail.

The power of the Governor and Legislative Council of Seychelles to make laws flows from Letters Patent of 31st August, 1903, by virtue of which the Seychelles Islands were erected into a separate colony. Clause 8 of the Letters Patent provides: "The Governor by and with the advice and consent of the said Legislative Council may make ordinances for the peace order and good government of the colony, subject nevertheless to such rules as We have already made or may hereafter make for their guidance by any Instruction under Our Sign Manual and Signet." Their Lordships have not been referred to any Instructions relevant to the question at issue in this case.

A power to make ordinances for the peace order and good government of a colony does not authorise alteration of the constitution or powers of the colonial legislature but it does authorise the enactment of rights privileges and immunities whether these be general or in favour of particular persons or classes of persons. Such a power has been held "to authorise the utmost discretion of enactment for the attainment of the objects pointed to" and a court will not enquire whether any particular enactment of this character does in fact promote the peace order or good government of the colony (*Riel v. The Queen*, 10 App. Cas. 675).

It was argued for the appellants that this general power to enact rights privileges and immunities is limited by the provisions of Sec. 2 and 5 of the Colonial Laws Validity Act, 1865 (28 & 29 Vic. cap. 63). Sec. 2 provides that "any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony . . . shall to the extent of such repugnancy . . . be void and inoperative." Sec. 5, after conferring on every Colonial Legislature power to make laws regarding Courts of Judicature, provides that "every representative Legislature shall have and be deemed at all times to have had full power to make laws respecting the constitution powers and procedure of such legislature . . ." A representative legislature is defined as one of which at least half the members are elected and the Legislative Council of Seychelles is not a representative legislature within the meaning of this Act. The argument for the appellants was that, in view of the fact that the first part of Sec. 5 confers certain powers on every Colonial Legislature, the restriction of the grant of further powers by the latter part of the Section to representative legislatures must be deemed to imply that non-representative legislatures are prohibited from exercising any of these further powers. Their Lordships do not accept this argument. The purpose of Sec. 5 is to confer rights not to take them away. No right is conferred by Sec. 5 on any non-representative legislature to make laws respecting the constitution powers or procedure of that legislature and it may be that few if any non-representative legislatures have power to make laws which directly affect their own constitution powers or procedure, but, if any such legislature has power from another source to make laws which touch any of these matters, those powers are not affected by the Colonial Laws Validity Act, 1865.

In any event their Lordships are of opinion that Sec. 192 (1) (a) of the Seychelles Penal Code is not a law respecting the constitution powers or procedure of the Legislature of Seychelles within the meaning of Sec. 5 of the Colonial Laws Validity Act. It was argued that these words must be given a wide meaning so as to include all rights privileges and immunities which attach to members of the legislature in their capacity as members or at least all those rights privileges and immunities which could properly be regarded as falling within the sphere of constitutional law. Their Lordships see no reason for so extending the ordinary meaning of the words of this Section. None of those words is apt to include privileges or immunities of individual members of the legislature which protect them against actions in respect of their conduct as members. Accordingly Sec. 192 (1) (a) of the Seychelles Penal Code is within the power to legislate conferred on the legislature of that colony by Letters Patent, is not repugnant to any Act of Parliament and is therefor *intra vires* and valid.

A further question was fully argued—whether absolute privilege in respect of statements made in a legislative assembly by members of that assembly is so essential for free discussion and the proper conduct of business that the setting up of any legislative assembly necessarily implies the creation of that immunity. It has long been settled that the setting up of a colonial legislature does not vest in that legislature without express grant all the privileges of the House of the Imperial Parliament but only such powers or privileges "as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute. Whatever in a reasonable

sense is necessary for these purposes is impliedly granted whenever any such legislative body is established by competent authority" *Barton v. Taylor*, 11 App. Cas. 197 per *Lord Selborne* at p. 203; *Kielley v. Carson* 1842, 4 Moore P.C. 63. There is little authority on the question whether absolute privilege must be held to have been impliedly granted: but in *Gipps v. McElhone*, 1881, 2 N.S.W. 18 it was held that no action lay for defamation in respect of a question put by a member in the legislative assembly of New South Wales. Sir J. Martin, C.J. said at p. 21 "There is no doubt in my mind of the existence of this privilege, and that it is absolute. It arises from inherent necessity. The necessity is just as great here as in the Imperial Parliament." Their Lordships see no reason to differ from this opinion or to draw any distinction in this matter between representative and non-representative legislative assemblies.

Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellants will pay the costs of this appeal.

In the Privy Council

CHENARD AND COMPANY AND OTHERS

v.

JOACHIM ARISSOL

DELIVERED BY LORD REID

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