IN THE PRIVY COUNCIL NO; 12 of 1978

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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

BETWEEN

RAMESH DIPRAJ KUMAR MOOTOO (Appellant)

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO (Respondent)

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

IN THE PRIVY COUNCIL No. 12 of 1978.

ON A P P E A L

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A N D

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 ACT NO. 16 of 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

No. 1.

Notice of Motion

In the High Court.

No. 1

Notice of Motion.

22nd October, 1974.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920A of 1974.

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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 ACT NO. 16 OF 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

In the High Court.

No. 1.

Notice of Motion.

22nd October, 1974.

(Continued).

TAKE NOTICE that the High Court of Justice at Port of Spain will be moved on the 15th day of November, 1974 at the sitting of the Court at the hour of 9 o'clock in the forenoon or soon thereafter as Counsel can be heard, by Counsel on behalf of the above named Applicant RAMESH DIPRAJ KUMAR MOOTOO for the following reliefs namely:-

(a) An order declaring the Unemployment Levy Act 1970 (Act No. 16 of 1970) is ultra Vires the Constitution unconstitutional null and void and of no effect.

(b) An order that the Applicant is not liable for any sums determined therein.

(c) Such further or other relief as the nature of the case may require.

(d) Such order as to costs of an incidental to this Application as the Court shall consider just.

AND FURTHER TAKE NOTICE that the grounds of the Application are:-

(a) that the Unemployment Levy Act 1970 No. 16 of 1970 is ultra vires the Constitution of Trinidad and Tobago and is unconstitutional is null and void and of no effect.

(b) that in divers respects the said Act is in conflict with and in breach of the provisions of the said Constitution.

(c) that in any event the said Act constitutes an unwarranted invasion of the democratic rights and freedom of the Applicant and other citizens of Trinidad and Tobago and its enactment could not be reasonably justified in a society that has a proper respect for the rights and freedom of the individual.

Dated this 22nd day of October, 1974.

/s/ Edward N. Fergus.
Applicant's Solicitor.

To: The Attorney General, Red House, Port of Spain.

Filed by Mr. Edward N. Fergus, Solicitor for the Applicant herein, of No. 3 Penitence Street, San Fernando whose address for service is the same and in Port of Spain c/o L. Ramcoomarsingh of Sackville Street.

No. 2.

Affidavit of Ramesh Dipraj Kumar Mootoo.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920A of 1974.

In the Matter of the Constitution of Trinidad and Tobago being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962.

AND

In the Matter of the Application of RAMESH DIPRAJ KUMAR MOOTOO (a person alleging that certain provisions of the said Constitution have been and are likely to be contravened in relation to him by reason of the enactment of the Unemployment Levy Act 1970 Act. No. 16 of 1970) for redress in accordance with Section 6 of the said Constitution.

I, RAMESH DIPRAJ KUMAR MOOTOO, Medical Practitioner, of High Street, San Fernando in the Island of Trinidad, make oath and say as follows:-

1. I am a self employed Medical Practitioner practising my profession in San Fernando and was practising continuously since 1961.

2. On the 4th June, 1970 the Legislative of Trinidad and Tobago purported to enact Unemployment Levy Act 1970 (Act No. 16 of 1970).

3. In terms of the provisions of the said Act I am liable for and I am required to pay an unemployment levy of certain sums to the Board of Inland Revenue calculated on the basis of my chargeable income for income tax purposes for the year 1974.

4. The imposition of the said levy is for the benefit of a fund called the Unemployment Fund which is established by the said Act. The use to which the said fund may be put has not been determined by law.

In the High Court.

No. 2.

Affidavit of Ramesh Dipraj Kumar Mootoo

22nd October, 1974.

(Continued)

5. I am advised by Counsel and verily believe that the levy is ultra vires the provisions of the Constitution of Trinidad and Tobago which guarantees the fundamental human rights and freedom of the individual and that it is in particular a violation of the fundamental right of the citizen to the enjoyment of property guaranteed by Articles 1 and 2 of the said Constitution.

6. The said Act No. 16 of 1970 was not passed in accordance with the provisions and requirements of Section 5 of the said Constitution.

7. But for the enactment I am obliged to pay the levy upon my income.

8. Unless a declaration of the unconstitutionality of the said Act is made by the Supreme Court the Board of Inland Revenue will seek to recover from me the sums payable under the said Act in respect of the said levy upon my income.

9. Accordingly I respectfully pray that this Honourable Court will be pleased to grant the reliefs set forth in the Notice of Motion hereto in pursuance of the powers granted by Section 6 of the Constitution of Trinidad and Tobago and in pursuance of all other powers enabling the Court to grant such relief or any other relief that may be just.

Sworn to at No. 3 Penitence Street in the town of San Fernando this 22nd day of October, 1974.

/s/ Ramesh Dipraj Kumar Mootoo

Before me,

/s/ Dalton Chadee

Commissioner of Affidavits.

Filed on behalf of the Applicant herein:

To:

The Attorney General,
Red House,
Port of Spain.

No. 3.

Affidavit of Vindar Dean-Maharaj.

In the High Court.

No. 3.

Affidavit of Vindar Dean-Maharaj.

21st November, 1974.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920 of 1974.

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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 ACT NO. 16 OF 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

I, VINDAR DEAN-MAHARAJ of No. 1, Kitchener Street, Woodbrook in the City of Port of Spain, in the Island of Trinidad, make oath and say as follows:-

1. I am Comptroller of Accounts in the Ministry of Finance of Trinidad and Tobago.

2. As Comptroller of Accounts I am responsible for maintaining the main books of Accounts of the Government of Trinidad and Tobago and for providing for the reconciliation of the figures in these books with the Accounting records maintained by Ministries and Departments.

3. As Comptroller of Accounts I am required to produce financial statements at the end of every year and to submit them to the Auditor General not later than four months after the end of the year.

4. The Auditor General's Report on these statements together with the statements signed by me is laid in Parliament some three months after the final date for submission of the statements by me to him.

In the High Court.

No. 3.

Affidavit of Vindar Dean-Maharaj.

21st November, 1974.

(Continued)

5. I have from the year 1970 to the present time been responsible for maintaining and have maintained the main books of accounts relating to the Unemployment Fund established by the Unemployment Levy Act 1970 and for providing for the reconciliation of the figures in those books with the accounting records maintained by Ministries and Departments and have so provided.

6. I have been responsible for producing and have produced at the end of each of the years 1970, 1971, 1972 and 1973 a financial statement in respect of the Unemployment Fund.

7. In relation to each of the years 1970, 1971, 1972 and 1973 I submitted the respective financial statement on the Unemployment Fund to the Auditor General and his comments on the Fund for each year are included in his report for that year which has been laid in Parliament.

8. In respect of each of the years 1970, 1971, and 1972 I produced a detailed statement showing expenditure from the fund. Copies of the said statements are hereto annexed and marked "A", "B" and "C" respectively.

9. Copies of the Auditor General's Reports for 1970, 1971 and 1972 referred to at paragraph 7 hereof are hereto annexed and marked "D", "E" and "F" respectively.

10. No printed copy of the Auditor General's report for 1973 is yet available.

11. In respect of the years 1970, 1971 and 1972, I have with the Accounting Officer, Ministry of Finance attended before the Public Accounts Committee of Parliament and given information in respect of the financial statements of the said Fund.

Sworn at the Red House,
Port of Spain this 21st
day of November, 1974.

/s/ H.V. Dean-Maharaj

Before me,

/s/ H.R.L. Bynoe.

Commissioner of Affidavits.

Filed on behalf of the Respondent.

No. 4.

In the High Court.

No. 4

Affidavit of George Rex Latour.

21st November, 1974.

Affidavit of George Rex Latour.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920 of 1974.

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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 (ACT NO. 16 OF 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

I, GEORGE REX LATOUR, make oath and say as follows:-

1. I am Clerk of the House of Representatives of the Parliament of Trinidad and Tobago and reside at 29, Church Street, in the City of Port of Spain.

2. In 1970 I held the post of Clerk of the said House of Representatives.

3. My duties as Clerk of the said House of Representatives include attendance at all sittings of the said House of Representatives and the preparation of Minutes of these sittings.

4. On 22nd May, 1970 I attended a sitting of the said House of Representatives as Clerk of the said House of Representatives when the said House of Representatives debated a Bill entitled "A Bill entitled an Act to provide for the imposition of an Unemployment Levy upon the chargeable income or profits of persons".

5. At the commencement of the said sitting of the said House of Representatives on the said date the following members of the said House of Representatives were present at that sitting:-

In the High Court.

No. 4.

Affidavit of George Rex Latour.

21st November, 1974.

(Continued)

The Honourable	C. A. Thomasos	Speaker
"	K. Mohammed	
"	L.M. Robinson	
"	V. L. Campbell	
" Dr.	M. P. Awon	
"	E. E. Mahabir	
"	F. C. Prevatt	
"	K. Hudson-Phillips	
"	B. L. B. Pitt	
"	G. M. Chambers	
Mrs.	M. Donawa	
Mr.	F. V. Stephen	
"	J. R. F. Richardson	
"	Sham Mohammed	
"	V. A. Jamadar	
"	B, S. Maraj	
"	A. C. Alexis	
"	R. E, Wallace	
"	A. Bermudez	
"	A. A. Thompson	
"	A. Baksh	
"	R. Bhoolai	
"	F. Blackman	
"	N. Muradali	
"	E. E. Phipps	
"	R. Rambachan	
"	S. Shah	
Mrs.	L.A.E. Wright	

6. When the question was put by the Speaker of the said House of Representatives to the Members of the said House of Representatives upon the Third Reading of the said Bill on the said date, the said Bill was passed by the said House of Representatives without any division.

Sworn at Red House, Port of Spain this 21st day of November, 1974,

/s/ George R. Latour.

Before me,

/s/ R. L. Bynoe

Commissioner of Affidavits.

Filed on behalf of the Respondent.

In the High Court.

No. 5.

Affidavit of Lancelot Busby.

21st November, 1974.

No. 5.
Affidavit of Lancelot Busby.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920 of 1974.

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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT, 1970 (NO. 16 OF 1970)FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

I, LANCELOT BUSBY of 6, Armon Dale, Petit Valley, in the Ward of Diego Martin, in the Island of Trinidad make oath and say as follows:-

1. I am a Public Officer holding the office of Senior Statistician in the Ministry of Planning and Development, and I am at present in charge of the Central Statistical Office of the said Ministry, performing duties of the Director of Statistics.

2. The functions of the Director of Statistics include publication of Statistics compiled, tabulated and analysed.

3. Exhibited hereto is a booklet marked "A" which is a publication issued by the Director of Statistics containing inter alia analyses of the Labour Force in Trinidad and Tobago, the said analyses being based on a continuous sample survey of the population.

4. The said publication was issued by the Director of Statistics in exercise of his functions under the Statistics Ordinance, Chapter 42 No. 11.

In the High Court.

Sworn at Red House, Port of Spain this 21st day of November, 1974.

/s/ Lancelot A. Busby

Before me,

/s/ R. L. Bynoe

Commissioner of Affidavits.

No. 5.

Affidavit of Lancelot Busby.

21st November, 1974.

(Continued) Filed on behalf of the Respondent.

No. 6.

Affidavit of Joseph Emmanuel Carter.

21st November, 1974.

No. 6.

Affidavit of Joseph Emmanuel Carter.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920A of 1974.

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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT, 1970 (NO. 16 OF 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

I, JOSEPH EMMANUEL CARTER, make oath and say as follows:-

1. I am Clerk of the Senate of the Parliament of Trinidad and Tobago and reside at 19, Thomas Drive, Diego Martin, in the Island of Trinidad.

2. In 1970 I held the said post of Clerk to the said Senate.

3. My duties as Clerk of the said Senate include attendance at all sittings of the said Senate and the preparation of Minutes of those sittings.

4. On Tuesday 2nd June, 1970 at the Seventeenth Sitting of the 1969-70 Session a Bill entitled - "An Act to provide for the imposition of an Unemployment Levy upon the chargeable income or profits of persons" was introduced in the said Senate.

5. The said Bill was also given a Second and Third Reading on the said date in the said Senate and was passes in the said Senate on the said date without any division.

6. The following Senators were present at the Seventeenth Sitting of the 1969-1970 Session of the said Senate, held on Tuesday 2nd June, 1970 at 1.30 p.m.

Senator, the Honourable J. Hamilton Maurice, President.
Senator, the Honourable D. P. Pierre, Minister of Public Utilities and Minister of Housing
Senator, the Honourable C. K. Gomes, Minister of Education and Culture
Senator, the Honourable O.R. Padmore, Minister of Petroleum and Mines and Minister of Industry and Commerce.
Senator, the Honourable J. C. Daniel, Parliamentary Secretary to the Minister of Labour and Minister of Social Security.
Senator, the Honourable R. S. Felix, Parliamentary Secretary to the Prime Minister.
Senator, Dr. A. Date-Camps, Vice President
Senator, the Honourable T. Sheers
Senator, the Honourable C. T. Tull
Senator, the Honourable Sir Patrick Hobson K. T.
Senator, the Honourable M.T.I. Julien
Senator, the Honourable J. B. Stollmeyer
Senator, the Honourable T.T. Bleasdell
Senator, the Honourable W. O. de Suza
Senator, the Honourable Ramzan Ali
Senator the Honourable C. Spencer
Senator, the Honourable L. Balgobin
Senator, the Honourable R. Martin
Senator, the Honourable Dr. R, Mootoo
Senator, the Honourable Pundit S. Persad
Senator, the Honourable Dr. Wahid Ali
Senator, the Honourable W. Hinds.

The only Senator absent was senator C. O'Brien-one of the Independent Senators.

Sworn at Red House, Port of Spain this 21st day of November, 1974. /s/ J. E. Carter.

Before me,

/s/ R. L. Bynoe.

Commissioner of Affidavits.

Filed on behalf of the Respondent.

In the High Court.

No. 7.

Judge's Notes of Evidence.

No. 7.

Judge's Notes of Evidence.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920A of 1974.

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

Plaintiff

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970; ACT NO. 16 OF 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

Defendant

Before the Honourable
Mr. Justice J. Braithwaite.

S U B M I S S I O N S

Maharaj for applicant refers to:

(1) S. 2 "Unemployment Levy" definition.
(2) S. 5 reads "Charged, levied and collected."
(3) S. 17 Payment of Unemployment Fund.

Not Consolidated Fund

Regulations by Governor General

Project and other matters

(4) S. 14 (2) Established Unemployment Fund - admitted by Minister of Finance.

(5) S. 14 (3) Minister authorised to make advances etc. No Regulations are made under the Act.

Refers to S. 1 (a) of Constitution - "due process of Law".
Must be by "due process of law".

For validity of Act must be exercised by taxing power of sovereignty of Parliament - must be tax. Chapter VII (S.85 (1), (2), (3) and (4).

Parliament purported to raise money for special fund by 16 of 1970.

S. 86 "Tax - (1) Imposition; (In breach of S. 1);
(2) Paid into Public Treasury;
(3) Support the Government;
(4) Purpose to which it is put should be a public purpose.

Loan Association V. Topeka 20 W all 665 Supreme Court of the U.S.A. (Private purposes) See p. 1235 etc. of Judgment.

Naked confiscation of property of private individual. (If primary purpose to assist private persons - cannot be a taxation)

Assuming purpose defined - purpose must be for public purpose, North Dakota V. Nelson County 1 N. Dakota - 88 (For relief of poor).
(Prevented farmers becoming charges on the States)
Purpose not defined - definition of "unemployment levy" is not sufficiently certain to enable proposed use of levy to be ascertained with sufficient certainty.

S. 19 (not invoked) which authorised Governor General to make regulation for project in respect of which money may be advanced from Unemployment Fund. S 85 (3) of Constitution of Trinidad and Tobago. Issue of moneys must be by Act of Parliament not by Minister acting under Regulations (S. 19 ultra vires) No Taxation without representation.

Fund cannot be utilised for any purpose under existing law. An accumulation takes the character of deprivation of property without due process of law.

In the High Court.

No. 7.

Judge's Notes of Evidence

(Continued).

No regulations made. To say it is for unemployment is not sufficient. The purposes must be specified in Act. Where tax imposed, must be character of tax at time of imposition.

How is unemployment to be relieved?)
Who is to qualify for benefit? } Uncertainty
)

(Purposes not defined)

What is meaning of "projects"?

State V. Osawgee 14 Kan. 424

Direct payment to unemployment-not for projects which Governor General can decide.

State has power to tax-for public use.

If taking of money is not constitutional, it must be a tax- due process of law.

WestV.C. & P. Telephone Co. 295 U.S. Reports
Olson V. United States 292 U.S. Reports at 246
(44- Mode of exercising legislative power. 45- Introduction of Bills. 46-Restriction in powers of Senate as to Money Bills).

S. 45 of Constitution. S. 44-46 read).
If taxation is to be improved. S. 44-46 must be complied with q.v. S. 36 of Constitution.
(S. 36- Power to make laws for peace, order and good Government) 19 (c) would require Act of Parliament.

Auckland V. Harbour Board (1924) A.C.326 (1972) Argos L.R. 124 Legislative power far beyond Governor General's powers-determination of policies.
19 (c) collides with S. 85 (3)
Hawkes Bay Raw Milk Producers Co-op. Co. Ltd. V. New Zealand Milk Board.
Parliament cannot abdicate functions by delegation to Governor General -All India Reports (1951) - (1954) p. 465.

Act cannot be said to be taxing statute.

(1) Act violates Constitution - Section 1;
(2) Act not a taxing statute;
(3) Section 19 of Act unconstitutional:-

(a) collides with 85 (3) of constitution by purporting to give Executive Legislative Powers to provide

for the issue of money from a public fund, this power being one exerciseable only by Act of Parliament.

(b) 85 (3) requires issue of money authorised by Act of Parliament not by subsidiary legislature of any kind. 19 (c) unconstitutional.
If Section 19 (c) is unconstitutional-whole Act Unconstitutional.

Definition of 'Act' in interpretation-Act No. 2 of 1962.
I.R.C. and Attorney General V. Lillyman (1964) 7 W.I.R. p.514.
"Due process of Law" - compensation payable if property taken.
If not a tax, why not under Income Tax Ordinance. (For it purports to be a tax on profits etc. from income).
Should be passed in accordance with Section 5 of the Constitution. Court orders affidavit by Attorney General to be filed on or before 21st.

Adjourned 1.00 p.m. - 22nd.

Motion: Unemployment Levy 26th January, 1974

Warner:

Due process: Inappropriate to take Section 5 of Constitution into consideration for purpose of finding whether "due process" clause infringed.

Infringement must first be shown.

Fraser J.A. - La Salle's case p. 412 para. C- "Oppressive and Arbitrary treatment".
The question arises whether requirement to make payment under Act infringes Section 1.
Definition of Tax - (1) I.R.C. v. Lillyman? 7 W.I.R. 496 by Sackoon J.A. - para. 1, p. 504.
Real dispute is whether purpose is a "public purpose". Attorney General of Canada v. Ontario e.g. Poor relief.
Look at Loan Association v. Topeka (Social position in U.S. in 1874 not applicable to Trinidad and Tobago).
North Dakota v. Nelson County
Definition: Section sufficient to show purposes of Act.
Francis v. Chief of Police (1973) 2 All E.R. 598
Subsidiary Legislation (1969) 2 All E.R. 1039
Peace, order and good government - Right of Parliament to legislate for - See Section 36 of Constitution 10 A.G. 675.
Leake v. Commissioner of Taxation (Western Australia Law Reports) p. 66.
Purposes of the Act.
No collision between 85 (3) of the Constitution and

In the High Court.

No. 7.

Judge's Notes of Evidence.

(Continued).

and Section 19 (3) of the Act. Does not come within Section 6 of the Constitution.

For example - section 14 of the Act.

Delegation: Craies Statute Law p. 512, 7th Edition.
R. v. Gurah (1870) A.C. 905.

Maharaj:-

Julius v. Bishop of Oxford
"May" - "shall"

La Salle v. Attorney General 383 Phillips J.A.
Affidavits - no relevance - Craies 7th Edition p. 128
Welch v. Nager (1949) 2 All E.R.
Halsbury's 3rd Edition, Volume V, p. 581, Section 1246.

Warner:-

Affidavits from Clerk of House of Representatives and Senate were filed because of Section 5 of the Constitution. Never his opinion that it had to be specifically stated in preamble. It was because Court concerned about section that it was necessary to have affidavits from House of Representatives and Senate. Act in no way contravenes Section 5 of the Constitution. That affidavits of Carter and Latour be read. Senior Statistician's report should be admitted. Social policy and justice.

To determine constitutionality of Unemployment Levy Act.
"Due process". Social circumstances relevant consideration.
Justice Rand of Supreme Court of Canada.
Canadian Bill of Rights.
Dean Maharaj's affidavit:
Court rules affidavits not relevant to the issue raised in this application and accordingly excludes them from the record.

Issues raised in this case is when the Act 1970 contravenes Sections 1 and 2 of the Constitution of Trinidad and Tobago and more particularly whether it contravenes Section 1 (a) (Reads from section) "Enjoyment of property" Consider "except by due process of law". La Salle v. Attorney General (1971) W.I.R. para. 9 on p. 9 (Speech of Phillips J.A.) Oppressive use of authority p. 371,- "arbitrary". For those who challenge to establish oppressive and abitrary policy of that Act - p. 394.
Constitution does not augment rights existing before August 1962.p. 395, para. H-P. 410 Fraser J. para D.
Adjourned 26th November, 1974.

26th November, 1974 - 1.45 p.m.

In the High Court.

No. 7.

Judge's Notes of Evidence.

(Continued)

Maharaj:-

Collision between 85 (3) of Constitution and 19 (c) of Act Refers to Section 6 (1) and reads.

Assuming collision ought not to take 6. Refers to motion and affidavit in support.

As Parliament had inherent right of tax and authorised delegation legislation could not abdicate its own functions. Therefore 19 (c) of Act authorised issue of money out of special fund. Therefore in terms colliding with Section 85 (3) deprivation of property with due process of law. La Salle - criminal trial not civil.
Is unlawful withdrawing of money not oppressive and arbitrary? Imposition must bear the character of a tax at the time of the committal. When money is taken at that state, it must be a tax. Purposes are not defined.
I conceded that relief of unemployment by direct payment of benefits to unemployed individuals - public purposes - legislation to the effect upheld in Criminal cases. Undefined projects. Loan Association and Topeka. Possibility of loans to private persons to unemployed persons. Public purposes. How is unemployment to be relieved.

Judgment reserved December 13th.

No. 8.

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

Written Judgment of Braithwaite J.

TRINIDAD AND TOBAGO:

2920 A of 1974.

IN THE HIGH COURT OF TRINIDAD AND TOBAGO

BETWEEN

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO

(UNEMPLOYMENT LEVY ACT, 1970, ACT NO. 16 of 1970)

J U D G M E N T.

Before the Honourable Mr. Justice John Braithwaite.

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December 1974.

(Continued).

Ramesh Lawrence Maharaj for applicant
The Solicitor General and Blackman with him for the respondents.

By a notice of motion dated the 22nd day of October, 1973, the applicant, a self-employed medical practitioner, sought the following reliefs:-

(a) an Order declaring the unemployment Levy Act, 1970, (Act No. 16 of 1970) is ultra vires the Constitution unconstitutional null and void and of no effect;

(b) an order that the applicant is not liable for any sums determined therein;

(c) such further or other relief as the nature of the case may require;

(d) such order as to the costs of and incidental to the application as the Court shall consider just.

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

(a) that the Unemployment Levy Act, 1970 (Act No. 16 of 1970) is ultra vires the Constitution of Trinidad and Tobago and is unconstitutional is null and void and of no effect;

(b) that in divers respects the said Act is in conflict and in breach of the provisions of the said Constitution.

(c) that in any event the said Act constituted an unwarranted invasion of the democratic rights and freedoms of the Applicant and other citizens of Trinidad and Tobago and its enactment could not be reasonably justified in a society that has a proper respect for the rights and freedom of the individual.

This was the affidavit to which the applicant swore in support of his application:

1. I am a self employed Medical Practitioner practising my profession in San Fernando and was practising continuously since 1961.

2. On the 4th June, 1970 the Legislature of Trinidad and Tobago purported to enact the Unemployment Levy Act 1970 (Act No. 16 of 1970)

3. In terms of the provisions of the said Act I am liable for and I am required to pay an unemployment levy of certain sums to the Board of Insland Revenue calculated on the basis of my chargeable income for income tax purposes for the year 1974.

4. The imposition of the said levy is for the benefit of a fund called the Unemployment Fund which is established by the said Act. The use to which the said Fund may be put has not been determined by law.

5. I am advised by Counsel and I verily believe that the levy is ultra vires the provisions of the Constitution of Trinidad and Tobago which guarantees the fundamental human rights and freedoms of the individual and that it is in particular a violation of the fundamental right of the citizen to the enjoyment of property guaranteed by Articles 1 and 2 of the said Constitution.

6. The said Act No. 16 of 1970 was not passed in accordance with provisions and requirements of Section 5 of the said Constitution.

7. But for the enactment I am not obliged to pay the levy upon my income.

8. Unless a declaration of the unconstitutionality of the said Act is made by the Supreme Court the Board of Inland Revenue will seek to recover from me the sums payable under the said Act in respect of the said levy upon my income.

9. Accordingly I respectfully pray that this Honourable Court will be pleased to grant the reliefs set forth in the Notice of Motion hereto in pursuance of the powers granted by Section 6 of the Constitution of Trinidad and Tobago and in pursuance of all other powers enabling the Court to grant such relief or any other relief that may be just.

For ease of reference, I think it may be best for me to set out at this stage those provisions both of the Unemployment Levy Act, 1970 (to which I shall refer in this judgment as "the Act") and of the Trinidad and Tobago (Constitution) Order in Council, 1962 (to which I shall refer in this judgment as "the Constitution) which I conceive to relevant for the determination of the issues raised in this application:-

"AN ACT to provide for the imposition of an unemployment levy upon the chargeable income or profits of persons.

(Assented to 4th June, 1970).

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December 1974.

(Continued).

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Trinidad and Tobago, and by the authority of the same, as follows:-

1. This Act may be cited as the Unemployment Levy Act, 1970.

2. (1) In this Act -
"unemployment levy" or "levy" means the levy imposed by this Act as from time to time amended, for the purpose of the relief of unemployment and the training of unemployed persons.

3. (1) The Board of Inland Revenue shall be responsible for the due administration of this Act and for the computation, collection and recovery of the levy.

(2) Any function conferred by this Act on the Board shall be exercised, as may be necessary, by any officer authorised by it according as the Board may direct and references in this Act to the Board shall be construed accordingly.

4. (1) Notwithstanding any rule of law to the contrary, the profits or gains of a person that would, but for the provisions of any enactment (other that the Ordinance or the Corporation Tax Acts) conferring exemptions from income tax or corporation tax shall be within the charge to the levy imposed by this Act.

(2) The Board of Inland Revenue shall, for the purposes of computing the levy, ascertain the chargeable income or profits of a person referred to in subsection (1) in accordance with the provisions of the Ordinance or the Corporation Tax Acts, as if the profits or gains of such person were charged to income tax or corporation tax, respectively.

(3) Notwithstanding any rule of law to the contrary, the profits or gains of a company that are brought within the charge to the levy by sub-section (1) shall, for the purpose of the distribution thereof as income or profits that is exempt in the hands of the members of the company, be taken to be reduced by the amount of the levy,

borne by the company, and accordingly no exemption from income tax or corporation tax shall be allowed to such members of the company in respect of any part of a distribution representing the levy.

5. Subject to this Act for the financial year 1970 and for each subsequent financial year there shall be charged, levied and collected on the profits or gains of a person an unemployment levy at the rate or rates hereinafter specified.

6. Subject to this Act, the levy shall be charged in accordance with section 7 on the chargeable income or profits of every person for the financial year coinciding with the year of income in respect of which the chargeable income or profits for income tax or corporation tax purposes are ascertained.

7. The levy shall be at such rate or rates as are prescribed, save that until any other rate is provided for the following rates shall have effect:

(a) in the case of a company, on the full amount of the chargeable profits 5%

(b) in the case of an individual:-

(i) on the first $10,000.00 of chargeable income .....Nil;

(ii) on the remainder of chargeable income ..... 5 per cent.

8. (1) Subject to this Act, the levy shall be made upon the assessment of a person, and shall be payable by that person.

(2) Subject to sections 9 and 10, the Levy shall be payable on or before the 30th April in the next year or, within thirty days next following the service of the assessment, whichever is the later.

(3) If all or any part of the levy, is not paid by the 30th April, in the next year whether an assessment is already made or not, it shall carry interest at the rate of fifteen percent per annum from that date to the date of payment.

(4) Every person who has income or profits that is within the charge to the levy for the financial year shall deliver to the Board together with his

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

return of income for the year of income required by section 36 (1) of the Ordinance a statement of the full amount of the chargeable income or profits for the purposes of this Act in a form approved by the Board and shall, if absent from Trinidad and Tobago, give the name and address of an agent residing therein.

(1) Subject to this section and in the case of an individual to section 7 (b), every person shall pay to the Board on or before the 31st March, the 30th June, the 30th September, and the 31st December respectively, in each financial year an amount equal to one-quarter of the levy upon the chargeable income or profits as disclosed in his statement if any, of income for the preceding year of income, and the remainder of the levy as disclosed in his statement for the year of income on or before 30th April, in the next year.

(2) The Board may estimate the amount of the levy payable by any person where -

(a) that person fails to make the statement or the return for the immediately preceding year of income required by sub-section (1) of section 36 of the Ordinance or both;

(b) no income tax or corporation tax was payable in the immediate preceding year of income, and upon making demand therefor in writing, of such person, sub-section (1) shall apply accordingly, as if the Board's estimate was the estimate of such person.

(3) For the financial year, 1970, the instalments required by subsection (1) to be paid in advance shall be paid upon the chargeable income or profit determined for the purposes of the levy from the return of income for the year of income 1969 required by section 36 (1) of the Ordinance and shall be made as follows:-

(a) on or before 30th June .....one third;
(b) on or before 30th September ....one third;
(c) on or before 31st December .....one third;

and the remainder of the levy as disclosed in his statement for the year of income, on or before 30th April in the next year.

(4) Where an individual is in receipt of emoluments,

within the meaning of section 53C of the Ordinance in a year of income, the provisions of subsection (1) shall not apply to that individual in respect of that part of his income arising or accruing to him from emoluments received by him in the year of income, if but only if, section 10 applies in respect of the emoluments paid to such individual.

(5) In addition to the interest payable under section 8 (3), where any person, being required by this Act to pay a part or instalment of the levy, has failed to pay all or any part thereof as required, he shall, on payment of the amount he failed to pay, pay interest at twelve per cent per annum from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he becomes liable to pay interest thereon under section 8(3), whichever is earlier, unless the Board, on being satisfied that the failure to pay did not result from the taxpayer's own default, directs a reduction in the rate of interest payable.

(6) In this section "statement" means the statement referred to in section 8(4).

10. (1) On the making of any payment on or after the 31st day of May, 1970, to any employee or the holder of any office of, or on account of, any emoluments during the financial year 1970 or any other financial year thereafter, the levy shall, subject to section 7 (b) and subject to and in accordance with any regulations made hereunder, be deducted or withheld by the person making the payment; and the provisions of sections 53A, 53B (2) to (12) inclusive and 53C and any regulations made under the Ordinance for the purpose shall, with such adaptations or modifications as are necessary or expedient, have effect for the purpose of this Act.

(2) For the financial year, 1970, the employer shall deduct or withhold under subsection (1) the annual amount of the levy in seven equal (as far as possible) monthly instalments commencing in the month of June.

(3) An individual in receipt of income that includes emoluments (within the meaning of section 53B of the Ordinance) shall compute the amount of the levy payable for the financial year and submit notice of the proportionate part of the levy attributable to the emoluments to his employer and to the Board; and the provisions of subsection (1) shall apply to such part thereof accordingly, save that the Board may revise the

In the High Court.

No. 8.

Written Judgment of Braithwaite J,

13th December, 1974.

(Continued).

computation of the levy and upon giving notice of such revision, and making demand therefor to, and upon, the individual and his employer, subsection (1) shall apply as if such revision was the computation of the employee. In this sub-section "proportionate part of the levy" means that part of the levy that bears to the full amount thereof the same proportion as the income from emolyments bears to the full amount of the income of the individual before making any deductions and allowances under the Ordinance other than deductions authorised by section 10 thereof.

(4) Nothing in this section shall apply to an employee or the holder of an office who by notice signed by him and sent to the Board and the employer elects to pay the levy in accordance with section 9(1).

11. Where on the assessment of a person it appears that the levy computed upon his chargeable income or profit for the year of income falls short of or exceeds the amounts paid during the financial year in respect of the levy, and such shortfall or excess is less than three dollars, no adjustment thereof shall be made and the Board shall not demand payment or make refund in any such case.

12. For the removal of doubt it is hereby declared that in ascertaining the chargeable income or profits of a person for the purposes of income tax or corporation tax no deduction or allowance shall be made of, or on account of, the levy imposed by this Act.

13. Subject to the provisions of this Act, the provisions of the Ordinance in the table below shall apply in relation to the levy as they apply in relation to income tax chargeable under the Ordinance but subject to any necessary modifications and adaptations:-

T A B L E.

Income Tax Provisions applied to Levy

Sections 25 to 31 (Trustees, agents &c).
Sections 43 to 43H (Appeals).
Sections 46 (1) and (2) (Repayments of Tax).
Sections 56,57,58,59 and 62 (Collection)
Sections 63,64,64A and 64B (Recovery)
Sections 65 and 66 (Notices).
Section 67 (Imprisonment of defaulters).
Sections 68, 68A, 68A and 69 to 74 (General provisions).

14. (1) In this section "Minister" means the member of the Cabinet to whom responsibility for Finance is assigned.

(2) There is hereby established for the purposes of this Act an unemployment fund which shall be administered by the Minister.

(3) Subject to this Act and to any regulations made thereunder the Minister is authorised to make advances from the fund for any of the purposes thereby provided.

15. All accounts relating to the fund shall be kept separately by the Comptroller of Accounts but shall be shown in the general accounts of Trinidad and Tobago and laid therewith before Parliament.

16. The accounts shall be audited annually by the Director of Audit in accordance with Part V of the Exchequer and Audit Ordinance as if the fund was established under section 48 of that Ordinance.

17. All monies collected pursuant to this Act shall be paid into the unemployment fund.

18. A person who contravenes or fails to comply with any of the provisions of this Act or of any regulations made hereunder is guilty of an offence and liable on summary conviction therefor to a fine of two thousand, five hundred dollars and in the case of a contuining offence to a further fine of fifty dollars for every day on which any default continues after conviction therefor.

19. The Governor-General may make regulations generally for giving effect to this Act, and in particular -

(a) for the management and control of the fund;
(b) for prescribingthe accounts, books and forms to be used;
(c) as to the projects and other matters concerning which advances from the fund may be made;
(d) for prescribing anything by this Act required to be prescribed.

Passed in the House of Representatives this 22nd day of May, 1970.

G.R. LATOUR
Clerk of the House.

Passed in the Senate this 2nd day of June, 1970.

J.E. CARTER
Clerk of the Senate.

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

THE CONSTITUTION

THE RECOGNITION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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, 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.

Act at variance with this chapter.

5. (1) An Act of Parliament to which this section applies may expressly declare that it shall have effect notwithstanding sections 1 and 2 of this Constitution and, if any such Act does so declare, it shall have effect accordingly except insofar as its provisions may be shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

(2) An Act of Parliament to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House.

(3) For the purposes of subsection (2) of this section the number of members of the Senate shall, notwithstanding the appointment of temporary members in accordance with section 27 of this Constitution, be deemed to be the number of members specified in sub-section (1) of section 23 of this Constitution.

Enforcement of protective provisions.

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 subjection (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.

(3) If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the said foregoing sections 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.

(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.

PART 2

Powers and Procedure of Parliament.

Power to make laws.

36. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Trinidad and Tobago.

Mode of Exercising legislative power.

44. (1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall be exercised by bills passed by the Seante and the House of Representatives and assented to by the Governor-General on behalf of Her Majesty.

(2) When a Bill is presented to the Governor-General for assent, he shall signify that he assents or that he withholds assent.

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

(3) A Bill shall not become law unless it had been duly passed and assented to in accordance with this Constitution.

Introduction of Bills, etc.

45. (1) A Bill other than a Money Bill may be introduced in either House; a Money Bill shall not be introduced in the Senate.
(2) Except on the recommendations or with the consent of the Cabinet neither House shall.

(a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person residing, makes provision for any of the following purposes:-
(i) for imposing or increasing any tax;
(ii) for imposing or increasing any charge on the revenues or other funds of Trinidad and Tobago or for altering any such charge otherwise than by reducing it; or
(iii) for compounding or remitting any debt due to Trinidad and Tobago;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes aforesaid; or

(c) receive any petition which, in the opinion of the person presiding, requests that provision be made for any of the purposes aforesaid

Restriction on powers of Senate as to Money Bills.

46. (1) If a Money Bill, having been passed by the House of Representatives and sent to the Senate at least one month before the end of the session is not passed by the Senate without amendment within one month after it is sent to the Senate, the Bill shall, unless the House of Representatives otherwise resolves, be presented to the Governor-General for assent notwithstanding that the Senate has not consented to the Bill.
(2) There shall be endorsed on every Money Bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a Money Bill; and there shall be endorsed on any Money Bill that is presented to the Governor-General for assent

in pursuance of subsection (1) of this section the certificate of the Speaker signed by him that it is a Money Bill and that the provisions of that subsection have been complied with

CHAPTER VII

FINANCE

Establishment of Consolidated Fund.

85. (1) All revenue or other moneys raised or received by Trinidad and Tobago (not being revenue or other moneys payable under this Constitution or any other law into some other public fund established for a specific purpose) shall, unless Parliament otherwise provides be paid into and form one Consolidated Fund.

(2) No moneys shall be withdrawn from the Consolidated Fund except to meed expenditure that is charged upon the Fund by this Constitution or any Act of Parliament or where the issue of these moneys has been authorised by an Appropriation Act or an Act passed in pursuance of section 87 of this Constitution.

(3)No moneys shall be withdrawn from anypublic fund other than the Consolidated Fund unless the issue of those moneys has been authorised by an Act of Parliament.

(4) No moneys shall be withdrawn from the Consolidated Fund or any other public fund except in the manner prescribed by or under any law".

Before I address my mind to the main issues involved in this application, I think I must give my reasons for expunging from the record the affidavits filed on behalf of the respondent. All of these affidavits deal with matters, to my mind, completely extraneous to the issues. I would have thought that a mere cursory glance at Chapter IV of the Fourth Edition of Craises on Statute Law, p.118 to 122 would have dispelled any lurking idea of introducing these affidavits as purported affidavits in reply to the applicant's affidavit. The affidavit in support of the applicant's motion are clear, concise and precise. The Respondent's affidavits answer none of the allegations put forth in the applicant's affidavit. What I think they seek to do, inter alia is to introduce in this matter things and circumstances leading up to the introduction of the Bill for an Act to impose on certain citizens of Trinidad and Tobago a levy in order to define the purposes of the Act. This Court cannot allow itself to be influenced by anything that has gone before the enactment of the

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

measure presently before it; neither can it be influenced by the purported exercise of the "powers" under the Act by any department of Government after it came into force. I quote from a somewhat ancient case where in Gorham v. the Bishop of Exerter (1850) 5. Ex. 630. 637 where Aldeson B. said this, "We do not construe acts of Parliament according to history". This dictum was followed by another by Famcee L.C. in the case of R. v West Biding County Council (1906) 2 K.B. where he says that at p. 670, "The mischief sought to be cured by an Act of Parliament must be sought in the Act itself. Although it may perhaps be legitimate to call history in aid to show what facts existed to bring about a statute, the inferences to be drawn therefrom are exceedingly slight."

Similarly reference to what took place in Parliament, that is to say, "the Parlimentary history" of a statute when the statute was under consideration seems to me not to be permissible where the meaning and purport of that statute is under review by a Court. It is true that in two cases R. v. Bishop of Oxford (1879) 2 Q.B. 525 and in S.E. Ry. v. Railway Commissioners (1880) 5 Q.B.D. 217, 236 the Judges in the first case allowed a speech of the Lord Chancellor in the House of Lords to be cited as an authority as to the construction of a statute; and in the second case, Cockburn L.J. said this: "Where the meaning of an Act is doubtful, we are, I think, at liberty to recur to the circumstances under which it passed into law as a means of solving the difficulty;" and he proceeded to quote a speech made by the proposer of the Bill and the speech by the Lord Chancellor when he introduced the Bill in the House of Lords. The footnote - (y) atp. 121 of the 4th Edition of Craies which I am using says this:

> "These decisions are inconsistent with ..... and the first was disapproved by Earls Cairns and Selborne in Julius v. Bishop of Oxford (1880) 5 App. Cas. 214. See also, as to the doubtful propriety of referring for the construction of a statute relating to a colony, to the speech of a Secretary of State in introducing it into Parliament. Smiles v. Belford (1877) 1 Upp. Com. App. 336, 445, Burton J.A., 451 Moss, J.A., Gordelin v. R. (1903) 33, Canada, S.C. 255, Davies J."

I have had the benefit of reading the cases last quoted and have concluded that whenever the constitutionality of an Act falls to be considered by a Court, that Court has to consider the Act as it stands before the Court. Public Speeches by Ministers antecedent to the introduction

of the Act as well as speeches made in Parliament, if my interpretation of the several authorities to which I have referred is correct, cannot supplement the inadequacies of the Act (if any). I think that I must look at the Act as it stands before me now. In this view I am somewhat fortified by the view taken by Mr. Justice Willes in the case of Miller v. Taylor (1769) 4 Burr, 2303 where the learned Judge said this among other things: "The sense and meaning of an Act of Parliament must be collected from what it says when passed into law ....." In further support of my opinion are the dicta in R. Hertford College (1878) 3 Q.B.D. 693, 707. Henson v. Ruthmines (1892) A.C. 498, 502, the Administrator-General of Bengal v. Prem at Mudick per Lord Watson (1895) L.R. 22 IND. App. 107 (See also U.S. v. Union Pacific Railway Company (1875) 91 U.S. 72, 79, Re. Trans-Missouri Freight Association (1896) 166 U.S. 290, 316, Jackson J.A. in J.R.C. and A.G. v Lillyman after referring to the remarks made by the Finance Minister in introducing the bill into the Legislative Assembly said this.

"Whether this effort disarmed criticism or fostered appreciation of the Bill is not a matter for this Court, for the whole Ordinance must be considered as it is, irrespective, as has been before indicated, of any intentions anterior to the passing of the enactment; the Court must in its pursuit nevertheless be watchful and not give sanction to a course resulting in the introduction of a tax by the improper avoidance of entrenched provisions, such as constitutional guarantees of rights for the protection of the citizen and his property."

All I am left to do now so far as the affidavits in reply are concerned is to give my reason for the exclusion of an affidavit which purports to show that when the applicant was a Senator he voted in favour of the measure and that he cannot approbate and reprobate at one and the same time.

As I see it, what the respondent is saying, is that the applicant, having given his consent to the measure is estopped from questioning the constitutionality of the measure. The simple answer to this proposition is (as appears on the face of the Act) that the issue of the constitutionality of the measure was not brought to the applicant's mind. For that matter, and again as it appears, on the face of the Act (and I cannot go behind the face of the Act) that issue was not brought to the minds of any of the members of the Parliament. To go one step further, it is my opinion that even the Queen's representative in Trinidad and Tobago, the Governor-General was not (on the face of

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

the Act or otherwise for that matter) made aware that he was assenting to an Act which, as I hope to show below, came well within the provisions of section 5 of the Constitution of Trinidad and Tobago. What is more is that none of the citizens of this country were by the Act made to know (at the time that the Act became law) that they were being deprived or likely to be deprived of their property without due process of law.

These then are the reasons for my holding that the several affidavits filed by the respondent are inadmissible, void and of no effect. These affidavits are, accordingly, all struck out; and I proceed on the basis that they never existed.

The facts relevant to this application are not disputed. On the 4th June, 1970, the Governor-General assented to AN ACT to provide for the imposition of an unemployment levy upon the chargeable income or profits of persons. The Act had been passed by both the House of Representatives and the Senate. For all purposes it became the law, and from the date of the assent citizens whose chargeable income and companies whose profits exceed $10,000.00 per annum were required on paid of a penalty of an original fine of $2,500 to pay the levy. A former Senator (the applicant), now a medical practitioner in private practice, who voted in favour of the Bill, is asking this Court to pronounce against the Constitutional validity of the Act. Inter alia, he says in his affidavit, that he has been required to pay a levy on his income which is unconstitutional (See affidavit).

What I think I have first to consider in this section is whether or not the applicant has been deprived of the enjoyment of his property otherwise than by "due process of law". I am of the view that all the arguments advanced by Counsel on both sides of the motion (and to which I shall advert later) whether or not they were conscious of it, were directed respectively to show that the Act offended or did not offend the so-called "due process clause".

I am not at this stage concerned about the proposition that the levy imposed by the Act is a tax or not. That may come, perhaps, later. Because a tax (as I shall define it below) may very well be so oppressive and so abritrary as itself to offend the most basis concepts of a democratic society. It is true that the imposition of a "tax" on the citizen has been regarded from time

immemorial as a sovereign right of the State. There have been instances when this sovereign right has been abused and with this statement any student of English, French, and American history (to mention a few), must, of necessity agree. The point that I am trying to make is that because a deprivation of a citizen's property may fall within the category of what is acceptable generally as a tax, it does not follow that any further deprivation can be so categorised. Otherwise it would mean that a sovereign government, restricted or not by constitutional restraints, may constitutionally enact legislation to deprive the citizen of the enjoyment of all his property and then seek to rely on the state's sovereignty and the state's rights to make laws supposedly for peace, order and good government of Trinidad and Tobago. Surely this can not be so. Any legislation seeking to effect this end must be clearly confiscatory and ipso facto unconstitutional.

Both Phillips J.A. and Fraser J.A. in the case of Lassalle v. the Attorney General (1971) 18 W.I.R. went to considerable pains to explore and to explain in general the meaning of the expression "due process of law", and while in that case their attention was addressed primarily to the definition of the expression as applied to the criminal law, I think that the arguments set forth and the quthorities referred to by these two Judges can well be applied to the instant case. At page 391, Para. 9, Phillips J.A. says thus:

> "In my opinion, these words of Proressor Holdsworth save to elucidate the meaning and context of the expression "due process of law" as it is used in s.1 (a) of the Constitution. Some of them can bear repetition. 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 criminal law .....it 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".

The words to which Phillips J.A. referred are founded at Para. D at p. 391 and they are as follows:

> "It has been stated .....

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

"It has been stated .....that the origin of the due process clause of the Constitution is the famous 39th clause of Magna Charta, with regard to which Professor Holdsworth states in his HISTORY OF ENGLISH LAW, VOL. 1 p. 63:

> "It has, I think, a very considerable significance because it laws down the principle that liberty and property are not to be interfered with without "due process of law".

"Speaking of the clause and of those immediately preceding and following it the learned author says (op. cit. Vol. 2 at pp. 215-216); "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 ..... The account which I have given of those of its clauses which place limitations upon arbitrary government will show us that in the Charter we get the first attempt to explain in exact legal terms some of the leading ideas of constitutional government". I think thatI would be well guided to apply the principles applied by both Phillips and Fraser J.A. in La Salles case to the instant case and adapt Phillips J.A. handsome words at para. G. for the purposes of this judgment which would now read "The concept of due process of law" is the anthesis of arbitrary infringement of the individual's right to the enjoyment of his property and of his right not to be deprived thereof."

Before I go on, I think I ought to refer in passing to the comments of TARNOPOLSKY in his work THE CANADIAN BILL OF RIGHTS, at p. 149 (an authority cited by the Solicitor-General and referred to by Phillips J.A. at Para. B at p. 390 of the La Salle case): "In 1628 when Coke wrote a commentary on Magna Charta as part of his Institutes, he showed the identity between the phrases "law of the land" and "due process of law" and asserted that the purpose of those provisions was to protect the subject from oppressive use of authority" ....."

Perhaps I may be allowed at this point to say this that both Phillips and Fraser J.A. have in La Salles cases dealt so exhaustively and learnedly with origins and possible interpretations of the expression "due process of law", albeit they were dealing with a somewhat different aspect of human rights and fundamental freedoms, that I would be presumptious again to attempt to review the several authorities to which they referred in the judgments.

What I think I have learnt from their judgments and the constitutional principles elucidated therein, and which in my view, ought to be applied to the present application

is that it is only in accordance with the law of the land, which must in itself be neither arbitrary nor oppressive, that a citizen may be deprived of the enjoyment of his property which (See Lillyman's case) includes money.

Pre-eminent, except for the "existing laws" (see section 3 of the Constitution). Among the laws of Trinidad and Tobago is the Constitution of Trinidad and Tobago. If therefore Parliament passes into "law" a measure which offends or the provisions of which collide with the Constitution, that measure must be constitutionally invalid, and, without constitutional sanction the measure must be considered arbitrary.

Perhaps it may be convenient at this point to advert to those provisions of the Constitution which were discussed during the course of the hearing of this motion and to attempt to examine those provisions in the context of legislative capacity of the Parliament of Trinidad and Tobago.

I will first refer to section 36 of the Constitution which reads as follows:

Power to make laws. 36. Subject to the provisions of this Constitution Parliament may make laws for the peace, order and good government of Trinidad and Tobago.

This provision seems to me to make it clear that the Parliament of Trinidad and Tobago after the 31st day of August, 1962 lost, in certain prescribed instances the inherent sovereign capability to pass laws with which it was endowed prior to that date. The law-making capacity of Parliament is circumscribed by other provisions of the Constitution notably:

(a) section 38 which deals with alteration of certain provisions of the Constitution;
(b) section 45 which deals with certain types of Bills including a Bill for the imposition of increase of any tax;
(c) Section 5 which deals with Acts which abridge or infringe or authorise the infringement, abrogation or abridgement of rights and freedoms recognised in general by section 1 and those more particularly detailed in section 2.

It seems to me, therefore, to follow that unless the special procedures provided for in the above sections are followed implicitly and the law purporting to be made is one which

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

infringes, abrogates or abridges any of the rights and freedoms, whether or not that is for the peace, order and good government of the country or not, it must be regarded as unconstitutional and therefore of no effect. More particularly, if that law deprives the citizens of the right to the enjoyment of his property, it must be passed in accordance with the provisions of the Constitution whether or not that law seeks to impose taxation or any other type of depriavation of the citizen's property. Otherwise such a law must be arbitrary and possibly oppressive.

I do not therefore subscribe to the view that the proper approach to the matter in hand is to discover whether the levy imposed by the Unemployment Levy Act, 1970 is a tax or not; and thereafter to conclude that if that levy is a tax it automatically becomes constitutional and valid for all purposes.

What I think is the proper approach is to examine the provisions of the Act itself and to ascertain whether or not those provisions meet the requirements of the Constitution. If they do not, then the Act is unconstitutional (See Letter I p.512 of I.R.C. &A.G. v. Lillyman).

In this connection may I quote from part of the speech, of Jackson J.A. at p. 511 of I.R.C. v. Lillyman (1964) 7 W.I.R., where the learned Judge refers to Lord Pearce's comments on the remarks of Lord Birkenhead L.C. in Mc Cawley v. Rex (1964) 2 W.L.R. at p. 1310:

> "These passages show clearly thatthe Board (i.e. the Judicial Committee of the Privy Council) took the view which commends itself to the Board in the present case, that a Legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law. This restriction exists independently of the question whether the legislature is sovereign .....But the proposition which is not acceptable is that a legislature, once established, has some inherent power derived from the mere fact of its establishment to make a valid law by the resolutions of a bare majority which its own constituent instrument has said shall not be a valid law unless made by a different type of majority or by a different legislative process"

That is why I was somewhat surprised when the learned Solicitor-General in one of his submissions that "it was inappropriate to take section 5 of the Constitution into consideration for the purpose of finding where the due

process clause was infringed". Now this is how section 5 reads:-

Acts at variance with this Chapter.

5. (1) An Act of Parliament to which this section applies may expressly declare that it shall have effect notwithstanding sections 1 and 2 of this Constitution and if any such Act does so declare, it shall have effect accordingly, except in so far as its provisions may be shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

(2) An Act of Parliament to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House.

(3) For the purpose of subsection (2) of this section the number of the members of the Senate, shall notwithstanding the appointment of temporary members in accordance with section 27 of the Constitution, be deemed to be the number of members specified in section 23 of this Constitution."

What, as I see it, subsection (1) does is to require an express declaration in an Act of Parliament which infringes, abrogates or abridges such rights and freedoms. If the Act so declares, then and only then does it have, shall I say, the desired effect. What happens when such an Act does not contain the express declaration referred to above? The simple logical answer to this question seems to me to be that the Act will not have the effect of abrogating, infringing or abridging the fundamental right or freedom in question- or in other words the Act would be of no practical or other effect and consequently would be a nullity. But that is not all. Even when the Act contains the requiste declaration, its validity may still be challenged on the grounds that its provisions cannot be reasonably justified in a society which has a proper respect for the rights and freedoms of the individual.

I cannot therefore agree with the learned Solicitor that it is "inappropriate to take section 5 of the Constitution into consideration for the purpose of finding whether the due process clause had been infringed". On the contrary, I regard section 5 as of most fundamental importance when considering the validity of an Act such as the one now under review. For the section describes and defines with clarity and emphasis the due or proper process through which such an Act must pass before its validity can be sustained.

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

Again I refer to part of Lord Pearce's comments in Mc Cawley v R. (1964) 2, W.L.R.P.C. at p. 1310:

> "..... the proposition which is not acceptable that a legislature, once established, has some inherent power derived from the mere fact of its establishment to make a valid law by the resolution of a bare majority which its own constituent instrument has said shall not be a valid law unless made by a different type of majority or by a different legislative process."

On the face of the Act there is no express declaration within the meaning of section 5 nor is there any indication by what majority the Act was passed into law. In addition I do not think that there is any question that the provisions of the Act have deprived those persons to whom they apply of their property, and, if I am right in the views I have expressed above, without the sanction of the appropriate process prescribed by the Constitution.

It may be of passing interest to note that in at least two Acts passed subsequently to the Act under review, the Sedition (Amendment) Act, No, 36 of 1971 and the National Insurance Act, 1971, both the express declaration and the proportion of the majority by which these measures were passed appeared on the face of the Acts.

I turn now to the submissions of counsel. Both counsel premised their submissions on the ground that the main issue that fell to be determined was whether or not the levy imposed by the Act was a tax. They agreed in a general way on the definition of a tax. Counsel for the applicant relied on the definition in the American case of Loan Association v. Topeka 20 Wall 655 in which Mr. Justice Miller who delivered the judgment of the Supreme Court said this:

> "A tax' says Websters Dictionary" is a rate or a sum of money assessed on the person or property of a citizen by Government for the use of the Nation or State". "Taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes". Cooley on Constitutional Limitations, 479. Coulter J. in Northern Liberties v. St. John's Church 13 Pennsylvania State 104 says "I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by the authority of the Government for the purposes of carrying on the Government in all its machinery and operations- that they are imposed for a public purpose."

Counsel for the respondent in his turn relied on the diction of Jackson J.A. at p. 504 letter G of the case of I.R.C. and A.G.V. Lilleyman where the learned Judge says this:

> "There are three main elements of a tax namely, it must be imposed by a State or other public authority, must be compelled, and the imposition must be for public purposes."

It seems to me that for the purpose of their submissions the issues were narrowed down to the determination of the questions as to whether the imposition of the levy by the Act was for "public purposes". If the imposition of the levy, they seem to argue, was for "public purposes" then the levy would have all the characteristics of a tax. Both submissions proceeded on the basis that the State had an inherent and unrestricted right to impose taxation.

The main contentions of counsel for the applicant may perhaps be summarised as follows:-

(a) The purposes of the Act are not specifically set out therein, so that it cannot be said that the levy is imposed for public purposes. The definition of the expression "unemployment levy" in section 2 of the Act is not sufficiently certain to enable the proposed use of the levy to be ascertained. Section 19 of the Act which, inter alia, is intended to have the purposes of the Act set out has not been invoked;

(b) Section 19 of the Act which authorises the Governor-General to make regulations in respect of which moneys may be advanced from the Unemployment Fund collides with the provisions of section 85 (3) of the Constitution. Under this subsection the issue of moneys must be authorised by an Act of Parliament and not by a Minister acting under regulations made by the Governor-General.

(c) The Fund cannot be utilised for any purpose under existing law, and is an accumulation which takes the character of a deprivation of property without due process of law;

(d) Where a tax is imposed, the imposition must bear the character and contain all the elements of a tax at the time of its imposition, otherwise the imposition is a mere unconstitutional taking of private property since the purposes for

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

which the levy was made are uncertain and not definable and cannot be classified for that reason as public purposes, the imposition could not be tax;

(e) Section 19(c) of the Act is unconstitutional because its effect is to delegate legislative power to the Governor-General who may in terms of the paragraph determine policy in relation to projects and matters and translate his decision into rules of conduct binding the Minister in the disposition of the Fund.

Before dealing with the arguments, I set out a summary of the submissions made by thecounsel for the respondent:-

(a) The definition of "unemployment levy" in section 2 of the Act taken together with the long title to the Act sufficiently indicate the purposes of the Act;

(b) There is no real collision between section 85 (3) of the Constitution and section 19. In fact both section 14 and section 19 were in accordance with the provisions of section 85 (3) of the Constitution. In any event, the present motion does not seek to question the constitutionality of section 19 of the Act vis-a-vis section 85(3) of the Constitution. If it is found that section 19 is offensive, then the Court may apply the doctrine of severability.

(c) The diction of Phillips J.A. in La Salle v. Attorney General (1971) 18 W.I.R. ought to be followed in this motion, that is to say that the onus is on the applicant to show that the Act is arbitrary and oppressive before it can be regarded as offending "the due process" clause.

(d) Section 19(c) does not offend the rule of "lelegatus non potest delegare" q.v. Craie's 7th Edition at p. 412.

The expression "unemployment levy" is thus defined in section 2 of the Act: "unemployment levy" or "levy" means the levy imposed by the Act as from time to time amended, for the purpose of the relief or unemployment and the training of unemployed persons. Now apart from this

reference to the purpose to which it is to be put, there is one other reference in the Act to the "purposes" to which the "levy'is to be put, and that is contained in section 14(3) which reads as follows:-

> "(3) Subject to this Act and to any regulations made thereunder the Minister is authorised to make advances from the fund for any of the purposes thereby provided."

No regulations having been made under this Act, it would be foolhardy, to say the least, to conjecture at their possible contents: At p. 150 of Craie's (4th Edition) of these words appear:

> "Interpretation Clauses. The more modern statute contains, in the form of an interpretation clause, a little dictionary of its own, in which it endeavours to define, ofter arbitrarily, the chief terms used."

This, as I see it, is the sole function of an interpretation section. This type of section is not meant to contain substantive provisions of an enactment. As it is put at p. 211 of Odgers on "The Construction of Deeds and Statutes": The chief fault in these (interpretation) clauses is that frequently the draftsman attempts to legislate under guise of a definition," However undesirable this method of drafting may be, and it is certainly most undesirable, I am not prepared at this state to say that it is absolutely fatal to the legislation under review if for no other reason that to give effect to the maxim-ut res magis valeat quam pereat. For if the words occurring in the definition have no legislative value, then the whole Act is completely devoid of object and purpose-and that could hardly have been the intention of Parliament.

What is more important, I think, is to determine whether the words "for the purpose of the relief of unemployment and the training of unemployed persons" standing as they do in the splendid isolation of a definition section are sufficiently self-explanatory to indicate with certainty the nature and quality of the relief referred to. Counsel for the applicant in this context put a number of hypothetical questions: "How is the employment to be relieved? If it is by lending money to businessmen to establish factories to create employment in certain areas, then clearly this would be unconstitutional, for although, some of the unemployed may directly benefit, the main thrust of the expenditure will be for private gains. It is to be used for payment of unemployment allowances? Who is to qualify for the benefit?

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

Are underemployed persons to benefit? In so far as the definition speaks of training of the unemployed, which of theunemployed are to be trained? What of those who are already trained, but cannot find employment or sufficient employment? It seems to me that counsel will not find in the Act suitable answers or for that matter any answers at all to his hypothetical questions.

Speaking for myself, it is not sufficient in an Act to use terms like relief of unemployment and training of unemployed persons" in vacuo so to speak, and to expect by the mere use of the terms to imply that they connote "public purposes". The nature and quality of the relief has, in my view, to be spelt out so as to make it clear that the public and the public alone will benefit from the imposition of any levy. Terms and expressions used in isolation and unexplained are not enough. In the case of Dwarkadas Skinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd. (1954) SC R at pp. 683 and 685, Maharaj J., expressing the majority opinion of the Court said this inter alia "Therefore .....The Court has to look behind the names, forms and appearances to discover the true character and nature of the legislation .....". In the instant case, looking behind the names, forms and appearances what I see is an Act which apart from a passing reference in its interpretation section, does not set out the purposes, public or otherwise, which it intends to effect. What I do see in the Act is an intent to deprive citizens , who fall within a category ascertained by the Act, of the enjoyment of that part of their property which has survived the inroads of mormally accepted taxation by way of income tax. What I see further is that this intent has been pursued without the sanction and authority of (section 5) The Constitution. If this view is correct, it seems to me that the Act is both arbitrary and oppressive and consequently offends the concept of "due process of law". Support for this view seems to come from the decision in A. Magnano Co. v. Hamilton et al reported at 292 U.S. at p.40 which may be summarised as follows:

"The due process clause applies if the Act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as for example, the confiscation of property."

May I make it abundantly clear that there are sound authorities and precedents for regarding the "relief of unemployment" as a public purpose provided that the nature and quality of the relief is such that benefits are

are paid directly to ascertained unemployed individuals, q.v. Carmichael v Souther Coal Co. 301 U.S. p. 495. In the United Kingdom prior to the introduction of the National Insurance Legislation, relief was paid directly to the unemployed in the form of what was then known as "the dole"; in the United States the same type of direct payment is known as "welfare". Again in the United Kingdom there were the Poor Relief Acts which provided for direct payments to persons who were ascertained and ascertainable as poor; in Trinidad and Tobago direct payments are made to the old (who are impecunious) and to those whose domestic burdens are intolerable (public or social assistance). All these benefits are directly receivable by defined and definable sections of the community. Such relief, as I said above, seems to me to be in the national interest and is doubtlessly for a public purpose."

On the other hand there is authority for the proposition that relief for a general purpose, which does not specify the persons to whom and the manner in which it is to be applied has been held not to be a public purpose. In the state v Osawkee 14 Kans. 418 (1875) the Court held that provision for the poor in the Constitution must be limited to paupers and that an argument for the validity of an imposition on the ground that the prevention of pauperism was a public purpose was "dangerous and unsound." There is, I think, sound reasoning behind this decision; for if there is the possibility that persons other than the unemployed may benefit from an unemployment fund, then the imposition seems to loose it "public purpose" character and may well become "quasi-public" or "quasi-private". Both the cases of Loan Association v Topeka 20 Wall. 655, (1874) and North Dakota v Nelson County (1 No. Dak. 88) 1890 appear to aid this proposition.

There is an attempt under section 19 of the Act (which is set out above) to give the Governor-General "regulatory powers" with respect to the "projects" for which moneys from the fund should be advanced. Quite apart from the stark fact that the Governor-General has not been given the opportunity to exercise the "powers" given "purportedly" to him under this section there is this: that only by an Act of Parliament itself can direct an issue of money from the Unemployment Fund be achieved. (See section 85(3) of the Constitution). In my opinion, Parliament cannot delegate this function to the Governor-General, and certainly on the most basic principles, the Governor-General cannot in his turn delegate his powers to a Minister of Government. Even if the Regulations had been made, (which then have not been) I would have held that Parliament is not permitted to confer its own "legislative" as distinct from "regulatory powers" on the Chief of State. (q.v. In re. Constitution of India and

In the High Court.

No. 8.

Written Judgment of Braithwaite J

13th December, 1974.

(Continued).

Delhi Laws Act 1951 AIR SCR 332,345 (Per Kania C.J.) and Bagla v Maahya Pradesh State AIR 1954 SCR 465). I find that section 19(c) of the Act is in direct collision with section 85(3) of the Constitution. Perhaps the words of the Chief Justice of the United States spoken by him in 1803 may assist; and this is what he said.

> "The very essence of judicial duty is to say what the law is and if two laws conflict with each other the courts must decide on the operation of each. If theConstitution is paramount to any ordinary law the Constitution must govern in any direct conflict; to think otherwise would be to nullify the very purpose of a written Constitution."

Before I came to the decision relating to the collision between section 19(c) of the Act and its implications, I had addressed my mind to the arguments of the Solicitor General as I have set them out above. Again I did not agree with him for the reasons I hope I have made clear. What the Solicitor suggested when, perhaps, I indicated that section 19(c) was in direct conflict with section 85(3) of the Constitution, was that I apply the doctrine of severability and remove section 19 from the Act. This, I did not think, I was competent to do. Had I acceded to the Solicitor's request, I would have substituted myself for Parliament - than which no desire is further from my mind or intention.

> "Nothing in the Act under review shows in what circumstances an unemployed individual is entitled to relief under the Act or for selection for training under the Act. Nothing in the Act indicates by what means eligibility for unemployment relief or training for the unemployed is to be determined. In these circumstances I find it virtually impossible to conclude that the Act is one in which is intended to ensure for the public benefit.

All of the authorities which have been put at my disposal seem to indicate that, in attempting to assess the constitutionality of an Act vis-a-vis the constituent document whence the Legislature derives its powers, a most liberal view has to be adopted. as Stoby J.A. put it at page 512 of Lilleyman's case: after quoting from one of the earliest exponents of constitutional propriety (see above).

"Nor was his view a purely legalistic one: he appreciated to the full the role of Government and the necessity for Government in the interest of progress to be

dynamic and enterprising to quote his words again:

"We admit, as all must admit, that the powers of government are limited, and that its limits are not to be transcended. But we think that the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried with execution, which will enable that body to perform the high duties assigned to it, in a manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and the spirit of the Constitution, are constitutional."

In more recent times in the case of the Attorney-General for British Colombia v The Attorney-General for Canada (1939) A.C. 468 at p. 482 Lord Atkin said this:

"It is unnecessary to repeat what has been said many times by the Courts in Canada and by this Board (The Judicial Committee of the Privy Council), that the Courts will be careful to detect and invalidate any actual violations of constitutional principles under pretence of keeping within the statutory field. A colourable device will not avail."

However liberally the Act is construed, it appears to me that it fails to show that its purport and intent is to benefit the common weal. In a word I find that the Act compulsorily imposes a levy on the property of the citizen for purposes which are neither defined nor indeed definable by the terms of its provisions.

I cannot therefore agree with the learned Solicitor that the mere mention of the purposes of the Act in the definition of "unemployment levy" is sufficient to show that the levy imposed by the Act is one imposed for the public benefit (public purposes) and that it consequently falls within the accepted definition of a "tax".

If I am right in these findings, it seems to me to be unnecessary to deal with the other arguments and contentions set forth before me.

The Order of the Court is as follows:

(a) That it is declared that the Unemployment Levy Act, 1970, (Act No. 16 of 1970) is ultra vires the Constitution, null and void and of no effect; and

In the High Court.

No. 8.

Written Judgment of Braithwaite J.

13th December, 1974.

(Continued).

(b) That the applicant is not liable for any sums levied under the said Act.

The respondent is ordered to pay the applicant's costs to be taxed.

There will be a stay of execution of my order for a period of 6 weeks.

Dated this 13th day of December, 1974.

John A. Braithwaite.

Judge.

No. 9.

FORMAL ORDER OF BRAITHWAITE J.

No. 9.

Formal Order of Braithwaite J.

13th December, 1974.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
Red House, Port of Spain.

No. 2920A of 1974.

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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (APERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 ACT NO. 16 OF 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

Before the Honourable Mr. Justice Braithwaite.
On the 13th day of December, 1974.

Upon Motion for (a) An order declaring the Unemployment Levy Act 1970 (Act No. 16 of 1970) is ultra vires the Constitution unconstitutional null and void and of no effect. (a) An other that the Applicant is not liable for any sums determined therein. (c) Such further or other relief as the nature of the case may require.

In the High Court.

No. 9.

Formal Order of Braithwaite J.

13th December, 1974.

(Continued).

(d) Such order as to costs of and incidental to this Application as the Court shall consider just made unto this Court by Counsel for the Applicant.

And Upon Reading the affidavits of RAMESH DIPRAJ KUMAR MOOTOO, VINDAR DEAN-MAHARAJ and GEORGE R. LATOUR.

And Upon Hearing Counsel for all parties herein.

THIS COURT Doth Declare that the Unemployment Levy Act, 1970 (Act No. 16 of 1970) is ultra vires the Constitution, null and void and of no effect and that the applicant is not liable for any sums levied under the said Act.

And It is Ordered that the respondent do pay the applicant's costs to be taxed.

And It Is Also Ordered that there be a stay of execution for six weeks.

6/3/75.

Registrar.

In the Court of Appeal.

No. 10

Notice of Appeal.

15th January, 1975.

No. 10.

NOTICE OF APPEAL.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL
Red House, Port of Spain.

CIVIL APPEAL NO. 2 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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 ACT NO. 16 of 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

In the Court of Appeal.

No. 10.

Notice of Appeal

15th January, 1975

(Continued).

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent-Appellant,

AND

RAMESH DIPRAJ KUMAR MOOTOO

Applicant-Respondent.

TAKE NOTICE that the Respondent-Appellant being dis-satisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of Mr. Justice John A. Braithwaite dated the 13th day of December, 1974, 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 relief set out in paragraph 4.

AND THE RESPONDENT-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.

2. The whole of the Judgment of Mr. Justice John A. Braithwaite dated the 13th December, 1974.

3. GROUNDS OF APPEAL.

(1) That the learned Judge erred in law

(a) in expunging from the record affidavits filed on behalf of the respondent-appellant by failing to draw a distinction between the admissibility of evidence from construction of a statute and the admissiblity of evidence for determining the constitutionality of a statute;

and (b) in deciding that the affidavits filed on behalf of the respondent were inadmissible.

(2) That the learned Judge erred in concluding that the affidavits regarding proceedings in Parliament when the Act was passed were introduced for the purpose of raising an estoppel, even though counsel for the appellant had given a contrary explanation for introduction of those affidavits.

(3) That the learned Judge erred in law

(a) in holding or implying that any imposition of taxation by the Legislature after 31st August, 1962 must be an abrogation or infringement of the applicant's right to the enjoyment of his property and that such an imposition must conform with section 5 of the Constitution, failing which it must be regarded as "arbitrary and possibly oppressive" and therefore unconstitutional;

and (b) in holding that the requirements of section 5 of the Constitution are a part of due process of law through which the impugned Act should have passed and wrongly rejected the submission that it is only after it has been established that a deprivation of property has been effected without due process of law that a statute making provision for this deprivation may be examined for the purpose of determining whether it is nevertheless saved by the provisions of section 5.

(4) That the learned Judge erred in law in holding in effect that for the purpose of section 1 (a) of the Constitution the right to enjoyment of property contained therein is an absolute right.

(5) That the learned Judge erred in law in concluding

(a) that "relief of employment and training of unemployed persons" does not connote a public purpose;

(b) that the Act "does not set out the purposes which it intends to effect".

(c) that it fails to show that its purport and intent is "to benefit the commonwealth;

and (d) that the purposes of the Unemployment Levy are not public purposes.

(6) That the learned Judge

(a) misconstrued section 1 (a) of the Constitution in holding that the impugned statute was unconstitutional because of collision with section 85 of the Constitution;

In the Court of Appeal.

No. 10.

Notice of Appeal.

15th January, 1975.

(Continued).

and (b) wrongly rejected or failed to take into proper account the submission that where redress is being sought under section 6 of the Constitution (which redress the respondent-applicant in his affidavit purported to seek) the infringement alleged must be of any of the provisions of sections 1 to 5 and of section 7 of the Constitution.

(7) That the learned Judge erred in law

(a) in holding that section 19 (c) of the Act is in collision with section 85 (3) of the Constitution and that it is a delegation of authority which authority is reserved to Parliament by the said section 85 (3);

(b) in construing section 19 of the Act by failing to give effect to section 14 of the said Act;

and (c) in holding that the effectiveness of section 14 (3) is dependent on the existence of Regulations made under section 19.

(8) That the learned Judge was wrong in law in concluding or implying that the mere deprivation of property by an Act of Parliament was a breach of Section 1 (a) of the Constitution and that such an Act had to conform with section 5 of the Constitution to be valid.

(9) That the learned Judge erroneously held the provisions of the act to be arbitrary and oppressive on the ground that it depreives citizens of the enjoyment "of that part of their property which has survived the inroads of normally aceepted taxation by way of income tax".

(10) That the learned Judge erred in law, holding that he had no jurisdiction to sever from the Act any portion thereof which he held to be unconstitutional and in particular to sever from the Unemployment Levy Act, 1970 Section 19 if it were found to be unconstitutional.

(11) That the Learned Judge, having stated in his judgment as read that there would be no order as to costs, wrongly exercised his discretion subsequently in varying his judgment to award costs to the respondent without giving counsel for the appellant an opportunity to be heard.

(12) That the learned Judge was wrong in law in holding that the Unemployment Levy Act of 1970 was ultra vires the Constitution and/or that the applicant was not liable for the sums levied under the said Act.

4. That the decision of the Judge dated the 13th day of December, 1974 be reversed.

5. The persons directly affected by the Appeal are:

NAMES	ADDRESSES
THE ATTORNEY GENERAL	RED HOUSE, PORT OF SPAIN
RAMESH DIPRAJ KUMAR MOOTOO	HIGH STREET, SAN FERNANDO.

This appeal is filed by the Chief State Solicitor of No. 7, St. Vincent Street, Port of Spain, Solicitor for the Respondent-Appellant.

Dated this 15th day of January, 1975.

SAHADEO TOOLSIE

for Chief State Solicitor.

Solicitor for the Respondent-Appellant.

TO: The Registrar,
Court of Appeal.

And To:

Mr. Edward N. Fergus,
3, Penitence Street,
San Fernando.
Solicitor for the Applicant-Respondent.

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

No. 11.

JUDGMENT OF SIR ISAAC HYATALI C.J.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 2 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

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
Respondent/Appellant

AND

RAMESH DIPRAJ KUMAR MOOTOO
Applicant/Respondent

Coram: Sir Isaac E. Hyatali, C.J.
C.E.G. Phillips, J.A.
M.A. Corbin, J.A.

March 26, 1976.

T. Hosein, Q.C. A. Warner, Q.C., Solicitor General and I. Blackman for the appellant.

F. Ramsahoye, Q.C. and R. Maharaj - for the respondent.

J U D G M E N T

Delivered by Sir Isaac Hyatali, C.J.:

On the application of Ramesh Dipraj Kumar Mootoo (the applicant) Braithwaite, J. held and so declared on 13 December 1974 that "The Unemployment Levy Act 1970 (the Act) is ultra vires the Constitution, null, void and of no effect" and that the applicant is not liable for the levy imposed by the Act on his chargeable income. The Attorney General who was named as respondent in the proceedings, appealed against the decision of the learned judge on several grounds but they are all embraced in the last of them which complains that he was wrong in law to so hold and declare.

In his application to the High Court, which was made by motion under s.6 of the Constitution, the applicant claimed that the Act was in conflict with the Constitution and in any event, "constituted an unwarranted invasion of the democratic rights and freedoms of the applicant . . . and its enactment could not be reasonably justified in a society that has proper respect for the rights and freedoms of the individual." The latter claim however was misconceived and need not occupy our attention further since the Act, not having been enacted under section 5 of the Constitution could not give rise to the question engendered by that claim.

In his affidavit in support of the motion the applicant alleged, inter alia - (1) he was a medical practitioner in practice in San Fernando; (2) under the Act he was liable for and required to pay an unemployment levy to the Board of Inland Revenue calculated on the basis of his chargeable income for 1974; (3) the levy was for the benefit of a fund, "the use to which it may be put had not been determined by law"; (4) he was advised and verily believe that the levy violated the fundamental right of the citizen to the enjoyment of property guaranteed under ss. 1 and 2 of the Constitution; and (5) the Act was not passed in accordance with the requirements of s. 5 of the Constitution.

In opposition to the application, the Attorney General filed four affidavits - the first, sworn to by V. Dean-Maharaj, Comptroller of Accounts, exhibited the books of Accounts kept in reference to the unemployment fund established under the Act and the expenditure from the fund in relation to the years 1970-72 inclusive; the second, sworn to by the Clerk of the House of Representatives, showed that the Act was passed in that House without any division; the third, sworn to by the Clerk of the Senate, showed that the Act was passed in the Senate without any division and that the applicant who was then a member thereof, voted for the passage of the Act; and the fourth, sworn to by Lancelot Busby, acting Director of Statistics, exhibited a booklet published by the Central Statistics Office containing inter alia, data on the state of unemployment in the Country in 1969 and 1970. At the hearing of the motion, objection was taken to the reception of the affidavits filed by the Attorney General, on the ground that they were irrelevant to the issues before the Court. The learned judge upheld the objection and expunged them from the record. In his notice of appeal, the Attorney General complained that the learned judge's decision to expunge all these affidavits from the record was wrong in law but at the hearing of the appeal counsel for the Attorney General confined his complaint to the exclusion of Busby's affidavit and did not pursue his complaint in relation to the others.

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued).

The learned judge was right, in my opinion, to exclude the affidavits of the Comptroller of Accounts and the Clerks of the two Houses of Parliament, since they were not relevant to any issue before the Court; but I do not consider that he was on solid ground when he excluded Busby's affidavit. What fell to be considered in the motion before the learned judge was the constitutionality of a statute in reference to which complaints were made (according to the notes of evidence and the matters to which he adverted in his judgment) that it authorised the "naked confiscation" of property, that it contained provisions which were "arbitrary and oppressive", that it was not a bona fide taxing statute, and that Parliament had resorted to "a colourable device" to deprive the applicant of his property and without due process of law. In the face of the issues raised, by these complaints it became necessary and relevant, in my view, (1) to identify the evils which the Act sought to remedy; (2) to ascertain the reasons for its provisions; (3) to negative the suggestion of bad faith on the part of Parliament in enacting the Act; and (4) to refute the claim that Parliament in enacting the Act had employed a colourable device to evade the restrictions of the Constitution. Now it is clear that issues such as these do not normally arise when the words of a statute, whose constitutionality is not in issue, are being construed to discover the intention of Parliament in using them. The canons of construction applicable in such a case are well know and the learned judge referred to them in his judgment. But these canons were far from helpful in resolving the issues raised by the complaints against the Act and its constitutionality.

Busby's affidavit exhibited a booklet published in June 1972 under the authority of the Statistics Ordinance Ch. 42 No. 11. It accordingly came into existence after the Act was passed. It was not published however for any purpose connected with the applicant's motion which, it is to be observed, was filled more than two years later, viz. 22 October, 1974. The value of the booklet lay in the fact that it gave the unemployment figures in the Country for 1969 and 1970. The authenticity of those figures was never challenged. They established that there was massive unemployment in the Country when the Act was passed on 4 June, 1970. Moreover, it was a matter of common knowledge that it was enacted in the wake of a period of social unrest in the society of such gravity that in order to contain it, a State of Emergency was declared on 20 April, 1970 and that Parliament continued it for a period of six months thereafter. Mr. Hosein for the Attorney General submitted that Busby's affidavit and the matter of common knowledge were relevant to the four issues

referred to; and further that judicial notice could properly be taken of the latter. Both these submissions are well-founded in my opinion, and I accept them as sound.

In vindication of them I would refer firstly to Dr. Basu's respected monograph on Constitutional Law of India, 6th Edn. in which he states at p. 79 -

> "There is little controversy on the proposition that, as in the case of all external evidence, debates in the Constituent Assembly as well as other historical facts that led to the adoption of any particular provision may be admissible . . . . . to ascertain the evils which the statute was intended to remedy."

Secondly, to a valuable and persuasive dictum of the Supreme Court of the U.S.A. in United States v Union Pacific Railroad Co. (1875) 91 U.S. 72, per Davis, J. at 79, to this effect:

> "In construing an Act of Congress we are not at liberty to recur to the views of individual members in debate nor to consider the motives which influenced them to vote for or against its passage. The Act itself speaks of the will of Congress and this is to be ascertained from the language used. But Courts, in construing a statute may with propriety recur to the history of the times when it was passed; and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it."

And finally, to the recent cases of Hinds & ors. v Reg. and D.P.P. v Jackson (P.C. Appeals Nos. 4 and 5 of 1975 dated 28 July 1975) in which the Privy Council referred with approval to the competence of the Court to take judicial notice of circumstances of common knowledge which existed at the time when the impugned legislation was passed to negative any suggestions of bad faith on the part of Parliament in enacting it.

The scheme of the Act is quite straightforward. After declaring in the long title that it is "An Act to provide for the imposition of an unemployment levy on the chargeable income or profits of persons" and defining in s.2 that the levy referred to means "the levy imposed . . . for the purpose of the relief of unemployment and the training of unemployed persons", the Act imposes a levy at the rate of 5% on the chargeable profits of companies and on the chargeable income of individuals in excess of

In the Court of Appeal.

No. 11

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued).

$10,000.00 (ss. 5,6,7). It then proceeds to invest the Board of Inland Revenue with authority to administer the Act, to compute, collect and recover the levy (s.3) and to pay it in to a fund expressly created for the purposes of the Act and designated the Unemployment Fund (ss. 14, 17).

Additionally, it makes applicable to the levy mutatis mutandis, some 38 sections of the Income Tax Ordinanceh Ch. 33 No. 1 as they apply to income tax chargeable thereunder (s. 13), directs the Comptroller of Accounts to keep the accounts relating to the fund separately but to show them in the general accounts of the Country laid before Parliament (s. 15), and places the fund under the scrutiny of the Director of Audit as if it were a fund established under s.48 of the Exchequer and Audit Ordinance 1959 (s. 16).

The two purposes mentioned in the definition of levy in s. 2 are not specified elsewhere in the Act. Indeed, there is no mention whatever in the body of the Act of the purposes for which the levy is imposed. Section 19 however authorises the Governor General to make regulations generally (which it may be recorded here were never made) "for giving effect to /the/ Act and in particular -

(a) for the management and control of the fund;

(b) for prescribing the accounts, books and forms to be used;

(c) as to the projects and other matters concerning which advances from the fund may be made;

(d) for prescribing anything /the/ Act required to be prescribed."

It is to be noted in reference to the fund that s. 14(2) "establishes for the purposes of /the/ Act an unemployment fund" and directs the Minister to administer it, while s. 14(3) prescribes that -

"subject to /the/ Act and to any regulations made thereunder, the Minister is authorised to make advances from the fund for any of the purposes thereby provided."

Before considering the findings and conclusions of the learned judge it would be useful, I think, to examine

the function and responsibilities of a Court and the canons by which it should be guided when it is called upon to consider and determine the constitutional validity of an enactment. The erudite opinion expressed by Viscount Simonds in Belfast Corporation v O.D. Cars Ltd., (1960) 1 All E.R. 67, 69, is relevant to this task and I accordingly turn to seek guidance from the opinions of learned and distinguished judges and authors in the United States and other English-speaking countries in which kindred problems have been dealt with. In Crowell v Benson (1931) 285 U.S. 22 62, Hughes, C.J. in delivering the opinion of the Court stated:-

> "When the validity of an Act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."

In Fletcher v Peck (1809) 6 Cranch 128, Marshall, C.J. defined the function and responsibility of the Court in these terms:-

> "The question whether a law be void for its repugnancy to the constitution is at all times a question of much delicacy, which ought seldom, If ever, to be decided in the affirmative in a doubtful case. The Court when impelled by duty to render such a judgment would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes; but it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

And Washington, J. in Ogden v Saunders 12 Wheat. 213, 270 in stating the reason for the rule said:

> "It is but a decent respect due to the wisdom, the integrity and the pattiotism ofthe legislative body by which any law is passed to presume in favour of its validity, until its violation of the constitution is proved beyond all reasonable doubt."

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued).

In Black on "The Construction and interpretation of Laws" (1911) p. 110, para. 41 H, the learned author expresses the relevant principles as follows:-

> "Every Act of the Legislature is presumed to be valid and constitutional until the contrary is shown. All doubts are resolved in favour of the validity of the Act. If it is fairly and reasonably open to more than one construction, that construction will be adopted which will reconcile the statute with the Constitution and avoid the consequence of unconstitutionality."
>
> Legislators, as well as judges, are bound to obey and support the Constitution and it is to be understood thatthey have weighed the constitutional validity of every Act they pass. Hence the presumption is always in favour of the constitutionality of a statute, not against it; and the Courts will not adjudge it invalid unless its violation of the Constitution is, in their judgment, clear, complete and unmistakable."

Dr. Basu on Constitutional Law of India (supra), 457, summarises the approach of the American Courts thus:

> "It is the first canon of judical review of legislation in the United States, that 'the legislature must be considered innocent till it is guilty beyond all reasonable doubt'. Hence all reasonable doubt of a statute's validity must be resolved in favour of a statute and it should not be pronounced to be unconstitutional unless it is clearly proved to be so."
>
> . . . . . .
>
> What the presumption means is that there should be such an opposition between the Constitution and the law that the Judge should feel a clear and strong conviction of their incompatibility.
>
> . . . . . .
>
> It must be presumed that a Legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience . . . and that its discriminations are based on adequate grounds."

In reference to the Courts in Australia the learned author at p. 460 states the principles by which they are guided in these terms:

> "No doubt if the Court is convinced that there has been a violation of the constitutional prohibition, it must give effect to the organic law regardless of the consequences." (Osborne v Commonwealth (1911) 12 C.L.R. 321).

"At the same time", he continues,

> ". . . . the Court should not exercise its undoubted power to declare a legislative enactment . . . to be beyond its /the legislature's/ power, unless the invalidity of the enactment is clear beyond all reasonable doubt." (Waterside Workers Federation -v- Commonwealth (1911) 12 C.L.R. 321).

In reference to the Courts in Eire the learned author at p. 640 quotes the case of In Re Act 26 of the Constitution (1940) I.R. 470; 1943 L.R. 334 as authority for saying that:

> "it has been held that the Court should approach any Act of the Legislature with the assumption that it is within its constitutional powers, and that the assumption should be maintained until the contrary is clearly shown. But if it is established in any case that the Legislature has exceeded its powers, it is the duty of the Court (High Court or Supreme Court) so to declare." (National Union v Sullivan (1947) I.R. 77, 100).

In reference to India the learned author states that the American principles are being generally followed on this point and in exemplification of that statement he refers to Chiranjit Lal v Union of India (1950) S.C.R. 1188, 1202, in which Fazal Ali, J. said:

> "The presumption is always in favour of the constitutionality of an enactment and the burden is on him who attacks it to show that there has been a clear transgression of the constitutional principles."

The presumptions in favour of constitutionality and the proposition that the legislature correctly understands

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

and appreciates the need of its own people were authoritatively stated by the Privy Council in two recent decisions. In Attorney General and Another v Antigua Times Ltd. (1975) 3 All E.R. 81, Lord Fraser of Tullybelton in dealing with the question whether a law imposing a tax was reasonably required to raise revenue for public purposes stated at p. 90, ibid:

> "In some cases it may be possible for a court to decide from a mere perusal of an Act whether it was or was not reasonably required. In other cases the Act will not provide the answer to that question. In such cases has evidence to be brought before the court of the reasons for the Act and to show that it was reasonably required? Their Lordships think that the proper approach to the question is to presume, until the contrary appears or is shown, that all Acts passed by the Parliament of Antigua were reasonably required. This presumption will be rebutted if the statutory provisions in question are, to use the words of Louisy, J. 'so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct exertion of a different and forbidden power'. If the amount of the licence fee was so manifestly excessive as to lead to the conclusion that the real reason for its imposition was not the raising of revenue but the preventing of the publication of newspapers, then that would justify the conclusion that the law was not reasonably required for the raising of revenue."

And in Hinds & ors.v The Queen and D.P.P. v Jackson (supra) the presumption in favour of Parliament in reference to the challenge made to the validity of an enactment providing for hearings of certain cases in camera was reaffirmed by Lord Diplock in these words:

> "The introductory words of s. 13 (1) of the Gun Court Act, 1974, amount to a declaration by the Parliament that the hearing in camera of the kinds of cases which fall within the jurisdiction of the Gun Court is reasonably required for the protection of the interests referred to, which include the public safety and public order. By s. 48(1) of the Constitution the power to make laws for the peace, order and good government of Jamaica is vested in the Parliament; and prima facie it is for the Parliament to decide what is or is not reasonably required in the interests of

public safety or public order. Such a decision involves considerations of public policy which lie outside the field of the judicial power and may have to be made in the light of information available to Government of a kind that cannot effectively be adduced in evidence by means of the judicial process.

In considering the constitutionality of the provisions of s. 13(1) of the Act, a court should start with the presumption that the circumstances existing in Jamaica are such that hearings in camera are reasonably required in the interests of 'public safety' public order or the protection of the private lives of persons concerned in the proceedings'. The presumption is rebuttable. Parliament cannot evade a constitutional restriction by a colourable device . . . But in order to rebut the presumption their Lordships would have to be satisfied that no reasonable member of the Parliament who understood correctly the meaning of the relevant provisions of the Constitution could have supposed that hearings in camera were reasonably required for the protection of any of the interests referred to; or, in other words, that Parliament in so declaring was either acting in bad faith or had misinterpreted the provisions of s.20(4) of the Constitution under which it purported to act."

All these authorities and learned opinions clearly point in one direction. They enunciate principles and establish canons of judicial review which are unimpeachable and I respectfully accept andadopt them for present purposes. I consider it essential therefore that the obligation which they impose on the Court should be kept steadily in view and judicially discharged; for as Marshall, C.J. stated in Fletcher v Peck (supra) a Court when impelled by duty to pronounce upon the constitutional validity of a statute would be unworthy of its station if it is unmindful of the solemn obligation which that station imposes on him.

The findings on which the learned judge based his declaration are not as coherent as they might have been but they may fairly be summarised as follows: (1) if a law "deprives the citizen of the right to the enjoyment of his property, it must be passed in accordance with the provisions of /s.5 of/ the Constitution whether or not that law seeks to impose taxation or any other type of

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued)

deprivation of property". (2) The levy imposed by the Act seeks "to deprive citizens who fall within a category ascertained by the Act of the enjoyment of that part of their property which has survived the inroads of normally accepted taxation by way of income tax without the sanction and authority of s.5 of the Constitution . . . . /It is consequently/ arbitrary and oppressive and . . . offends the concept of due process of law". (3) "Relief of unemployment" is a public purpose provided "the nature and quality of the relief is such that benefits are paid directly to ascertained unemployed individuals". (4) The mere use of the terms "the relief of unemployment and the training of unemployed persons" in s.2 of the Act is not enough to connote a public purpose; the nature and quality of the relief must be spelt out to ensure that the public alone will benefit from the levy imposed. (5) It is most undesirable for a draftsman to legislate under the guise of a defination but is is not absolutely fatal to the Act because of the necessity to give effect to the maxim "ut res magis valeat quam pereat". (6) By s. 19(c) of the Act, Parliament delegated its authority to the Governor General contrary to s.85(3) of the Constitution, to direct the issue of money from the Unemployment Fund. (7) However liberally the Act is construed, it fails to show that "its purport and intent is to benefit the public weal" since the purposes of the levy "are neither defined not definable". Save for the statement of the principle in reference to legislating under the guise of a definition, the Attorney General has challenged all the findings of the learned judge as wrong in law.

The first two conclusions of the learned judge were based on points he took ex proprio motu and were sufficient to found the declarations made, But by them he appeared to hold that in order to be intra vires the Constitution a statute which imposes a tax on income or an additional tax on income which has 'survived the inroads of normally accepted taxation' has to be passed under s.5 thereof. These propositions however are inconsistent with well-settled principles and are in direct conflict with authority. The power to tax for the purposes of Government or for public purposes rests upon necessity and is inherent in every Sovereignty. See Cooley on Constitutional Limitations (1972) Reprint 479-481 for a learned and concise dissertation on the principles, Newcastle Breweries Ltd v The King (1920)1 K.B. 854 R v Barger (1908) 6 C.L.R. 41, 46. Consequently, the imposition of a tax for such purposes does not violate the right to property unless it can be established that the statute imposing it is "so arbitrary as to compel the conclusion that it does not

involve an exertion of the taxing power but constitutes in substance and effect the direct exertion of a different and forbidden power, as for example, "the confiscation of property". See A. Magnano Co. v Hamilton, Attorney General of Washington et. al. 292 U.S. 40, 44 quoted with approval in Attorney General v Antigua Times Ltd. (supra) Counsel for the respondent who recognised the validity of that principle intimated at the outset and quite properly that he did not intend to support the judgment of the learned judge insofar as it decides that an Act which imposes a tax is not valid unless it is passed under s.5 of the Constitution.

One of the fundamental issues raised by the applicant in the Court below and before this Court was whether the levy imposed by the Act was a tax. It is well established that there are three main elements of a tax, namely, it must be imposed by the State, or other public authority, it must be compelled, and the imposition must be for public purposes. (See Inland Revenue Commissioners and Attorney v Lilleyman and others (1964) 7 W.I.R. 496 per Jackson, J.A. at p. 504 and Leake v The Commissioner of Taxes (1933) 3.W.A.L.R. 66). There was no contest in respect to the first two elements. This was not surprising since the levy is clearly imposed and compelled by ss.5-8. The controversy raged over the third element, that is to say, whether the Act has declared the purposes for which the levy is imposed and, if so, whether are public purposes.

In the light of the conditions prevailing in the Country at the material time, there can be no doubt that the statutory objective which the draftsman of the Act had in mind was to tax the more prosperous section of the society to raise a special fund for the relief of unemployment and the training of unemployed persons. To put it graphically, the objective clearly, was to tax the rich to relieve the poor. The draftsman sought to do so by the imposition of a levy on profits and chargeable incomes above a certain level but he omitted to state its purposes in the body of the Act. He referred to them however in the definition of levy in section 2 thereof. The question therefore is, whether the purposes mentioned in the definition, may properly be taken as declaring the purposes of the levy; and, if so, whether they constitute public purposes.

The practice of enacting under the guise of definition infringes a valuable rule of drafting and has repeatedly attracted severe judicial critism. The failure to observe this salutary and valuable rule has no doubt been very ebstly in the instant case and is deserving the servest censure; but as the learned judge himself correctly pointed out, this practice is not necessarily fatal to that which

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued).

has been so enacted. Consequently, if the purpose of the levy imposed by the Act in this case can fairly and reasonably be implied or inferred from the definition of "levy" in s.2 then it seems to me that it is the bounden duty of the Court in the light of the principles previously discussed to infer and give effect to it. A case of some assistance on this question though not directly in point is Cother v The Midland Ry. Co. (1848) 2 Phill. 469, quoted in Craies on Statute Law 7th Edn. 212 where it is stated that -

> "the word 'railway' was interpreted by s. 3 of the Capital Railways Clauses Consolidation Act 1845 to mean 'the railway and works by the special Act authorised to be constructed'; and it was held by Lord Cottenham that, by virtue of this interpretation clause, the company had power to take land compulsorily under the Act for the purposes of building a railway station."

The provision in s. 2 of the Act that "unemployment levy" of "levy" means the levy imposed thereby "for the purpose of the relief of unemployment and the training of unemployed persons" raises in my judgment a perfectly clear and irresistible inference thatthe purpose of the levy is to relieve unemployment and train unemployed persons. I feel no difficulty whatever in drawing that inference. Indeed, having done so, there is every justification, in my judgment, for reading the Act as if it contained an express provision declaring that the levy imposed is for the purpose of the relief of unemployment and the training of unemployed persons.

The next question then is whether these two purposes are public purposes. I have no doubt at all that they are. The attempt made to persuade this Court that the expression "relief of unemployment" carried the restricted meaning of a dole, or "money payment" was a valiant one but it left me unmoved. Reeve v Walker (1932) 1 K.B. 454 to which counsel for the Attorney General referred to discredits the restricted interpretation contended for. So does the golden rule of interpretation that the words of a statute must prima facie be given their ordinary meaning. In the context win which the expression is used, it clearly means the relief of the unemployment situation in the Country, and would plainly embrace the provision of work and wages to the unemployed as in Reeve v Walker (supra) and generally all measures directed to the reduction and, if possible, the elimination of unemployment. In any event, the restructed interpretation suggested, did not advance the applicant's contention since even on such an interpretation a public purpose was clearly embraced in the expression.

The learned judge stated that relief of unemployment is a public purpose provided that benefits are paid directly to ascertained unemployed individuals. This proviso however is relevant to the administration of the fund and accordingly irrelevant for present purposes. The learned judge obviously had in mind there, a dole or a money payment; but that is to give, as I have demonstrated a restricted meaning to the term for which there is, in my judgment, no justification whatever. The learned judge then rejected the notion that the term "relief of unemployment and training of unemployed persons" was sufficient to connote a public purpose, and held that to achieve that result the nature and quality of the relief had to be spelt out to ensure that the public alone will benefit from the levy imposed. But if, as I hold, the expression "relief of unemployment"bears the simple and perfectly intelligible meaning indicated then his conclusion that the nature and quality of the relief needed to be spelt out cannot be supported. It may be that the learned judge was addressing his mind to the question of avoiding abuse in the expenditure of the levy collected under the Act but if that is so, it was not a proper question for him to consider in a motion challenging the constitutionality of a statute.

For the reasons I have given, I am satisfied and so hold that the Act did declare when it was enacted albeit, inferentially bu s.2, that the imposition of the levy was for the public purpose of the relief of unemployment and the training of unemployed persons and that consequently it is a taxing statute within the meaning of the definition given in Lilleyman's case (supra), and the principles enumciated in Leake v The Commissioner of Taxes (supra).

In Brodhead v City of Milwaukee 19 Wis. 652, quoted at p. 489 of Cooley's monograph (supra) the Supreme Court of Wisconsin proposed the following test for impeaching a statute and declaring void the tax imposed by it. It is an apt one and I respectfully adopt it for present purposes:

> "To justify the court in arresting the proceedings and in declaring the tax void, the absence of all public interest in the purposes for which the funds are raised must be clear and palpable; so clear and palpable as to be perceptible by every mind at first blush. It is not denied that claims founded in equity and justice, in the largest sense of those terms, or in gratitude or charity will support a tax.". Such is the language of the authorities".

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued).

As it cannot possibly be said that there is an absence of all public interest in the purposes of the Act, I reject the findings of the learned judge that the Act fails to show that "its purport and intent is to benefit the public weal" or that its purposes are neither defined nor definable.

I pass on now to consider the learned judge's conclusion that s. 19(c) of the Act is in direct "collision" with s. 85(3) of the Constitution. It is unclear from his reasons whether he was of opinion that this collision was an additional ground or an alternative one for declaring the Act unconstitutional, but whichever it was, it is manifest that his conclusion was founded on the premise that Parliament had by s.19(c) of the Act illegally delegated to the Governor General the legislative function vested in it by the Constitution of authorising the issue of moneys from the special fund created under the Act.

Section 85 of the Constitution provides as follows:

> "85.(1) All revenues or other moneys raised or received by Trinidad and Tobago (not being revenues or other moneys payable under this Constitution or any other law into some other public fund established for a specific purpose) shall, unless Parliament otherwise provides, be paid into and form one Consolidated Fund.
>
> (2) No moneys shall be withdrawn from the Consolidated Fund except to meet expenditure that is charged upon the Fund by this Constitution or any Act of Parliament or where the issue of those moneys has been authorised by an Appropriation Act or an Act passed in pursuance of section 87 of this Constitution.
>
> (3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by an Act of Parliament.
>
> (4) No moneys shall be withdrawn from the Consolidated Fund or any other public fund except in the manner prescribed by or under any law."

It is beyond question that the Unemployment Fund created by s. 14 (2) of the Act is a "public fund other than the Consolidated Fund". Consequently, the issue of moneys from that public fund is required to be authorised

by an Act of Parliament in accordance with the stipulation contained in s. 85(3) of the Constitution. There is nothing however is s.85(3) which prohibits or otherwise disables Parliament from providing in the statute itself which creates the public fund aforesaid, the necessary authority to issue moneys therefrom. It thus seems perfectly permissible for a statute to create such a fund in one section and to authorise the issue of moneys therefrom in the same or another section. The question therefore is whether the Act has done so.

Section 14(2) of the Act not only creates the Unemployment Fund, but mandates the Minister to administer it. And by s.14(3) the Minister is told that -

> "subject to /the/Act and to any regulations made thereunder /he/ is authorised to make advances from the fund for any of the purposes thereby provided."

This subsection confers on the Minister in the plainest possible terms authority to issue moneys from the Unemployment Fund. In one and the same section therefore, the Act creates the fund and authorises the Minister to issue moneys therefrom. But then it was said that notwithstanding this provisions the Minister was powerless to take action thereunder because Parliament had delegated to the Governor General sole authority to declare the purposes of the levy as well as to issue moneys from the fund for the purposes so declared. Reference was made to the word "thereby" in the expression "any of the purposes thereby provided" for the purpose of demonstrating that it referred exclusively to the regulations which Parliament had by s.19 authorised the Governor General to make generally for giving effect to the Act and in particular by s. 19(c):

> "as to the projects and other matters concerning which advances from the fund may be made."

I do not and cannot agree that this provision means, or implies, or is reasonably capable of the interpretation, that the Governor General is empowered thereby to authorise the issue of moneys from the Unemployment Fund. It would be doing violence to language, in my opinion, so to hold. Nor can I accept that Parliament delegated to the Governor General by this provision the sole, or indeed any authority, to declare the purposes of the levy. On the contrary, Parliament declared these purposes inferentially, as I have held, in s.2 of the Act; and to interpret s. 19(c) in the manner suggested would not only introduce an unwarranted conflict between two sections of the Act but violate a venerated

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued).

canon of interpretation enunciated by the House of Lords in Warburton v Loveland (1832) 2 Dow & Cl. 480, 500; 5 E.R. 499, 510 that -

> "No rule of construction can require, that when the words of one part of a statute convey a clear meaning according to their strict grammatical construction, a meaning which best advances the remedy, and supresses the mischief, aimed at by the legislature, it shall be necessary to introduce another part of the statute which speaks with less perspicuity and of which the words may be capable of such construction as by possibility to diminish the efficacy of the other provision of the Act."

See also Craies on Statute Law (supra) 99 where the principle is stated thus:

> "No rule of construction can require that when the words of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part."

In this connexion reference may be usefully be made to State of Tasmania v Commenwealth of Australia (1904) 1 C.L.R. 329 in which Barton, J. at p. 357 applied that principle in interpreting the provisions of ss. 89, 92 and 93 of the Commonwealth of Australia Act and In re London Marine Insurance Association Smith's case (1869) 4 Ch. App. 611, 614, in which Selwyn, L.J. said -

> "it is not the duty of a Court of Law or of Equity to be astute to find out ways in which the object of an Act of the Legislature may be defeated."

The position is a fortiori, in my view, where an attempt is made to defeat the constitutionality of an Act of Parliament.

In my opinion, the expression "any of the purposes thereby provided" in section 14(2) is capable of more than one meaning. "Any" in that context, it was said arguendo, meant one of two purposes, but "any" also means "some" i.e. "more than one". (See the Shorter Oxford Dictionary 3rd Edn.). Section 2 refers to two main purposes of the levy but this does not preclude the application of the levy to several sub-purposes within the ambit and scope of the main purpose. It is possible

therefore on reading ss.2,14 and 19 together to arrive at several meanings of the expression "any of the purposes thereby provided". It could mean "any or some of the purposes provided by the Act and the regulations" or "any or some of the projects and other matters" referred to in s. 19 (c). Other permutations are possible but it is not necessary to set them out here. The point I wish to emphasize is that in s.14(2), "thereby" is referable both to "the Act and to any regulations made under the Act" or to the "regulations" alone; and "purposes" in the expression "any of the purposes" is referable to the purposes stipulated in s. 2 and such sub-purposes as may be specified in the regulations; or it is referable to the "projects and other matters" referred to in s. 19(c).

Applying the principles therefore which I have set out both with respect to the functions and responsibilities of a court in determining the constitutional validity of a statute and the caution to be observed against introducing unwarranted conflicts between one section of a statute and another, I would interpret section 14(3) as meaning "that the Minister is authorised, subject to the Act and any regulations made thereunder, to make advances from the fund for any of the projects and other matters concerning which advances from the fund may be made". It will be observed that this interpretation relates the expression "any of the purposes thereby provided" in s. 14(3) to the expression "the projects and other matters" in s. 19(c). In the event, it gives not only a sensible and reasonable meaning to the two sections of the Act but avoids the criticism that it is achieved at the expense of applying meanings to words that are strained and distorted. I am fortified in maintaining this interpretation since it has the added advantage of being consonant with the purposes of the levy as declared in s. 2, is consistent with the objects of the Act as a whole, and is in harmony with the rule of construction enunciated in Warburton v Loveland (supra).

It is a matter for criticism that regulations "for giving effect to" the Act, to use the language of s. 19, were never made. Indeed, it may well be that if they were made these proceedings may not have been instituted. But this ommission is no warrant for saying that the regulations referred to were necessary to give the Act validity. For it is manifest from the Act itself, as I have shown, that the levy imposed thereunder fulfils all the requirements of a tax and that the making of regulations is not a condition precedent either to the imposition and taking of the levy (ss. 5,6,8) or to the identification of its purpose (s.2) or to the establishment of the Unemployment Fund (s. 14(2) or to the making of advances under statutory authority from the fund (s. 14(3)). The great emphasis placed therefore on the making

In the Court of Appeal.

No. 11.

Judgment of Sir Isaac Hyatali C.J.

26th March, 1976.

(Continued).

of regulations was wholly misconceived and to no avail to the applicant since they could have been made from time to time, could not exceed the purposes declared by the Act (s. 16 of the Interpretation Act 1962) and were intended in the final analysis to do no more than to provide the necessary machinery to promote and facilitate the execution of the objects and purposes of the Act.

The several conclusions which I have reached are at variance with all the findings of the learned judge set out earlier in this judgment and reject the submissions of Counsel for the respondent before this court in support of the decision in the court below. The main burden of counsel's submissions were that the Act was not a taxing statute because the character of the levy was not determined at the moment of its imposition and that Parliament omitted to inform the taxpayer of the purpose of the levy. Both these elements, he argued, were left to be set out in regulations which were never made. He con-ceded and rightly so, in my opinion, that if the Act imposed a tax it would survive judicial scrutiny into its constitutionality and it is accordingly only necessary for me to say that my conclusion for the reasons I have given that the Act did impose a tax necessarily involves the rejection of his submissions.

An alternative contention which he directed to the validity of the Act was that the financial provisions of the Act relating to the expenditure of the Unemployment Fund are unconstitutional and inseparable from the Act. In particular, he argued, s. 19(c) of the Act purports to constitute the Governor General acting on advice as a separate legislature to exercise an essential legislative function, i.e. to say, to authorise the issue of moneys from the Unempolyment Fund. Moreover, he submitted, the combined effect of s.14(3) ands.19(c) is to make provisions which collide withs.85(3) of the Constitution and to render the Act invalid. In support of the later proposition he argued that nothing short of an Appropriation Act, as was provided for in the case of the Consolidated Fund, was valid to authorise the issue of moneys from the Unemployment Fund. I have dealt with and rejected all these propositions in the course of my judgment and it only remains for me to say now that for the reasons I have sought to give I would allow the appeal with costs here and in the court below and set aside the declarations and orders made by the trial judge.

Isaac Hyatali
Chief Justice.

TRINIDAD AND TOBAGO:

In the Court of Appeal.

No. 12

Judgment of C.E.G.Phillip J.A.

26th March, 1977.

IN THE COURT OF APPEAL

Civil Appeal
No. 2 of 1975.

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

BETWEEN

THE ATTORNEY GENERAL OF
10 TRINIDAD AND TOBAGO Appellant

AND

RAMESH DIPRAJ KUMAR MOOTOO Respondent

Coram: Sir Isaac Hyatali, C.J.
C.E.G. Phillips, J.A.
M. A. Corbin, J.A.

March 26, 1976.

T. Hosein, Q.C, The Solicitor General (Alcade Warner). Q.C.) and I Blackman - for the appellant.
Dr. F. Ramsahoye,Q.C., and R.L.Maharaj - for the respondent.

20

J U D G M E N T.

Delivered by Phillips, J.A.:

By an originating motion brought before the High Court the respondent, who is a physicial practising his profession in San Fernando, sought an order declaring that the Unemployment Levy Act, 1970 (hereafter called "the Act") is ultra vires the Constitutional, null and void and of no effect. He also sought other consequential relief.

30 The Act was passed in the House of Representatives and the Senate on May 22, 1970 and June 2, 1970 respectively and came into operation on June 4, 1970 when it received the Governor General's assent. Its long title is "An Act to provide for the imposition of an unemployment levy upon the

In the Court of Appeal.

No. 12.

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued)

chargeable income or profits of persons." By s.2(1) "chargeable income" or chargeable profits" or chargeable income or profits" means . . . . the chargeable income or profits ascertained under the provisions of the /Income Tax/ Ordinance or of the Corporation Tax Acts respectively." The levy is imposed by s. 5 which provides as follows:

> 5. "Subject to this Act for the financial year 1970 and for each subsequent financial year there shall be charged, levied and collected on the profits or gains of a person an unemployment levy at the rate or rates hereinafter specified."

Sections 6 and 7 are to the following effect:

> 6. "Subject to this Act, the levy shall be charged in accordance with section 7 on the chargeable income or profits of every person for the financial year coinciding with the year of income in respect of which the chargeable income or profits for income tax or corporation tax purposes are ascertained."
>
> 7. "The levy shall be at such rate or rates as are prescribed, save that until any other rate is provided for the following rate shall have effect:
>
> (a) in the case of a company, on the full amount of the chargeable profits 5%;
>
> (b) in the case of an individual:-
>
> (i) on the first $10,000.00 of chargeable income . . . Nil
>
> (ii) on the remainder of chargeable income . . . .5 per cent."

It should be stated here, in parenthesis, that no alteration has been made in the rates laid down in the Act.

There then follow a number of provisions from which it is clear that the Act purports to be an extension, so to speak, of the Income Tax and Corporation Tax legislation, i.e. it seeks to establish something in the nature

of a surtax to be used for special purposes. In particular, it should be noted that by s.3(1) the responsibility "for the due administration of this Act and for the computation, collection and recovery of the levy" is placed upon the Board of Inland Revenue. Other provisions of the Act which it is necessary to set out in detail are the following:

S.2(1) "'unemployment levy' or 'levy' means the levy imposed by this Act as from time to time amended, for the purpose of the relief of unemployment and the training of unemployed persons."

S.14(1) "In this section 'Minister' means the member of the Cabinet to whom responsibility for Finance is assigned.

(2) There is hereby established for the purpose of this Act an unemployment fund which shall be administered by the Minister.

(3) Subject to this Act (and to any regulations made thereunder) the Minister is authorised to make advances from the fund for any of the purposes thereby provided.

s.17 All monies collected pursuant to this Act shall be paid into the unemployment fund.

s.19 The Governor-General may make regulations generally for giving effect to this Act, and in particular -

(a) for the management and control of the fund;

(b) for prescribing the accounts, books and forms to be used;

(c) as to the projects and other matters concerning which advances from the fund may be made;

(d) for prescribing anything by this Act required to be prescribed."

No regulations have been made by the Governor-General in pursuance of s. 19.

In the Court of Appeal.

No. 12.

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued).

This is the background against which the respondent by his notice of motion and supporting affidavit, both dated October 22, 1974 made (inter alia) the following allegations:

(a) that the levy imposed by the Act is a violation of the fundamental right of the citizen to the enjoyment of property guaranteed by ss. 1 and 2 of the Constitution.

(b) that the Act was not passed in accordance with the requirements of section 5 of the Constitution and that in any event its enactment could not be reasonably justified in a society that has a proper respect for the rights and freedoms of the individual.

(c) that in divers respects the Act is in conflict with and in breach of the provisions of the Constitution.

Braithwaite, J. in a considered judgment upholding the submissions made on behalf of the respondent, made a declaration that the Act was unconstitutional and that the respondent was not liable for any sums levied thereunder. It is against this judgment that this appeal has been brought.

After setting out the sections of the Act and of the Constitution which he considered relevant to the determination of the motion, the learned judge proceeded to give his reasons for rejecting as inadmissible four affidavits that were tendered in evidence as part of the appellant's case. Before this Court counsel for the appellant urged the admissibility of only one of these, viz: an affidavit of the Senior Statistician in the Ministry of Planning and Development, exhibiting a booklet issued in June 1972 by the Director of Statistics containing (inter alia) "analyses of the Labour Force in Trinidad and Tobago, the said analyses being based on a continuous sample survey of the population." For reasons hereinafter appearing I consider it unnecessary to decide this point.

Thereafter the learned judge stated what he considered to be the primary issue in the case in the following words:

"What I think I have to consider in this section (sic) is whether or not the appli-

cant has been deprived of the enjoyment of his property otherwise than by 'due process of law'. I am of the view that all the arguments advanced by counsel on both sides of the motion . . . whether or not they were conscious of it, were directed respectively to show th t the Act offended or did not offend the so-called 'due process clause'.

I am not at this stage concerned about the proposition that the levy imposed by the Act is a tax or not. That may come, perhaps, later. Because a tax (as I shall define it below) may very well be so oppressive and so arbitrary as itself to offend the most basic concepts of a democratic society. It is true that the imposition of a 'tax' on the citizen has been regarded from time immemorial as a sovereign right of the State . . . . . The poknt I am trying to make is that because a deprivation of a citizen's property may fall within the category of what is acceptable generally as a tax, it does not follow that any further deprivation cam be so categorised. Otherwise it would mean that a sovereign government, restricted or not by constitutional restraints, may constitutionally enact legislation to deprive the citizen of the enjoyment of all of his property and then seek to rely on the state's sovereignty and the state's rights to make laws supposedly for peace, order and good government of Trinidad and Tobago. Surely this cannot be so. Ahy legislation seeking to effect this end must be clearly confiscatory and ipso facto unconstitutional."

It is now necessary to set out the provisions of ss.1 and 2 of the Constitution which were held to have been infringed by the Act. These (so far as is material) are 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 . . . . . enjoyment of

In the Court of Appeal.

No. 12.

Judgment of C.E.G. Phillips J.A.

26th March, 1976.

(Continued).

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 . . . . ."

This is also a convenient point at which to refer to s.6(1) in pursuance of which the respondent sought relief from the High Court. It is 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."

It appears to me that the learned judge's approach to the matter was premised on the assumption that any taxing statute must prima facie be regarded as authorising a deprivation of property in contravention of s.1(a) of the Constitution, otherwise referred to as the "due process clause." This opinion is borne out not only by the above-quoted passage from his judgment but also by the following extracts therefrom:

" . . . The law making capacity of Parliament is circumscribed by other provisions of the Constitution, notably:

(a) . . . . . .
(b) . . . . . .
(c) section 5 which deals with Acts which abridge or infringe or authorise the infringement, abrogation or abridgment of rights and freedoms recognised in general by section 1 and those more particularly detailed in section 2.

It seems to me, therefore, to follow that unless the special procedure provided for in the above sections are followed and followed implicity and the law purporting to be made in one which infringes, abrogates or abridges any of the rights and freedoms, whether or not it is for the peace, order and good government of the country, it must be regarded as unconstitutional and therefore of no effect. More particularly, if that law deprives the citizen of the right to the enjoyment of his property, it must be passed in accordance with the provisions of the Constitution whether or not the law seeks to impose taxation or any other type of deprivation of the citizen's property. Otherwise such a law must be arbitrary and possibly oppressive.

I do not therefore subscribe to the view that the proper approach to the matter in hand is to discover whether the levy imposed by the Unemployment Levy Act, 1970 is a tax or not; and thereafter to conclude that if that levy is a tax it automatically becomes constitutional and valid for all purposes.

. . . . . .

"I cannot therefore agree with the learned Solicitor /General/ that it is 'inappropriate to take section 5 of the Constitution into consideration for the purpose of finding whether the due process clause had been infringed.' On the contrary, I regard section 5 as of most fundamental importance when considering the validity of an Act such as the one now under review. For the section describes and defines with clarity and emphasis the due or proper process through which such an Act must passbefore its validity can be sustained."

I have emphasised the last words of this quotation for the purpose of illustrating what I consider to be a fundamental error into which the judge fell.

It is worthy of observation that in the Court below counsel for the respondent did not submit that the Act was necessarily a contravention of the due process clause of the Constitution because of non-compliance with the

In the Court of Appeal.

No. 12

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued)

requirements of s.5. This fact has been clearly recognised by the learned judge when he stated:

> "Both counsel premised their submissions on the ground that the main issue that fell to be determined was whether or not the levy imposed by the Act was a tax. They agreed in a general way on the definition of a tax.
>
> . . . . . .
>
> It seems to me that for the purpose of their submissions the issues were narrowed down to the determination of the question as to whether the imposition of the levy by the Act was for 'public purposes'. If the imposition of the levy they seem to argue, was for 'public purposes' then the levy would have all the characteristics of a tax. Both submissions proceeded on the basis that the state had an inherent and unrestructed right to impose taxation."

The object of s.5 of the Constitution is to endeavour to save from the taint of unconstitutionality any Act of Parliament which would otherwise be unconstitutionality any Act of Parliament which would otherwise be unconstitutional as being in contravention of ss. 1 and 2. This is seen by reference to sub.s.1 which stipulates that:

> 5.(1) "An Act of Parliament to which this section applies may expressly declare that it shall have effect notwithstanding sections 1 and 2 of this Constitution and, if any such Act does so declare, it shall have effect accordingly except insofar as its provisions may be shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual."

It follows logically from the use of the expression "notwithstanding sections 1 and 2 of this Constitution" that s. 5 envisages a situation in which, but for its operation, there would be a manifest infringement of the provisions of ss. 1 and 2. In such circumstances I am of the opinion that the necessity for considering whether the Act was passed in accordance with the requirements of s.5 can arise only after it has been determined that the Act infringes or authorises the infringement of the due process clause of the Constitution. In other words, the

first issue for consideration is whether the Act, purporting to be a taxing statute, can properly be held to authorise a deprivation of property without due process of law within the meaning of s.1(a) of the Constitution.

Before this Court counsel on both sides took a similar stand on this question. In my opinion, therefore, thefirst and paramount question that arises for determination is whether the passing of the Act was a valid exercise of the power of taxation which is inherent in the nature of a sovereign state. In relation to this question reference may usefully be made to the following passage (at p.479) from Cooley's Constitutional Limitations (a work first published in the United States of America in 1868 and reprinted in 1972).

> "Taxes are defined to be burdens or charges imposed by the legislative power upon persons or property, to raise money for public purposes. The power to tax rests upon necessity, and is inherent in any sovereignty. The legislature of every free State will possess it under the general grant of legislative power, whether particularly specified in the constitution among the powers to be exercised or not. No constitutional government can exist without it."

The state's inherent right to impose taxation, is however, subject to the limitation that it cannot seek to deprive the individual of his property under the guise of exercising the taxing power. This limitation is expressed by Cooley (op.cit.) in the following statement (at p.487):

> "Having thus indicated the extent of the taxing power, it is necessary to add that certain elements are necessary in all taxation, and that it will not necessarily follow because the power is so vast, that everything which may be done under pretence of its exercise will leave the citizen without redress, notwithstanding there be no conflict with constitutional provisions. Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the government, when it comes to be carefully scrutinized, will prove, instead of a tax, to be an unlawful confiscation of property, unwarranted by any principle of constitutional government."

In the Court of Appeal.

No. 12.

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued).

By s.36 of the Constitution Parliament is empowered to "make laws for the peace, order and good government of Trinidad and Tobago". The exercise of the legislative power is, of course, subject to any restraints imposed by the Constitution itself. The true nature of the right to impose taxation that emanates from this section is, in my view, aptly described in the passages from Cooley (opp.cit.) quoted above. In determining the questions whether tax legislation may prima facie be held to be a contravention of the due process clause of the Constitution as authorising that an individual be deprived of the enjoyment of his property without due process of law, it is imperative not to lose sight of the fact that such legislation is essential to the very existence of the state. As is stated in Mason and Beaney, American Constitutional Law, (4th edn.) at p.267:

> "A Government, like its individual citizens, must have regular income to pay bills and maintain credit. In addition a government must have coercive power to collect taxes."

In this connection it is useful to contemplate the hypothetical situation of a government which has a bare majority of members in Parliament, and may therefore be unable to have any taxing law passed by a three-fifths majority in each House, as is required for an Act passed in accordance with the provisions of s.5 of the Constitution. The absurdity of such a state of affairs leads, in my opinion, to the irresistible conclusion that the "deprivation of property" which results from the enforcement of a taxing statute is not within the purview of that term as it is used in s. 1(a) of the Constitution. Alternatively, and perhaps this is the more logical approach to the matter - on the assumption that a taxing statute authorizes a deprivation of property within the meaning of s. 1(a), it is carried out by the due process of law by reason of its emanating from the taxing power of the state. I derive support for this conclusion from the case of Magnano Co. v. Hamilton, (1933) 292 U.S. 40, in which it was held (inter alia) by the United States Supreme Court that:-

(a) "In general, the due process clause of the Fourteenth Amendment, applied to the States, like the due process clause of the Fifth Amendment, applied to Congress, is not a limitation upon the taxing power.

(b) The due process clause applies if the Act be so arbitrary as to compel the conclusion that it does not involve and exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as for example, the confiscation of property."

In Lasalle v. The Attorney-General, 18 W.I.R. 379, a case which dealt with the constitutional requirements of procedural due process in relation to a criminal matter, I had occasion torefer briefly to the history of due process and concluded by stating:

> "I am of opinion that before the Constitution came into force the enactment of legislation in the terms of the amending act /The Defence (Amendment) Act, 1970/ could not have been properly regarded as an encroachment on any of the then existing fundamental rights of the appellant. Those rights, though now guaranteed, have not been augmented, by the Constitution."

I consider these words applicable (Mutatis mutandis) to the circumstances of the case under review, and in applying them thereto I would point out that before the date of commencement of the Constitution, it was an accepted constitutional principle that no right of the individual was infringed in consequence of the passing of taxing legislation by a simple majority of the members of the Legislature. In my judgment, this position is in no way altered by the coming into force of the Constitution.

The main issue that arises for determination, therefore, is whether the Act complies with the definition of a taxing statute and is not a mere colourable device for depriving citizens of the enjoyment of their property. Section 44 of the Constitution (so far as is material) provides as follows:

> "44(1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall be exercised by bills passed by the Senate and the House of Representatives and assented to by the Governor-General on behalf of Her Majesty.
>
> (2) . . . . . .

In the Court of Appeal.

No. 12.

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued).

(3) A Bill shall not become law unless it has been duly passed and assented to in accordance with this Constitution."

The Act was duly passed by both Houses of Parliament and received the Governor-General's assent on June 4, 1970.

There has been no dispute between the parties either in this Court or in the High Court as to the meaning of "a tax". Jowitt's Dictionary of English Law gives the following definition:

> "In public law, taxation signifies the system of raising money for public purposes by compelling the payment by individuals of sums of money called taxes."

In R. v. Barger, (1908) 6 C.L.R. 41 in the High Court of Australia, Griffiths, C.J., Barton and O'Connor, JJ. stated:

> "The primary meaning of 'taxation' is raising money for the purposes of government by means of contribution from individual persons."

Reference should also be made to the following passage from the judgment of Mr. Justice Miller in the American case of Loan Association v. Topeka, U.S. Reports (87 Wall. 20) 655 at p. 664, which has been quoted by the Learned Judge:

> "A 'tax' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state'.
>
> "Taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes'.
>
> /Cooley on Constitutional Limitations, 479/.
>
> Coulter, J., in Northern Liberties v. St. John's Church /13 Pennsylvania State, 104/ says very forcibly,
>
> 'I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by authority of the government for the purpose of carrying on the government in

> all its machinery and operations - that they are imposed for a public purpose.'

The crucial question for decision, in my view, is whether the Act, which otherwise bears all the attributes of a taxing statute, can properly be held to have disclosed the public purposes for which the levy sought to be imposed was to be used. Reference has already been made to s.2, the interpretation section, which by subs. (1) defines "unemployment levy" or "levy" as meaning:

> "levy imposed by this Act as from time to time amended, for the purpose of the relief of unemployment and the training of unemployed persons."

The gravamen of the attack levelled against the Act by counsel for the respondent was that no sufficient declaration of the public purposes for which the levy was imposed has been made by this section in the context of s. 19 which provides for the making of regulations by the Governor-General "generally for giving effect to this Act". It was submitted that when, as in this case, a taxing statute provides for the payment of taxes into a special fund and not into the Consolidated Fund, it is essential that from the moment that it becomes operative, the public purposes to which the fund is applicable should be capable of precise definition on the face of the statute. There is no question of this proposition being satisfied in this case, it was said, because it is stipulated by s.19(c) of the Act that the actual projects which are to be the subject of expenditure are to be provided for by regulations, which, in any event, have not been made. The primary purposes of the expenditure were left to be defined by the regulations while the expression used in s.2(1)i.e. "the relief of unemployment and the training of unemployed persons" was intended to indicate the ultimate object of the expenditure. This, it was contended, was the result of the proper construction of s.14(3) which reads:

> Subject to this Act and to any regulations made thereunder the Minister is authorised to make advances from the fund for any of the purposes thereby provided."

It was strenously argued that the word "thereby" referred solely to "regulations", from which it followed that the intention of the Act was to leave the declaration of its purposes to be defined by the regulations.

In the Court of Appeal.

No. 12

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued).

On behalf of the appellant, on the other hand, it was submitted that the word "thereby" is referable both to the "Act" and "regulations". After careful consideration I am satisfied that this is the true construction. This proposition, I think, becomes clear if one supposes the deletion of the words "and to any regulations made thereunder". Another (perhaps minor) consideration which fortifies me in this conclusion is while s.2(1) of the Act speaks about a "purpose", s.19(c) uses the expression "projects and other matters", which, of course, would have to be intended to carry out any purposes declared by the Act. (See s.16(7)) of the Interpretation Act, 1962).

Counsel for the appellant placed great reliance upon the principle of the presumption of constitutionality which is expressed in certain rules referred to in Seervai, Constitutional Law of India, pp.54 et. seq., Those that are material are as follows:

> (1) "There is a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; 'to doubt the constitutionality of a law is to resolve it in favour of its validity.' /American Jurisprudence, Vol. II, pp. 719 - 720/.
>
> (2) Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of the law upheld . . . . . ."

The result of the application of this principle is that on the assumption that there is any doubt as to whether the word "thereby" is applicable to the regulations alone or to both the Act and the regulations, such doubt must be resolved in favour of the latter construction. Counsel for the respondent sought to invoke the principle whereby it is said that a taxing statute must be applied strictly, or more correctly, that "the intention to impose a charge upon a subject must be shown by clear and unambiguous language".

(See Craies on Statute Law, 5th edn. pp.113 - 116). In my judgment, however, this principle, as submitted by counsel for the appellant, comes into operation when questions arise as to the liability of an individual on whom a tax is sought to be imposed by a

valid statute, and has no application to the issue of the constitutional validity of a taxing statute.

No suggestion was made that the word "may" as used in s.19 of the Act imposed upon the Governor-General a legal duty of making regulations. It merely authorised him to do so. There is no room here for the application of the principle enunciated in the well-known case of Julius v. The Bishop of Oxford, (1880) 5 A.C. 214.

For the reasons indicated I am of opinion that the fact that no regulations have been made detailing the "projects and other matters" referred to in s. 19 (c) is not conclusive of the question as to whether any public purposes have been declared by the Act. In the circumstances I do not propose to embark upon examination of certain hypothetical questions which, it was submitted by counsel for the respondent, would have arisen if such regulations had been made, e.g.

(a) whether such regulations would have infringed the fundamental rights declared by s.1(b) and/or (d) of the Constitution, which are as follows:

> (b) the right of the individual to equality before the law and the protection of the law;
>
> . . . . . .
>
> (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(b) whether or not the purposes of a taxing statute could legitimately be defined by regulations;

(c) whether the authorisation by regulations of the withdrawal of moneys from the unemployment fund would have been a contravention of s.85(3) of the Constitution, despite the fact that such withdrawal, as I have held, is expressly authorised by s.14(3) of the Act.

In dealing with the question as to whether the definition of "levy" as meaning the levy imposed by the Act for the relief of unemployment and the training of unemployed persons was a sufficient declaration of its purposes, the learned judge said:

In the Court of Appeal.

No. 12.

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued).

"However undesirable this method of drafting may be, and it is certainly most undesirable, I am not prepared at this stage to say that it is absolutely fatal to the legislation under review if for no other reason than to give effect to the maxim ut res magis valeat quam pereat. For if the words occuring in the definition have no legislative value, then the whole Act is completely devoid of object and purpose - and that could hardly have been the intention of Parliament.

What is more important, I think, is to determine whether the words 'for the purpose of the relief of unemployment and the training of unemployed persons' standing as they do in the splendid isolation of a definition section are sufficiently self-explanatory to indicate with certainty the nature and quality of the relief referred to. Counsel for the applicant in this context put a number of hypothetical questions . . .

Speaking for myself, it is not sufficient in an Act to use terms like 'relief of unemployment and training of unemployed persons' in vacuo so to speak, and to expect by the mere use of the terms to imply that they connote 'public purposes'. The nature and quality of the relief has, in my view, to be spelt out so as to make it clear that the public and the public alone will benefit from the imposition of any levy. Terms and expressions used in isolation and unexplained are not enough."

In this connection it seems to me that if it is accepted that the words in question are capable of being interpreted as indicative of a public purpose, the appellant is entitled to rely upon the presumption of constitutionality and require the respondent to prove that some other purpose was intended. No such attempt has in fact been made by the respondent, whose counsel has conceded that the term "relief of unemployment" may be referable to a public purpose, viz: the assistance of indigent unemployed persons by direct financial payments. On the basis of certain American cases it was submitted that this is the only possible meaning that can be given to the expression. I am unable to accept this submission. In my opinion, the alleviation of the unemployment situation by the provision of employment by the state may also properly be described as "the relief of

unemployment". This view is in consonance with one of the definitions of the word "relief" to be found in the Oxford Dictionary, viz:

> "ease or alleviation given to or received by a person through the removal or lessening of some cause of distress or anxiety."

It appears to me that the provision of work for the unemployed and the training of unemployed persons with a view to making them employable are far better means of dealing with the situation than the mere handing out of a dole. It should be noted here that it was conceded by counsel for the respondent that the training of unemployed persons was capable of being considered to be a public purse.

The present appeal raises essentially a question of construction. Many of the American and Indian authorities cited during the argument deal with circumstances quite different from those under consideration. I therefore consider it unnecessary to refer to any of them. Much more relevant to the determination of the present matter has been the recent case of Attorney General & anor. v. Antigua Times Ltd., (1975) 3 All E.R. 81 decided by the Judicial Committee of the Privy Council. Section 10 of the Constitution of Antigua is in the following terms:

> "(1) Except with his own consent, no person shall be hindered inthe enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.
>
> (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision - (a) that is reasonably required - (i) in the interests of defence, public safety, public order, public morality or public health; . . . . . ."

By s. 10 of the Newspapers Registration Act (added by s.2 of the Newspapers Registration (Amendment) Act, 1971 No. 8 of 1971) it is required that any person publishing a

In the Court of Appeal.

No. 12.

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued).

newspaper in Antigua should before doing so obtain from the Cabinet a licence for that purpose and pay into the Treasury an annual licence fee of six hundred dollars. In case of failure to pay the said sum on or before the stipulated date any licence granted before that date is not to become valid until payment is made. By sub. s.(4) it is provided as follows:

> "(4) If any person shall publish or cause to be published any newspaper without holding a valid licence under this section he shall be guilty of an offence and shall on summary conviction be liable to a fine of five hundred dollars for every day on which such newspaper is published."

The following statement of facts (so far as is material for present purposes) is taken from the headnote of the case (ibid., pp. 81 - 82):

> "The plaintiff, a limited company, was the publisher of a newspaper in Antigua called the'Antigua Times'. The plaintiff commenced proceedings in the High Court under s. 15(1) of the Constitution of Antigua /S.I 1967 No. 225, Sch. 2/ seeking /a declaration/ that s.1B of the Newspapers Registration Amendment) Act 1971 (No. 8 of 1971) . . . . /was/ unconstitutional. The plaintiff contended that /s.1B/ contravened s 10(1) of the Constitution by hindering the plaintiff in the enjoyment of its freedom of expression since s.1B made the plaintiff's right to publish newspaper subject to the annual payment of $600. The judge granted the /declaration/ sought and his decision was affirmed by the Court of Appeal of the West Indies Associated States. The defendants appealed to the Privy Council."

Delivering the judgment of the Board allowing the appeal, Lord Fraser of Tullybolton said (ibid. at pp. 89 - 90):

> ". . . . . In the /Lordships'/opinion the licence fee required to be paid annually by all publishers of newspapers was a tax. Taxation is not referred to in s. 10 . . . . . .

Revenue requires to be raised in the interests of defence and for securing public safety, public,order, public morality and public health and if this tax was reasonably required to raise revenue for those purposes or for any of them, then s.1B is not to be treated as contravening the Constitution.

In some cases it may be possible for a court to decide from a mere perusal of an Act whether it was or was not reasonably required. In other cases the Act will not provide the answer to that question. In such cases has evidence to be brought before the court of the reasons for the Act and to show that it was reasonably required? Their Lordships think that the proper approach to the question is to presume, until the contrary appears or is shown, that all Acts passed by the Parliament of Antigua were reasonably required. This presumption will be rebutted if the statutory provisions in question are, to use the words of Louisy J., 'so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct execution of a different and forbidden power'. If the amount of the licence fee was so manifestly excessive as to lead to the conclusion that the real reason for its imposition was not the raising of revenue but the preventing of the publication of newspapers, then that would justify the conclusion that the law was not reasonably required for the raising of revenue.

In their Lordships' opinion the presumption that the Newspaper Registration (Amendment) Act 1971 was reasonably required has not been rebutted and they do not regard the licence fee is manifestly excessive and of such a character as to lead to the conclusion that s.1B was not enacted to raise revenue but for some other purpose.

Was the revenue to be raised by the licence fees required in the interests of defence or for securing public safety,

In the Court of Appeal.

No. 12.

Judgment of C.E.G.Phillips J.A.

26th March, 1976.

(Continued).

public order, public morality or public health? Though there may be some taxing statutes which state the purposes for which the revenue raised will be applied, ordinarily they do not. The purposes stated cover a very wide field of government expenditure and in the absence of any indication to the contrary, their Lordships think it right to presume that the revenue derived from the licence fees was to be applied to these purposes. That being so, in their opinion s.10 insofar as it requires the payment of a licence fee, is a provision which comes within s. 10(2) of the Constitution and which cannot therefore be treated as contravening it, even though it requires the payment of the licence fee in the first place before publication of a newspaper."

This authority has provided great assistance as it illustrates most vividly the amplitude of the presumption of constitutionality that ensures in favour of a taxing statute. Two salient points emerge from the decision:

(1) It is to be presumed that revenue raised as a result of a taxing statute passed for stated purposes will, in the absence of evidence to the contrary, be applied to the said purposes.

(2) If the tax sought to be raised by the impugned legislation is so manifestly excessive as to suggest that the true intention of the Legislature is not to raise revenue to carry out the public purposes in question, then, of course, the presumption of constitutionality will not apply.

No contention has been put forward on behalf of the respondent that the rate of the levy imposed by the Act is so manifestly excessive as to suggest that the Act is a mere colourable device intended to achieve some purpose other than that stated. In the light of the broad principles deducible from Attorney-General v. Antigua Times Ltd. (supra) it seems to me that there is nothing in the circumstances of the case under review to make the presumption of constitutionality inapplicable to the Act.

I am of opinion that this presumption operates so as to make it unnecessary for the appellant to produce evidence by affidavit in order to show that there was an unemployment problem existing in the country at the time of passing of the Act. I am also of the view that the Court was entitled to take judicial notice of the existence of such a state of affairs.

For the reasons which I have endeavoured to state I have come to the conclusion that the statement contained in s.2(1) of the Act that the levy was imposed for the "relief of unemployment and the training of unemployed persons" was a sufficient declaration of a public purpose in order to stamp the Act with the character of a taxing statute. Accordingly, I am of opinion that the Act does not contravene the provisions of ss. 1 and 2 of the Constitution. I, too, would therefore allow this appeal with costs both here and in the Court below and set aside the orders made by the learned judge of the High Court.

C.E.G. Phillips.
Justice of Appeal.

No. 13.

JUDGMENT OF M. A. CORBIN J.A.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 2 of 1975.

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

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent/Appellant

AND

RAMESH DIPRAJ KUMAR MOOTOO

Applicant/Respondent

Coram: Sir Isaac Hyatali, C.J.
C. E. G. Phillips J.A.
M. A. Corbin J.A.
March 26, 1976.

In the Court of Appeal.

No. 13.

Judgment of M.A. Corbin J.A.

26th March, 1976.

(Continued).

T. Hosein, Q.C., A. Warner, Q.C., Solicitor General, and I. Blackman, State Counsel - for the appellant.
Dr. F. Ramsahoye, Q.C. and R. Maharaj - for the respondent.

J U D G M E N T

Delivered by Corbin, J.A.

I have had an opportunity of reading before-hand the judgments of the learned President and Mr. Justice Phillips and I agree with the opinions expressed and the orders proposed. However, in deference to the detailed and helpful arguments by Counsel on both sides and to the importance of the points raised in this appeal. I would add some observations of my own.

On 22nd October, 1974, Ramesh Dipraj Kumar Mootoo (hereinafter called "the respondent") moved the High Court for an order declaring that the Unemployment Levy Act, 1970 (hereinafter called "the Act") is ultra vires the Constitution and is null and void and of no effect. On 13th December, 1974, Braithwaite J. made the declaration prayed for, and the Attorney General (hereinafter called "the appellant") has now appealed against that order on the ground that the judge was wrong in holding that the respondent had so established.

The learned trial judge had clearly put a good deal of research and thought into his judgment but it seems, with respect, that he fell into two fundamental errors. The first was to misconceive what were the basic issued for his determination, and the second was to rely on several authorities which were not relevant and which, in some instances, did not support the findings he was seeking to make. In the result, he approached the matter as if it was the duty of the appellant to establish the validity of the Act rather than as if it was for the respondent to show it to be unconstitutional.

He based his judgment to a large extent on a finding that the Act violated section 5 of the Constitution since it was by its nature confiscatory. The imposition of a tax does not, however, violate the right of property unless it is made "mala fide" and that has not been shown to apply in the present case.

On the contrary, the booklet published by the

Central Statistical Office showing the state of unemployment in this country in 1969 and tendered as an exhibit to the affidavit of Lancelot Busby supported the contention that there was need for such a tax. The learned trial judge did not admit this affidavit but, in my view, it was relevant and therefore admissible.

By using the approach referred to, he failed to give sufficient consideration to the important issue - whether or not the respondent had established beyond doubt that the Act had not met the requirements of a taxing statute.

There is a very heavy burden cast on any person challenging the validity of any piece of legislation since there is a presumption that the legislature understands and correctly appreciates the needs of the people and that its laws are directed to problems made manifest by experience. The Court will only declare a statute invalid if it conflicts with the Constitution and so the onus is on anyone seeking to impugn a statute to show that in the circumstances which existed at the time it was passed, the legislation violated rights enshrined in the Constitution.

This strong presumption in favour of validity has been recognised by many learned authors of text books, but it will be sufficient to refer only to one or two of these, e.g. Cooley on Constitutional Limitations (1972) Reprint at p. 183:

> "The constitutionality of a law, then is to be presumed, because the legislature, which was first required to pass upon the question, acting, as they must be deemed to have acted, with integrity, and with a just desire to keep within the restrictions laid by the constitution upon their action, have adjudged that it is so. They are a co-ordinate department of the government with the judiciary, invested with very high and responsible duties, as to some of which their acts are not subject to judicial scrutiny, and they legislate under the solemnity of an official oath, which it is not to be supposed they will disregard."

Black on Interpretation of Laws (1911) p. 110:

In the Court of Appeal.

No. 13

Judgment of M.A. Corbin J.A.

26th March, 1976.

(Continued).

"41. Every act of the legislature is presumed to be valid and constitutional until the contrary is shown. All doubts are resolved in favour of the validity of the act. If it is fairly and reasonably open to more than one construction, that construction will be adopted which will reconcile the statute with the constitution and avoid the consequence of unconstitutionality.

Legislators, as well as judges, are bound to obey and support the constitution, and it is to be understood that they have weighed the constitutional validity of every act they pass. Hence the presumption is always in favour of the constitutionality of a statute; every reasonable doubt must be resolved in favour of the statute, not against it; and the courts will not adjudge it invalid unless its violation of the constitution is, in their judgment, clear, complete, and unmistakable. And, further, a state statute can be declared unconstitutional only where specific restrictions upon the power of the legislature can be pointed out, and the case shown to come within them, and not upon any general theory that the statute is unjust, oppressive, or impolitic, or that it conflicts with a spirit supposed to pervade the constitution, but not expressed in words. Neither will any court, in determining the constitutional validity of a statute, take into consideration or pass upon the motives of the legislature in its enactment."

And in Seervai's Constitutional Law of India at p.54:

"There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless this case is so clear as to be free from doubt; to doubt the constitutionality of a law is to resolve it in favour of its validity".

The same principle has also been emphasized by the Courts in a long list of decided cases. One of the most recent of these is the decision of the Privy Council in Attorney General and Another -v. Antigua Times Limited (1975)

3 All E.R. 81 where Lord Fraser of Tulleybelton stated at p.90:

> "In some cases it may be possible for a court to decide from a mere perusal of an Act whether it was or was not reasonably required. In other cases the Act will not provide the answer to that question. In such cases has evidence to be brought before the court of the reasons for the Act and to show that it was reasonably required? Their Lordships think that the proper approach to the question is to presume, until the contrary appears or is shown, that all Acts passed by the Parliament of Antigua were reasonably required. This presumption will be rebutted if the statutory provisions in question are, to use the words of Louisy J, 'so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct execution of a different and forbidden power'."

And in Hinds & ors. v. The Queen and D.P.P. v. Jackson P.C. Appeals Nos. 4 and 5/75 dated 28th July, 1975 Lord Diplock, after expressing the opinion that the presumption exists, stated:

> "The presumption is rebuttable. Parliament cannot evade a constitutional restriction by a colourable device. But in order to rebut the presumption their Lordships would have to be satisfied that no reasonable member of Parliament who understood correctly the meaning of the relevant provisions of the Constitution could have supposed that hearings in camera were reasonably required for the protection of any of the interests referred to: or, in other words, that Parliament in so declaring was either acting in bad faith or had mis-interpreted the provisions of the Constitution under which it purported to act."

That the same considerations have guided the Courts in the United States of America is shown by:

In the Court of Appeal.

No. 13.

Judgment of M.A. Corbin J.A.

26th March, 1976.

(Continued).

Cromwell v. Benson (1931) 285 U.S. 22
Fletcher v. Peck (1809) 6 Cranch 128
Ogden v. Saunders 12 Wheat 213.

Equally well recognised is the power of the Legislature to impose taxes. In Cooley on Constitutional Limitations (supra) at ps. 479-481 the learned author expresses the view that:

> "the power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it..... The power to tax rests upon necessity, and is inherent in every sovereignty."

One of the main arguments advanced by the respondent both here and in the High Court in support of his application was that this Act was not really a taxing statute but only a colourable device for evading the requirements of the Constitution.

The ingredients necessary for creating a taxing statute were fully discussed in Inland Revenue Commissioner & Attorney General v. Lilleyman and Others (1964) 7 W.I.R. 496 where it was held that the three elements of a tax are: (1) it must be imposed by the State or other public authority, (2) it must be compelled, and (3) the imposition must be for a public purpose.

It was necessary, therefore, for the respondent, in order to succeed, to show that one or all of these ingredients was lacking. At the hearing before us Counsel conceded that the Act contained the first two elements, but contended that it did not state clearly what are the public purposes for which the money was being raised. He submitted that (a) no purposes were clearly stated in the Act, and (b) even if purposes were stated, then they were not public purposes.

In support of the first proposition he contended that the legislature could not have intended the purposes to be set out in the definition section alone but it must have been intended that section 2(1) should be read in conjunction with section 19. The effect of this, he submitted, would be that the purposes would not be known until regulations had been made, and that none had been made. I do not agree.

In my judgment the Act must be read as a whole and when this is done the purposes for which the levy is made are very clearly stated in section 2(1). The learned author of Cooley on Constitutional Limitations (supra) at p.57 states:

> "Nor is it lightly to be inferred that any portions of a written law is so ambiguous as to require extrinsic aid in its construction. Every such instrument is adopted as a whole, and a clause which, standing by itself, might seem of doubtful import, may yet be made plain by comparison with other clauses or portions of the same law. It is therefore a rule of construction, that the whole is to be examined with a view to arrive at the true intention of each part".

Applying this principle to the Act under consideration, the first thing one observes is the Long Title:

> "An Act to provide for the imposition of an unemployment levy upon the chargeable income or profits of persons."

Then the relevant part of section 2(1) reads:

> "'unemployment levy' or 'levy' means the levy imposed by this Act as from time to time amended, for the purpose of the relief of unemployment and the training of unemployed persons."

The Act then goes on to make provision for charging persons with the levy in similar manner as for income tax (sections 4 and 5) and it provides the basis of the levy (sections 6 and 7). In all these sections the word "levy" must be given the meaning prescribed in section 2(1) so that section 7 would in fact read: "the levy imposed by this Act as from time to time amended for the purpose of the relief of unemployment and the training of unemployed persons shall be at such rate or rates as are prescribed, save that until any other rate is provided for the following rates shall have effect ...." etc. Moreover, section 14 establishes a fund for carrying out the objects. It reads:

> "14.(1) In this section 'Minister' means the member of the Cabinet to whom responsibility for Finance is assigned.

In the Court of Appeal.

No. 13.

Judgment of M.A. Corbin J.A.

26th March, 1976.

(Continued).

(2) There is hereby established for the purposes of this Act an unemployment fund which shall be administered by the Minister.

(3) Subject to this Act and to any regulations made thereunder the Minister is authorised to make advances from the fund for any of the purposes thereby provided."

The reference in sub-section (2) can only relate to the purposes stated in section 2(1).

Section 19 of the Act empowers the Governor-General to "make regulations generally" for giving effect tothe Act. This must mean "giving effect to the purposes stated".

When all these sections are read together and the Act is thus looked at as a whole, it seems to me that there can be no doubt that the purposes for which the levy is made are clearly set out. The practice of including enacting provisions in an interpretation section has ofter been severely criticised and it is regrettable that this was done here but, as the learned trial judge himself observed, this would not necessarily render the legislation invalid.

The next question then is whether or not this is a public purpose. Here again there is a heavy onus on the respondent for it has been said that to justify a court in declaring a tax void the absence of all public interest in the purposes for which the funds are raised must be clear and palpable; so clear as to be perceptible by every mind at first blush. (Brodhead v. City of Milwaukee 19 Wis. 652).

What constitutes a public purpose is a question which the legislature must decide upon its own judgment and in respect of which it is vested with a large discretion which should not be fettered by the Courts except where under pretence of a lawful authority the legislature has engaged in an unlawful exercise. No such "mala fides" has been shown here.

Counsel for the respondent submitted that "unemployment relief can be a public purpose but giving some people employment is not the relief of unemployment". Further, that as there is no system such as a dole for the relief of unemployment in this country, the reduction of unemployment by giving some people work is not within the meaning of the expression "the relief of unemployment". I do not accept that contention.

It is a well established canon of construction that words must in the first instance be given their natural and ordinary meaning. As I see it, to provide a fund "for the purpose of the relief of unemployment and the training of unemployed persons" includes the provisions of unemployment relief for persons in the same way as if they were handed money under a dole. If the fund is to be used for providing jobs, it must inevitably follow that unemployment will be relieved, and there can be no doubt that that was the intention of the legislature, especially when regard is had to the conditions existing at the time of the passing of this Act (see Busby's affidavit).

I have no doubt that this Act satisfies all the requirements of a taxing statute as defined in Inland Revenue Commissioner v. Lilleyman (supra) and that it is perfectly valid and constitutional.

It should be clearly borne in mind that that is the only question which this Court is called upon to decide. It is not the function of this Court to consider whether or not the objects of the fund are laudable nor if there is any apprehension of mal-administration. This latter is for Parliament and electorate. It may be noted, however, that a safeguard against mal-administration is provided by section 16 of the Act which reads:

> "16. The accounts shall be audited annually by the Director of Audit in accordance with Part V of the Exchequer and Audit Ordinance as if the fund was established under section 48 of that Ordinance."

I too would allow the Appeal with costs here and in the Court below and set aside the declaration and orders made by the trial judge.

M. A. Corbin
Justice of Appeal.

No. 14.

FORMAL ORDER OF COURT OF APPEAL.

In the Court of Appeal.

No. 14.

Formal Order of Court of Appeal.

26th March, 1976.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 2 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.

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 ACT NO. 16 of 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
Respondent/Appellant

AND

RAMESH DIPRAJ KUMAR MOOTOO
Applicant/Respondent.

%%%%%%%%%%

Dated and Entered the 26th March, 1976.
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 15th day of January, 1975, and the Judgment hereinafter mentioned.

UPON READING the record dated herein.

AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent and mature deliberation thereupon had

IT IS ORDERED

that the Appeal be allowed and that the Orders and declarations of The Honourable Mr. Justice John Braithwaite made on 13th day of December 1974 be set aside and that the costs of this Appeal be taxed and paid by the Respondent to the Appellant.

/s/ S. Cross
Asst. Registrar.

No. 15.

In the Court of Appeal.

No. 15.

Order granting Conditional leave to Appeal to the Judicial Committee of the Privy Council.

27th April, 1976.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 2 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

AND

IN THE MATTER OF THE APPLICATION OF RAMESH DIPRAJ KUMAR MOOTOO (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN AND ARE BEING LIKELY TO BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ENACTMENT OF THE UNEMPLOYMENT LEVY ACT 1970 ACT NO. 16 of 1970) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

BETWEEN

RAMESH DIPRAJ KUMAR MOOTOO — Appellant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO — Respondent

Before the Honourable Sir Isaac Hyatali, Phillips & Corbin JJ.A.

Tuesday the 27th day of April, 1976
Entered the 27th day of April, 1976.

Upon the Motion of the above-named appellant of Tuesday 27th April, 1976 for leave to appeal to Her Majesty in Council against the judgment of this Court comprising the Honourable Sir Isaac Hyatali, Chief Justice, the Honourable Mr. Justice Phillips and the Honourable Mr. Justice Corbin, Justices of Appeal, delivered herein on the 26th day of March, 1976;

UPON READING the affidavit of Edward Nathaniel Fergus sworn to on the 1st April, 1976 and filed herein.

In the Court of Appeal.

No. 15.

Order granting Conditional leave to Appeal to the Judicial Committee of the Privy Council.

27th April, 1976.

(Continued).

AND UPON HEARING Counsel for the appellant and Counsel for the Respondent.

THE COURT DOTH ORDER that subject to the performance of the said appellant 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 Her Majesty in Council against the said judgment of this Court be and the same is hereby granted to the appellant;

AND THIS COURT DOTH FURTHER ORDER that the appellant do within six (6) weeks from the date of this Order enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of $2400 (Two Thousand Four Hundred Dollars) with one or more sureties or deposit into Court the said sum of $2400.00 for the due prosecution of the said appeal and for the payment of all such costs as may become payable by the appellant to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of the Judicial Committee of the Privy Council ordering the appellant to pay the costs of the said appeal;

AND THIS COURT DOTH FURTHER ORDER that the appellant do within ninety (90) days from the date of this order in due course take out all appointments 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 that the provisions of this order on the part of the appellant have been complied with;

AND THIS COURT DOTH FURTHER ORDER that the appellant be at liberty to apply at any time within four (4) months from the date of this order for final leave to appeal as aforesaid on the 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 26th day of March, 1976 pending the Hearing and final determination of the said appeal to Her Majesty in Council and that the costs of and incidental to this application be costs in the cause.

LIBERTY TO APPLY.

BY THE COURT.

REGISTRAR.

No. 16.

In theCourt of Appeal.

No. 16.

Order granting Final Leave to Appeal to the Judicial Committee of the Privy Council.

14th July, 1976.

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. 2 of 1975.

BETWEEN

RAMESH DIPRAJ KUMAR MOOTOO

Applicant/Respondent

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent/Appellant

Before the Honourable Sir Isaac Hyatali, C.J.
Mr. Justice C.E.G.Phillips J.A.
Mr. Justice M.A. Corbin J.A.

Made the 14th day of July, 1976.
Entered the 14th day of July, 1976.

Upon the application of Ramesh Dipraj Kumar Mootoo preferred unto this Court by Motion on the 29th day of June, 1976, for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court dated the 26th day of March, 1976.

AND UPON READING the Notice of Motion and the Order of this Court dated the 27th day of April, 1976,

AND UPON HEARING COUNSEL for the Applicant and for the Respondent and upon being satisfied that the terms and conditions imposed by the said Order dated the 27th day of April, 1976, have been complied with

THIS COURT DOTH ORDER that final leave be and is hereby granted to the said Petitioner to appeal to Her Majesty in Her Majesty's Privy Council

By the Court

Registrar.

In the Court of Appeal.

No. 17

Amended Order granting final leave to appeal to the Judicial Committee of the Privy Council.

13th March 1978.

No. 17.

AMENDED 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: 2 of 1975.

Between

RAMESH DIPRAJ KUNAR MOOTOO — Applicant/Respondent

and

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO — Respondent/Appelant:

Before: The Honorable the Chief Justice Hyatali C.J., Corbin J.A. and ~~Kelsick J.A.~~ Mr Justice G. Scott.

Made the 13th day of March, 1978.

Entered the 13th day of March, 1978.

UPON the Application of Ramesh Dipraj Kumar Mootoo proferred unto this Court by Motion on the 13th day of February, 1978 for an order enabling the Appeal herein to be taken to the Judicial Committee of the Privy Council.

AND UPON reading the Notice of Motion, the affidavit in support thereof and the Order of this Court herein made on the 14th July, 1976 granting leave to appeal to Her Majesty in Council.

AND UPON HEARING COUNSEL for the Applicant and the Respondent

THIS COURT DOTH GRANT LEAVE AND ORDER that all further proceedings in this appeal be taken before the Judicial Committee of the Privy Council.

BY THE COURT

REGISTRAR: