27.1980

IN THE PRIVY COUNCIL No. 20 of 1979.

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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

BETWEEN

PATRICK CHOKOLINGO Applicant/Appellant

AND

THE LAW SOCIETY OF TRINIDAD AND TOBAGO Respondent/Respondent

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

~~CHARLES RUSSELL & CO.~~ OSMOND GHUNT & ROSE
~~HALE COURT~~
~~LINCOLN'S INN~~
~~LONDON WC2 3UL~~ 14-16 HIGH HOLBORN
LONDON WC1V 6BX

Solicitors for the Respondent.

CHARLES RUSSELL & CO
HALE COURT, LINCOLN'S INN
LONDON WC2 3UL
SOLICITORS FOR THE ATTORNEY GENERAL

IN THE PRIVY COUNCIL NO. 20 OF 1979.

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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

BETWEEN

PATRICK CHOKOLINGO — Applicant/Appellant

AND

THE LAW SOCIETY OF TRINIDAD AND TOBAGO — Respondent/Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

No. 10 of 1979

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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

AND

IN THE MATTER OF THE APPLICATION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO: 1218 OF 1972 FOR CRIMINAL CONTEMPT.

No 1.

In the High Court

No. 1

Notice of Motion

31st January 1975.

Notice of Motion

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SAN FERNANDO.

No. 81 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO CONTAINED IN THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, S.I. 1962 NO: 1875.

AND

IN THE MATTER OF THE APPLICATION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN

In the High Court

No. 1

Notice of Motion

31st January 1975.

(continued)

RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO: 1218 OF 1972 FOR CRIMINAL CONTEMPT.

TAKE NOTICE that the High Court of Justice in San-Fernando will be moved on the 14th day of February 1975 at the hour of nine o clock in the forenoon or soon thereafter as Counsel may be heard by Counsel on behalf of the above named applicant PATRICK CHOKOLINGO for the following relief in pursuance of the constitutional jurisdiction vested in the Court by Section 6 of the Constitution of Trinidad and Tobago, namely:-

(a) An order declaring that the order made against him by the High Court in the exercise of its criminal jurisdiction in proceedings No: 1218 of 1972 is unconstitutional, null and void and of no effect;

(b) A further order declaring that the imprisonment of the applicant suffered under the said order was illegal and a violation of the human rights and fundamental freedoms guaranteed to the applicant by the Constitution of Trinidad and Tobago and in particular by Section 1 thereof;

(c) A further order directing the Respondent The Trinidad and Tobago Law Society to pay to the Applicant such damages as the Court may assess to have been suffered by the Applicant by his wrongful inprisonment under the said order and a further order that costs in the sum of $11,369.27 paid by the Applicant to the Trinidad and Tobago Law Society be repaid by the said Society to the Applicant;

(d) Such further or other order as the justice of the case may require;

(e) An order that the Trinidad and Tobago Law Society do pay the costs of these proceedings.

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

1. The publication which was the subject of the proceedings No: 1218 of 1972 was not a criminal contempt of the Supreme Court of Judicature or any other court established for Trinidad and Tobago.

2. The publication was not a criminal contempt of the judges or of any judge performing judicial functions in Trinidad and Tobago.

3. The order of the High Court contravened and was a violation of the provisions of the Constitution of Trinidad and Tobago and in particular Section 1 (a) (i) and (k) thereof, in that the order:-

(a) deprived the applicant of his liberty and was made without due process of law;

(b) was a contravention of the Applicant's right to freedom of thought and expression; and

(c) contravened the right to freedom of the press.

4. The order cannot in any event be supported by the principles of law and practice relating to criminal contempt received in or applicable to in Trinidad and Tobago and in particular the order could not properly have been made by summary process and without proceedings upon information or indictment.

Dated this 31st day of January, 1975.

/s/ Capildeo & Capildeo

Capildeo & Capildeo of No. 25 St. Vincent Street, Port of Spain and in San Fernando c/o Mr. Ronald Kowlessar of 77-78 Court Street, San Fernando. Solicitor for the Applicant.

To: The Honourable AAttorney General Of Trinidad and Tobago,
"Chambers"
Red House,
Port of Spain.

AND TO: The Trinidad and Tobago Law Society.

In the High Court

No. 1
Notice of Motion
31st January 1975.
(continued)

No. 2.

Affidavit of Patrick Chokolingo

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
SAN FERNANDO.

No. 2
Affidavit of Patrick Chokolingo
31st January 1975.

In the High Court

No. 2
Affidavit of Patrick Chokolingo

31st January 1975.

(continued)

No: 81 of 1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO CONTAINED IN THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, S.I. 1962 NO:1875

AND

IN THE MATTER OF THE APPLICATION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO: 1218 OF 1972 FORCCRIMINAL CONTEMPT.

I, PATRICK CHOKOLINGO, having been duly sworn make oath and say as follows:-

1. I am the Applicant herein and I have duly authorised Messrs. Capildeo and Capildeo, Solicitors to act as Solicitors on my behalf. My address and place of business in San Fernando is at 8-10 New Street.

2. On the 26th day of May, 1972 an article under the following caption was published in the BOMB newspaper of which I am and was at all material times the editor.
THE JUDGES WIFE --- The old domestic was bent on exposing bribery, corruption and fraud in the household. A copy of the said article is hereto annexed and marked P.C.1.
The said newspaper is lawfully published once weekly and was so published at all material times.

3. Following the publication of the said article proceedings were instituted in the High Court of Justice by The Trinidad and Tobago Law Society the second named Respondent by way of motion for the issue of a Writ of Attachment or an order of Committal against me for Contempt of Court. The documents filed in the proceedings together with the judgment and order of the High Court made in the exercise of its criminal jurisdiction are hereto annexed and marked P.C. 2. Under the said order I was committed to prison for twenty-one days.

4. Prior to the institution of the said proceedings the Attorney General of Trinidad and Tobago the first named Respondent declined to move against me for Contempt of Court in relation to the said publication and has never so moved. The Attorney General is served with these proceedings in pursuance of the provisions of Section 13 of the Supreme Court of Judicature Act 1962.

5. I was imprisoned at the Port of Spain Goal under the Order of the High Court of Justice made on the 17th day of August, 1972 for a period of TWELVE DAYS when I was released under a remission from the Crown.

6. I am advised and verily believe that the said Order of the High Court contravened and was a violation of the Human Right and Fundamental Freedom guaranteed to me by article 1 of the Constitution of Trinidad and Tobago whereby no individual may be deprived of his liberty or security of the person except by due process of law.

7. I am further advised and verily believe that the said Order contravened and was a violation of the Human Right and Fundamental Freedom of thought and expression guaranteed to me under the said Section 1 of the Constitution of Trinidad and Tobago.

8. I am also further advised that the said Order contravened and was a violation of the Fundamental Freedom of the press guaranteed by Section 1 of the Constitution of Trinidad and Tobago.

9. No Judge of the Supreme Court of Trinidad and Tobago or other person has expressed to me or to my Solicitors the view that the said publication was or may be understood to refer to him and no individual or authority has brought any proceedings whatsoever in any court of Justice in Trinidad and Tobago in connection with the said publication save and except the proceedings by the Trinidad and Tobago Law Society mentioned and referred to herein.

10. I rely on the grounds set out in the Notice of Motion to support my claim to relief herein.

11. During the course of the said proceedings and during my imprisonment I suffered severe inconvenience loss

In the High Court

No. 2
Affidavit of Patrick Chokolingo

31st January 1975.

(continued)

and damage and grave indignity and humiliation.

PARTICULARS OF SPECIAL DAMAGE:

Legal expenses in my defence in proceedings No: 1218 of 1972 .....$ 6,000.00

The Solicitors and Client's costs which I paid to The Trinidad and Tobago Law Society under the Order of the High Court in proceedings No:1218 of 1972 was $11,364.27

12. I am also advised and verily believe that the Order of the High Court was made in the exercise of its criminal jurisdiction and from it there is no Appeal to the Court of Appeal in Trinidad and Tobago.

13. In the premises I pray that this Honourable Court will in the exercise of the constitutional jurisdiction vested in the High Court in pursuance of Section 6 of the Constitution of Trinidad and Tobago and in exercise of all other powers enabling the Court in that behalf grant me the relief sought in the motion herein or such further or other relief as may be just.

SWORN to at No. 3,Penitence Street,)
in the town of San Fernando, this) /s/ Patrick
31st day of January, 1975.) Chokolingo.

Before me

/s/ Dalton Chadee
Commissioner of Affidavits

Filed on behalf of the Applicant herein.

EXHIBIT "P.C. 1"

This is the annexed referred to in the affidavit of Patrick Chokolingo as P.C.1 sworn to before me on the 31st day of January, 1975.
/s/ Dalton Chadee,
Commissioner of Affidavits.

Exhibit "P.C. 1" The Bomb Newspaper.

The Judge's Wife.

26th May 1972.

"P.C.1." Applicant's Exhibit
Copy of The Bomb - The Judge's Wife.
26th May, 1972.

THE BOMB - THE JUDGE'S WIFE.

The Old domestic was bent on exposing bribery, corruption and fraud in the household.

You must hear my story mister. look at me. I am an old woman and I working for this judge and his big fat wife for too many years and this morning the boboloops lady watch me and tell me to get out of she house.

She watch me straight in me face and say I too old and she don't want me no more. Outside ol woman she tell me.

You think that is right, mister. I work so many years and I keeping all them people secrets and the woman just up and fire me so.

I didn't think it woulde happen the amount of things I know bout them. But she feel they too big and I look like little folk to them so who go listen to me.

But I go do for them. I hear you does write anything so I coming by you and if you won't write them I going by them Moko people and get it off my chest. But to tell I have to tell.

I ain't taking that from that old sourface wretch. I don't think she husband does even touch she again and I think is because he running from she that he catch on to that bottle.

He don't leave the bottle and sometimes when they rowing and they could row - she tell him that he loving the bottle and he could kiss the bottle.

And another time when they was rowing, she say "You

Exhibit "P.C.1" The Bomb Newspaper. The Judge's Wife. 26th May 1972. (continued)

can kiss my ass" and he come serious like a judge and say "That sounds like a better propo- something." - And she pelt a bottle behind him.

But that judge and he wife does live like dog and cat. Fighting and cussing all the time. And she fire me. Mister you want the story or not. I go do for them today and I don't have time to waste. Oho!

Lissen, I want to tell you how some of them judge and them does live in this country. They does beg and they like pump thing worse than me and you. We poor but them begging for everything from the bread on their table, they does get free. They don't pay for nothing, I tell you.

And if the bread don't come one day, is because the big fat madam ringing and saying like if she is a big shot "Baker, you didn't send my bread this morning."

That woman boldface and she could eat. I believe she eating for the two of them, because he don't eat, you know. Give he a bottle and he spending the whole day with it, like if they put he so.

If they go down town to buy something, when they come back they like real father Christmas, with one set of thing in the car and is me they calling to put things inside.

But when you come to find out, is because they beg for everything in the stores. They know how to live. They does get thing from Syrians and they know how to beg Syrians.

You think you could print that, mister, how they does bad beg Syrians. I tell you one day they went in town and take some dresses from one of the big Syrian stores and after she and she sister wear them one day each, they send them back to the store to exchange. Don't doubt it.

But even the Syrian man fed up and he send them back saying "It was a gift" and he couldn't change a gift"after it had been used.

Them people sit too bold face. They doesn't cook

Exhibit "P.C.1."

The Bomb Newspaper.

The Judge's Wife.

26th May 1972.

(continued)

often you know. Every day they trying to see who they could mop. They does live by everybody and they don't want nobody to eat by them.

And sometimes, once in a blue moon, they does throw a fete, but not in their house you know. They borrow somebody house down the island on then is bacchanal. Is then I have to work. Whole day the witch on the phone ringing everybody. She calling Grells to send so much meat and she ordering a million and one thing and no money to come. She just saying after she finish "This is the judge's wife" and putting down the phone.

He too in the thing. A big judge like that calling people and saying we having a party down the island and we want to get some whiskey and after a lot ofsweet talk he put down the phone and clap his hands together and you know what - whiskey flowing like water after that.

And them people could take bribe. You believe that we could chisel money. I wouldn't lie, sometime I spend two dollars in the market and I tell madam is two fifty and get a little bus fare to go home for the week and thing.

But them, Them does get raise by the hundreds. People does come in cars and leave all kind of fat envelopes for the judge and say: Tell the madam that JJ send that. Be careful it's money that I borrowed from her and I am returning it.

Believe me sir, the amount of people say so, they must be money lenders. They does get bribe. And when they come and I hand it to she, they does have big row when he trying to get the money from she.

I hear with my own two ears how they cussing one another about money I just hand she. He shouting that it is he own and She have no right to it and she saying. "the next time you want money, tell them to send it to you."

Believe me, when the people in this country hear bout how some of them judges does live in this country right now, they might get scared.

I believe some of them judge wives should get some

Exhibit "P.C.I."
The Bomb Newspaper.
The Judge's Wife.
26th May 1972.
(continued)

judgment themselves but I say to myself that one of these days judgment day will come on them, and you know something I think this one meeting she judgment day now.

Mister that woman mean and cheap and greedy and nasty and she know how to beg. If she beg for some whiskey, is not a glass full nuh but a whole bottle.

If she ask for a Christmas tree, she want the bulbs and all the decoration on it and you go dead if you know the kind of things them does beg for. All that I know. 10

And this week the insurance people come and ask them about paying National Insurance for me and the bold face lady say they don't have no servant. She say I working for she and I just leave the job. And when they leave she say that she can't afford to pay National Insurance for no servant so I fired.

Fix she up good in the paper, mister, and God will bless you.

EXHIBIT "P.C.2" (No. 1)
This is the annexed referred to in the affidavit of Patrick Chokolingo as P.C.2 sworn to before me on the 31st day of January, 1975.
/s/ Dalton Chadee.
Commissioner of Affidavits.

Exhibit "P.C.2" (No.1) Application for leave to issue Writ of Attachment.

31st January 1975.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE.

No: 1218 of 1972

In the Matter of an Application for leave to issue a Writ of Attachment against or for an Order for Committal of PATRICK CHOKOLINGO and AJODHA SINGH for an alleged Contempt of Court.

B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY
(Applicant)

A n d

PATRICK CHOKOLINGO A ND AJODHA SINGH
(Respondents).

S T A T E M E N T .

1. The Applicant is The Trinidad and Tobago Law Society, a body corporate having been incorporated by The Trinidad and Tobago Law Society (Incorporation) Act No. 29 of 1969 and has its registered office at No. 28, St. Vincent Street, Port-of-Spain.

2. The relief sought herein is an Order that the Applicant be at liberty to issue a Writ or Writs of Attachment or for the Committal of PATRICK CHOKOLINGO the Editor of the newspaper called "THE BOMB" and AJODHA SINGH the Proprietor-Publisher and Printer thereof for their Contempt of this Court in publishing in the issue of the said newspaper for the 26th day of May, 1972 an article under the heading "A JUDGE'S WIFE" and that the said Patrick Chokolingo and Ajodha Singh do pay to the Applicant its costs of and occasioned by these proceedings including the issuing and execution of the said Writ or Writs or other Order.

Exhibit "P.C.2"(No.1) Application for leave to issue Writ of Attachment.

31st January 1975.

(continued)

3. The grounds upon which the said relief is sought are that the said article as published is a scurrilous abuse of Her Majesty's Judges of the Supreme Court of Judicature of Trinidad and Tobago (hereinafter called "the said Court") and is calculated and tends to bring the said Judges and the said Court into Contempt and to lower their dignity and its authority and to bring the administration of justice in Trinidad and Tobago into disreputa and disregard and to scandalise the said Court and the Judges thereof.

Dated this 10th day of June, 1972.

/s/ M.T.I. Julien.
Solicitor for the Trinidad & Tobago Law Society, the Applicant herein.

"P.C.2"

This is the annexed referred to in the affidavit of Patrick Chokolingo as P.C.2 Sworn to before me on the 31st day of January, 1975.

/s/ Dalton Chadee
Commissioner of Affidavits.

To: The Registrar of the High Court of Justice.

E X H I B I T

TRINIDAD AND TOBAGO:

Exhibit "P.C.2" (No. 2.)

IN THE HIGH COURT OF JUSTICE.

Affidavit of Mark Thomas Inskip Julien

No: 1218 of 1972.

10th June, 1972.

In the Matter of an Application for leave to issue a Writ of Attachment against or for an Order for the committal of Patrick Chokolingo and Ajodha Singh for an alleged Contempt of Court.

B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY

(Applicant)

A n d

PATRICK CHOKOLINGO and AJODHA SINGH

(Respondents).

I, MARK THOMAS INSKIP JULIEN of Gordon Street, St. Augustine in the Island of Trinidad, Solicitor for the Applicant herein make oath and say as follows:-

1. I am a Solicitor of the Supreme Court of Judicature of Trinidad and Tobago (hereinafter called "the Supreme Court") a member of the Council and Honorary Secretary of the Trinidad and Tobago Law Society, the Applicant herein.

2. The Applicant is a body corporate having been incorporated by the Trinidad and Tobago Law Society (Incorporation) Act No. 29 of 1969 having its registered office at No. 28, St. Vincent Street, Port of Spain, in the Island of Trinidad and has duly authorised me to make this affidavit.

3. On Friday the 26th day of May, 1972 I purchased from a vender in St. Vincent Street, Port-of-Spain, aforesaid a copy of the issue for the said 26th day of May, 1972 of the weekly newspaper known as "THE BOMB" which was being published and sold about the streets of Port of Spain and else-where in Trinidad and Tobago. On page 15 of the said newspaper under the heading "THE JUDGE'S WIFE" there is an article purporting to be written by one David Lincott which refers to Her Majesty's Judges of the Supreme Court.

4. The publication of the said article is calculated and tends to bring the said Judges and the Court into contempt

Exhibit "P.C.2" (No.2)

Affidavit of Mark Thomas Inskip Julien

10th June, 1972.

(continued)

and to lower their dignity and its authority and to bring the administration of justice in Trinidad and Tobago into disrepute and disregard and to scandalise the Court and the said Judges thereof.

5. "The Bomb" is a weekly newspaper circulating throughout the Commonwealth Caribbean and as appears on the back page of the issue of the said newspaper dated the 19th day of May, 1972 also in the City of New York in the United States of America, A copy of each of the issues of the said newspaper for the 26th and 19th days of May, 1972 are hereto annexed and marked "A" and "B" respectively.

6. There appears in paragraph 2 of his defence delivered by the said Patrick Chokolingo one of the Respondents herein on the 6th day of November, 1970 and filed in the Registry of the Supreme Court in an action intituled "In the High Court of Justice No: 1643 of 1970 Between one A.N.R. Robinson as Plaintiff and the said Patrick Chokolingo and one Bhadase Sagan Maharaj as defendants an admission by the said Patrick Chokolingo (and I verily believe it to be the fact) that he is the Editor of the said newspaper "THE BOMB". A true copy of the said defence is hereto annexed and marked "C".

7. It appears also from a Statutory Declaration made the 9th May, 1972 the respondent in the Red House, Port-of-Spain, in accordance with the provisions of the newspaper Ordinance Ch. 30 No. 8 that the said Ajodha Singh is the Proprietor Publisher and Printer of the said newspaper "THE BOMB". A true copy of the said Statutory Declaration is hereto annexed and marked "D".

8. Save where otherwise expressly stated I depose to all the above facts of my own knowledge.

SWORN by the said MARK THOMAS INSKIP JULIEN the deponent above named at No. 28, St. Vincent Street, P.O.S. Trinidad W.I. at the hour of 9.00 in the forenoon this 10th day of June 1972.

/s/ M.T.I. Julien.

Before me
/s/ B.C. Jordan
Commissioner of Affidavits.

EXHIBIT

TRINIDAD AND TOBAGO:

Exhibit P.C.2 (No 3)

IN THE HIGH COURT OF JUSTICE.

No: 1218 of 1972.

Affidavit of Patrick Chokolingo.

In the Matter of an Application for leave to issue a Writ of Attachment against or for an Order for committal of Patrick Chokolingo and Ajodha Singh for an alleged Contempt of Court.

24th June, 1972.

B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY

(Applicant)

and

PATRICK CHOKOLINGO and AJODHA SINGH

(Respondents).

==========

I, PATRICK CHOKOLINGO, Journalist, of No. 9, Third Street, Saddle Road, Maraval, in the Ward of Diego Martin, in the Island of Trinidad, make oath and say as follows:-

1. I am one of the respondents herein.

2. The respondent AJODHA SINGH is the Proprietor, Publisher and Printer of the weekly newspaper called "THE BOMB" and I am the Editor of the same.

3. I accept sole responsibility for the form matter and content of the said newspaper; no one else is concerned with this.

4. I wrote and published the short story complained of in these proceedings. This short story is a work of fiction and does not refer to any known person or persons. I have in the past written several short stories some of which have appeared in other journals and other broadcasts over the British Broadcasting Corporation.

5. At the time of writing the short story complained of I did not think it was derogatory of the judicial system of this country or of its Judges.

6. I have now been advised that the said short story

Exhibit P.C.2 (No. 3) Affidavit of Patrick Chokolingo. 24th June, 1972. (continued)

amounts to a Contempt of Court and I accept that this is so. I therefore unreservedly apologise to This Honourable Court and to all Her Majesty's Judges of the Supreme Court of Judicature for this publication which I ought not to have published and the publication of which I now deeply regret.

7. I have never intended by my publication to scandalise the Courts or bring the administration of justice into disrepute.

8. I have always held the courts of this country and its Judges in high esteem and have always had full confidence in their integrity honesty and impartiality. I have at all times had full confidence in the administration of justice in this country.

SWORN to at No. 25, St. Vincent Street, Port-of-Spain, this 24th day of June, 1972.) /s/ Patrick Chokolingo.

Before me
/s/ Severian Millet
COMMISSIONER OF AFFIDAVITS.

Filed on behalf of the Respondents herein.

E X H I B I T

TRINIDAD AND TOBAGO:

In the Matter of
THE NEWSPAPER ORDINANCE CH. 30 NO. 8.

Exhibit "D"
Affidavit of
Ajodha Singh

==========oOo==========

I, AJODHA SINGH of Southern Main Road, Curepe, in the Ward of Tacarigua, in the Island of Trinidad, Newspaper Publisher, do solemnly and sincerely declare as follows:- 9th May, 1972.

1. I make this declaration on my own behalf under the Provisions of the Newspapers Ordinance Chapter 30 No. 8 with respect to the Newspaper known as "THE BOMB".

2. The correct title or name of the said Newspaper is "THE BOMB".

3. The true description of the house or building where the said Newspaper is printed and published is the one storey building situate at the Corner of Southern Main Road, and Clifford Street, Curepe, in the Ward of Tacarigua, in the Island of Trinidad.

4. The true name and place of abode of the Proprietor and Publisher and Printer is AJODHA SINGH of Southern Main Road, Curepe, aforesaid.

AND I MAKE this declaration conscientiously believing the same to be true and in accordance with the Statutory declarations Ordinance Chapter 7 No. 7 and I am aware that if there is any statement in this declaration which is false in fact which I know or believe to be false or do not believe to be true I am liable to fine and imprisonment.

SWORN to at No. 25, St. Vincent Street, Port of Spain, this 9th day of May, 1972.) /s/ Ajodha Singh

Before me
/s/ Francis G. Thomas
COMMISSIONER OF AFFIDAVITS.

"D" This is the statutory declaration marked "D" referred to in the affidavit of Mark Thomas Inskip Julien sworn the 10th day of June, 1972, before me,
/s/ R. B. Bynoe.
Commissioner of Affidavits.

E X H I B I T

Exhibit P.C.2 (No.4)

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

Affidavit of Ajodha Singh.

No: 1218 of 1972.

24th June 1972.

In the Matter of an Application for leave to issue a Writ of Attachment against or for an order for committal of Patrick Chokolingo and Ajodha Singh for al alleged contempt of Court

B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY

(Applicant)

a n d

PATRICK CHOKOLINGO AND AJODHA SINGH

(Respondents)

==========oOo==========

I, AJODHA SINGH Newspaper Publisher, of Clifford Street, Curepe, in the Ward of Tacarigua, in the Island of Trinidad, make oath and say as follows:-

1. I am one of the Respondents herein.

2. I am the Proprietor, Publisher and Printer of the weekly newspaper called "THE BOMB".

3. The Respondent Patrick Chokolingo is the Editor of the said newspaper.

4. I became the Proprietor, Printer and Publisher of the said newspaper in early May, 1972. So far for medical reasons I have never taken part in the day to day administration or management of the said newspaper. I do not write or assist in the writing of any of the articles, short stories or other matters which appear in the said newspaper.

5. I did not write or assist in the writing of the short story complained of in these proceedings nor was I aware of the contents of it nor that the same was to be published in the said newspaper. I only got to know of the short story when I read it in the said newspaper sometime after its publication.

Exhibit P.C.2 (No.4)

Affidavit of Ajodha Singh

24th June 1972.

(continued)

6. When I read the said short story I did not give it much thought or any serious consideration at the time and I was not aware of the implications contained in it. It has now been brought home to me that the said short story amounts to a contempt of Court. I accept that this is so and wish unreservedly to express to this Honourable Court and to all Her Majesty's Judges of the Supreme Court of Judicature my sincere and profound apologies for this regrettable and in excusable publication.

7. I have always held the Courts of this country and their Judges in high esteem and have always had full confidence in their integrity honesty and impartiality. I have at all times had full confidence in the administration of justice in this country.

8. I have not apologised before because I was not aware of the legal procedure until so advised by my legal advisers.

SWORN to at No. 25, St. Vincent Street, Port of Spain, this 24th day of June, 1972.) /s/ Ajodha Singh.

Before me

/s/ Severian Millet
Commissioner of Affidavits.

Filed on behalf of the Respondents herein.

E X H I B I T

Exhibit P.C.2 (No.5) TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

Supplementary Affidavit of Mark Thomas Inskip Julien.

4th July, 1972.

No: 1218 of 1972.

In the Matter of an Application for leave to issue a Wrot of Attachment against or for an Order for Committal of Patrick Chokolingo and Ajodha Singh for an alleged contempt of Court.

B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY (Applicant)

and

PATRICK CHOKOLINGO and AJODHA SINGH (Respondents)

I, MARK THOMAS INSKIP JULIEN of Gordon Street, St. Augustine in the Island of Trinidad, Solicitor make oath and say as follows:-

1. This affidavit is supplemental to my affidavit sworn the 10th day of June, 1972 and filed herein.

2. Since Filing the Motion herein and after swearing my affidavit of the 10th day of June, afo-esaid, I purchased from a vender in St. Vincent Street, Port of Spain, in the said Island on the 16th day of June, 1972 a copy of the issue of the weekly newspaper "THE BOMB" of Friday the said 16th day of June, 1972 in which the Respondent Patrick Chokolingo (sometimes called "Pat Chokolingo") under the widely known name of "Choko" in his weekly column known as "Choko Spectular" on page 3 under bold headlines "CHOKO IN JAIL" stated inter alia:

> "In my case, all I wanted was to continue to edit the Bomb from the jail. And make no mistake about it, I was, I am and will be the editor. There was going to be no horsing around with that".

A true copy of the issue of the said newspaper "THE BOMB" of the 16th day of June, 1972 is hereto attached and marked "Z".

SWORN by the deponent above-named MARK THOMAS INSKIP JULIEN at 28, St. Vincent Street, Port of Spain, Trinidad this 4th day of July 1972 at the hour of 11.55 in the forenoon.

/s/ M.T.I. Julien.

Before me
/s/ Stanley C. Jordon

Commissioner of Affidavits.

Exhibit P.C.2 (No.5)

Supplementary Affidavit of Mark Thomas Inskip Julien

4th July, 1972. (continued)

E X H I B I T

Exhibit P.C.2 (No.6)

Order of Achong J.

12th June, 1972.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No: 1218 of 1972.

In the Matter of an Application for leave to issue a Writ of Attachment against or for an Order for Committal of Patrick Chokolingo and Ajodha Singh for an alleged Contempt of Court.

B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY

(Applicant)

and

PATRICK CHOKOLINGO and AJODHA SINGH

(Respondents)

Before the Honourable Mr. Justice Achong
Entered the 12th day of June, 1972
On the 12th day of June, 1972.

UPON HEARING Counsel for The Trinidad and Tobago Law Society the Applicant herein for leave to make an application for attachment or for an Order for Committal.

AND UPON READING the Statement lodged herein and the affidavit of Mark Thomas Inskip Julien filed herein on the 10th day of June, 1972

IT IS ORDERED that the said Applicant be at liberty to make application to this Court for an Order that it be at liberty to issue a Writ of Writs of attachment against or for the committal of Patrick Chokolingo and Ajodha Singh for their alleged Contempt of this Court in publishing in the issue of the newspaper known as "THE BOMB" for the 26th day of May, 1972 an article under the heading "THE JUDGE'S WIFE".

AND IT IS FURTHER ORDERED that the costs of and occasioned by this application for leave be costs in the said application for attachment or Order for Contempt of Court.

/s/ Wendy S. Punnette
Asst Registrar.

E X H I B I T

TRINIDAD AND TOBAGO.

Exhibit P.C.2 (No.7)

IN THE HIGH COURT OF JUSTICE

No: 1218 of 1972.

Notice of Motion.

In the Matter of an Application for leave to issue a Writ of Attachment against or for an Order for the Committal of Patrick Chokolingo and Ajodha Singh for an alleged Contempt of Court.

12th June, 1972.

10 B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY

(Applicant)

and

PATRICK CHOKOLINGO and AJODHA SINGH

(Respondents).

TAKE NOTICE that pursuant to the leave of the Honourable Mr. Justice Achong given on the 12th day of June, 1972 the High Court of Justice will be moved on the 22nd day of June, 1972 or so soon thereafter as
20 Counsel can be heard by Counsel Algernon Wharton Esquire, one of Her Majesty's Counsel on behalf of The Trinidad and Tobago Law Society the Applicant herein for an Order that the above-named Applicant be at liberty to issue a Writ or Writs of attachment against or for the Committal of Patrick Chokolingo and Ajodha Singh the Respondents herein for their contempt of this Court in publishing in the issue of the newspaper known as "THE BOMB" for the 26th day of May, 1972 an article under the heading "THE JUDGE'S WIFE" upon the grounds set forth in the copy
30 Statement served herewith used on the application for leave to issue this Notice of Motion.

AND for an Order that the Respondents do pay to the Applicant its costs of and occasioned by this Motion and of and incidental to the issuing and execution of the said Writ or Writs of attachment or Order for committal or such further or other Order as may be made.

AND FURTHER TAKE NOTICE that upon hearing of the said Motion The Trinidad and Tobago Law Society will use the affidavit of Mark Thomas Inskip Julien filed herein on the
40 10th day of June, 1972 and the exhibits therein referred to.

Exhibit P.C.2 (No.7)

Notice of Motion (continued)

Dated this 12th day of June, 1972.

/s/ M.T.I. Julien
Applicant's Solicitor.

To: Patrick Chokolingo and Ajodha Singh,
Corner of Southern Main Road and
Clifford Street,
Curepe.

E X H I B I T

Order of Hassanali J.

Exhibit P.C.2 (No.8)

Order of Hassanali J.

17th July, 1972.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No: 1218 of 1972.

In the Matter of an Application for leave to issue a Writ of Attachment against or for an Order for Committal of Patrick Chokolingo and Ajodha Singh for an alleged Contempt of Court

B E T W E E N

THE TRINIDAD AND TOBAGO LAW SOCIETY

(Applicant)

And

PATRICK CHOKOLINGO and AJODHA SINGH

(Respondents)

Before the Honourable Mr. Justice Hassanali
Entered the 18th day of July, 1972
On the 17th day of July, 1972

Upon Motion made unto this Court by Counsel on behalf of the above-named applicant The Trinidad and Tobago Law Society and Upon Hearing Counsel for the above-named respondents Patrick Chokolingo and Ajodha Singh and Upon Reading the Order for leave to issue the said Motion the Statement and Affidavit of Mark Thomas Inskip Julien with the exhibits therein referred to filed herein the 10th day of July, 1972 and the affidavits in answer of Patrick Chokolingo and Ajodha Singh filed herein the 10th day of July, 1972 the Court being of the opinion on consideration of the facts disclosed in the said affidavits that the said Patrick Chokolingo and Ajodha Singh have been guilty of Contempt of Court by publishing in the newspaper known

as "THE BOMB" of 26th May, 1972 an article entitled "THE JUDGE'S WIFE" doth Order

Exhibit P.C.2 (No.8) Order of Hassanali J. 17th July, 1972. (Continued)

(a) that the said Patrick Chokolingo do stand committed to the Royal Goal for his said Contempt for a period of twenty one days; and

(b) that the said Ajodha Singh do pay a fine of $500.00 or in default do stand committed to the Royal Goal for a period of twenty-one days, and that the said Ajodha Singh be held in custody until the said fine of $500.00 be paid.

AND IT IS ORDERED that the said respondents Patrick Chokolingo and Ajodha Singh do pay to the said applicant The Trinidad and Tobago Law Society its costs as between Solicitor and Client of and incidental to this Motion and of the said committal, such costs to be taxed by the Registrar.

/s/ George R. Benny.
Registrar.

E X H I B I T

Trinidad and Tobago: WARRANT

Exhibit P.C.2 (No.9) Warrant. 17th July, 1972.

IN THE HIGH COURT OF JUSTICE

No: 1218 of 1972.

Between

THE TRINIDAD AND TOBAGO LAW SOCIETY
(Applicant)

and

PATRICK CHOKOLINGO and AJODHA SINGH
(Respondents)

-----oOo-----

TO THE KEEPER OF THE ROYAL GOAL:

Whereas upon Motion made unto the Court the 12th day of June, 1972 it was ordered by the Honourable Mr. Justice Carlton Achong that the applicant be at liberty to issue a Writ or Writs of attachment against Patrick Chokolingo and Ajodha Singh for their Contempt in publishing in the issue of the newspaper known as "THE BOMB" for the 26th day of May, 1972 an article under the heading "THE JUDGE'S WIFE".

Exhibit P. C.2 (No.9)

Warrant.

And Whereas the said Patrick Chokolingo was pursuant to the said Order of the Honourable Mr. Justice Carlton Achong dated the 12th day of June 1972 attached and brought before the Honourable Mr. Justice Noor Hassanali on the 22nd day of June, 1972.

17th July, 1972.

(continued)

And Whereas after hearing the said Patrick Chokolingo in person the Honourable Mr. Justice Noor Hassanali ordered that the said Patrick Chokolingo be imprisoned in the Royal Goal without Hard-Labour for a term not exceeding twenty-one days.

Now, therefore these are to command you the Keeper of the Royal Goal to receive the said Patrick Chokolingo into your custody in the said Royal Goal and there to imprison him for the said term not exceeding twenty-one (21) days and there kept without Hard Labour during the whole of the said term of imprisonment.

And for so doing this shall be your sufficient warrant.

Witness: The Honourable The Chief Justice The Honourable Mr. Isaac Hyatali, this 17th day of July, 1972.

/s/ G.A. Edoo
Deputy Registrar.

No.3.

In the High Court.

No. 3

Judgment of Mr. Justice Hassanali in Proceedings 1218 of 1972

17th August 1972.

Judgment of Mr. Justice Hassanali in Proceedings 1218 of 1972.

TRINIDAD AND TOBAGO:

No: 1218 of 1972

IN THE HIGH COURT OF JUSTICE

In the Matter of an Application by the Trinidad and Tobago Law Society for leave to issue a Writ of Attachment against or for an Order for committal of PATRICK CHOKOLINGO and AJODHA SINGH for an alleged Contempt of Court

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Before The Honourable

Mr. Justice N.M. Hassanali

Mr. A. Wharton Q.C., Mr. S. Wooding Q.C. and
Mr. F. Solomon for the Applicant
Mr. E. Hamel Wells Q.C., Mr. S. Maraj and
Mr. B. Sharma for Respondents

In the High Court.
NO: 31

Judgment of Mr. Justice Hassanali in Proceedings 1218 of 1972.

17th August 1972.

(continued)

J U D G M E N T.

"THE BOMB" is a weekly newspaper with circulation in Trinidad and Tobago. On Friday 26th May, 1972, there appeared at page 15 in an issue of that newspaper an article entitled "A short story - The Judge's Wife". On the 10th day of June, 1972, the Trinidad and Tobago Law Society (hereinafter called "the applicant") obtained leave of Achong J. to move this court for leave to issue a writ of attachment against or for an Order for the committal of the respondents Patrick Chokolingo as Editor and Ajodha Singh as Proprietor, Printer and Publisher of the Bomb. That application for leave was based on the affidavit of Mr. Inskip Julien a Solicitor and the applicant's Honorary Secretary exhibiting:- A Statement of Defence in pending High Court Action No. 1643 of 1970 a statutory declaration dated 9th May, 1972, made under the provisions of the Newspapers Ordinance Ch. 30 No. 8 and an issue of the Bomb of the 26th May, 1972.On the same 12th June, 1972 the Notice of Motion, a copy of the Order of Achong J. and the affidavit of Mr. Julien together with the exhibits were served on each respondent personally.

This motion came on for hearing on the 26th June, 1972, but was on the application of Counsel for the Respondents adjourned to the 27th June, 1972. At the hearing, Counsel for the respondents made certain objections in limine. The absence of the respondents from court was excused during the hearing of these objections. Altogether there were three main submissions:

(1) That under the provisions of the Trinidad and Tobago Law Society (Incorporation) Act No. 29 of 1969 (hereinafter referred to as "The Act") the applicant had neither the capacity nor the power to bring this motion;

(2) The applicant had in any event used the wrong procedure;

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17th August 1972.

(continued)

(3) The evidence before the court was insufficient to identify the respondent Chokolingo as Editor of the Bomb of 26th May, 1972.

Counsel submitted that on either the first or the second of those objections the motion must be dismissed; and on the 3rd it must fail as against the respondent Chokolingo. The court heard argument from both sides. During the course of the argument the court on its own motion received the evidence of Mr. George Benny, Registrar of the Supreme Court of Judicature exhibiting the proceedings No. 1643 of 1970. On the 10th July, 1972, the court over-ruled the submissions made on behalf of the respondents.

On the first submission it was contended that the applicant's powers were circumscribed by secs. 3 and 4 of the Act (which created it) and it could not do anything which it is not empowered to do by the Act; and that if the court found that it did not have the power under that Act to bring this motion the court must dismiss the motion. In the parts material to this judgment section 3 of the Act reads:

The objects of the society are:-

(a) to support and protect the character status and interest of the legal profession generally and particularly of solicitors practising within Trinidad and Tobago.

(b)

(c) to consider all questions affecting the interests of the legal profession and to intitiate and to watch over and if necessary to petition the Parliament of this country or promote deputations in relation to general measures affecting the professions and to procure changes of law and practice and the promotion of improvements in the principles and administration of law.

(d).....(e).....(f)

Section 4 in its material parts reads:

"The society shall have the powers hereinafter set

forth and such other powers as are appropriate to its objects and are from time to time specified in the Rules of the Society.....".

No other provision of the Act is relevant in this judgment.

A statute establishing a body corporate name (sec. 17 of the Interpretation Act No. 2 of 1962). That is to say it may do that which is necessary to prosecute or defend a cause or proceeding before a competent court. It may move the court by motion; this has not seriously been disputed. I took the view that in initiating these proceedings the Law Society is "supporting and protecting the interests of the legal profession". For the course of justice - the administration of justice - manifestly is an interest of that profession. By secs. 3(a) and 4 of the Act therefore the applicant has the appropriate power to initiate before a competent court proceedings necessary to have investigated and dealt with by that court an alleged interference with or obstruction of the administration of justice - in other words to bring this Motion alleging contempt of court by the respondents.

Even if bringing this Motion for committal of the respondents for (criminal) contempt were outside the powers vested by the Act in the applicant, I would nevertheless in the exercise of my discretion entertain the Motion because:-

(a) The applicant's act of initiating these proceedings is not expressly forbidden by the Act; and

(b) The proceedings are in the interest of the public; and would cause no injury to it (the public). (See Vol. 9 Halsbury's Laws (3rd Edit.) paras. 138 & 139).

On the second submission it was contended that the motion must be dismissed because the application to Achong J. was unnecessary; the applicant ought to have moved the court for an order nisi calling on the respondents to show cause why they should not be committed for contempt in publishing the short story. I was referred to the Crown Office Rules especially Rule 240 thereof which reads:

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17th August 1972.

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"unless otherwise directed by the court or a judge an application on the Crown side for an attachment for contempt shall be my Motion for an order nisi. The service of an order nisi for an attachment shall be personal".

It was further submitted that the Motion be dismissed because where the liberty of the subject is involved the court would insist on strict compliance with the rules. I was referred to several authorities including the cases of Squires v. Hammond 1912(W.N. 200; and The King v. Editor, Printer and Publisher of the Wealdstone News and the Harrow News 1925) W.N. 153. In each of these cases an application against a party to an action on an order nisi was dismissed as being contrary to O. 52 R. 2 - identical in terms with our R.S.C. O.53 R. 2 - which specifically prohibits "any Motion or application for an order nisi or order to show cause in any action .....or for attachment .....". In the other cases to which I was referred in which an application was refused the reason was some irregularity or defect which was considered materially prejudicial to the respondent as e.g. failure to affect personal service of a Notice of Motion, or omission to serve an affidavit; or giving misleading infor information to a respondent as to the consequence of his failure to comply with an order.

In the instant matter no such consideration arose. The Notice of Motion was served personally on each respondent some ten days before the Motion came up for hearing. They were served too with copies of the relevant affidavits and exhibits. They duly appeared by Counsel. There was evidence before me of the offence allegedly committed by them. Neither was in jeopady or in any way prejudiced up to the time that the objections in limine were taken. In the circumstances, I held the view that even if the proper procedure were by Motion for order nisi the instant motion was not necessarily invalidated (See Petty v. Daniel 1886) 34 Ch. D. 172). and that this would be a proper case for the purpose of justice in which the motion ought to be proceeded with (See Oswald on Contempt p. 211).

I do not consider the procedure adopted here to be wrong. The jurisdiction of our courts in contempt proceedings is to be exercised as nearly as possible in accordance with the practice and procedure for the

time being in force in the High Court of Justice in England (See Sec. 14 of the Supreme Court of Judicature Act. No. 12 of 1962).

The Crown Office Rules 1906 were revoked by Rules of the Supreme Court (Div. Ct.) 1938 which (together with Criminal Proceedings Rules 1938) form a code of procedure on the Crown side of the Queen's Bench Division.Order 59 Rule 26 of the Rules of the Supreme Court (Div. Ct.) 1938. governed contempt proceedings, and the terms of that Rule relevant to criminal contempt have since substantially been in force to the present day. The effect of the rule is that in cases of criminal contempt leave must first be obtained ex parte to apply, and the application must be by Notice of Motion with personal service of all relevant documents etc.

Even before McLeod v. St. Aubyn (infra) committal for contempt by scandalizing the court itself had become obsolete in England. The provisions of Rule 26 do not specifically refer to contempt such as that alleged in the instant application - unconnected to particular court proceedings. Until 1938 the practice was that such conduct was dealt with on summary process for committal. See McLeod v. St. Aubyn 1899 A.C. 549; R.V. Gray 1900) 2 Q.B.D. 36; R. v. Davies 1906) 1 K.B. 32; Ambard v. Attorney General of Trinidad and Tobago 1936) A.G. 322. However this is not to say that such conduct may not now be dealt with on application pursuant to the provisions of Rule 26. See Annual Practice 1963 p. 1721; 1742 et seq.

The instant application might have been made without leave by Notice of Motion for committal only. Since the power in the court to deal with (criminal) contempt is discretionary it seems desirable that the court have the opportunity to decide whether it will exercise the power- before the Notice of Motion is served on the respondent. At all events neither the application to Ashong J. nor the applicant's seeking attachment as a relief alternative to committal invalidates the Motion.

An application for attachment or committal in a case of criminal contempt is in the nature of criminal information; a report to the court on which the court is asked to exercise its discretionary power. re: G's Application for a Committal Order 1954) 2 A.E.R. 794. Uniformity in practice is desirable. However once the court's jurisdiction is invoked by Motion what is important is

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that before an alleged offender is dealt with by the court he must first be served with all the relevant documents informing him of the nature and content of the charge and be given an opportunity to answer.

The one relief (attachment) or the other (committal) has been sought (since 1938) in recent contempt cases in England. In R. v. Evening Standard Coy. ex p. Attorney General 1954) 1 A.E.R. 1026, the application was by Motion for a Writ of Attachment against the proprietors of a newspaper, the editor and a reporter. In R. v. Oldham's Press Ltd. ex p. Attorney General 1956) 3 A.E.R. 494 the application was by Motion for leave to issue Writ of Attachment also against the proprietors of a newspaper, the editor and a reporter. In R. v. Metropolitan Police Commissioner ex p. Blackman (No. 2) 1968) 2 A.E. R. 369, the application was by Motion for committal. For the form and the content of application etc. see Encly. of Ct. Forms and Precedents Vol. 6 p. 52, 59 et seq. and Atkin's Court Forms (2nd Edit.) Vol. 12 p. 106, 117 et seq.). The submission that the instant motion must be dismissed is misconceived.

On the evidence before me, the solicitor's affidavit the exhibits and the evidence of the Registrar, I held the view that it was open to me to infer in the absence of evidence to the contrary - that the respondent Chokolingo was the editor of the Bomb on the 26th May, 1972, and I so inferred.

At the hearing on the 10th July, 1972, both respondents were present in court; and have been at the other hearings since then.

On the application of Counsel for the applicant, the respondents not objecting, and pursuant to R.S.C. O. 29, R. 11, I corrected a clerical error in the order of Achong J. which I believe was due to an accidental omission.

Upon my over-ruling the preliminary objections, the respondents sought and obtained my leave to file affidavits. In the exercose of my discretion and for the reasons then stated on the objection by Counsel for the Respondents - I refused the application by Counsel for the applicant to cross-examine the respondent Chokolingo on his affidavit.In answer to the Court Counsel for the respondents stated that the respondent Chokolingo did not wish to be cross-examined. He stated further that neither

respondent wished to file any further affidavit; and neither would call any evidence apart from the affidavit already filed on his behalf. Counsel for the Applicants then read the publication "The Judge's Wife". and addressed the court on the merits of the Motion.

In his reply Counsel for the respondents conceded that the publication though a short story was a contempt of court. He conceded that it was a scandalous and scurrilous attack on the Judges of Trinidad and Tobago in the charge made therein against them of accepting bribes; and that this was contempt of court because the readers of the short story might get the impression that reference therein was to the Judges of this country. This he conceded was abuse of Judges as Judges, - for "bribery" would be understood to be misconduct in relation to litigation.

At the close of address by Counsel each respondent in answer to the court stated that he wished to say nothing and would all nothing to what Counsel had said in his behalf. The affidavit of each respondent was read to the court.

At common law contempt of court has always been an offence punishable by the court itself in its Criminal Jurisdiction.

Any act done or writing published calculated to bring a court or a Judge into contempt or to lower the deference paid to his office - or any publication - which offends against the dignity of the court or is calculated or tents to prejudice or obstruct or unduly to interfere with the course of justice will constitute a contempt. The question in every case is not whether the publication in fact interferes with or obstructs or prejudices etc., but whether it tends or has the tendency to interfere with or obstruct or prejudice the due course of justice (Hunte v. Clarke 1889) 58 L.J. Q.B. 490.

Scandalous and scurrilous abuse of a Judge as a Judge is a contempt of court and will be punished not because of the injury done to the Judge not for the purpose of vindicating his character nor for the purpose of taking vengeance on the perpetrator of the scandal but for the purpose of preserving respect for the administration of the Queen's courts.

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17th August 1972.

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There are civil as well as crominal contempts of court. A scandalous attack on a Judge as a Judge is one kind of Criminal contempt - There are other kinds. This Judgment is not concerned with any other kind of contempt.

It is vital for the dur administration of Justice that public confidence therein be preserved. This was emphasized as long ago as 1765 in the following words:

> ".... Attacks on the Judges excite in the minds of the people a general dissatisfaction with all judicial determinations. And whenever men's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and ..... calls out for a more rapid and immediate redress than any other obstruction whatever - not for the sake of judges as individuals but because they are the channels through which the Queen's justice is conveyed.." R. v. Almon 1765) Wilm. Rep. 243.

That passage was quoted with approval as recently as two years ago. See Morris v. the Crown Office 1970) 1 A.E.R. at p. 1084. Over the years from the turn of century courts have from time to time made pronouncements on the subject.

In Mc Leod v. St. Aubyn (supra) at p. 561 Lord Morris said ...."The power to commit for contempt is not to be used for the vindication of the Judge as a person. He must resort to an action for libel or criminal information .....Committal for contempt of court is a weapon to be used sparingly, and always with reference to the administration of justice..... It is a summary process and should be used only from a sense of duty and under the pressure of public necessity, for there can be no landmark pointing out the boundaries in all cases....."

In R. v. Gray 1900) 22 K.B. at p. 41 Lord Russell emphasized:

"The jurisdiction - as old as the common law itself - is to be exercised only when the case is clear and beyond all reasonable doubt; because if it is not a case beyond reasonable doubt the courts will and ought to leave the Attorney General to proceed by criminal information....."

In the King v. Davies 1906) 1 K.B. at p. 40 Wills J. explained that the principle underlying the cases in which persons have been punished for attacks upon courts is ".. not for the purpose of protecting the courts as a whole or the individual Judge of the court from a repetition of them, but of protecting the public and especially those who wither voluntarily or by compulsion are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal is undermined or impaired...."

The essence of the offence is the damage to public confidence in the administration of justice.

In R. v. Metropolitan Police Commissioner 1968) 2 A.E.R. at p. 320 Lord Denning, referring to the power of the court to commit for contempt assured:- It is a jurisdiction which undoubtedly belongs to us - but which we will most sparingly exercise more particularly as we ourselves have andinterest in the matter.Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us...."

In Morris v. The Crown Office (supra) at p. 1087 Salmon L.J. declared.... The archaic description of the proceedings as contempt is unfortunate and misleading. It suggests that they are designed to buttress the dignity of the Judges and to protect them from insult. Nothing could be further from the truth. No such protection is needed. The sole purpose of proceedings for contempt is to give the courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented. The power to commit for what is inappropriately called contempt of court is sui generis and has from time immemorial repose in the Judge for the protection of the public...."

Finally - in as much as this application stems from a newspaper publication - passing reference may be made to Lord Atkin's statement - while discussing the right of the public to criticize Judges' decisions and the courts - that "Justice is not a cloistered virtue". Ambard v. Attorney General A. C. at p. 335; and to Lord Russell's observation (while discussing a similar aspect of the law) that the ...."liberty of the press is no greater and no less that the liberty of the subject....."

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R. v. Gray (supra) at p. 40.

I trust that it has been abundantly demonstrated by the passages to which I have referred that contempt is not constituted by an attack on a Judge as an individual - no matter how unwarranted that be. The court is concerned with an attack on a Judge as a Judge, and the court will not exercise its power to punish unless the case if clear and beyond doubt, and public interest necessarily demands the exercise of that power. And the power if exercised, must always be with reference to the administration of justice.

I consider the publication "A Judge's Wife" to be a contempt of court, as a scandalous and scurrilous attack on the Judges of the country in the charge that they accept bribes. I consider this a case beyond all reasonable doubt" and one in which the court for the protection of the public ought to exercise its jurisdiction and not leave the matter to be dealt with by indictment or criminal information. No contrary view has been suggested.

With these principles (above) in mind I proceed to examine the publication itself. It is both unnecessary and undesirable to refer to all the passages; for most of the publication is a scandalous reference to the details of a Judge's private life. I should refer to the exact words only where I consider it necessary for the purpose of this judgment.

The short story entitled "The Judge's Wife" is told in the (Trinidad) vernacular, by an aggrieved domestic servant. She has been dismissed from her employment at a Judge's home because, it seems, her employer wishes to avoid National Insurance Tax recently imposed on the employer. She requests a Bomb news reporter to publish her story of the circumstances of her dismissal and threatens that if the Bomb will not, she will ask "Moko" to do it. She than makes allegations in sordid detail of misconduct by a Judge and his wife as individuals; makes comments thereon; and makes allegations that this Judge and other Judges abuse their office to obtain gifts. After describing the instances of the Judge's abuse of his office she exclaims "And these people (the Judge and his wife) could take bribe". She proceeds: "They get raise by the hundred. People does come in cars and leave fat envelopes for the Judge. They does get bribe . And when they come and I hand it to she they does have

big noise when he trying to get the money from she.... He shouting this is he own and she have no right to it and she saying the next time you want money tell them to send it to you .... Believe me sir, when the people in this country hear bout how some of them Judge does live in this country right now - they might get scared. The old woman concludes her narrative with the request, referring to the Judge's wife, "Fix she up good,Mister, and God will bless you".

The publication bears in small print at the top left hand corner the caption "Short Story by P. David Lincott," and in the right top hand corner the editorial note in bold white letters against a heavy background." the old domestic was bent on exposing bribery, corruption and fraud in the household".

For this publication the respondent Chokolingo has by his affidavit tendered his plea of guilt as the editor of the Bomb and as being solely responsible. He says it is a short story - a work of fiction, and that it does not refer to any known person or persons; that at the time of writing he did not think it was derogatory of the judicial system of the country or of its Judges. He now on Counsel's advice has accepted that it is a contempt of court and he unreservedly apologises for and he regrets the publication which he now realizes he ought not to have made. He never intended by the publication to scandalize the court or the judicial system. And he re-affirms his confidence in and his esteem for the judicial system and the Judges of the country.

By his affidavit the respondent Ajodha Singh admits his responsibility and guilt as proprietor publisher and printer. He says however, that he takes no part in the administration or management of the newspaper or in writing for it; that he know nothing of the publication until he read it in the Bomb. He did not then give it much thought; and was not aware of its implications. He too now accepts it is a contempt of court and he expresses his apology and his regret; and he re-affirms his confidence in and his esteem for the judicial system and for the Judges of the country.

The cases shown that lack of intention or knowledge is no excuse though it may have a great bearing on the punishment which the Court will inflict. The test is

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whether the matter complained of is calculated to interfere with the course of justice, not whether the author of printer intended the result. Absence of intention to prejudice the course of justice does not excuse a party from being adjudged guilty of contempt, nor does the absence of that intention excuse him of punishment. See R. v. Oldham's Press Ltd. 1956) 3 A.E.R. 497.

I find - as Counsel for the respondents has himself, virtually conceded - that the short story amounts to contempt of court because of the probability that its readers would get the impression that the reference therein is to Judges of Trinidad and Tobago. The allegation regarding bribery, therefore, would tend to bring the courts and the administration of justice into disrepute; and public confidence in the administration of justice would be impaired or damaged. This, according to Counsel himself - is what he explained to the respondents; and accordingly they admitted their guilt.

For the purpose of this judgment, to the extent that any of the allegations of fact in either affidavit are uncontroverted by evidence either direct or circumstantial - I accept them as evidence of the truth of what they allege.

Notwithstanding the contents of his affidavit, each respondent by his plea admitted that readers might get the impression that reference in the short story is to local Judges.

The Respondent Chokolingo does not in his affidavit say whether or not at the time of writing it occurred to him that readers might get that impression. Nor of course does he say whether or not he intended them to get that impression. The two questions relate to the state of his mind at the time of writing and will have a bearing on the subject of proper punishment. The affidavit reflects much thought and care in its preparation. I do not think that his omission to refer to either of these questions is due to inadvertence. Of course there is no onus on him to say anything in his defence. However, in all the circumstances, I take the view that his affidavit lacks candour.

There is evidence - circumstantial evidence - in the affidavit itself not only on the question whether the average reader would get the impression that the reference in the publication is to local Judges but also on the

two questions:

(a) whether at the time of writing it occurred to the respondent that readers might get the impression (above referred to); and

(b) whether he intended them to get that impression or was indifferent whether they did or not.

What is the evidence? I refer to the following features:

The newspaper is printed and published in Trinidad and Tobago. The language in the short story is in the vernacular (of Trinidad). The (drawing) representation of the Judge as part of the caption shown the full bottomed wig such as is worn by the Judge of Trinidad and Tobago. There is the reference to "Moko" as another newspaper. There are the following other references - of local vintage - to "Syrians" big Syrian Stores "Grell's" as a grocer; "down the island" as a holiday resort; the National Insurance Tax as of recent introduction. There is the warning of the consequence of the people of this country's hearing "how some of them Judge's" live etc. Finally there is the editorial caption describing the determination of the old woman to expose bribery etc.

A court is entitled to make an ingerence of fact if it believes it to be the only reasonable inference from all the other known circumstances. Guided by this principle it may make such inferences about the state of mind of a writer.

The entire publication - indeed all the evidence must be viewed absolutely objectively. Heeding this warning I feel sure nonetheless that the short story as a whole - and having regard especially to the features to which I have referred, will leave the average reader in Trinidad and Tobago - (the jurisdiction of all the Judges) - with the impression that the short story refers to local Judges. The publication is entitled "a short story;" but there is no indication that it is fiction.

The only reasonable inference seems to be that at the time of writing it would have occurred to the respondent that the average reader in the country would

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get that impression. To think otherwise would be to insult this respondent's intelligence. I believe too, again taking into account the several features to which I have referred - that this respondent intended his readers to get the impression; at least he was indifferent whether they did or not. A writer's intention may be inferred from a consideration of the ideas and the arrangement of those ideas in the publication; of the grammatical meaning of his words and of the likely effect on the intended readers of those words. I do not think it mere coincidence - rather I think it design - that these several features appear in the short story. The respondent seems to have put the issue of the state of his mind beyond any doubt whatever by the declaration that when people "in this country" hear how Judges live "in this country" they might get "scared".

As I have already indicated on the substantive question of contempt I am concerned with the allegation only of bribery. In the rest of the story there is evidence relevant to the question whether the average reader will be left with the impression that the story refers to Judges of Trinidad and Tobago; evidence of the identity of the locality - in which the story is set; and there is of course evidence of the intention of the writer.

Counsel for the respondent deprecated the publication in the strongest possible terms. He did not try to minimize the gravity of the offence committed thereby. He urged in mitigation the contents of the respondents affidavits. And he asked that the court be merciful to the respondents.

I shall take into account all that there is or there seems to be in their favour. In the absence of evidence to the contrary I assume that they each have a clean record I shall of course take into account all that they have respectively urged in their affidavits. It is to their credit that they swore to their affidavits on the 24th June, 1972, some three (3) days before hearing of the Motion began. They are in no way prejudiced by the fact that they did not tender these affidavits of apology until after the preliminary objections were over-ruled. Anyone accused of a crime is entitled to take any points which may be legitimately raised in his favour, and to insist on proof beyond reasonable doubt.

The Respondent Chokolingo says that he did not at the time he published the story - appreciate that he committed the offence of contempt and that he did not intend thereby to scandalize the court or Judges or the judicial system; and he did not think his story derogatory of either. However, as I have found - he knew that his readers might get the impression that the story referred to Judges of Trinidad and Tobago, and either he intended them to be or he was indifferent whether they were left with that impression.

The respondent has said that the story is a work of fiction. He has not stated any motive for writing such a story. He does not claim it to be criticism, or comment or protest of any kind. It is none of them. It is a work of fiction - presumably to amuse, entertain or simply interest its readers.

The state of the respondent's mind at the time of the commission of the offence (as has already been indicated) is of relevance on the question of penalty. His act of writing and publishing was deliberate. He intended the effect to which I have referred. It is this effect on its readers which will bring or tend to bring the court into disrepute.

The respondent Patrick Chokolingo is committed to prison for 21 days without hard labour.

The respondent Ajodha Singh is ordered to pay a fine of five hundred dollars. In default, this respondent will stand committed to a term of 21 days imprisonment without hard labour. He will remain in custody - and if necessary, in prison, for that period of time, unless the sum be sooner paid.

Both respondents are to pay the costs of this Motion as Between Solicitor and Client.

Dated this 17th day of August, 1972.

/s/ N. M. Hassanali

J U D G E .

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Notes of Evidence of Mr. Justice Cross on hearing of Motion.

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TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 81/75 - San F'do.
323/75 - Port of Spain.

In the Matter of the Application of Patrick Chokolingo under section 6 of the said constitution for relief on the ground that the human rights and fundamental freedoms enshrined in the said constitution and in particular section 1 thereof have been contravened in relation to him by an order of the high court made in proceedings No: 1218 of 1972 for criminal contempt

B E T W E E N

PATRICK CHOKOLINGO — APPLICANT

AND

THE LAW SOCIETY OF TRINIDAD AND TOBAGO — RESPONDENT

Before the Honourable Mr. Justice P.L. U. Cross.

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NOTES OF EVIDENCE.

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R. Maharaj, Ramsahoye for applicant.

Algernon Wharton, Q.C. and Wooding - F. Solomon - N. King for Law Society, instructed by I. Julien.

Clinton Bernard for the Attorney General.

Wharton Q.C. objects to Jurisdiction. Refers to Notice of Motion which Claims (1) that order unconstitutional - (b) imprisonment - (c) damages. Reads grounds: Reference in (c) should be (i) instead of (c) Ramsahoye concedes. Wharton says only the four grounds must be supported and no other. Grounds 1, 2 and 4 are appealable, therefore

this Court has no Jurisdiction.
So far as ground 3 is concerned it is sought to rely on S. 6 of the Constitution. Motion before Hassanali J. was on for which leave had been granted by another Judge earlier.
Ramsahoye - no objection to form (2) - Relief within jurisdiction. (Court requests Wharton to continue)
Reads affidavit- refers to affidavit of 24/6/72 attached to present affidavit. At hearing was represented by Counsel.
Contempt of Court Ordinary and special - White book 1949 - P. 847 Ordinary breach of Judgment or order - Special contempt P. 848.
Re Almond - foundation of law of contempt.
Scandalising Court - Borrie & Lowe on Contempt (1973) P. 152 Cap. 6.
(1) it was a contempt - even if it were not judgment of Hassanali J. remains valid until appealed.
P. 92 of de Smith's Judicial Review of Administration Action P. 96 and 524 "Liminie for collateral or indirect challenge"
Spencer & Bower - Res Judicata 2nd Edition 1969 P. 14 para 15
Applicant is estoppel by the judgment from alleging that this publication did not contain a contempt of any court or the Judges of Trinidad and Tobago. Grounds 1 and 2 must fail.
P. 407 of Spencer & Bower - Appendix A - para. 503, para. 507.
Nothing to prevent applicant from raising his constitutional right in the proceedings.
Grounds 1 and 2 not available as already decided by Court.
Estoppel available in every kind of proceeding including criminal proceedings.
Criminal contempt sine generis.
Applicant could have gone to Court of Appeal.
Archbold 38th Ed. 4th Supplement para. 388 note:
R. v. Hogan (1974) 2 All E.R. issue estoppel applies to criminal proceedings".
Ground 4 would give applicant a right of appeal. What he says is that the learned Judge had no jurisdiction . He would therefore have appealed.
This was in fact argued before Hassanali J. and determined by him.
Chadee v. Richards - Vol. 14 of Judgments of Trinidad and Tobago p. 29 (1953 - 54) at p. 30; p. 31 l.9.
If there was an error applicant had a right of appeal.

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Seaward & Peterson (1897) 1 Ch. Div. 545 p. 549.
Ambard v. A.G. of Trinidad and Tobago (1963) 1 All E.R. p. 704 - process invoked - no indictment.
In Birkett's case unreported (357/46) also done by motion.
11.05 to 11.20 break.
Summary on grounds 1,2, and 4.
Applicant says no contempt - procedure wrong. Grounds not open to applicant at this stage and before this Court.
Ground 3: Court has no jurisdiction under S. 6 of Order in Council saves Existing laws S.S. (1) and (5). Effect is to preserve all the laws.
Among those are the Common Law.
Section 1 of the Constitution itself.
Section 6
Sentence passed by Magistrate or Judge may deprive a person of liberty.
Section 3 of Constitution Sub sec (1).
Section 4 preserves our laws including the Common Law and Section 3 says that the freedoms embodied in (1) and (2) do not apply when you are applying laws already in existence.
Section (2)
Section 2 of Constitution is made subject to the provisions of S.S. 3,4, & 5.
Section 105 - definition of "law".
Section 6 -2 (a) was never intended and cannot be construed to mean that an act of one Judge of the High Court can be reviewed by another Judge of the High Court.
Jaundoo v. A.G. of Guyana (1968) 12 W.I.R. p. 221 at p. 227.
Existing laws cannot be scrutinized by the High Court to see whether they confórm with constitution and P. 232 "C". Art. 18 of Guyana Laws is our Art. 6 (P. 227 of Report) High Court Judges exercise of jurisdiction which was given to him by an existing law is not subject to scrutiny by another High Court Judge.

P. 227
(Revered by P.C. - (1971) 3 W.L.R. 13- Jaundoo)
Objections.
S. 6 is not intended to create a jurisdiction on one Judge to appeal the decision of another Judge.
If Sec. 3 is properly construed no question of jurisdiction to question the jurisdiction of another High Court Judge on an existing law.
Article not a story- not a criticism; not temperate, gratuitous attack on Judges as Judges.

Where there are laws relating to criminal contempt on date. Was practice and procedure such that matters of criminal contempt could be brought to notice of Judge by motion.
Stephens History of the Criminal Law - Vol. 1 -1883 Ed. p. 495
Borrie & Lowe p. 254:
If Judge is wrong you appeal - but you can't say.
Vol. 356 U.S. Reports 1957 p. 185.
Heale v. Minister of Health (1954) 3 All E.R. 499.
Punton v. Minister of Pensions (1964) 1 All E.R. 448; p. 455D.
Declarations are a matter of discretion- contradictory affidavits evidence of bad faith.
de Freitas v. G. Benny: A.G. & ors. No. 13/74(P.17)
Judgment, delivered on 30/4/74. Judgment of Hyatali C.J. Case of Runyor v. Reg.(1966) 1 All E.R. 633 - roles of Court and Legislature is new constitutions.
Adj. 12/3/75 at 2.30 p.m. in P.O.S. - 13" x 14"

12th March, 1975

Appearances as before.
Ramsahoye on a Sec. 6 application must have two qualities-

(1) that procedure used for enforcement of rights wrong.
(2) that Court has neither power jurisdiction nor authority to grant the relief.

Jaundoo's case preliminary objections were proper preliminary objections.
Section 6 provides.
Both executives and judicial action impugned in this case.
Where a fundamental right is contravened and coereive action useless damages may be awarded.
Jaundoo -p. 19 letter F even an ex parte relief may be granted.
No one contends that law relating to contempt is unconstitutional.
Sec. 31 - In every country which U.K. Government left they made a provision that no law existing when they left they cannot be infringed on ground that they violated.
We assumed that contempt of Court was part of existing law.
We are not impugning the law. We are saying that applicant was imprisoned without any law - brutum fulmen.
He was imprisoned under the guise of a law.
Mr. Wharton referred to Malick's case.
Applicant not impugning existing law.
Wooding replies: Dues process has substantive and procedural aspects.
If it can be demonstrated to the Court that what took place

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(continued)

before Hassanali was within the law.
Sec. 3 can be used where record before Court.
Both by way of merit and by way of jurisdiction.
Since Sections (1) and (2) do not in effect exist in this case, the position is that we have a notice of section with exhibits attached - Judgment of Hassanali.
I hold that Court does have jurisdiction to go into the merits of the application.
Ramsahoye: Application denied his liberty without due process that the order by which his body was brought to Court and by which he was sent to prison were both nullities.
High Court had no jurisdiction over him.
Root decision Narshalsea Case - 1630
Sirros v. Moore (1974) 3 All E.R. 776.
Hammond v. Howell 86 E.R.p. 1035.
Dirshell's Case - 124 E.R. 1006.
Where liberty of subject is involved Court has jurisdiction to inquire.
This is in substance of case for false imprisonment.
A.G. v. Times Newspapers (1973) 3 All E.R. (Reprint) p. 7 at p. 76 D.
If we are administering English Law we ought to be bound by House of Lords decision.
There can be no contempt of Court unless what is done relates to a trial.
Scandalising Court can only occur after a trial and with reference to it.
Sorrilous abuse of Judge must be, in relation to legal proceedings.
Private citizen cannot pray for order of contempt in a matter which does not concern him- Law Society has no locus atandi.
Where there is no trial judicial proceedings, there can be no contempt.
If proceeding for scandalising Court it must be proceeding lodged by the Attorney General.
Proceedings against applicant coram non judici.
No motion for contempt by scandalising the Court if not brought by the Attorney General.
"Abusing parties".
Mistake made as to jurisdiction.
Admits no appeal from summary committal for contempt.
Exercise of summary power limited by the necessities of the case.
Judgment of Reid makes it clear that party aggrieved or Attorney General only can bring proceedings.
P. 66 Lord Morris.

Attorney General v. Rubashom - Editor of Dover Newspaper L.R. Palestine 1920/33 p. 876 at p. 879.
Adj. to 13/1/75 at 2.30 p.m.
13th March, 1975 - Appearances as before.
A.G. v. Richardson - rare case of scandalising Court - referred to pending trial and article written in respect of that trial.
Mc Leod v. St. Aubyn (1899) A.C. 549 at p. 561
Court is different from Judge - distinction must be drawn between Court and a Judge of the Court not sitting in Court.
"Scandalising the Court" is the offence - if no proceedings there is no Court.
A.G. v. Richardson p. 800 - passage from Davies case.
Contempt not to protect amour propre of individual Judges.
Where there is no power to a tribunal question of contempt does not arise.
Scandalising Court - Gray's case - p. 62.
16 L.Q.R. p. 292 - article by Hughes at p. 295 - p. 300.
St. James Evening Post Case- 26 E.R. 683 - Root decision.
Special reference from the Bahamas (1893) A.C. 138 at p. 148.
Courts need not fear criticism from outside the bad.
Sirros v. Moore (1974) 3 All E.R. p. 784.
A.G. v. London Weekened Television (1972) 3 All E.R. 1146 G.
Gray cannot be relied upon - there must be some reference to a trial.
Balogh Cr. Court at St. Albans (1974) 3 All E.R. 283 at 291
Only A.G. or the party aggrieved can move for committal.
A private citizen is not in the same position.
No authority were party not a party to the cause has moved for scandalising the Court. Law Society is a private party.
Must be a motion by A.G. or party aggrieved: Balogh p. 291
A.G. v Times Newspapers at p. 59 E - G to 75 D; p. 87 F to G; p. 69 - 70 J -A p. 82
Balogh's: Jurisdiction in contempt p. 287 - 292.
Summary process - Articles: 25 L.Q.R. p. 238 cont'd on p. 254. Cases on 242 - 244.. 24 L. Q. R. p. 184 and 266
Contempt of Court is a Criminal offence - Vol. 8 Halsbury 3rd Edn. p. 3. No man can confess to a crime he did not commit.
Re Hastings (1959) 3 All E.R. 221 at p. 223.
Court has power to review its own order.
Distinction between libel and contempt.
Fundamental Rights and Constitutional Remedies by Aggarawala.
Addenda at p. 51 (L.I.)

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condemn Court for way he conducts a case.
It was Judge's conduct in Gray's case.
Bahamas case was one of scandalising - P.C. took view that no attempt obstruct course of Justice or impairing the administration of justice; that is the essential element.
The Bahamas and St Aubyn mean that we must find some element of obstruction of justice.
Scandalising of Judges is not scandalising of the Court.
The only way you can scandalise a Judge as Judge is in reference to his judicial work as Judge.
If the basic event does not occur the jurisdiction cannot be involved.
Ambard's case can be characterised or scandalising. It was judicial determination that was the subject of criticism.
When Court comes under attack by reason of its determinations and the conduct of its business; must be a condemnation of an action done in the seats of justice.
Murphy's case was a hybrid case.
Dunbabin's case p. 442:- 'If you accuse them of partiality then you are in the area of contempt'.
The authorities leave no room for the extention of the principles.
Porter: R. 37 Comm. L.R. p. 443.
If proceedings nullity Court has power to award damages.
Hammond v. Howell - Judge has to look at order made.
Adj. to 4/4/75 at 3.00 p.m.
Friday 4th April, 1975 - Appearances as before
Diplock's statements in Times Newspaper is a correct statement of English Law which applies to Trinidad.
Ex parte Earman - 31 American Law Reports 1226 (1923)
Florida Supreme Court at p. 1235.
Halsbury 3rd Edn. Vol. 8 No. 9; p. 7.
Hinds ex parte A.G. 1963 W.I.R. p. 13.
Dunbabin - locus standi. Contempt is an injury to the public and if he does not a private individual cannot because of the constitutional portion of A.G.
Declaratory judgment - p. 254.
No individual citizen can vindicate a public right.
If party does not suffer a private injury we have to see if there is a public right prejudiced and if there is and E.G. does not move no private individual can do so.
Two points -
What is scandalising?
What is the locus standi of private individual in a case of scandalising when A.G. declines to move?
Dunbabin's case does say that a private person could move for contempt of Court.
Bramapra Kash (1954) Vol. 41; All I. Reports - 10 Sup. Ct.

Borrie v. Lowe p. 158; p. 159.
Denning - The Road to Justice - p. 73: Libel on a Judge.
Report of Justice Committee - p. 14.
A.G. v. Panday's Vanguard Publishing Co. 15 W.I.R. p. 172; p. 175; p. 176
In England there are rules of Court -
S. 14 of Supreme Court of Judicature Act, 1962.
Formerly regulated by Crown Office Rules - refer to 61 and 67 of Local Rules.
Thereafter by legislation we incorporated the English Rules i.e. O. 59, r. 26 (1964 - Annual Practice).
Re Point (4) p. 72 of "The Road to Justice" any private individual.
Borrie v. Lowe p. 265 - last line.
Balogh's Case - p. 291 d.
Times Case - p. 75.
Adj. to 27th March, 1975.
27th March, 1975. - Appearances as before
Apologies for Wharton and Wooding by Solomon.
Solomon draws the Court's attention to cases on Locus Standi of Law Society. Shersingh v. R.P. Kapur. All India Reports (1968)
Punjab v. Harrian p. 217 (Reproduced in Annual Survey Law 1969: pp. 516 and 517, and footnote 1 on p. 517).
Emphasizes contempt of Court is a public crime - nothing can affect abort or terminate proceedings.
Bernard continues: P. 14 of Report of Justice.
Common Law Jurisdiction to deal with this kind of case summarily exists this is a complete answer to these proceedings in accordance with existing law proceedings, therefore saved by Sec. 3 of Constitution.
Beckles v. Delmare 9 E.I.R. 299.
Runwoya v. Regina (1966) 1 All E.R. 632.
Irrespective of how applicant brought before High Court on original proceedings. The High Court had its original jurisdiction and having done so and having adjusicated between the parties. The High Court is functus.
Dr. Ramsahoye addresses:- Offence of scandalising the Court is committed when there is a condemnation of its conduct in a particular trial. Must be a condemnation of judicial conduct and a judicial determination.
If no attack on Court there is no jurisdiction.
Murphy's case p. 290. Still a reference of the judicial determination of Judges.
Tusher Canti Gosh's case.
Motivations for perverse determinations must be secondary
Not enough to accuse Judge of mere impropriety. Almund's case is an authority only for proposition that if you

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Re: Tushar Canti Choah 1935 All India Report (Calcutta) 419 (no pending proceedings).
Adj. 26/3/75
26th March, 1975, Appearances as before
(1935) All E.R. Calcutta's C.J's Judgment.
Judgment of William p. 447.
State of Hyderabad v. C. Nataranjan 1954 All India R. 180 at p. 182 perspective Public v. Maharastra (1971) All E. R. p. 221 para 13.
Has Law Society any locus standi?
R. v. Dunbabin at p. 445
In Re C's application (1954) 2 All E. R. 794.
Stephens History of Criminal Law, Vol. 1 p. 495.
Holdsworth Vol. 3; 621 - Right of private person to prosecute.
Even if it were to be argued that the person moving the Court should have an interest.
A. G. v. Times Newspaper - Last para. of Lord Cross p. 87.
No false imprisonment if a result of judicial determination
Salmond on Torts 14th Ed. p. 181.
Sirros - Moore was discussing the liability of Judge.
Mr. Bernard addresses:-

(1) Scurrilous abuse or scandalising of Judges as Judges or the Courts constitute criminal contempt.
(2) Such contempt need not necessarily relate to a trial but can be wholly independent of a trial.
(3) At common law the High Court has inherent jurisdiction as a superior court of record to punish the contemnor summarily.
(4) Any party may invoke the Court's jurisdiction although in England it is usually the practice for an aggrieved party or the Attorney General so to do.
(5) Contempt proceedings in this matter having been carried out under the provisions of existing law were saved by the provisions of Section 3 of the Constitution. Therefore no constitutional challenge can be made to those proceedings.
(6) In any event a Judge of the High Court having already adjudicated on this matter the High Court is functus which is not admitted - there was an error in procedure - as distinct from the absence of jurisdiction.

Oswald on Contempt - 3rd Edn. pp. 6,9,91.

Was scandalising the Court a power of contempt?
Simon p. 77 J. p. 78 B; p. 80 (d):(Contempt to attempt to bribe a judge) p. 82B.
Diplock p. 71 (d) to restrictive and divided 972 (e) to (f); p. 73 (a) to (h).
R. v. Grey not referred to in any of the Judgments.
Balogh - Because new rules permitted.
Nothing in judgment takes away the power of High Court to deal summarily with contempt of court.
Was there such an offence? Was it justifiable before Hassanali? These are the only two questions which need to be answered.
p. 287 -a to b.
294 B et se q particularly "h" and "j" and 295 a.
Adj. to 25/3/75 .
25th March, 1975 - Appearances as before
Balogh demonstrates that R. v. Gray good law.
Balogh's case deals with Court acting of its own motion and in that situation that Stephenson L.J. used the words
on p. 292 - d. 973 (d) refers to O. 52, r. 1 (10) b; "for example the offence of scandalising the Court". New rules a appreciating that it is not possible to catalogue all the ways in which contempt may be committed.
R. v. Socialist Worker 1975 1 All E.R. 142 at p. 149 & 146 'g' recognises the principle that it has to go on and potential witnesses in possible proceedings have to be confident that they can rely on protection from disclosure of names.
p. 147.
Juristic rationale for contempt of Court.
R. v. Dundabin ex parte William (1953) 53 Common Law Reports (Aust) 442.
Borris v. Lowe (quoted in A.G. v. Times Newspaper) p. 152 et seq.
R. v. Gray (1900) 2 Q.B.D. 36 p. 42 Editor's note.
R. v. Editor of New Statesman (1928) 44 T.L.R. 301.
R. v. Slanger 38 Dom. L.R. 2 D p. 402 1962 (Canadian) at p. 405, p. 406
R. v. Murphy (1969) 4 Dom. L.R. 3rd 289 (Canadian) p. 295 contempt of Judge and Courts of New Brunswick.
Porter v. R. exparte Lee 37 Com L.R. 432 (Australian) at p. 443 and 447.
R. v. Brett (1950) V.L.R. (Victoria Aus. p. 226 (no pending proceedings) attack on Supreme Court as a Court. Clear that Court had jurisdiction.
Re Sarbae (1906) 23 T.L.R. 180 at p. 181 - Article by Barrister.

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Craig v. Kanseen (1943) All E.R. 106 p. 113 A.
Bushell's Case 124 E.R. p. 1006
Not necessary to do anything but declare it illegal.
Hammond v. Howell 86 E.R. 1035 at p. 1037.
Jaundoo's case courts will declare execution act unconstitutional.
This Court has power to declare judicial act unconstitutional.
Cooley - Constitutional limitations 1972 Reprint p. 397; 399.
What redress imprisonment invalid?
Ex parte Van Saudan 41 E.R. 701.
I do not challenge the power of the Court to award costs.
But this Court has power to award damages.
Also asking for costs.
Adj. to 14-3-75
14th March, 1975 - Appearances as before
Wooding addresses:-
Applicant argues no contempt. Scandalising Court can only occur after Trial and with reference to it.
No jurisdiction to use summary process unless something said relating to trial.
Scurrilous abuse - an order to be contempt must be a statement made in respect of judges in the manner in which they conduct themselves in respect of particular proceedings.
Not competent for Law Society.
Hassanali J. action conformed with applicable law.
Both the substantive and procedural was the common law in existence at date of constitution and therefore applicant cannot say his fundamental rights infringed.
No indictment for criminal contempt in U.K. since 1902.
Reliance on A.G. v. Time Newspapers 1973 3 A.E.R.
Balogh's Case.
O. 52, r. 1 of the R.S.C. (existing) 1973 White Book (2) b
One of the new matters introduced was power to apply to commit O. 52, r. 5: Power to comment on own motion.
Had it not been for new rules one would not have been able to come.
O. 59, r. 26 (2) 1959 White Book.
O. 44, r/ 1. 1 Scandalising the Court (1959)
Times Case p. 59 and p. 60 - a statement of general principles which is unexceptionable.
Ambard's case of summary process and all P.C. said was that criticism was moderate.
p. 66 e and g and J.
Did Hassanali have jurisdiction?

In the High Court.

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p. 10.
Halsbury's Col 11; p. 366; No. 496. Assessment of damages.
Adj. to 28/4/75 for judgment at 2.30 p.m.
28th April, 1975 - Appearances as before
Judgment read.
Ramsahoye asks that costs should be allocated since objections to the jurisdiction by respondents were over-rules.
Stay of Execution for 7 days to continue in the event of an appeal until its determination or without prejudice to the taxaction of the Bill of costs in this matter.

No. 5

Written Judgment of Mr. Justice Cross.

No: 5

Judgment of P.L.U. Cross.

28th April, 1975.

TRINIDAD AND TOBAGO.
IN THE HIGH COURT OF JUSTICE
SAN FERNANDO

No: 81 of 1975.

In the Matter of the Constitution of Trinidad and Tobago contained in the Trinidad and Tobago (Constitution Order in Council, S.I. 1962 No: 1875).

A N D

In the Matter of the Application of Patrick Chokolingo under Section 6 of the said Constitution for relief on the ground that the Human Rights and Fundamental Freedoms enshrined in the said Constitution and in particular Section 1 thereof have been contravened in relation to him by an order of the High Court made in proceedings No. 1218 of 1972 for Criminal Contempt.

Before the Honourable Mr. Justice, P.L.U. Cross

Dr. Ramsahoye S.C. and Mr. Ramesh Maharaj for the Applicant
Mr. Clinton Bernard Deputy Solicitor General for the Attorney General
Mr. Algernon Wharton Q.C. , Mr. Selby Wooding Q.C. and Mr. Frank Solomon for the Trinidad and Tobago Law Society.

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J U D G M E N T

The applicant is and wasat all material times the Editor of a weekly newspaper "THE BOMB" with a circulation in Trinidad and Tobago. On Friday 26th May, 1972 there appeared in that issue of the newspaper an article headed "The Judge's Wife - Short Story by David Lincott".

Following the publication the Trinidad and Tobago Law Society instituted proceedings in the High Court - No. 1218 of 1972 - by way of motion for the issue of a Writ of Attachment or an Order of Committal against the applicant for Contempt of Court in respect of the said publication.

On the 24th of June, 1972 the applicant swore to an affidavit filed in those said proceedings accepting that the publication amounted to a contempt of Court. At the hearing he was represented by Counsel who conceded that the publication was a contempt of Court.

On the 17th August, 1972 Hassanali J. before whom the matter was heard considered the publication to be a contempt of Court"as a scandalous and scurrilous attack on the Judges of the country in the charge that they accept bribes".

The applicant was committed to prison for 21 days without hard labour and was ordered to pay the costs of the Motion as between Solicitor and client.

The applicant now moves this Court for

(a) an order declaring that the order made against him by the High Court in the exercise of its criminal jurisdiction in proceedings No. 1218 of 1972 is unconstitutional, null and void and of no effect;

(b) a further order declaring that the imprisonment of the applicant suffered under the said order was illegal and a violation of the human rights and fundamental freedoms guaranteed to the applicant by the Constitution of Trinidad and Tobago and in particular by Section 1 thereof;

(c) a further order directing the Respondent the Trinidad and Tobago Law Society to pay to the applicant such damages as the Court may assess to have been suffered by the applicant by his wrongful imprisonment under the said order and a further order that costs in the sum of $11,369.27 paid by the Applicant to the Trinidad

and Tobago Law Society be repaid by the said Society to the applicant;

(d) such further or other orders as the justice of the case may require;

(e) an order that the Trinidad and Tobago Law Society do pay the costs of these proceedings.

The application is made on the grounds that:-

1. The publication was not a criminal contempt of the Supreme Court of Judicature or any court established for Trinidad and Tobago.
2. The publication was not a criminal contempt of the judges or of any judge performing judicial functions in Trinidad and Tobago.
3. The Order of the High Court contravened and was a violation of the provisions of the Constitution of Trinidad and Tobago and in particular Section 1 (a) (i) and (k) thereof, in that the order:-
   (a) deprived the applicant of his liberty and was made without due process of law;
   (b) was a contravention ofthe applicant's right to freedom of thought and expression; and
   (c) contravened the right to freedom of the press.
4. The order cannot in any event be supported by the principles of law and practice relating to criminal contempt received in or applicable to Trinidad and Tobago and in particular the order could not properly have been made by summary process and without proceedings upon information and indictment.

The motion came on for hearing on the 14th February, 1975 but was adjourned to 26th February, 1975 on the application of Counsel for the second-named Respondent. At the hearing Counsel for the Trinidad and Tobago Law Society raised certain objections in limine.

The main trust of these objections was that the Court had no jurisdiction since -

(i) grounds 1, 2 and 4 are appealable;
(ii) the applicant is estopped by the Judgment of the High Court in the contempt proceedings from alleging that the publication was not a criminal contempt and grounds 1 and 2 are therefore not available to him;
(iii) the committal of the applicant in the contempt proceedings was in virtue of an existing law and by the provisions of section 3 of the Constitution such a law is excepted from the provisions of section 1 of the Con-

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stitution which recognises and declares the human rights and fundamental freedoms which the applicant claims have been infringed.

Section 6 (1) of the Constitution of Trinidad and Tobago which set out as the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council 1962 (hereinafter referred to as "the Constitution) reads as follows:-

"6 (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing section 7 has been, is being or is 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".

The applicant has alleged that certain of the rights and freedoms set out in Section 1 of the Constitution have been contravened in relation to him. Specifically in paragraph 6 of his affidavit in support of his application he alleges that his imprisonment was a violation of his right not to be deprived of his liberty or the security of his person except by due process of law. He also alleges in the two following paragraphs of the said affidavit that his committal was a contravention of his freedom of thought and expression and of the freedom of the press. He has chosen to apply to the High Court for redress. It seems to me that on a true construction of the sub-section the right to make such an application is granted to the applicant while preserving his right to pursue any other course which may be lawfully available to him, including an appeal. To hold therefore that the existence of an alternative course displaces the right established by the Constitution could be at best inconsistent with the plain intendment of the words of the sub-section and at worst render his right nugatory.

Sub-section (2) of Section 6 confers jurisdiction to hear the application in these words:

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of sub-section (1) of this section.

This provision is couched in the widest possible terms and in my view deliberately so. The language is plain and unambiguous. It is interesting to note that paragraph (2) of Article 19 of the Constitution of Guyana which confers a similar jurisdiction on the High

Court of Guyana in identical terms is subject to the proviso that the High Court shall not exercise its powers under that paragraph "if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law". No such fetter is placed on the jurisdiction of the High Court of Trinidad and Tobago by the Constitution. I take this as an indication of the great importance attached by the Constitution to the citizen's rights of access to the High Court for the protection of his human rights and fundamental freedoms and its concern that, that access should be clear and unimpeded. The Constitution guarantees these rights and freedoms and, to adopt the words of Cummings J.A. in Olive Casey Jandroo vs A.G. (1968) 12 W.I.R. 221 at p. 251.

> "The existence of such a guarantee precludes any organ of the state - executive, legislative or judicial - from acting in contravention of such rights and any purported State act which is repugnant to them must be void".

The Constitution confers on the High Court the jurisdiction to determine whether there has been such a contravention and I find myself, with respect, in complete agreement with the opinion of Shastri J... in Romesh Thappar v. State of Madras (1950) S.C.R. 584 at p. 596, quoted by Cummings J.A. in Jandroo's case (supra):

> "The Court is thus constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it refuse to entertain applications seeking protection against infringement of such rights".

The applicant's right to apply to the High Court and the jurisdiction of the Court are both novel and extraordinary and the words of section 6 do not contain the implication that either is to be restricted by objections founded on the doctrines of res judicata or issue estoppel; indeed it is doubtful whether there is any room for the application of the latter doctrine in criminal proceedings.

I turn now to a consideration of Counsel's argument that the Court had no jurisdiction to entertain this application by virtue of the provisions of section 3 of the Constitution. He submitted that the law relating to contempt of court was a law in force in Trinidad and Tobago at the commencement of the Constitution and Section 3 (1) of the Constitution

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provides, inter alia, that section 1 shall not apply in relation to such a law. Once it appears from the record, as it does, that the act of which the applicant complains was done in pursuance of an existing law then the Court has no jurisdiction to hear the application based as it is on an invocation of the rights set out in section 1. If this is meant to suggest that section 1 created the rights and freedoms contained therein this is clearly not so. The section expressly recognises and declares that they already exist; section 3 (1) by necessary implication presumes that existing laws do not infringe those rights and ensures that such laws "are not subjected to scrutiny in order to see whether or not they conform to the precise terms of the protective provisions" (Director of Public Prosecutions v. Nasrella (1967) 2 All E.R. 161 at p. 165. It does not follow that any act of any organ of the state is similarly protected from scrutiny merely because it purports to have been done under the provisions of an existing law.

The applicant does not seek to impugn the existing law of contempt. He claims that the publication is not a contempt of court, and accordingly does not come within the ambit of existing law of contempt; The determination that it did infringe his freedom of expression and his consequent committal to prison violated his right not to be deprived of his liberty except by due process of law. Assuming an identity between the phrases "due process of law" and "the law of the land" (See Lassale v. A.G. (1971) 18 W.I.R. 379 at pp. 389, 390) then it is not possible to determine whether the applicant's rights have been infringed or not without a hearing on the merits.

I am re-inforced in this view by the words, though obiter and oblique of Lord Diplock in Jaundoo v. A.G. of Guyana (1971) 3 W.I.R. 13 at p. 17):

> "Their Lordships would observe in passing that Art. 18 contains an exception in respect of anything done under the authority of an existing law i.e. a law 'That had effect as part of the law of the former colony of British Guiana immediately before May 26, 1966 and has continued to have effect as part of the law of Guyana at all times since that day'.
> It is upon this article that the Attorney General would have sought to rely as justifying the action taken by the Ministry under the Roads Ordinance

had the matter ever reached the stage of hearing on the merits". (emphasis added).

For the reasons stated I came to the conclusion that the jurisdiction conferred on the High Court by section 6 (2) of the Constitution was not ousted and proceeded to hear the application.

Counsel for the applicant has conceded that the High Court of Trinidad and Tobago has jurisdiction summarily to commit for contempt of court. It is a power inherited from the English common law and in Balogh v. Crown Court at St. Albans (1974) 3 All E.R. 283 at p. 294 Lawton L.J. commented as follows:

> "It is clear both from Hawkins and Blackstone that this summary jurisdiction was not confined to cases where contempt occured in the court itself....Once there were reasonable grounds for thinking that a contempt of court had been committed, no matter where, Melford Stephenson J. had jurisdiction to deal with it summarily".

In Attorney General v. Panday and the Vanguard Publishing Co. Ltd. (1967) 15 W.I.R. 172 Rees J. (as he then was) in a comprehensive review of the history of the jurisdiction concluded at p. 176:

> "It is the concern of the High Court of Trinidad and Tobago to punish in a summary manner anyone who may be found guilty of committing an act which tends to interfere with the administration of justice".

Counsel for the applicant has, on the substantive level, stated three propositions in support of the application. Firstly, contempt by scandalising the court is now obsolete; secondly, if it still exists scandalising the court can only be a contempt if it relates to particular proceedings; thirdly, a distinction must be drawn between criticism of a judge's conduct as a private individual and a Judge or Judges as a Court and the publication which was the subject of the contempt proceedings does not refer to a Judge or Judges as a Court.

For the first proposition much reliance has been placed on the words of Lord Morris in McLeod v. St. Aubyn (1899) A.C. 549 at p. 561:

> Committals for contempt of Court by scandalising the Court itself have become obsolete in this country"

Whatever the authority of this statement may have been in England it is preceded by the admission that "there can be no doubt that there is a third head of

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contempt of Court by the publication of scandalous matter of the Court itself" and followed by the acknowledgment that in other jurisdictions:

"the enforcement of proper cases of committal for contempt of Court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and respect for the Court".

The very next year there was a committal for contempt by scandalising the court in R. v. Grey (1900) 2 Q.B. 36 when Lord Russell of Killowen C.J. said at p. 40:

"Any act done or writing published calculated to bring a Court or a Judge into contempt or lower his authority, is a contempt of court".

In the recent Canadian case of Regina v. Murphy (1969) 4 D.L.R. (3d) 289 at p. 292 Bridges Chief Justice of the New Brunswick Supreme Court had no hesitation in holding that contempt by scandalising the Court or a judge still exists and that proceedings in respect thereto may be resorted to "on necessary occasions". The argument of what may be described as "practical obsolescence" was also rejected in the Australian case of R. v. Dunbabin & anor Ex parte Williams (1935) 53 C.L.R. 434 and in A.G. v. Times Newspapers Ltd. (1973) 3 All E.R. 54 at p. 73. Lord Diplock refers to the "rare offence of scandalising the court after judgment".

The recently published Report of the Committee on Contempt of Court in England under the Chairmanship of Lord Justice Phillimore (HMSO Cmnd 5794) (hereinafter referred to as "the Phillimore Report") cites the case of R. v. Wilkinson (1930) The Times 16th July as "the last successful application" in England for committal for contempt by scandalising the Court; Borrie and Lowe however, in 'The Law of Contempt' (1973) on p. 162 refers to R. v. Colsey (1931) The Times, May 9 as the extreme example of contempt by scandalising the court.

Rarity is not obsolenscence and there can be no doubt that scandalising the court is still one of the forms of contempt and may be committed by the publication of any matter tending to lower the dignity and authority of the court or to undermine the respect in which, in the public interest, the Courts ought to be held or to destroy public confidence in their integrity and impartiality. To quote the Phillimore Report, Chapter 7, under the title

"Scandalising the Court" on p. 68:

> "The object of the law of contempt here, as elsewhere, is to protect the administration of justice, and the preservation of public confidence is an important part of this process".

If this is so, as I believe it is, there can be no reason either in law or common sense why the offence must be related to particular proceedings as Counsel for the applicant had urged. The law is not merely what is boldly asserted or plausibly maintained; it proceeds from well established principles and it matters not one whit whether a publication which tends to undermine public confidence in the integrity and impartiality of the court and thus interfere with the due administration of justice refers to particular proceedings or is a broad and unrelated imputation of judicial corruption; for "it is possible very effectually to poison the fountain or justice even before it begin to flow" (R. v. Parke (1903) 2 K.B. 432).

This branch of the law of contempt exists not to vindicate the personal dignity of the judges nor to indulge their amour propre but for the benefit of the society as a whole so that the public confidence to which I have already referred should enure. It is undoubtedly the recognition of this principle which is responsible for the statement in Borrie and Lowe (Op. cit) at p. 153 that:

> "the court can be "scandalised" at any time: whether the words said or acts done occur before, during or after a trial, or indeed without reference to any particular trial at all. The essence of the offence is the tendency to lower the repute of the court and therefore it can be committed at any time".

There is a dearth of English cases on the subject perhaps, as Borrie and Lowe maintain (p. 173) because the law has had a deterrent effect. In R. v. Gray (supra) a direct attack on the personal character of Darling J. was held by the Divisional Court to be a grave contempt. Counsel for the applicant rather cavalierly dismisses Gray's case and cites in support of his contention the words of Lord Diplock in A.G. v. Times Newspapers Ltd. (supra) at p. 71:

> "Contempt of court is a generic term descriptive of conduct in relation to particular proceedings in a Court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their

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disputes".

His Lordship continued on the same page:

"To constitute a contempt of court that attracts the summary remedy the conduct complained of must relate to some specific case in which litigation in a court of law is actually proceedings or in known to be imminent".

Lord Diplock was in my view concerned with the law of contempt as it relates to the facts of the case before the House of Lords and those of a like nature . Evidence of this is his passing reference to the exception of "the rare offence of scandalising the court;" no mention is made of Gray's case which clearly does not come within the definition contained in the second quotation and the judgment in which no superior court, as far as I can discover, has ever disapproved. Support for this view is found in the speech of Lord Reid at page 60; after quoting the observations of Lord Hardwicke LC in The St James' Evening Post Case 21 E.R. 480: "There are three different sorts of contempt. One kind of contempt is scandalising the Court itself. There may be likewise a contempt of this Court, in abusing parties who are concerned in causes here. There may be also a contempt of this court in prejudicing mankind against persons before the cause is heard, "Lord Reid went on to say:

"We are particularly concerned here with 'abusing parties' and 'prejudicing mandkind' against them".

The Courts of other Commonwealth countries have considered the question whether scandalising the Court is a category of contempt which may be committed solely in relation to particular proceedings and their judgments are, I think, of considerable assistance.

In Brahma Prakash v. The State of Uttar Pradesh AIR 1954 SC. 10 the facts were that the Executive Committee of a District Bar Association of the State after complaints by litigants, passed a resolution expressing the opinion that a Judicial Magistrate and a Revenue Officer who performed judicial functions were overbearing, discourteous and incompetent. The Supreme Court of India at p. 14 stated the principle derived from a consideration of the cases decided in the Courts in England thus:

"It will be an injury to the public if (the publication) tends to create an apprehension in the minds of the people regarding the integrity ability or fairness of the judge or to deter actual and prospective litigants from placing

complete reliance upon the Court's administration of justice".

On the facts of the case the Supreme Court of India was of the opinion that the contempt, if any, was of a technical nature, One of the circumstances moving the Court to that view was that very little publicity had been given to the resolution and "the appellants made their best endeavours to keep the thing out of the knowledge of the public".

The full Bench of Calcutta (Mukerji J. dissenting) held in re Tushar Kanti Ghosh AIR 1953 Calcutta 419 that a newspaper editorial approving a speech in the Legislative Council of Bengal attacking the Chief Justice and the Judges and stating that they (the Judges) found "a peculiar delight in hobnobbing with the Executive, with the result that the judiciary is robbed of its independence" was calculated to undermine the confidence of the public in the administration of justice and consequently a contempt. In his judgment Derbyshire C.J. at p. 424 had this to say:

> "It seems to me as much a contempt of Court to say that the judiciary has lost its independence by reason of something it is alleged to have done out of Court, as to say that as a result of a case it has decided, it is clear it has no independence or has lost what it had".

Again, in Porter v. The King (1926) 37 C.L.R. 432 an appeal to the High Court of Australia from the Supreme Court of the Northern Territory a clear distinction is made between two classes of scandalising the Court and obstructing the course of justice; it is equally clear from the language used that in the former case there need not be any relation to particular proceedings. Isaacs J. said at p. 443:

> "There are many species of contempt. Where a court is vilified or scandalised, or the members attacked in their public capacity, there is direct interference with the constitutional agent of the King in the administration of justice. Again, where a proceedings has been instituted and so is in the hands of those entrusted with royal administration of justice, anything calculated to obstruct or impede the course of justice or to prejudice the parties concerned may be summarily dealt with".

And Higgins J. at page 447:

> "There was no contempt of Court - no attack on any Court or its members, nor was there anything tending to obstruct the course of justice in any pend-

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ing case; and it is of the essence of the latter kind of offence that Court proceedings be pending when the comments are published". (emphasis added).

In short to use the words of the judgment of the Supreme Court of Palestine in A.G. v. Zalman Rubashoff (Law Reports of Palestine 1920 - 1933) 876 at p. 881:

"To undermine and impair the authority of the Courts at any time and in any place is serious.."

Applying the principles enunciated in the cases to which I have referred it seems to me that the species of contempt of court known as "scandalising the court" may be committed without reference to any particular proceedings. I am fortified in this conclusion by the significant sub-divisions of contempts out of court contained in the Phillimore Report. On page 7 the Report states:

"Mr. Justice Wilmot spoke of contempts in court and contempts out of court. But the words "contempts out of court" cover such a variety of actions that it is necessary to make further sub-divisions, which can be grouped under the following heads:-

(a) conduct liable to interfere with the course of justice in particular proceedings;
(b) reprisals against witnesses or parties (victimisation);
(c) "Scandalising the court";
(d) disobedience to court orders.

In order to consider Counsel's argument that the publication complained of in the proceedings before Hassanali J. was not a reference to a Judge or Judges in their judicial capacity it is necessary, unpleasant as it may be, to quote certain excerpts from it.

The publication affects to be a short story, in language which is as crude as its style is tasteless, based on the domestic affairs of a Judge but it contains two passages referring to Judges in the plural. One of them reads: "Lissen, I want to tell you how some of them judges and them does live in this country:" Thereafter follows a sordid recital of various acts of misconduct including the words"and them people could take bribe". Later on comes the statement: "Believe me, when the people in this country hear bout how some of them judges does live in this country right now, they might get scared".

Of course, the people have heard because the publication has just told them, and why should "the people

get scared" if the bribery and corruption are indulged in the Judges' private rather than their judicial capacity? The truth is the contention that the public would interpret these statements to mean that Judges of the High Court are prone to accept bribes as private individuals but are models of probity as Judges does not bear serious examination. The last quoted sentence itself answers this contention for it echoes in less elegant if equally expressive language the words of Rich J. in Dunbabin's case when he characterised as a contempt matter which "excites misgivings as to the integrity brought to the exercise of the judicial office" and of the Supreme Court of India in Brahma Prakash's case:

> "It will be an injury to the public if it (the publication of a disparaging statement) tends to create an apprehension in the minds of the people regarding the integrity of the Judge".

As was said in Hawkins Pleas of the Crown and R. v. Staffordshire County Court Judge (1888) 57 L.J. Q.B. 483 quoted in Rubashoff's case:

> "To charge a judge with injustice is a grievence contempt; to accuse him of corruption might be a worse insult, but a charge of injustice is as gross an insult as can be imagined short of that".

I find that "Scandalising the court" is a form of contempt of court which was at all times and still is a part of the law of Trinidad and Tobago; it was certainly in force at the commencement of the Constitution; the offence was justiciable by Hassanali J. who had the power to commit the applicant to prison if he thought fit, for what in my opinion was a clear contempt.

The proceedings before Hassanali J. did not therefore infringe any of the applicant's constitutional rights.

Counsel for the applicant raised one other point a procedural one. It was argued that the contempt proceedings should have been brought by the Atterney General and the Trinidad and Tobago Law Society had no locus standi. The point is sufficiently met, I think, by the words of Lord Cross of Chelsea in The times Newspapers Case (supra) on p. 87.

> "It is I think most desirable that in civil as well as in criminal cases anyone who thinks that a criminal contempt of court has been or is about to be committed should, if possible,

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place the facts before the Attorney General for him to consider whether or not those facts appear to disclose a contempt of court....the fact that the Attorney General declines to take up the case will not prevent the complainant from seeking to persuade the court that not withstanding the refusal of the Attorney to act the matter complained of does in fact constitute a contempt of Court of which the Court should take notice".

In Kanti Ghosh's case contempt proceedings were initiated by the Registrar of the Court and there is no doubt that the Court itself may act on its own motion. In Dunbabin's case the applicant was not concerned in any matter directly affected by the publication. Rich J. held at p. 445: that not only may the Court act ex mero motu but "the Court may be put in motion by a person who has no particular interest in the contempt complained of".

In Borrie and Lowe (op. cit.) it is stated on p. 265:"

> "There is, however, nothing in the Rules of the Supreme Court to prevent any person instituting proceedings, provided the applicant is represented by Counsel in proceedings before Courts other than the Queen's Bench Divisional Court. In practice, contempt cases involving civil proceedings are nearly always brought by private individuals, usually the aggrieved parties". (emphasis added).

The Phillimore Report on p. 79 notes that "in general, contempt proceedings, like most other proceedings, civil or criminal, may be instituted by a private individual," and on p. 80: "There are special reasons for such exceptions as exist to the general principle that prosecutions may be privately brought. We do not consider that the reasons here suffice to make contempt a further exception....We believe, however, that the attention of the Attorney General should be drawn to the matter before any private proceedings are begun".

The application is accordingly dismissed and the applicant is to pay the costs of this Motion. There will be a stay of execution for 7 days, to continue if an appeal is filed, without prejudice to the taxation of the bill of costs.

Dated this 28th day of April, 1975.

/s/ P.L.U. Cross
P.L.U. Cross.
Judge.

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Formal Order of Mr. Justice Cross.

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28th April, 1975.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE
SAN FERNANDO

No: 81 of 1975.

In the Matter of the Constitution of Trinidad and Tobago contained in the Trinidad and Tobago (Constitution) Order in Council E.I. 1962 No. 1875.

A N D

In the Matter of the Application of Patrick Chokolingo under Section 6 of the said Constitution for relief on the grounds that the Human Rights and Fundamental Freedoms enshrined in the said Constitution and in particular Section 1 thereof have contravened in relation to him by an order of the High Court made in proceedings No. 1218 of 1972 for Criminal Contempt.

Before The Hon. Mr. J. Cross
Dated and entered 28/4/75.

Upon Motion for:-

(a) An Order declaring that the Order made against him by The High Court in the exercise of its criminal jurisdiction in proceedings No. 1218 of 1972 is unconstitutional, null and void and of no effect.

(b) A Further Order declaring that the imprisonment of the application suffered under the said Order was illegal and a violation of The Human Rights and Fundamental Freedoms guaranteed to the applicant by the Constitution of Trinidad and Tobago and in particular by Section 1 thereof.

(c) A Further Order directing the Respondent The Trinidad and Tobago Law Society to pay to the applicant such damages as the Court may assess to have been suffered by the applicant by his wrongful imprisonment under the said order and a further order that costs in the sum of $11, 369.27 paid by the applicant to the Trinidad and Tobago Law Society be repaid by the said Society to the applicant.

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

(e) An Order that The Trinidad and Tobago Law Society do pay the costs of these proceedings

In the High Court.

No:6
Formal Order of Mr. J. Cross.

28th April, 1975.

(continued)

And upon reading the affidavit of PATRICK CHOKOLINGO with the exhibits attached thereto all filed herein.

And Upon hearing Counsel for all parties This Court Doth Order That The Notice of Motion filed herein on 31/1/75 and be the same is hereby dismissed with costs to be taxed and paid by the applicant to the Respondent The Trinidad and Tobago Law Society.

And this Court Doth Also Order that there be a Stay of executionfor seven (7) days from the date hereof to continue in the event of an Appeal such stay to be without prejudice to the taxation of the Bill of Costs.

.....
REGISTRAR.

No.7

NOTICE OF APPEAL

In the Court of Appeal

No.7
Notice of Appeal.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF APPEAL

No: 81 of 1975. HIGH COURT SAN FERNANDO

No: 39 of 1975. CIVIL APPEAL.

ON APPEAL FROM

THE HIGH COURT EXERCISING JURISDICTION UNDER SECTION 6 OF THE CONSTITUTION.

THE MATTER OF THE CONSTITUTION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO: 1218 OF 1972 FOR CRIMINAL CONTEMPT.

Between

PATRICK CHOKOLINGO

APPLICANT/APPELLANT

And

THE LAW SOCIETY OF TRINIDAD AND TOBAGO

RESPONDENT/RESPONDENT.

In the Court of Appeal.
No. 7

Notice of Appeal.

(continued)

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TAKE NOTICE that the Applicant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof contained in the judgment of the Honourable Mr. Justice Ulric Cross dated the 28th day of April, 1975. In motion No. 81 of 1975 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND the Applicant/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 Applicant/Appellant complains of the judgment of the Honourable Mr. Justice Ulric Cross dated 28th day of April, 1975 dismissing with costs a Motion for redress brought by the Applicant/Appellant in pursuance of the provision of Section 6 of the Constitution of Trinidad and Tobago.

3. GROUNDS OF APPEAL

(a) The High Court erred in law in holding that a contempt of Court by scandalising the Court had been committed by the publication of an article "The Judge's Wife in the issue of the "Bomb" Newspaper dated 26th May, 1972 for the reason that the elements which in law constitute the offence had not been established.

(b) The High Court further erred in law in holding that the Law Society of Trinidad and Tobago had locus standi in judicio to prosecute the proceedings for contempt of Court which resulted in the making of the impugned order of imprisonment after the Attorney General had declined to prosecute in respect of the alleged contemptuous publication or at all.

(c) The High Court ought to have held that the trial and imprisonment of the Applicant/Appellant for contempt of Court were a violation of the human rights and fundamental freedoms guaranteed to the Applicant/Appellant by and under section 1 of the Constitution of Trinidad and Tobago and in particular that he was denied his liberty without due process of law and in violation of the Applicant's freedom of thought

In the Court of Appeal.

No.7

Notice of Appeal.

(continued)

and expression and the freedom of the Press.

(d) The High Court erred in failing to determine the issue raised by the Applicant/Appellant on his motion for redress in accordance with the common law of England which was received in Trinidad and Tobago on the 1st March, 1888.

(e) The judgment of the High Court in so far as it refuses redress was erroneous in law.

(f) The Court erred in awarding all costs of the Motion in favour of the Respondent.

4. The relief sought by the Applicant/Appellant is that the Order made by the Honourable Mr. Justice Cross be reversed and that redress in the form of damages be awarded in favour of the Applicant/Appellant in pursuance of Section 6 of the Constitution of Trinidad and Tobago and that the Respondent the Law Society of Trinidad and Tobago be ordered to pay the said damages together with the costs of this Appeal and of the hearing in the High Court together with such further or other order as may be just including an order that the motion be remitted to the High Court for the assessment of damages.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

NAMES	ADDRESSES
PATRICK CHOKOLINGO	8-10 NEW STREET, SAN FERNANDO
THE LAW SOCIETY OF TRINIDAD AND TOBAGO	QUEEN STREET, PORT OF SPAIN.

TO: THE REGISTRAR OF THE COURT OF APPEAL.

AND: TO MR. M.T.I. JULIEN, SOLICITOR FOR THE LAW SOCIETY OF TRINIDAD AND TOBAGO. ST. VINCENT STREET, PORT OF SPAIN.

IT IS INTENDED TO GIVE NOTICE OF THESE PROCEEDINGS TO THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO, RED HOUSE PORT OF SPAIN, BY SERVICE OF A SEALED COPY OF THIS NOTICE.

/s/ Patrick Chokolingo.
.....
Applicant/Appellant

/s/ Capildeo & Capildeo
.....
Solicitors for the Applicant/Appellant.

This Notice of Appeal is filed by Messrs. Capildeo and Capildeo of No. 25, St. Vincent Street, Port-of-Spain, Solicitor for the Applicant/Appellant and their address for service is the same.

In the Court of Appeal.

No. 7

Notice of Appeal.

(continued)

No.8

GROUNDS OF APPEAL

In the Court of Appeal.

No. 8

Grounds of Appeal.

8th November 1977.

REPUBLIC OF TRINIDAD AND TOBAGO.

IN THE COURT OF APPEAL

NO. 81 of 1975 HIGH COURT SAN FERNANDO.
NO. 39 of 1975. CIVIL APPEAL.

ON APPEAL FROM THE HIGH COURT EXERCISING JURISDICTION UNDER SECTION 6 OF THE CONSTITUTION

THE MATTER OF THE APPLICATION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO: 1218 of 1972 FOR CRIMINAL CONTEMPT.

BETWEEN

PATRICK CHOKOLINGO
APPLICANT/APPELLANT

AND

THE LAW SOCIETY OF TRINIDAD AND TOBAGO
RESPONDENT/RESPONDENT

****

Particulars delivered pursuant to the order of The Honourable Chief Justice Sir Isaac Hyatali dated the 8th day of November, 1977.

Solicitors for Applicant/Appellant.

3. GROUNDS OF APPEAL

PARTICULARS UNDER PARAGRAPH 3 (a)

(a) (i) The article did not relate to any Judge or Judge's in their judicial capacity.

(ii) The article did not relate to the Administration of Justice in the Courts of Trinidad and Tobago.

(iii) The article did not mean as The Honourable Mr. Justice U. Cross found that the Judges of The Supreme Court of Judicature of Trinidad and Tobago took bribes.

PARTICULARS UNDER PARAGRAPH 3 (c)

(c) (i) There was a denial of liberty without due process because no offence (contempt by scandalising the Court) was committed by the publication of the article.

(ii) The writing of the article was justified by the fundamental right to freedom of thought and expression.

(iii) Its publication was in keeping with the freedom of the press as guaranteed by the Constitution of Trinidad and Tobago.

(iv)

PARTICULARS UNDER PARAGRAPH 3 (d)

(d) (i) The elements of contempt by scandalising are to be determined by the Common Law of England and not by the Common Law as developed elsewhere.

Dated this 8th day of November, 1977.

To: The Registrar of the Court of Appeal.

And To: Mr. M.T.I. Julien, Solicitor for The Trinidad and Tobago Law Society, St. Vincent Street, Port of Spain.

And to: The Attorney General of Trinidad and Tobago, Red House, PORT OF SPAIN.

No.9

Judgment of Sir Isaac Hyatali C.J.

In the Court of Appeal.

No.9

Judgment of Sir Isaac Hyatali,C.J.

28th Dec. 1978.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No. 39 of 1975

THE MATTER OF THE APPLICATION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO. 1218 OF 1972 FOR CRIMINAL CONTEMPT

BETWEEN

PATRICK CHOKOLINGO — Appellant

AND

THE LAW SOCIETY OF TRINIDAD AND TOBAGO — Respondent

****

Coram: Sir Isaac Hyatali C.J.
M.A. Corbin J.A.
C.A. Kelsick J.A.

December 28, 1978.

Dr. F. Ramsahoye S.C. and R.L.Maharaj for the appellant
J.A.Wharton, Q.C., H.A.S. Wooding Q.C. and F. Solomon for the Respondent
C.Brooks, Ag. Solicitor General and J. Permanand , Asst. Solicitor General for the Attorney General

J U D G M E N T

Delivered by Sir Isaac Hyatali, C.J.

This appeal has an unusual history but it is only

because it has been beset by unusual circumstances. On 10 June, 1972, the Trinidad and Tobago Law Society (the Society) was granted leave by Achong J. to move the Court for leave to issue a wrot of attachment against, or for an order for the committal of, Patrick Chokolingo (Chookolingo) the editor, and Ajodha Singh (Ajodha Singh) the proprietor, printer and publisher of a weekly newspaper called "The Bomb", in respect of the publication therein of an article entitled "A Short Story- The Judge's Wife", (the short story), juxtaposed to which was a caption stating "the old domestic was bent on exposing, bribery, corruption and fraud in the household."

The motion duly came on for hearing before Hassanali, J. whereupon three objections in limine were taken, including among which, was one relating to the competence of the Society to bring the motion. That objection however, and the other two, which it is immaterial for present purposes to specify, were overruled, and in the event, Chokolingo and Ajodha Singh were given leave to file affidavits.

Chokolingo in his affidavit confessed, inter alia as follows:

"4. I wrote and published the short story complained of in these proceedings. This short story is a work of fiction and does not refer to any known person or persons. I have in the past written several short stories some of which have appeared in other journals and other broadcasts over the British Broadcasting Corporation.

"5. At the time of writing the short story complained of I did not think it was derogatory of the judicial system of this country or of its Judges.

"6. I have now been advised that the said short story amounts to a Contempt of Court and I accept that this is so. I therefore unreservedly apologise to This Honourable Court and to all Her Majesty's Judges of the Supreme Court of Judicature for this publication I ought not to have published and the publication of which I now deeply regret.

7. I have never intended by my publication to scandalise the Courts or bring the administration of justice into disrepute.

8. I have always held the courts of this

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28th Dec. 1978.

(continued)

Country and its Judges in high esteem and have always had full confidence in their integrity, honesty and impartiality. I have at all times had full confidence in the administration of justice in this country."

Ajodha Singh in his affidavit stated, inter alia, as follows:

"5. I did not write or assist in the writing of the short story complained of in these proceedings nor was I aware of the contents of it nor that the same was to be published in the said newspaper. I only got to know of the short story when I read it in the said newspaper sometime after its publication.

6. When I read the said short story I did not give it much thought or any serious consideration at the time and I was not aware of the implications contained in it. It has now been brought home to me that the said story amounts to a contempt of Court. I accept that this is so and wish unreservedly to express to this Honourable Court and to all Her Majesty's Judges of the Supreme Court of Judicature my sincere and profound apologies for this regrettable and inexcusable publication.

7. I have always held the Courts of this country and their Judges in high esteem and have always had full confidence in their integrity honesry and impartiality. I have at all times had full confidence in the administration of justice in this country.

8. I have not apologised before because I was not aware of the legal procedure until so advised by my legal advisers."

After hearing Mr. Wharton Q.C., counsel for the Society, on the motion, Mr. Wells, Q.C., addressed the Court on behalf of Chokolingo and Ajodha Singh and Conceded with complete candour in the course thereof, that the short story:

"was a scandalous and scurrilous attack on the Judges of Trinidad and Tobago in the charge made therein against them of accepting bribes; and that this was a contempt of court because the readers of the short story might get the impression that reference therein was to the Judges of

This country; (and that) this was abuse of Judges as Judges - for 'Bribery' would be understood to be misconduct in relation to litigation."(emphasis added).

Notwithstanding the confession on oath of Chokolingo and of Ajodha Singh the Learned Judge proceeded to examine, and quite properly in my view, all the material placed before him in consequence of the motion, to determine, whether a contempt in law was actually committed. His conclusion was as follows:

> "I find- as counsel for (Chokolingo and Ajodha Singh) has himself virtually conceded - that the short story amounts to contempt of court because of the probability that its readers would get the impression that the reference therein is to judges of Trinidad and Tobago. The allegation regarding bribery, therefore, would tend to bring the courts and the administration of justice into disrepute; and public confidence in the administration of justice would be impaired or damaged. This, according to counsel himself, is what he explained to (Chokolingo and Ajodha Singh) and accordingly they admitted their guilt."

In the result, on 17th August, 1972, Chokolingo was committed to prison for 21 days' simple imprisonment, Ajodha Singh was fined $500.00, and both of them were ordered to pay the costs of the motion to the Society. After enduring imprisonment for twelve days however, Chokolingo was released under a remission granted to him by the Governor General. The costs of the motion were eventually taxed in the sum of $11,369.27 and duly paid by Chokolingo to the Society.

Nothing further was heard of the matter until 31 January, 1975 some two and a half years later - when Chokolingo issued a notice of motion stating that counsel would move the Court on his behalf under s. 6 of the Constitution of Trinidad and Tobago of 1962 (the Constitution) for the following reliefs:

(a) an order declaring that his committal to prison for contempt was unconstitutional, null and void;

(b) an order declaring that his imprisonment was illegal and a violation of the human rights and fundamental freedoms guaranteed to him under s. 1 of the Constitution; and

(c) an order for the payment of damages to him by the Society for his wrongful imprisonment and the refund of the costs aforesaid paid by him to the Society.

His grounds for seeking these reliefs were that:-

The short story published was not a criminal contempt of the Supreme Court or of the judges

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or of any judge performing judicial functions in Trinidad and Tobago; that the order committing him to prison was a violation of the Constitution and in particular s. 1 (a) (i) and (k) thereof in that it:

(1) deprived him of his liberty and was made without due process of law;

(2) was a contravention of his right to freedom of thought and expression

(3) contravened the right to freedom of the press;

and, in any event, the order of committal could not be supported by the principles of law and practice relating to criminal contempt received in or applicable to Trinidad and Tobago nor properly made by summary process and without proceedings upon information or indictment.

The respondents named to the motion were the Attorney General and the Society.

Cross, J. heard the motion but dismissed it with costs on 28 April 1975. Four points only were argued before him in support of the motion, but they were all rejected as unsound. They were:

(1) contempt by scandalising the court was obsolete;

(2) if such contempt still existed, scandalising the court can only be a contempt, if it relates to particular proceedings;

(3) the short story was a criticism of a Judge's conduct as a private individual and accordingly no contempt in law was committed by such criticism; and

(4) the Society had no locus standi to institute and maintain the proceedings brought against Chokolingo.

Chokolingo thereupon appealed against the judgment. In his notice of appeal, he named the Society alone as the respondent thereto but at the foot thereof he appended a note to the effect that it was intended to give notice of the proceedings to the Attorney General. It is of some importance to note this because at the hearing of his appeal before the Court, Chokolingo (who I shall hereafter call the appellant) sought the several reliefs which he claimed only against the Society. In fact, counsel on his behalf in answer to a specific question put by the court stated that the appellant was not seeking any relief against the Attorney General.

The record in this case was filed by the appellant's Solicitors on 14 April 1977. The hearing of the appeal began on 8 November 1977 and it was ultimately concluded on 24 November 1977, after an adjournment had been granted to accommodate counsel for the appellant. At that time however, the appeal of Maharaj v. The Attorney General was pending before the Privy Council. It was a case in which the appellant challenged an order of the Court of Appeal refusing his application for redress under s. 6 of the Constitution for deprivation of his liberty without due process of law. As the points raised in that case were of great relevance to the instant appeal, the court (Hyatali C.J., Phillips and Corbin J.A.) reserved its judgment and decided to deliver it after the decision of the Privy Council had been given.

The Privy Council heard the appeal referred to on 13 and 14 December, 1977 and gave its decision on 27th February 1978. Notice was then given to the parties herein that the instant appeal would be restored to the list on 16 March, 1978, for further consideration. On that date, the Court drew to the attention of the parties the decision of the Privy Council of 27 February 1978 now reported sub nom. Maharaj v. Attorney General of Trinidad and Tobago (No. 2) in (1978) 2 All E.R. 670 and invited further arguments from them in the light thereof. These were heard on 25th April, 1978 and the Court thereupon reserved its judgment.

Another event however, intervened thereafter, and for reasons which were discussed and explained in open court on 24 May 1978 and which it is not necessary for present purposes to dilate upon, Phillips J.A. with the concurrence of the Court, disqualified himself from continuing to take further part in the determination of the appeal. A hearing of the appeal de novo was consequently ordered with the concurrence of the parties. The Court as now constituted heard the appeal from 9 - 12 October 1978 and we now give our decision which we reserved on the latter date. In the earlier case of Maharaj v Attorney General of Trinidad and Tobago (No. 1) (1977) 1 All E.R. 411, the Privy Council held that an order made by a High Court Judge committing a barrister, for seven days for contempt of court was vitiated by the Judge's failure to observe a fundamental rule of natural justice to wit: that a person accused of an offence should be told what he is said to have done plainly enough to give him an opportunity to put forward an explanation or excuse that he may wish to

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advance.

In Maharaj v Attorney General of Trinidad and Tobago (No. 2) (supra) the Privy Council rules, inter alia, that the said barrister was entitled to apply for and obtain redress against the State under s. 6 of the Constitution on the ground that he was deprived of his liberty without due process of law in contravention of s. 1 (a) of the Constitution. The Court of Appeal had held, by a majority in that case that the appellant's application for redress should fail, as it was in essence a claim for damages against the Judge who made the committal order. This very point (among others) was advanced before the Privy Council and in rejecting it Lord Diplock, who delivered the majority judgment of the Board said this at pp. 679 and 680:

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

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

failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event.

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

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

In the notice of appeal as amended, the decision of Cross J. was challenged on the grounds that he erred:

(a) <u>in holding</u> -

(i) that the short story related to any judge or judges in their judicial capacity;

(ii) that the article related to the ad-

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ministration of justice in the courts of Trinidad and Tobago; and

(iii) that the short story meant that the judges of the Supreme Court took bribes;

(b) in holding that the Society had a locus standi in judicio to initiate and pursue the proceedings for contempt of court in relation to the short story after the Attorney General had declined to take any steps to prosecute the appellant in respect thereof, or ataall;

(c) in not holding -

(i) that there was a denial of liberty without due process of law because the o offence of contempt by scandalising the court was not committed by the publication of the short story.

(ii) that the writing of the short story was justified by the fundamental right to freedom of thought and expression; and

(iii) that the publication of the short story was in keeping with freedom of the press as guaranteed by the Constitution; and

(d) in failing to appreciate that the elements of contempt by scandalising the court had to be determined by the common law of England and not by the common law as developed elsewhere.

In presenting the appeal to this court however, counsel confined himself to these three complaints:

(a) that the Society was not authorised by its constitution to take proceedings to commit the appellant for contempt in respect of the short story published;

(b) if the Society was so authorised its motion to commit the appellant for contempt should not have been entertained because the Attorney General had declined to take any proceedings against the appellant and also because the Society did not and indeed could not allege, that its interest as a party to litigation had been affected; and

(c) the short story did not constitute a contempt of court and accordingly, the appellant suffered imprisonment for an offence without any evidence to support it, and was thereby deprived of his right to be presumed innocent until proved guilty according to law as prescribed by s. 2(f) of the Constitution.

The Society was incorporated by the Trinidad and Tobago Law Society (Incorporation) Act 1966 (the Act) Section 2 thereof endowed it with the right to sue and be sued in its corporate name (see also s. 17 of the Interpretation Act 1962) and, so far as is material, s. 3 prescribed that its objects were:

(a) to support and protect the character, status and interest of the legal profession generally and particularly of solicitors practising within Trinidad and Tobago.

... ...

(c) to consider all questions affecting the interests of the legal profession and to initiate and watch over and, if necessary to petition the Parliament of this country or promote deputations in relation to general measures affecting the profession, and to procure changes of law or practice and the promotion of improvements in the principles and administration of the law."

In rejecting the objection to the competence of the Society to bring the motion, Hassanali J. took the view that the course and administration of justice was manifestly an interest of the legal profession; and that the Society, in initiating the proceedings, was protecting and supporting the interests of the legal profession, since it was seeking thereby to have the Court investigate and deal with an alleged interference with, or obstruction of, the administration of justice. He went on to add however, that even if it was ultra vires the constitution of the Society to bring the motion he would exercise his discretion nevertheless to to entertain it because (a) the Society was not expressly forbidden by the Act from initiating the proceedings; and (b) the proceedings taken were in the public interest and would cause no injury to it.

In hearing the constitutional motion for redress Cross J. ruled that the objection taken against the competence of the Society to initiate the proceedings was sufficiently met by:

(i) the dictum of Lord Cross in Attorney General v Times Newspapers Ltd (1973) 3 All E.R. 54, 87 (at letter e);

(ii) the fact that in the case of In re Tushar Kanti Ghosh (1935) A.I.R. Calcutta 419, contempt proceedings were initiated by the Registrar of the Court;

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(continued)

(iii) the dictum of Rich. J. in R. v. Dunbabin and Anor ex parte Williams (1935) 53 C.L. R. 434, 445 to the effect that not only may the Court act ex mero motu but it may be put in motion by a person who has no particular interest in the contempt complained of;

(iv) a statement in Borris and Lowe's monograph on the Law of Contempt, 265; and

(v) the Phillimore Report on Contempt of Court 1974 (Cmnd5794) which noted at p. 79 that in general contempt proceedings may be instituted by a private individual.

It would appear that Cross. J. did not consider the question whether the objects of the Society as worded in s. 3 of the Act, authorised it to initiate the contempt proceedings under reference.

The question whether the Society was authorised by its objects to bring the motion was clearly one of substantive law, since it was dependent upon the interpretation of section 3 of the Act.

Hassanali, J. ruled as a matter of substantive law, that the Society was authorised by s. 3 of the Act to initiate the proceedings but he went on to add the two reasons already referred to for entertaining the the motion. One of them, it will be recalled, was that the initiation of the proceedings by the respondent was not expressly forbidden by the Act. Counsel attacked this added reason as invalid, and rightly so, because the settled principle in this regard, is that what the statute does not expressly or impliedly authorise is to be taken as forbidden. (See Ashbury Railway Carriage & Iron Co. v Riche (1875) L.R. 7 H.L. 653). But however that may be, the essence of the complaint made is that the Learned Judge was guilty of an error of law in ruling as he did.

It was then said that if the Society was so authorised, the motion was incompetent, because its interest as a party to litigation was not shown to be affected, and also because, the Attorney General had refused to institute proceedings against the appellant. If either of these propositions is sound, then the complaint in substance is that the learned judge committed an error of law in entertaining the motion. The same is to be said for the submission that the short story did not constitute the contempt of scandalising the Court, or that the learned judge committed the appellant for an offence which was not

proved by the evidence, and thereby deprived the appellant of the right to be presumed innocent until proved guilty according to law. In sum, all the complaints made against the decision of Hassanali, J. in committing the appellant for contempt alleged as Mr. Wooding for the Society rightly submitted in my view, errors of substantive law within the purview of Lord Diplock's dictum in Maharaj v Attorney General (No. 2) (supra).

Counsel for the appellant conceded, and quite correctly in my judgment, that Lord Diplock's dictum in that case confined contraventions of due process of law in s. 1 (a) of the Constitution to errors in procedure amounting to a failure to observe the rules of natural justice, but he sought to avoid the predicament in which that dictum enshrouded the whole of the appellant's case by submitting firstly, that what Lord Diplock said was obiter; secondly, that the appellant's case fell within the principle expressed in Thompson v City of Louisville 362 US 199, 206 to the effect, that the conviction of a person for an offence which is devoid of evidence to support it was tantamount to a conviction without due process of law; and thirdly, that the right of a person to be presumed innocent until proved guilty according to law, entrenched in s. 2 (f) of the Constitution, was violated if his imprisonment for an offence resulted from any error of fact or of substantive law or both, and entitled him to obtain redress under s. 6 of the Constitution, on the ground that he was deprived of his liberty without due process of law.

I do not agree that what Lord Diplock said in Maharaj v Attorney General (No. 2)(supra) is to be brushed aside as an obiter dictum. On the contrary, it was a ruling give to reject the submission made to the Board, that to uphold the claim in question for redress under s. 6 of the Constitution against the State, would subvert the rule of public policy, that a judge could not be made liable for anything done by him in the exercise of his judicial function. In my opinion Lord Diplock's dictum was deliberately couched in precise and careful language, not only to make it abundantly clear that errors of fact or of substantive law or both, made in judicial proceedings, furnished no ground to an applicant for maintaining that he was deprived of his liberty without due process of law contrary to s. 1 (a) of the Constitution, but to answer the points made in the closely

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reasoned dissenting opinion of Lord Hailsham. To illustrate what I have said it is only necessary to quote the following passage from his judgment at pp. 687-8:

"I am simply saying that on the view I take the expression "redress" in subsection (1) of section 6, and the expression "enforcement" in subsection (2), although capable of embracing damages where damages are available as part of the legal consequences of contravention, do not confer and are not in the context capable of being construed so as to confer, a right of damages where they have not hitherto been available, in this case against the State for judicial errors of a judge. This, in my view must be so even though the judge has acted as the committing judge was held to have done in the instant case. Such a right of damages has never existed either against the judge or against the State and it is not, in my opinion conferred by section 6.

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

particularly easy to obtain.

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

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

In the first place, asI understand the decision of the majority it is that a distinction must be drawn between a mere judicial error and a depriva-

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

I feel fortified in the opinion I have expressed by Lord Diplock's pronouncements to the effect, that no human right or fundamental freedom specified in s. 1 of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law; that the fundamental human right is not to a legal system that is infallible but to one that is fair; that it is only errors in procedure amounting to failure to observe the rules of natural justice (which he said were likely to be rare) that are capable of constituting infringements of the rights protected by s.1 (a); and that no mere irregularity in procedure is enough even though it goes to jurisdiction.

These principles by which this Court is bound, are so plainly at odds with those enunciated in Thompson's case (supra) that I have no hesitation in rejecting as untenable the submission of counsel for the appellant that the errors of fact and of substantive law allegedly made by Hassanali J. in committing the appellant to prison for contempt entitled him to obtain redress under s. 6 of the Constitution for the deprivation of his liberty without due process of law.

In so holding, I have not been unmindful of the submission on which counsel for the appellant heavily relied, that the expression "proved guilty according to law" in s. 2 (f) of the Constitution, meant or implied that if a sentence of imprisonment for an offence resulted from any errors of substantive law

or of fact the right to be presumed innocent and consequently also the right not to be deprived of liberty without due process of law was infringed. In my judgment however, the right to be presumed innocent until proved guilty according to law is no more than a right which entitles an accused to demand that he who alleges an offence against him must prove it and that he must do so beyond reasonable doubt.

In other words, the expression deals with the incidence and burden of proof in a criminal trial and preserves the common law rule, that that burden rests on the prosecution from the beginning to the end of the trial (See Woolmington v DPP)1935) 25 Cr. App R72), to remove the presumption of innocence in favour of an accused by proof which establishes beyond a reasonable doubt that he is guilty of the offence alleged against him. See in this connexion the judgment of Kelsick, J.A. in Faultin v Attorney General No. 1 of 1975 dated 13 December 1978, with which the other members of the Court concurred; and Cross on Evidence (4th Edn.) 109 where the learned author states:-

> "When it is said that an accused person is presumed to be innocent all that is meant is that the prosecution is obliged to prove the case against him beyond reasonable doubt. This is the fundamental rule of our criminal procedure, and it is expressed in terms of a presumption of innocence so frequently as to render criticism somewhat pointless."

These conclusions suffice to uphold the decision of Cross, J. who, it should be noted, dealt with the appellant's motion before Maharaj v Attorney General (No. 2) (supra) was decided by the Privy Council, His reasons therefore, for dismissing the motion, were not based on that case. They were nevertheless logical and sound in my judgment, and I would affirm them. For present purposed, however, it is unnecessary to examine them in any detail and I shall accordingly confine myself to a few brief comments on them.

I have already referred to his reasons for upholding the competence of the Society as a legal person to institute criminal proceedings for contempt of court, but in fortification of the soundness of his conclusion I would refer to Lord Fraser's definition of 'person' in Attorney General v Antigua Times Ltd. (1975) 3 All E.R. 81, 86-87 and quote the following passages in the judgment delivered in the House of Lords in Gouriet v Union of Post Office Workers (1977) 3 All E.R. 70, to

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which Mr. Wooding for the Society, helpfully referred the Court. Per Lord Wilberforce at p. 79 (f):

"When Parliament decides to prohibit certain conduct (eg delaying the mail) in enacts legislation defining the prohibited act (eg the Post Office Act 1953, ss. 58,68). To violation or disregard of the prohibition it attaches a sanction-prosecution as for a misdemeanour with a possible sentence of two years' imprisonment. Enforcement of the law means that any person who commits the relevant offence is prosecuted. So it is the duty either of the Post Office itself, or of the Director of Public Prosecutions or of the Attorney-General, to take steps to enforce the law in this way. Failure to do so without good cause, is a breach of their duty (for a recent formulation of this duty see the statement of Sir Hartley Shawcross, Attorney General (1951), in J. L I. J. Edwards's The Law Officers of the Crown. The individual, in such situations, who wishes to see the law enforced has a remedy of his own:he can bring a private prosecution. This historical right which goes right back to the earliest days of our legal system, though rarely exercised in relation to indictable offences, and though ultimately liable to be controlled by the Attorney-General (by taking over the prosecution and, if he thinks fit, entering a nolle prosequi) remains, a valuable constitutional safeguard against inertia or partiality on the part of authority."

Per Viscount Dilhorne at p. 90 (h):

"There are a number of statutory offences for the prosecution of which the consent of the Attorney-General or of the Director of Public Prosecutions is required but apart from these offences anyone can if he wishes start a prosecution without obtaining anyone's consent. The enforcement of the criminal law does not rest with the civil courts or depend on the Attorney General alone."

Per Lord Diplock at p. 97 (b) to (d):

"The ordinary way of enforcing criminal law is by punishing the offender after he has acted in breach of it. Commission of the crime precedes the invocation of the aid of a court

of criminal jurisdiction by a prosecutor. The functions of the court whose aid is then invoked are restricted to (1) determining (by verdict of a jury in indictable cases) whether the accused is guilty of the offence that he is charged with having committed and (2), if he is found guilty, decreeing what punishment may be inflicted on him by the executive authority. In English public law every citizen still has the right, as he once had a duty (though of imperfect obligation), to invoke the aid of courts of criminal jurisdiction for the enforcement of the criminal law by this procedure. It is a right which nowadays seldom needs to be exercised by an ordinary member of the public, for since the formation of regular police forces charged with the duty in public law to prevent and detect crime and to bring criminals to justice and the creation in 1879 of the offence of Directors of Public Prosecutions, the need for prosecutions to be undertaken (and paid for) by private individuals has largely disappeared; but it still exists and is a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law."

Per Lord Fraser at p. 116 (g) to (j):

" The most substantial argument on behalf of Mr. Gouriet was based on an anology between the alleged right of the private citizen to sue for an injunction with the well-established right of the private citizen to prosecute. Just as the Attorney-General's right and duty to prosecute after a crime has been committed does not exclude the private person's right to prosecute, so it was said, his right to obtain an injunction to prevent a crime should not exclude the private person's right to an injunction. But the analogy is not exact because a private prosecution is always subject to the control of the Attorney-General through his power to enter a nolle prosequi, or to call in any private prosecution and then offer no evidence. By the exercise of these powers the Attorney-General can prevent the right of private prosecution being effectively exercised in any particular case."

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See also Attorney General v Times Newspapers Ltd. (1973) 3 All E.R. 54, 87 Per Lord Cross.

On the question whether the article constituted the contempt of scandalising the court the following passage from the judgment of Cross, J. is relevant:

"In order to consider Counsel's argument that the publication complained of in the proceedings before Hassanali, J. was not a reference to a Judge or Judges in their judicial capacity it is necessary, unpleasant as it may be to quote certain excerpts from it.

"The publication affects to be a short story, in language which is as crude as its style is tasteless, based on the domestic affairs of a Judge, but it contains two passages referring to Judges in the plural. One of them reads: 'Lissen, I was to tell you how some of them judges and them does live in this country:' Thereafter follows a sordid recital of various acts of misconduct including the words 'and them people could take bribe'. Later on comes the statement: 'Believe me, when the people in this country hear bout how some of them judges does live in this country right now, they might get scared'.

Of course, the people have heard because the publication has just told them, and why should 'the people' get scared' if the bribery and corruption are indulged in the Judge's private rather than their judicial capicity? The truth is the contention that the public would interpret these statements to mean that Judges of the High Court are prone to accept bribes as private individuals but are models of probity as Judges does not bear serious examinations. The last quoted sentence itself answers this contention for it echoes in less elegant if equally expressive language the words of Rich J. in Dunbabin's case when he characterised as a contempt matter which 'excites misgivings as to the integrity brought to the exercise of the judicial office" and of the Supreme Court of India in Brahma Prakash's case:

"It will be an injury to the public if it (the publication of a disparaging statement) tends to create an apprehension in the minds of the people regarding the integrity of the

Judge.'

As was said in Hawkins Pleas of the Crown and R. v Staffordshire County Court Judge (1888) 57 L.J. Q.B. 483 quoted in Rubashoff's case:

'To charge a judge with injustice is a grevious contempt; to accuse him of corruption might be a worse insult, but a charge of injustice is as gross an insult as can be imagined short of that.'

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I find that 'Scandelising the Court' is a form of contempt of court which was at all times and still is a part of the law of Trinidad and Tobago; it was certainly in force at the commencement of the Constitution; the offence was justiciable by Hassanali J. who had the power to commit the applicant to prison if he thought fit, for what in my opinion was a clear contempt."

In my judgment the conclusion reached by the learned judge cannot be faulted. It is amply supported not only by the older authorities, but by the recent decision of the of the Supreme Court of New Zealand in Solicitor General v Radio Avon and Anor (1977) 1 N.S.L.R. 301. In that case, Wild C.J. in giving the judgment of the Court said at p. 304, and I respectfully endorse it, that the dictum of Lord Morris in McLeod v St. Aubyn (1899) A.C. 549, 561 that "Committals for contempt by scandalising the Court itself have become obsolete ....." has long been regarded as too wide and that the law is correctly stated in 9 Halsburys Laws (4th Edn.) para. 27, as follows:

"27. Scandalising the Court

Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority or to interfere with the due course of justice or the lawful process of the Court is a contempt of Court.

Thus scurrilous abuse of a judge or court, or attacks on the personal character of a judge are punishable as contempts. The punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual judges of the Court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by comparison are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has

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regarded with particular seriousness allegations of partiality or bias on the part of a judge or a court.

On the other hand, criticism of a Judge's conduct, or of the conduct of a court, even if strongly worded, is not a contempt, provided the criticism is fair, temperate and made in good faith, and is not directed to the personal character of a judge or to the impartiality of a judge or a court."

I would observe finally on this question, that the opinion of Cross, J. that the article constituted a contempt of court is not an isolated one. It coincides with the considered judgment of Hassanali, J., it is supported by the appellant's deliberate confession on oath, and it is reinforced by what was no doubt the considered opinion of his senior counsel, Mr. Wells, Q.C. at the hearing of the motion, that the short story " was an abuse of Judges as judges, for bribery would be understood (by readers of it) to be misconduct in relation to litigation." By conceding that readers would have so understood the short story Mr. Wells drew an inference which in my view, was perfectly consistent with the general characteristics, attitudes, and disposition of the average reader in this country.

There is one final point to which I must refer. It was raised by Mr. Wooding, on behalf of the Society. He objected that the Society was not a proper respondent in the case and that no relief could be granted against it. Counsel for the appellant admitted that his claim for relief was against the Society alone and no one else. In particular, he said, the appellant was making no claim against the State or the Attorney General as representing the State. Mr. Wooding's objection appeared to me to be perfectly valid one.It is clearly fatal to the appellants claim even if he had made out a claim for relief otherwise against the Society since it is not the State or an arm of the State or a public authority endowed by law with coercive powers. To meet the objection Counsel for the appellant contended, that s. 6 of the Constitution gave not only a new remedy against the State, but also one against the person usurping the powers and functions of the Attorney General, to secure the imprisonment of a private person. It would suffice to say in this connexion that Maharaj v The Attorney General (No. 2)

(supra) and more particularly Lord Diplock's dictum at p. 677 id. negatives the validity of counsel's contention. It is in these terms:

"Read in the light of the recognition that each of the highly diversified rights and freedoms of the individual described in s. 1 already existed, it is in their Lordships' view clear that the protection afforded was against contravention of those rights or freedoms by the state or by some other public authority endowed by law with coercive powers."

For these reasons I would dismiss the appeal with costs.

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Isaac Hyatali
Chief Justice.

No.10
JUDGMENT OF KELSICK J.A.

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Judgment of Kelsick J.A.
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TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No. 39 of 1975

THE MATTER OF THE APPLICATION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO. 1281 OF 1972 FOR CRIMINAL CONTEMPT

BETWEEN

PATRICK CHOKOLINGO Appellant

AND

THE LAW SOCIETY OF TRINIDAD AND TOBAGO Respondent

****

In the court of Appeal.

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Coram: Sir Isaac Hyatali C.J.
M.A. Corbin J.A.
C. A. Kelsick J.A.

December 28, 1978.

Dr. F. Ramsahoye S.C., and R. Maharaj for the Appellant

A. Wharton S.C., S. Wooding S.C., and F. Solomon for the respondent.

C. Brooks (Ag. Solicitor General) and Mrs. I, Permanand for the Attorney General

J U D G M E N T

Delivered By Kelsick J.A.

The material facts and historical background to this appeal have been outlined in judgments of the Chief Justice and Corbin J.A.

These proceedings were launched under s. 6 (1) of the Constitution set out in the Second Schedule to the Trinidad and Tobago Constitution Order in Council 1962 (hereinafter referred to as "the Constitution"). That section so far as material, provided:-

"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 of this Constitution has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

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

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

.....

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections or section 7 to the protection of which

the person concerned is entitled."

In his Notice of Motion the Appellant complained if the order for his imprisonment made by the High Court (Hassanali J.) in exercise of its criminal jurisdiction for contempt of court by scandalising the court by the publication of an article in a newspaper of which he was the editor.

He sought an order declaring the order of Hassanali J. to be void and of no effect on the ground that his imprisonment was unconstitutional, null and void and of no effect because it was in violation of his fundamental rights and freedoms guaranteed under the Constitution; and also a further order for damages for his wrongful imprisonment.

The amended grounds of appeal, against the order of Cross J. dismissing his motion, were that the High Court:-

(1) erred in law in holding that the article for which the Appellant was imprisoned was a contempt of court by scandalising the Court because the article -
  (i) did not relate to any Judge or Judge's wife in their Judicial capacity;
  (ii) did not relate to the administration of justice in the Courts of Trinidad and Tobago;
  (iii) did not mean... that the Judges of the Supreme Court of Trinidad and Tobago took bribes.

(2) erred in law in holding that the respondent had locus standi in judicio to prosecute the proceedings for contempt of court after the Attorney General had declined to prosecute;

(3) ought to have held that the trial and imprisonment infringed his fundamental rights and freedoms guaranteed under sections 1 and 2 of the Constitution and in particular
  (i) his rights to liberty and not to be deprived thereof except by due process of law - in that the offence of scandalising the court was not committed by the publication of the article;
  (ii) his freedom of thought and expression which justified the writing of the article;
  (iii) the freedom of the press in keeping

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with which was the publication of the article;

(iv) his right as a person charged with a crimi criminal offence to be presumed innocent until proved guilty according to law, which was never displaced.

(4) erred in failing to determine the element of contempt by scandalising in accordance with the common law of England as received in Trinidad and Tobago and not by the common law as developed elsewhere.

It is important to observe that while the Attorney General was a defendant to the original motion he is not a respondent in the appeal and the remedies now sought are against the Law Society only.

I find it convenient to begin by considering the decision of the Privy Council in Maharaj v. the Attorney General of Trinidad and Tobago (No. 2) (1978) 2 All E. R. 670 which, if it had been given prior to the hearing before Cross J., might have been urged in limine as disentitling the appellant to sue.

That case is also relevant to the issue whether the remedies under s. 6 of the Constitution are available as against the Attorney General and no other defendants.

Dr. Ramsahoye submitted that the claim was not against the State or the judge but against the prosecutor who brought an unconstitutional prosecution, put forward in support thereof a case which did not establish an offence and procured the machinery of the State to obtain an order against him in defiance of his fundamental rights.

He also suggested that, prior to the commencement of the Constitution, a person committed by a Supreme Court of record for contempt was entitled to have his committaldeclared illegal without it being quashed or reversed on error, and that the right was entrenched by s. 6 of the Constitution.

His authority for this proposition was Bushell's case 124 E.R. at p. 1017.

That was an application for habeas corpus where a person was questioning the authority of his present imprisonment. Different considerations apply for the grant of habeas corpus. Those which are relevant to

the newly created remedy under s. 6 of the Constitution are set out in Maharaj's case, supra. Lord Diplock, who delivered the majority judgment, declared the law to be:-

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

Earlier in his judgment he had stated at pp.675 - 6:-

"At that time too there was no right of appeal on the merits against an order of a High Court judge committing a person to imprisonment for contempt of court, except to the Judicial Committee by special leave which it alone had power to grant. Nevertheless on the face of it the claim for redress for an alleged contravention of his constitutional rights under s. 1 (a) of the Constitution fell within the original jursidiction of the High Court under s. 6 (2). This claim does not involve any appeal either on fact or on substantive law from the decision of Maharaj J. that the appellant on 17th April, 1975, was guilty of conduct that amounted to a contempt of court. What it does involve is an inquiry into whether the procedure adopted by that learned judge before committing the appellant to prison for contempt contravened a right, to which the appellant was entitled under s.

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1 (a), not to be deprived of his liberty except by due process of law.....

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

The appellant has not complained or proved the non-observance of any of the rules of natural justice in the hearing of the charge for contempt before Hassanali J. The grounds of appeal allege only judicial errors of law or fact. The Court was invited to hold that Lord Diplock's statement was obiter because it could not be reconciled with his previous dicta in De Freitas v. Benny (1976) A.C. 239 at p. 245:-

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

I think that Lord Diplock intended the above cited passage from Maharaj's case supra to be the ratio decidendi in the case. It seems to have been carefully and deliberately framed to allay the misgivings of Lord Hailsham in his dissenting judgment voiced at p. 684:-

> "I am quite willing to concede that for whatever reason a failure to formulate a criminal charge including one for contempt correctly was not authorised by law at the time (which included the Bill of Rights

/[1608_7), and that failure to do so would result in a conviction being set aside on appeal where one was available. I do not find the expression 'due process' (although it is a phrase familiar to English lawyers at least as far back as the statute 28 Edw. 3 c 3 (1354), repeated in the Petition of Right (1627) and the Habeas Corpus Act 1640) any easier to define exhaustively than have the American courts, but I am very ready to assume that any failure of natural "justice such as conviction by or before a biased interested or corrupt tribunal is struck down by the prohibition or even that a complete misdirection as to the burden of proof as in Woolmington v. Director of Public Prosecutions would do so, or that interruptions by a judge if carried too far, might also be affected, since this would disrupt the conduct of the defence. If so I can see no reason to exclude a failure sufficiently to formulate the charge. Exactly at what stage deprivation of due process fades into mere judicial error I do not find it easy to say and I am right it probably never occurred to the framers of the Constitution to ask themselves this question.The results to the individual can be equally obnoxious whichever side of the line such errors fall. From the point of view of judicial integrity, judicial dishonesty is by far the most serious. From the point of view of the liability of the state to pay compensation, I am not sure that any consideration of public policy justifies these distinctions, logically unassailable as all, or some at least of them, may be. What is certain is that if I am right it does not matter for the purpose in hand, since neither class or error gives a light of damages, but if I am wrong and the majority decision is correct, a new, and probably unattractive branch of jurisprudence is almost certain to arise in Trinidad and elsewhere, based on the distinction between those judicial errors which do, and those which do not, constitute a deprivation of due process of law."

I would dismiss this appeal in compliance with judgment of the Privy Council for the reasons that all the grounds of appeal allege only judicial errors of law or fact and that the remedies sought under s. 6 of the Constitution are not available

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against the law Society but only as against the Attorney General.

However, in the event that I am wrong in this conclusion, I will comment on the three submissions which were made by Dr. Ramsahoye for the appellant. These were:-

(1) The motion by the respondent to commit the appellant for contempt was not proper having regard to their own constitution and powers.

(2) There could not be a motion to commit for contempt by the appellant when the Attorney General had declined to prosecute and the appellant was not complaining that its interest as a party to litigation had been affected.

(3) The imprisonment of the appellant was effected without his having been granted due process of law and the protection of the law, because -

(a) the impugned article did not amount to a contempt of court;

(b) the presumption of innocence guaranteed to the appellant had never been displaced.

In the third submission it is contended for the appellant that he was denied his right not to be deprived of his liberty except by due process of law guaranteed to him by s. 1 (a) of the Constitution.

The extent, and problems, of the litigation which the progenitors in the Canadian Bill of Rights of ss. 1 and 2 of the Constitution were likely to gestate were predicted in commentaries on the Bill of Rights by two Canadian and one English, jurist.

The late Professor S.A. de Smith, writing in 1961, compared the Bill of Rights with Chapter III of the 1960 Nigerian Constitution which was modelled to a large extent on the European Convention of Human Rights. The Wooding Constitution Commission recommended (unsuccessfully) that the latter model should replace the former in the Constitution for the Republic of Trinidad and Tobago.

Professor de Smith commented (10 ICLQ at p. 232):-

"The Canadian Bill of Rights may possibly have been 'drawn up in accordance with the tradi-

tions of the English-speaking world'; it is indeed 'a fairly brief document expressed in general terms'; but it is a seed-bed uncertainty. The Nigerian formulation of fundamental rights may have had exotic origins; it is a fairly long document expressed in specific terms; it may constitute the more formidable obstruction to the will of a temporary majority in a legislature; but, although it leaves room for a large measure of judicial discretion, it provided judges and legislators alike with clearer criteria and reduces the area of uncertainty."

A year later, in the same journal, Professor Bora Laskin (as he then was) the present Chief Justice of Canada prophesied (11 ICLQ at p. 530):-

"The absolute terms in which the declaratory enumeration in section 1 is couched cannot by any stretch of the imagination be realised; and neither the Government, nor anyone else schooled even slightly in the civil liberties experience of the United States, could have any illusion about the wide invitation to judicial law-making, that the formulation in section 2 extends."

In one of the earliest judgments in which the Canadian Courts had to interpret and apply the Bill of Rights, Darling J. had this to say in R. v. Gonzales (1962) 32 D.L.R. (2d) 290, 291:-

"The difficulty in interpreting and applying the very general language of the Canadian Bill of Rights has not been exaggerated. It is in my opinion, impossible at this early date to fully grasp all the implications of the Act, or to determine its application in circumstances that cannot be fully foreseen."

The case before this court is a fitting example of the problems posed, as foreshadowed by Lord Hailsham, in construing such general words without adequate guidelines. A recent case which presented some difficulty to these courts was Faultin v. The Attorney General of Trinidad and Tobago Civ. App. No. 1 of 1975 dated December 13, 1978, mentioned later in this judgment, in which the nature of the right to the presumption of innocence was considered.

I will address my attention first to the second submission which poses the question whether

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the consent of the Attorney General was a condition precedent to the lawful institution of these proceedings, which are admittedly civil in character.

The general rule is that any person, including a corporation, may institute legal proceedings, civil or criminal, without the consent of any other person including the Attorney General. Of course such consent may be, and is, mandated by numerous statutes.

A notable exception to the rule at common law is a relator action in which the concurrence of the Attorney General is generally essential.

> "A relator in an action or information is a person who is aggrieved in a matter of public interest, and who
> (a) satisfies the Attorney General that the subject matter of the action is such as to justify the use of the officer's name; or who
> (b) satisfies the court that the name of the Queen's Coroner and Attorney" should be used in the information.
>
> "Relator is the name given to a plaintiff in an information in Chancery where the rights of the Crown were not immédiately concerned who was responsible for costs."

These descriptions are extracted from Stroud's Judicial Dictionary Vol. 3 (3rd ed.) p. 2521 and Jowitt's "The Dictionary of English Law", respectively -

The consent is not a formality. The Attorney General is the real plaintiff and maintains control over the conduct of these proceedings and can terminate them at any time. See Gouriet v. Union of Post Office Workers (1977) 3 All E.R. 70 at pp. 80h, 93h to 94b. 117a:

A relator action is often a useful means of enforcing the criminal law by anticipatory or preventative action where the Commission of a criminal offence has not taken place but has only been threatened. The remedy is an injunction or declaration enforceable by committal for contempt.

The approval of the Attorney General can only be dispensed with in an action for this purpose where the relator has a special interest, such as when the threatened acts will infringe a private right of his or cause him damage.

The above principles were propounded by the House

of Lords in Gouriet's case supra, which was reported after the hearing of the motion before Cross J.

In that case the House of Lords reviewed the rights of the Attorney General and of the private citizen in civil proceedings, in contrast to their rights in criminal proceedings. Their Lordships decided that the plaintiff could not bring the relator action to which the Attorney General had refused his consent to be joined as plaintiff in the action. They reiterated the undisputed common law rule that any person can commence a private prosecution for a breach of the criminal law, and may carry it to its final conclusion unless such proceedings are discontinued by the Attorney General. (pp. 90g, h; 79g to j; 97c, d; 116a, g).

The Notice of Motion acknowledges the fact (which was not contested) that the appellant was imprisoned as a result of criminal proceedings by Hassanali J.

In Gouriet's case supra the relator action in which the Attorney General refused his consent to the appellant was an action for an injunction against the Union of Post Office Workers to restrain them from committing the criminal offence of interfering with postal communications between the United Kingdom and South Africa or in soliciting or endeavouring to procure such interference contrary to ss. 58 and 68 of the Post Office Act 1953.

The House held that relator proceedings could be brought only with the consent of the Attorney General and that the withholding of his consent was not subject to review by the Courts, (p. 114h).

There is a parallel situation whereby the Courts cannot question the exercise of the Attorney General's discretion whether or not to prosecute or to discontinue criminal proceedings or whether or not to give his consent to the commencement of criminal proceedings where such is required by statute (Gouriet's case supra pp. 88g, h).

The reasons advanced were that the Attorney General is the sole authority to bring a civil suit for infringement of public rights; and a private person could only sue where his rights were, or were threatened to be infringed, or he had suffered, or was likely to suffer, damage as a result of the contravention of the public right. The relevant principles were expounded in the judgments of Lord

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Wilberforce at p. 80 ab; Viscount Dilhorne at p. 94e; Lord Diplock at pp. 98h to 99b; Lord Edmund Davies at pp. 105a; 106b; and Lord Fraser at pp. 114g; 116j to 117a; 119d to 120a.

Dr. Ramsahoye argued that a criminal proceeding for a contempt committed ex facie curiae can only be inst instituted under the law of contempt by the Attorney General; save that where the alleged contempt concerns pending proceedings a party to the proceedings may move if his interests are affected.

In support of that proposition he quoted from Attorney General v. Times Newspapers Ltd.(1973) 3 All E.R. 54 at p. 74(d) to (f) where Lord Diplock drew attention to the practice which had developed since 1954 by which the Attorney General as representing the public interest in the administration of justice makes applications for committal for contempt on the complaint of private persons. Lord Diplock remarked:-

> "It is in a similar capacity that the Attorney General is available to assist the courts as amicus curiae and is a nominal party to a relator action."

This practice however has not disqualified those representing private interests from continuing to make such applications independently of the Attorney General.

In Gouriet's case supra it was stated that the Attorney General is not a nominal but the real plaintiff in a relator action.

My answer to the second submission is that the refusal of the Attorney General to prosecute the appellant in criminal proceedings for contempt of court did not exclude the respondent's right to prosecute for that offence, and it was competent for it to do so, even though no private interest of the respondent was, or was alleged to have been, affected.

The first contravention of due process alleged in the third submission is that the appellant was imprisoned for publishing an article which was a contempt of court by way of scandalising the court.

Dr. Ramsahoye submitted that there can be no scandalising of the court unless the impugned matter affects the work of the court directly. It must refer or relate to actual legal proceedings, pending or contemplated or to a judgment which has been pronounced.

He asserted that there has not been any reported case of a conviction for scandalising the court except in the above circumstances.

There are few reported cases on contempt by way of scandalising the court which has fallen into disuse in the United Kingdom.

In McLeod v. St. Aubyn (1899) AC. 549 a barrister was sentenced by the Acting Chief Justice of St. Vincent to 14 days imprisonment for scandalising the court by the publication of a newspaper article that was a scandalous abuse of the judge in his judicial capacity. It attacked his conduct in the trial of certain cases.

The Privy Council allowed the appeal. They found that the appellant had innocently and without any knowledge if its contents handed a copy of the newspaper to the librarian of a public library and that he was not guilty of contempt. Lord Morris in the course of his judgment made these observations at p. 561:-

"Now, what are the considerations applicable to the case? Committals for contempt of Court are ordinarily in cases where some contempt ex facie of the Court has been committed, or for comments on cases pending in the Courts. However, there can be no doubt that there is a third head of contempt of Court by the publication of scandalous matter of the Court itself. Lord Hardwicke so lays down without doubt in the case of In re Read and Huggonson.

He says, 'One kind of contempt is scandalising the Court itself.' The power summarily to commit for contempt of Court is considered necessary for the proper administration of justice. It is not to be used for the vindication of the judge as a person. He must resort to action for libel or criminal information. Committal for contempt of Court is a weapon to be used sparingly, and always with reference to the interests of the administration of justice. Hence, when a trial has taken place and the case is over, the judge or the jury are given over to criticism.

It is a summary process, and should be used only from a sense of duty and under the

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pressure of public necessity, for there can be no landmarks pointing out the boundaries in all cases. Committals for contempt of Court by scandalising the Court itself have become obsolete in this country. Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of "coloured populations, the enforcement in proper cases of committal for contempt of Court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and respect for the Court."

In R. v. Gray (1900) 2 Q.B. 36 the facts were that the defendant wrote an article in a newspaper, the details of which were not disclosed in the report of the case, but which was admitted to be a scurrilous abuse of the judge in reference to his conduct during the trial of an accused person which had ended. Lord Russel of Killowen described the nature of the contempt at p. 40:-

> "Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L.C. characterised as 'scandalising a Court or a judge.'"

He found that the contempt in question was not justifiable criticism and should be dealt with brevi manu. However he continued at p. 41

> "It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt; because, if it is not a case beyond reasonable doubt, the Courts will and ought to leave the Attorney General to proceed by criminal information."

In Attorney General v. Times Newspaper Ltd. supra the respondents had published adverse criticisms of

a defendant's conduct in resisting an action for damages that was pending.

Lord Reid, speaking in the House of Lords on the law of contempt and its relation to freedom of speech, declared at p. 60:-

"The law on this subject is and must be founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice to what is reasonably necessary for that purpose. Public policy generally requires a balancing of interests which may conflict. Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice."

This view was echoed by Lord Cross at p. 83-4:-

"When the alleged contempt consists in giving utterance either publicly or privately to opinions with regard to or connected with legal proceedings, whether civil or criminal, the law of contempt constitutes an interference with freedom of speech and I agree with my noble and learned friend that we should be careful to see that the rules as to 'contempt' do not inhibit freedom of speech more than is reasonably necessary to ensure that the administration of justice is not interfered with."

Several of the Law Lords emphasised that the contempt must present a real and serious risk of interference with the course of justice by causing harm to the parties to the litigation or to the public interest. The absence of such a risk is relevant to the punishment of the Offender.

See the judgment of Lord Reid at p. 63g to 64a; Lord Morris at p. 67c and Lord Diplock at pp. 74h to 75c.

The inference can be drawn from dicta of Lord Diplock that a contempt must be connected with particular legal proceedings, imminent, pending or completed; at least if it is to attract the summary remedy.

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Lord Diplock said at p. 71:-

"'Contempt of Court' is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms."

... ...

"All other contempts of course are classified as 'criminal contempts', whether the particular proceedings to which the conduct of the contemnor relates are themselves criminal proceedings or are civil litigation between individual citizens. This is because it is the public interest in the due administration of justice, civil as well as criminal, in the established courts of law that it is sought to protect by making those who commit criminal contempts of court subject to summary punishment. To constitute a contempt of court that attracts the summary remedy, the conduct complained of must relate to some specific case in which litigation in a court of law is actually proceeding or is known to be imminent. Conduct in relation to that case which tends to undermine the due administration of justice by the court in which the case will be disposed of, or which tends to inhibit litigants in general from seeking adjudication by the court as to their legal rights or obligations, will affect not only the public interest but also - and this more immediately - the particular interests of the parties to the case.";

and at p. 73 he made specific mention of the offence of scandalising the court:-

"Contempt of court, except the rare offence of scandalising the court after judgment, is committed before the trial is concluded..... Contempt of court is punishable because it undermines the confidence not only of the parties to the particular litigation but also of the public as potential suitors, in the due administration of justice by the established courts of law."

On the role of the Attorney General and the

right of a private person to prosecute for a contempt, reported bysuch person to the Attorney General, where he declines to do so, Lord Cross made this pronouncement at p. 87:-

> "If he (the Attorney General) takes them up he does not do so as a Minister of the Crown behind the complaint' - but as 'amicus curiae' bringing to the notice of the court some matter of which he considers that the court shall be informed in the interests of the administration of justice. 'It is, I think, most desirable that in civil as well as in criminal cases anyone who thinks that a criminal contempt of court has been or is about to be committed should, if possible, place the facts before the Attorney General for him to consider whether or not those facts appear to disclose a contempt of court of sufficient gravity to warrant his bringing the matter to the notice of the court. Of course, in some cases it may be essential if an application is to be made at all for it to be made promptly and there may be not time for the person affected by the 'contempt' to put the facts before the attorney before moving himself. Again the facts that the attorney declines to take up the case will not prevent the complainant from seeking to persuade the court that notwithstanding the refusal of the attorney to act the matter complained of does in fact constitute a contempt of which the court should take notice. Yet again, of course, there may be cases where a serious contempt appears to have been committed but for one reason or another none of the parties affected by it wishes any action to be taken in respect of it. In such cases if the facts come to the knowledge of the attorney from some source he will naturally himself bring the matter to the attention of the court."

In Borrie and Lowe's"The Law of Contempt" the view is expressed at p. 153:-

> "It should be said at the outset that the court can be scandalised at any time, whether the words said or acts done occur before, during or after a trial and indeed <u>without reference to any trial</u> at all."

<u>R. v. Gray supra</u>, which is cited by the authors does not in my view support this statement of the law;

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for the contempt there related to a trial. The above opinion was expressed before the decision in the Times Newspaper case supra.

In Attorney General v. Butterworth (1962) 3 All E.R. 326, 332 Donovan J. declared:-

"I refer to two matters which seem to me to show that contempt of court is not an offence confined to pending cases. First, scurrilous abuse of a judge after the case is over cannot affect that case. It can affect only future cases which he tries, by reducing his authority. Yet it is certainly contempt."

The contempt was the victimisation of a witness by a member of the same federation because of evidence which the witness had given before a court of law, Denning M.R. said at p. 329:-

"I have no hesitation in declaring that the victimisation of a witness is a contempt of court, whether done whilst the proceedings are still pending or after they have finished. Such a contempt can be punished by the court itself before which he has given evidence."

These quotations also appear to assume that the abuse must be directed to a particular judge and cause and not to the court, or its work, in general.

This approach is in harmony with the remarks of Lord Diplock in the Times Newspaper case supra.

These cases clearly establish that there is today in Trinidad and Tobago an offence of scandalising the court and that it may be prosecuted by a private citizen where the Attorney General declines so to do.

However the summary remedy which was resorted to against the appellant was not in my opinion available against him, because the contempt did not relate to any specific cause as contemplated by Lord Diplock.

The other fundamental right of the respondent which in the third submission it is claimed was infringed was the appellant's right to the presumption of innocence. This right is protected by s. 2 (f) of the Constitution, which prohibits any law to abrogate, abridge or infringe any of the rights specified therein, including the right of a person charged with a criminal offence to be presumed innocent until proven guilty according to law.

As mentioned above it was contended for the respondent that due process is not confined to the observance of the rules of natural justice but embraces the right to the presumption of innocence which is a particularisation of due process. (De Freitas v. Benny supra).

In Faultin's case supra, I reviewed the authorities in which the nature of that right has been analysed.

The Courts of Canada and England have assimilated the right to the reasonable doubt procedural rule laid down by Lord Sankey in Woolmington v. the Director of Public Prosecutions (1935) A.C. 462, 481.

In Regina v. Appleby (1972) S.C.R. 303 Mr. Justice Bora Laskin (as he then was) said, at p. 317, that the right to be presumed innocent guaranteed under s. 2 (f) of the Canadian Bill of Rights (from which s. 2 (f) of the Constitution was copied) gives the accused:-

> "the initial benefit of a right of silence and the ultimate benefit (after the Crown's evidence is in and as well any evidence tendered on behalf of the accused) of any reasonable doubt."

The inference could fairly and properly have been drawn from the contents of the article which was admitted in evidence before Hassanali J. that it scandalised the courts beyond reasonable doubt.

I would have held that the presumption of innocence was desplaced and that the appellant's right thereto was not infringed or abrogated.

With regard to the first submission, after careful consideration my initial doubts, as to whether ss. 2 and 3 of the Trinidad and Tobago Law Society (Incorporation) Act 1962 impliedly empowered the respondent to enter this suit, have been dispelled.

I find that the respondent lawfully commenced these proceedings before Hassanali J. and adopt the reasoning of the Chief Justice on this issue.

I would however add that Judges are members of the legal profession and that measures designed to uphold the respect for, and dignity of the judges by denouncing and punishing unwarranted and unjustified attacks on their integrity and impartiality do support and protect the character and status of the Courts and of the judges who adjudicate therein. The interests of members of the

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legal profession who appear before the judges to present the cases of their clients are also indirectly protected by such actions.

Accordingly I do not accept the first submission.

In the final result I hold that the appellant is not entitled to any of the reliefs prayed for and this appeal should be dismissed with costs,

C.A. Kelsick,
Justice of Appeal.

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Judgment of Corbin J.A.

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

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Civil Appeal
No. 39 of 1975

THE MATTER OF THE APPLICATION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO. 1281 of 1972 FOR CRIMINAL CONTEMPT

Between

PATRICK CHOKOLINGO — Appellant

And

THE LAW SOCIETY OF TRINIDAD AND TOBAGO — Respondent

December 28, 1978.

Dr. F. Ramsahoye, S.C. and R. Maharaj for the Appellant.
J.A.Wharton, Q.C. H.A.S. Wooding, Q.C. and F. Solomon for the respondent
C. Brooks and Mrs J. Permanand for the Attorney General.

J U D G M E N T

Delivered by Corbin J.A.

The appellant is and was at all material times the editor of a weekly newspaper "THE BOMB" with a circulation in Trinidad and Tobago. On Friday 26th May, 1972 there appeared in that issue of the newspaper an article headed: "The Judge's Wife - Short Story by David Lincott."

Following the publication the Trinidad and Tobago Law Society ("the Law Society") obtained leave to in-

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stitute proceedings in the High Court - (No. 1218 of 1972) - by way of motion for the issue of a Writ of Attachment or an Order of Committal against the appellant for contempt of court in respect of the said publication.

On the 24th June, 1972 the appellant swore to an affidavit filed in the said proceedings in which he averred, inter alia, that he had been advised by counsel and consequently accepted that the publication amounted to a contempt of court. At the hearing of the motion on 17th August, 1972 counsel for the appellant conceded that the article constituted a contempt.

Hassanali J. before whom the matter was heard held the publication to be a "scandalous and scurrilous attack on the Judges of the country in the charge that they accept bribes", and committed the appellant to prison for 21 days without hard labour. He also ordered the appellant to pay the costs of the motion as between solicitor and client. As the law then stood the appellant did not have a right of appeal except by special leave to Privy Council which he did not pursue but after he had served 21 days the remainder of the sentence was remitted.

On 31st January, 1975 the appellant moved the Court for the following relief:

(a) a declaration that the order made against him by the High Court in the exercise of its criminal jurisdiction in proceedings No. 1218 of 1972 is unconstitutional, null and void and of no effect;

(b) a further declaration that the imprisonment of the appellant suffered under the said order was illegal and a violation of the human rights and fundamental freedoms guaranteed to the appellant by the Constitution of Trinidad and Tobago and in particular by section 1 thereof;

(c) a further order directing the respondent the Trinidad and Tobago Law Society to pay to the appellant such damages as the Court may assess to have been suffered by the appellant by his wrongful imprisonment under the said order and a further order that costs in the sum of $11,369.27 paid by the appellant to the Trinidad and Tobago Law Society be repaid by the said Society to the appellant;

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

(e) an order that the Trinidad and Tobago Law Society do pay the costs of these proceedings.

This motion came on for hearing before Cross, J. and was dismissed on 28th April, 1975.

Against that order the appellant appealed on six grounds but at this hearing counsel confined his submissions under three main heads, viz:

(1) the Law Society could not properly bring a motion to commit the appellant for contempt having regard to the terms of their own constitution;

(2) The Law Society could not bring a motion for contempt when the Attorney General had declined to prosecute and when the Law Society was not a party to any pending litigation out of which the contempt arose;

(3) The imprisonment of the appellant was effected without due process of the law because:

(a) The impugned article did not constitute contempt of court since there had been no scandalising of a Judge; and

(b) The presumption of innocence had not been displaced.

It will be convenient to deal with the first and second heads together. In support of his contention under the second head counsel relied on the case of Gouriet v. Union of Post Office Workers (1977) 3 All E.R. 70 and submitted that although an application to commit for contempt may be made either by the Attorney General or by a party to a pending action, the Attorney General is the only one who may move when no proceedings are pending; further that in adversary litigation a private individual may move only where his private interest is affected.

The situation in Gouriet's case was very different from the circumstances of the instant appeal, and that decision is of no avail to the appellant. Gouriet's case dealt with a relator action in which a private individual was seeking to restrain a threatened breach of the Post Office Act 1953. It was held that except where statute otherwise provides, a private person can bring an action to restrain such a threatened breach only if his claim is based on an allegation that the threatened breach would constitute an infringement of

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his private rights and would inflict special damage on him. In the instant case however the Law Society is alleging that the appellant had committed a criminal offence of contempt by scandalising the Courts, and the Society moved the Court for a Writ of Attachment for contempt. The application was in the nature of a criminal information. The right of an individual to enforce the law where a criminal offence has been committed was fully explained and emphasised by Viscount Dilhorne in Gouriet's case (supra) at p. 90 where he said:

"The criminal law is enforced in the criminal courts by the conviction and punishment of offenders, not in the civil courts."

.....

"There are a number of statutory offences for the prosecution of which the consent of the Attorney-General or of the Director of Public Prosecutions is required but apart from these offences, anyone can if he wishes start a prosecution without obtaining anyone's consent. The enforcement of the criminal law does not rest with the civil courts or depend on the Attorney-General alone."

And at p. 97 Lord Diplock expressed his opinion that:

"In English public law every citizen still has the right, as he once had a duty (though of imperfect obligation) to invoke the aid of courts of criminal jurisdiction for the enforcement of the criminal law by this procedure. It is a right which nowadays seldom needs to be exercised by an ordinary member of the public for since the formation of regular police forces charged with the duty in public law to prevent and detect crime and to bring criminal to justice and the creation in 1879 of the office of Director of Public Prosecutions, the need for prosecutions to be undertaken (and paid for) by private individuals had largely disappeared; but it still exists and is a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against criminal law".

See also Morris v The Crown Office (1970) 1 All E.R. 1079 per Lord Salmon at p. 1087.

Similar views are found in the report published

by the Phillimore Committee and in the judgment of Vaisey, J. in Re G's Application (1954) 2 All E.R. 794.

By its motion here the Law Society was bringing the contempt to the attention of the Court in the same way as was done in Moore v Clerk of Assize, Bristol (1972) 1 All E.R. 58.

In A.G. v Times Newspapers Limited (1973) 3 All E.R. 54, 87 Lord Cross gave as his opinion:-

"It is, I think, most desirable that in civil as well as in criminal cases anyone who thinks that a criminal contempt of court has been or is about to be committed should, if possible, place the facts before the Attorney-General for him to consider whether or not those facts appear to disclose a contempt of court of sufficient gravity to warrant his bringing the matter to the notice of the court, Of course, in some cases it may be essential if an application is to be made at all for it to be made promptly and there may be no time for the person affected by the 'contempt' to put the facts before the attorney before moving himself. Again the fact that the attorney declines to take up the case will not prevent the complainant from seeking to persuade the court that notwithstanding the refusal of the attorney to act the matter complained of does in fact constitute a contempt of which the court should take notice. Yet again, of course, there may be cases where a serious contempt appears to have been committed but for one reason or another none of the parties affected by it wishes any action to be taken in respect of it. In such cases if the facts come to the knowledge of the attorney from some other source he will naturally himself bring the matter to the attention of the Court".

In my judgment these authorities establish beyond a doubt that except where otherwise provided by statute the right exists in a private individual to enforce criminal law without the consent of the Attorney General or those authorities whose duty it is to prosecute offenders against criminal law.

I turn then to consider whether the Law Society being an artificial person who can act only within the powers derived from its Constitution has been given that right.

The objects of the Society are set out in section 3

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(continued)

of the Trinidad and Tobago Law Society (Incorporation) Act No. 29 of 1969 and the relevant parts of that section read thus:

"The objects of the society are:-

(a) to support and protect the character status and interest of the legal profession generally and particularly of solicitors practising within Trinidad and Tobago.

(b)

(c) to consider all questions affecting the interests of the legal profession and to initiate and to watch over and if necessary to petition the Parliament of this country or promote deputations in relation to general measures affecting the professions and to procure changes of law and practice and the promotion of improvements in the principles and administration of law".

It was submitted on behalf of the appellant that this section limits the powers of the Law Society to protecting the interests and welfare of the legal profession in its dealings with the public and that the term "legal profession" refers to practitioners only, and does not relate to the administration of justice. I do not accept this interpretation of the section. I think that the expression used, and especially the words "to support and protect the character, status and interest of the legal profession generally" together with the expression "the promotion of improvements in the principles and administration of the law" are sufficiently wide to include the administration of justice in which the Society has substantial interest. Be that as it may, even if Hassanali J. erred in holding that an individual has the right to institute criminal proceedings and that the law Society did have the "Vires" to do so that is not an end to the matter. The question still remains whether the judge's errors would entitle the appellant to apply for redress under section 6 of the Constitution, and with this I shall deal at a later stage.

So much for the first and second heads of complaint. The gravamem of Counsel's complaint under the third head was two fold. First, he contended that the appellant was convicted of something which did not amount to contempt. He conceded that there is a category of contempt known as scandalising, but contended, that this does not arise here since the article did not relate to any pending proceedings and was not

referrable to a particular judge as a Court.

That "scandalising" can arise without reference to pending proceedings is clearly illustrated in the judgment of Donovan, L.J. in R. v. Butterworth (1962) 3 All E.R. 326 where he said at p. 332:

> "I refer to two matters which seem to me to show that contempt of Court is not an offence confined to pending cases. First scurrilous abuse of a judge after the case is over cannot affect that case. It can affect only further cases which he tries, by reducing the authority. Yes it is certainly contempt."

Vide also the judgment of Rich J. in R. v. Dunbabin and anor. Ex. parte Williams (1935) 53 C.L.R. 434, 442.

The learned authors of Borrie andLowe on the law of Contempt (1973) Ed. at p. 153 also express the view that personal abuse of a judge as judge can amount to contempt because if tends to bring the administration of justice generally into disrepute. Counsel's second limb was that since the article did not amount to a contempt the appellant had been convicted of a crime which was not proved, and consequently there was a failure by the prosecution to displace the presumption of innocence which can only be removed by evidence sufficient to establish the charge beyond reasonable doubt. A conviction in such circumstances, he said, would amount to a denial of "due process" such as would entitle the appellant to apply for redress under section 6 of the Constitution.

In Maharaj v. The Attorney General of Trinidad and Tobago (No. 2) (1978) 2 All E.R. 670 it was held that section 6 of the Constitution of Trinidad and Tobago 1962 created a new remedy against any interference with the rights and freedom protected by section 1 which would have been unlawful under the previously existing law but that:

> ".... no human right or fundamental freedom recognised by Chapter 1 of the Constitution is contravened by a judgement or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. When there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infalliable but to one that is fair. It is only errors in pro-

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cedure that are capable of constituting infringements of the rights protected by s. 1 (a), and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice."

Counsel submitted, however, that this passage should not be interpreted as meaning that the rules of natural justice related only to breach of the "audi alteram partem" rule or instances of bias, and that the expression "due process" embraces more than that. It would include a failure to displace the presumption of innocence, he said, because the maxim "nulla poena sine legit" is fundamental to all criminal proceedings and an accused person could not have a trial in accordance with natural justice where the prosecution did not make out a case.

In support of his proposition he relied on the case of Thompson v Louisville 362 U.S. 199. He urged this Court to follow that decision and to say without reference to the decision in Maharaj's case that, it follows from the case of de Freitas v. Benny (1969) A.L. 239 that the right guaranteed by section 2 (f) of the Constitution forms part of the "due process" rule.

I do not agree, however, that there is a failure of natural justice if a person isconvicted of an offence without there being sufficient evidence to support it or on evidence which does not establish it. The rules of natural justice which are well known do not embrace such a situation nor have they any reference to the presumption of innocence.

Only errors in procedure entitle a person to complain under Section 6 that there has been a deprivation of his life, liberty and property without due process of law. In other cases where there has been a deprivation by error of substantive law there is no remedy under Section 6. This is the effect of the decision in Maharaj's case.

Thompson's case is in conflict with Maharaj's case by which this Court is bound. It cannot, therefore, assist the contention of the appellant.

It must be borne in mind that this is an appeal from the order of Cross J. who dismissed the appellant's motion for redress for an infringement of his rights and not an appeal from the order of Hassanali, J. who committed the appellant to prison. Nevertheless it is necessary to examine the validity of the latter order in considering whether Cross, J. was right to dismiss

the appellant's motion.

What then is the result if Hassanali, J. erred in holding, as he did that:

(1) An individual has the right to institute criminal proceedings;

(2) The Law Society was competent to function as an individual for the purpose of bringing the motion; and

(3) The article was in contempt of Court.

The answer is that even if he erred, which I hold he did not, these would all be judicial errors in substantive law which (as I have shown on the authority of the decision in Maharaj's case) do not give rise to a claim for redress under section 6.

It would follow that the order of Cross J. was correct even though arrived at by different reasoning because he did not have the advantage of the advice given by the Learned Law Lords in Maharaj's case (supra) which was decided later.

There is, however, another point to be considered. It was submitted by counsel for the Law Society that the appellant was wrong to name the Society as respondent since it is not a judical arm of the State and had made no order. The real complaint, he said, is against the order of Hassanali, J. in which event the proper respondent would be the Attorney General.

It seems to me that the decision in Maharaj's case (supra) is complete authority for counsel's contention. In that case Lord Diplock at p. 675 expressed his opinion in these terms:

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

And at p. 677.

> "Read in the light of the recognition that each of the highly diversified rights and freedoms of the individual described in s 1 already

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(continued)

existed, it is in their Lordships' view clear that the protection afforded was against contravention of those rights or freedoms by the state or by some other public authority endowed by law with powers. The chapter is concerned with public law, not private law. One man's freedom is another man's restriction; and as regards infringement by one private individual of rights of another private individual, s 1 implicitly acknowledges that the existing law of torts provided a sufficient accommodation between their conflicting rights and freedom to satisfy the requirement of the new Constitution as respect those rights and freedoms that are specifically referred to."

Lord Hailsham supported the majority view on this point although he differed from them on other aspects of the appeal, and at p. 681 he said:

"On the assumption (which I make for this purpose) that the remedy of damages is otherwise available to the appellant against the state, it appears to me that the Attorney-General is the appropriate party by virtue of s 19 of the State Liability and Proceedings Act 1966".

As I understand it, sections 1 and 2 of Chapter 1 of the Constitution of Trinidad and Tobago, 1962 prohibit contravention by the State of any of the fundamental rights declared and recognised therein but afford no protection against infringement by a private individual, and consequently the appellant could not seek redress for any infringement which may have been committed by the Law Society.

This point also would be fatal to the appellant's motion. In the event that the view which I take on these aspects of the law is not maintainable, I turn to consider whether the article does constitute a contempt for which the appellant could properly be imprisoned.

It is necessary then to examine the impugned article in the light of the relevant decision and to decide whether it exposes the judges to ridicule in a way which amounts to scandalising the courts. The article should be looked at as a whole without seeking to explain away individual passages in isolation and should be assessed by bearing in mind the mentality of the average reasonable person who would read it.

It would be difficult in my view for a reasonable person to interpret the article otherwise than as alleging that judges take bribes, and this must be a reference to them in their work in court since no reasonable person would understand it to refer to their conduct in some charity competition or other sphere. The tenor of the entire article relates to judges as a body.

The real criterion in my view is whether the article tends to undermine the confidence which the public should be able to feel in the complete impartiality of the judiciary. The test is not what effect the writer intended but what is the likely result of the publication. (R. v. Murphy 4 D.L.R. 289 or 294). Erosion of trust can take place even if the reference is not directed at the conduct of the judge in Court but rather is aimed at his conduct qua judge out of Court without reference to any particular case. In either instance the result must be to create distrust and cause the public to loss faith in the ability of the Courts to protect their freedoms. The protection afforded by the law of contempt is aimed primarily at preventing undue interference with the administration of justice, and is concerned with protection the processes from abuse and derogatory articles. It is not the interference with a particular individual which is important rather it is the tendency to bring the administration of justice into disrepute causing litigants and prospective litigants to lose confidence in the Courts' impartiality and integrity. It is important to maintain respect for the Court and its officers, because without it the law itself would fall into disrepute.

In deciding whether an article is derogatory it is often necessary to have regard to the gist of it to determine its true import. It is not necessary to prove that the words are intended to scandalise but only that they have a tendency to do so. As Wilmot, J. said in R. v. Almon 97 E.R. 94, 100. "An attack upon Judges excites in the minds of the people a general dissatisfaction with all Judicial determinations..." There is no reason to suppose that the minds will be excited any less if the allegation is of corruption in one judge then if it is a slur on the judiciary as a whole.

Counsel for the appellant also submitted that in assessing the article one should have regard to the freedom of the press. He urged that people have a basic freedom to think and publish, and that it is these freedoms of the public which must be protected not the

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(continued)

sensitivity of judges. As I have already sought to show, the rights of the public must be preserved by protecting it from articles which would destroy its confidence in the judiciary and in the administration of justice. The constitutionally recognised freedom of the press cannot be intended to be used as a licence for libel because as Lord Russell put it so lucidily in R. v. Gray (1900) 2 Q.B. 36, 40:

> "Judges and Courts are all open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen".

In the Times Newspaper case (supra) Lord Reid was equally emphatic when he said at p. 60.

> "Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice."

It would not, in my view, be justifiable to seek to ensure the freedom of the press at the cost of subjecting the administration of justice to wholly unwarranted abuse. Applying those principles to the present case I have no doubt that the article published by the appellant does scandalise the Courts and, in my judgment, he was properly committed to prison for contempt.

In the result I hold that Cross J. was right in dismissing the motion and I would dismiss the appeal with costs.

M.A.Corbin
Justice of Appeal

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 39 OF 1975.
HIGH COURT ACTION NO. 81 OF 1975(San F'do.)

ON APPEAL FROM
IN THE HIGH COURT EXERCISING JURISDICTION
UNDER SECTION 6 OF THE CONSTITUTION.

IN THE MATTER OF THE CONSTITUTION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO. 1281 OF 1972 FOR CRIMINAL CONTEMPT.

BETWEEN

PATRICK CHOKOLINGO
APPLICANT/APPELLANT

AND

THE LAW SOCIETY OF TRINIDAD AND TOBAGO
RESPONDENT/RESPONDENT

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DATED AND ENTERED THE 28TH DAY OF DECEMBER 1978.
BEFORE THE HONOURABLES THE CHIEF JUSTICE SIR ISAAC HYATALI
MR. JUSTICE MAURICE CORBIN
MR. JUSTICE CECIL KELSICK

UPON READING the Notice of Appeal filed on behalf of the Applicant/Appellant and dated the 1st day of May, 1975 and the Judgment hereinafter mentioned

UPON READING the record filed herein

UPON HEARING Counsel for the Applicant/Appellant and Counsel for the Respondent/Respondent

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED

(1) That this Appeal be dismissed

(2) That the Order of the Honourable Mr. Justice Ulric Cross dated the 28th day of April, 1975 be affirmed

(3) That the Applicant/Appellant do pay to the Respondent/ Respondent the taxed costs of this hearing of this Appeal

(4) That the question of costs for the aborted hearing of this Appeal be reserved to be brought on by Notice.

Sgd. Cecil H. Pope.
Assistant Registrar.

No.12

Formal Order of Court of Appeal.

REPUBLIC OF TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

High Court Action
No. 1403 of 1972.

Appeal No. 31 of 1976.

Between

KEN GORDON Plaintiff

10 And

AJODHA SINGH AND PATRICK CHOKOLINGO Defendants

* * * * * * *

IN CHAMBERS

Before The Honourable Mr. Justice S.G. Maharaj,
On the 10th day of June, 1976.
Dated this day of June, 1977.

This action coming on for trial on the 31st May, 1974 and 10th June, 1979 and upon hearing Counsel for the Plaintiff and Defendants.

20 IT IS ORDERED

That the Claim against the first Defendant be dismissed with costs to be taxed and paid by the Plaintiff.

AND IT IS FURTHER ORDERED

That judgment be entered for the plaintiff against the second Defendant for damages in the sum of $25,000.00 with costs of suit to be taxed and paid by the said second Defendant.

AND IT IS FURTHER ORDERED

30 That the sum of $1,000.00 deposited into Court to the credit of this action on the 20th July, 1973 be paid out to the Plaintiff on account of the judgment of $25,000.00 awarded herein.

Registrar.

No. 13

In the Court of Appeal.
No.13

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

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

23rd Feb., 1979.

REPUBLIC OF TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

No. 81 of 1975 HIGH COURT SAN F'DO.

No. 39 of 1975 CIVIL APPEAL.

ON APPEAL FROM

THE HIGH COURT EXERCISING JURISDICTION UNDER SECTION 6 OF THE CONSTITUTION

IN THE MATTER OF THE CONSTITUTION OF PATRICK CHOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF ON THE GROUNDS THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO. 1281 of 1972 FOR CRIMINAL CONTEMPT

Between

PATRICK CHOKOLINGO Applicant/Appellant

And

TRINIDAD AND TOBAGO LAW SOCIETY
Respondent/Respondent.

In the Court of Appeal.
No.13

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

23rd Feb. 1979.

(continued)

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Coram. The Honourable Chief Justice
Sir Isaac Hyatali and Corbin J.A. Kelsick J.A.

Made the 10th day of January, 1979.
Entered the 23rd day of February, 1979.

Upon the Motion of the above named Applicant/ Appellant dated the 28th day of December, 1978 for leave to appeal to the Judicial Committee of the Privy Council against the judgment of the Court of Appeal (the Hon. Chief Justice, Sir Isaac Hyatali and Corbin J.A. Kelsick J.A.) delivered herein on the 28th day of December, 1978.

AND UPON READING the Notice of Motion and the affidavit of the Applicant/ Appellant's Solicitor sworn to on the 14th day of March, 1979 and filed in support thereof.

AND UPON HEARING Counsel for the Applicant/ Appellant and for the Respondent/Respondent.

THE COURT DOTH ORDER that subject to the performance by the said Applicant/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 the Judicial Committee of the Privy Council against the said judgment of the Court of Appeal be and the same is hereby granted to the Applicant/Appellant.

AND THIS COURT DOTH FURTHER ORDER that the Applicant/Appellant do within six (6) weeks from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of Two Thousand Dollars ($2,000.00) with one or more securities or deposit into Court the said sum of Two Thousand Dollars ($2,000.00) for the due prosecution of the said appeal and for the payment of all such costs as may become payable to the Respondent/Respondent in the event of the Applicant/Appellant not obtaining an

In the Court of Appeal.

No.13

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

23rd Feb. 1979.

(continued)

order granting final leave to appeal or of the appeal being dismissed for non-prosecution or such costs as may be awarded by the Judicial Committee of the Privy Council to the Respondent/ Respondent on such appeal.

NOW THIS COURT DOTH FURTHER ORDER that all costs of and occasioned by the said appeal shall abide the event of the said appeal to the Judicial Committee of the Privy Council if the said Appeal shall be allowed or dismissed or shall abide the result if the said appeal in case the said appeal shall stand dismissed for want of prosecution.

AND THIS COURT DOTH FURTHER ORDER THAT the Applicant/Appellant do within four (4) months 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 Respondent/Respondent have been complied with.

AND THIS COURT DOTH FURTHER ORDER that the Applicant/Appellant be at liberty to apply within five (5) months from the date of this order for final leave to appeal as aforesaid on production of a certificate under the hand of the Registrar of this court of due compliance on his part with the conditions of this order.

AND THIS COURT DOTH FURTHER ORDER that there be a stay of execution of the order for costs made by this court on the determination of the appeal on the 28th day of December, 1978 and that the costs of and incidental to this application be costs in the cause.

Liberty to Apply.

By the Court:

REGISTRAR.

No. 14

Order Granting Final leave to appeal to the Judicial Committee of the Privy Council.

In the Court of Appeal.
No.14

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

21st June, 1979.

REPUBLIC OF TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

No. 81 of 1975 High Court San Fernando.

No. 39 of 1975 Civil Appeal

ON APPEAL FROM

IN THE HIGH COURT EXERCISING JURISDICTION UNDER SECTION 6 OF THE CONSTITUTION.

IN THE MATTER OF THE APPLICATION OF PATRICK CHOOKOLINGO UNDER SECTION 6 OF THE SAID CONSTITUTION FOR RELIEF OF THE GROUND THAT THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICULAR SECTION 1 THEREOF HAVE BEEN CONTRAVENED IN RELATION TO HIM BY AN ORDER OF THE HIGH COURT MADE IN PROCEEDINGS NO. 1281 OF 1972 FOR CRIMINAL CONTEMPT.

BETWEEN

PATRICK CHOKOLINGO

Applicant/Appellant

AND

THE TRINIDAD AND TOBAGO LAW SOCIETY

Respondent/Respondent.

* * * * * * * *

Before: The Honourable Chief Justice Sir Isaac Hyatali.
The Honourable Mr. Justice M. Corbin J.A.
The Honourable Mr. Justice C. Kelsick J.A.

Made the 30th day of May, 1979.
Entered the 21st day of June, 1979.

In the Court of Appeal.

No. 14

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

21st June, 1979.

(continued)

UPON the Application of PATRICK CHOKOLINGO preferred unto this Court by Motion on the 15th day of May, 1979 for final leave to appeal to the judicial Committee of the Privy Council against the judgment of this Court dated the 28th day of December, 1978.

AND UPON HEARING Counsel for the Applicant and for the Respondent and upon being satisfied that the terms and conditions imposed by the Order dated the 18th day of January, 1979 have been complied with.

10

THIS COURT DOTH ORDER that final leave be and is hereby granted to the said Applicant to Appeal to the Judicial Committee of the Privy Council.

/s/ Conrad Douglin
Registrar.