

IN THE PRIVY COUNCIL

No. 37 of 1985

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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IN THE MATTER of the interpretation of  
the Constitution of Trinidad and Tobago  
and in particular Section 136

B E T W E E N :

PETER SOOKOO (an infant by  
Harry Sookoo his father and next  
friend) and HARRY SOOKOO (Plaintiffs) Appellants

- and -

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO (Defendant) Respondent

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R E C O R D O F P R O C E E D I N G S

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Ingledeu, Brown, Bennison  
& Garrett  
International House  
26 Creechurch Lane  
London  
EC3A 5AL

Solicitors for the Appellants

Charles Russell & Co.  
Hale Court  
Lincoln's Inn  
London  
WC2A 3UL

Solicitors for the  
Respondent

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O N A P P E A L

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IN THE MATTER of the interpretation of  
the Constitution of Trinidad and Tobago  
and in particular Section 136

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THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO (Defendant) Respondent

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R E C O R D O F P R O C E E D I N G S

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No. 1

Letter, Chief Justice C.A. Kelsick to His  
Excellency Mr Ellis Clarke

In the High  
Court of  
Justice

June 28, 1985

No. 1  
Letter, Chief  
Justice C.A.  
Kelsick to  
His Excellency  
Mr Ellis Clarke

His Excellency Mr. Ellis Clarke T.C.,  
President,  
President's House,  
ST. ANN'S

28th June 1985

Yours Excellency,

10

I will attain the retiring age of 65 on  
15th July, 1985. There are several matter on which I  
have adjudicated that are part heard or in which judgment  
has been reserved.

Under Section 136(2) of the Constitution,

I advise Your Excellency to grant me permission to continue  
in office until December 21, 1985 which is the end of the  
short term, so as to enable me to deliver judgment and to  
do any other thing in relation to proceedings that were  
commenced before me prior to my attaining the retiring  
age.

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Yours sincerely,

Sgd: C. A. Kelsick  
.....  
CHIEF JUSTICE

In the High  
Court of  
Justice

---

No. 2

Letter, His Excellency Mr Ellis Clarke to  
Chief Justice C.A. Kelsick

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No. 2  
Letter, His  
Excellency  
Mr Ellis Clarke  
to Chief

28th June, 1985.

Justice C.A. Kelsick

The Honourable the Chief Justice  
Mr. Cecil Kelsick,  
Chief Justice's Chambers,  
Supreme Court,  
PORT OF SPAIN.

28th June  
1985

Dear Chief Justice,

10

I acknowledge receipt of your letter of  
June 20, 1985.

Pursuant to Section 136(2) of the  
Constitution I hereby permit you to continue in office as  
Chief Justice until December 21, 1985 this being the  
period necessary to enable you to deliver judgment or to  
do any other thing in relation to proceedings that were  
commenced before you before July 15, 1985.

Yours sincerely,

Sgd: Ellis Clarke  
.....  
PRESIDENT

20



16th July 1985

# TRINIDAD AND TOBAGO GAZETTE

## (EXTRAORDINARY)

VOL. 24

Port-of-Spain, Trinidad, Tuesday, 16th July, 1985—Price 18c.

No. 202

1419

### APPOINTMENT OF CHIEF JUSTICE

IN accordance with section 102 of the Constitution of the Republic of Trinidad and Tobago, His Excellency the President, has after consultation with the Prime Minister and the Leader of the Opposition, appointed MR. JUSTICE CLINTON BERNARD, a Justice of Appeal, to the Office of CHIEF JUSTICE, with effect from the date on which Mr. Justice CECIL KELSICK vacates that office. The appointment was made on Friday, 12th July, 1985.

15th July, 1985.

J. TAM  
*Secretary to His Excellency  
the President*

1420

### REAPPOINTMENT OF MEMBERS OF THE VICTORIA EAST LOCAL PUBLIC ASSISTANCE BOARD

THE PUBLIC is hereby notified that in accordance with section 8(3) of the Public Assistance Act, Chap. 32:03, the Minister of Labour, Social Security and Co-operatives has been pleased to reappoint MR. JOHN DUBE from 6th May, 1985 and MR. ALTON FARRELL from 16th June, 1985 as Members of the Victoria East Local Public Assistance Board for a further period of two (2) years.

A. SALANDY  
*Permanent Secretary,  
Ministry of Labour, Social Security  
and Co-operatives*

1421

### CANCELLATION OF MARRIAGE OFFICER'S LICENCE

UNDER the provisions of the Marriage Act, Chap. 45:01, the Minister of Legal Affairs has cancelled the Marriage Officer's Licence granted to and in the name of AMAR BEHARRY RAMBISOON of the Pentecostal Church of God, notice of which was given in the *Trinidad and Tobago Gazette*, Volume 12, Number 119, Item Number 1240, dated 10th May, 1973.

Dated this 8th day of July, 1985.

L. INNIS  
*for Permanent Secretary,  
Ministry of Legal Affairs*

Originating Summons

Originating  
Summons

16th July 1985

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando

In the Matter of the Interpretation of the  
Constitution of Trinidad and Tobago and in  
particular Section 136.

No: S1292 of 1985.

Between

10

PETER SOOKOO ( An Infant  
by Harry Sookoo, his father  
and next friend) and  
HARRY SOOKOO

Plaintiffs

And

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO.

Defendant

\*\*\*\*\*

LET THE DEFENDANT THE ATTORNEY GENERAL OF TRINIDAD 20  
AND TOBAGO attend before the Judge in Chambers at the High  
Court of Justice, Harris Promenade, in the town of San  
Fernando on the 18<sup>th</sup> day ~~of~~ July ~~day of~~ 1985, at  
9 o'clock in the forenoon on the hearing of an application  
by the Plaintiffs for the Court to determine the follow-  
ing questions:-

- (1) Whether upon the true construction of Section  
136 (1) and (2) of the Constitution of Trinidad  
and Tobago contained in the Schedule to the  
Constitution of the Republic of Trinidad and  
Tobago Act Ch:1:01 of the Laws of Trinidad and

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Tobago (hereinafter referred to as "the Constitution").  
His Excellency the President of Trinidad and Tobago  
Mr. Ellis Clarke has the power and/or authority to  
allow the Hon. Mr. Cecil Kelsick to continue in office  
after attaining the age of sixty-five on the 15<sup>th</sup> day of  
July, 1985 to perform the functions of Chief Justice of  
Supreme Court of Trinidad and Tobago.

In the High  
Court of  
Justice

No. 4  
Originating  
Summons

16th July  
1985

(continued)

- 10 (2) Whether upon the true construction of Sections 136 (1)  
and (2) of the Constitution the discretion of His  
Excellency the President of Trinidad and Tobago Mr. Ellis  
Clarke to allow a judge of the Supreme Court which  
includes the Chief Justice by virtue of Section 3 of the  
Constitution to continue in office after attaining his  
retiring age is limited to enabling the Judge to deliver  
judgment or to do any other thing in relation to  
proceedings that were commenced before him before he  
attained the retiring age.
- 20 (3) Whether upon the true construction of Sections 136 (1)  
and 136(2) the Hon. Mr. Cecil Kelsick if he remains in  
the office of Chief Justice of Trinidad and Tobago after  
he attains the retiring age, can validly perform the  
functions of Chief Justice of Trinidad and Tobago.
- (4) Such further and/or other relief as the Court may deem  
fit.
- (5) Costs.

Dated this 16<sup>th</sup> day of July, 1985.

NOTE:- This Summons may not be served later than 12 calendar  
months beginning with the above date unless renewed by  
Order of the Court.

In the High  
Court of  
Justice

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No. 4  
Originating  
Summons

16th July  
1985

(continued)

This Summons was taken out by LUCINA CÁRDENAS  
of No: 3 Penitence Street, in the Town of San Fernando,  
Solicitor for the Plaintiffs herein.

L. Cardenas  
LUCINA CARDENAS  
Plaintiff's Solicitor.

TO: The Registrar of the Supreme Court,  
AND TO: The Attorney General of Trinidad and Tobago  
Red House,  
PORT-OF-SPAIN.

10

NOTE: If a defendant does not attend personally or by his  
Counsel or Solicitor at the time and place above  
mentioned such order will be made as the Court may  
think just and expedient.

Affidavit of Lucina Cardenas  
TRINIDAD AND TOBAGO:

In the High  
Court of  
Justice

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

No. 5  
Affidavit of  
Lucina  
Cardenas

16th July 1985

In the Matter of the Interpretation of  
the Constitution of Trinidad and Tobago  
and in particular Section 136.

No: S1292 of 1985.

10

Between

PETER SOOKOO ( An Infant by  
Harry Sookoo, his father and  
next friend) and  
HARRY SOOKOO

Plaintiffs:

And

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO

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I, LUCINA CARDENAS of No. 3 Penitence Street, in  
the town of San Fernando in the Island of Trinidad, Solic-  
itor make oath and say as follows:

- (1) I am the Solicitor for the Plaintiffs and I am  
authorised by the Plaintiffs to make this  
affidavit on their behalf.
- (2) The facts deposed to herein are except where  
otherwise stated within my personal knowledge  
and true and correct.
- (3) I am instructed by the Plaintiffs to commence  
proceedings by Writ of Summons issued out of the  
Sub-Registry of San Fernando against the Minister  
of Health and the Attorney General of Trinidad  
and Tobago for damages for negligence in respect

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16th July  
1985

(continued)

of medical attention and/or treatment which the infant plaintiff received at the Sangre Grande District Hospital and the Port of Spain General Hospital from the period 18<sup>th</sup> day of November, 1984 to 5<sup>th</sup> day of December, 1984 which resulted in the amputation of the infant plaintiff's right leg and Special damages which the adult plaintiff suffered as a result of the said tort. Counsel Mr. Ramesh L. Maharaj has already settled the Writ and Statement of Claim in the said matter. A copy of the said settled Writ and Statement of Claim is hereto attached and marked "LC1" and "LC2" respectively.

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(4) By Order 6 Rule 1 of the Rules of the Supreme Court of Trinidad and Tobago every Writ must be in Form 2 Appendix A of the said Rules which necessitates the said Writ to be witnessed by the Honourable Chief Justice of Trinidad and Tobago.

(5) The Honourable Mr. Cecil Kelsick attained the age of sixty-five years on Monday 15<sup>th</sup> day of July, 1985. His Excellency the President of Trinidad and Tobago in the purported exercise of his powers under Section 136 (2) of the Constitution of Trinidad and Tobago has permitted the Honourable Mr. Cecil Kelsick to continue in office until the 21<sup>st</sup> day of December, 1985. This is evidenced by the Trinidad Express Newspaper of Saturday 13<sup>th</sup> July, 1985 at page 28 under the heading "Kelsick goes on to December 21". A copy of the said newspaper is now produced to me and marked "LC3".

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(6) No person has been appointed to fill the office of Chief Justice of Trinidad and Tobago as from the 16<sup>th</sup> day of July, 1985.

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- (7) I am desirous of filing the action against the Attorney General and the Minister of Health for the tort of negligence on behalf of my client as mentioned above but I am uncertain as to whether the said Writ of Summons would be valid if it is witnessed by the Honourable Mr. Cecil Kelsick as Chief Justice.
- (8) There appears to be a fundamental divergence of views in the construction of the said Section of the Constitution which in the absence of the appointment of a new Chief Justice of Trinidad and Tobago ought to be resolved before the Plaintiffs commence their action by Writ of Summons against the Attorney General of Trinidad and Tobago and the Minister of Health as mentioned above. This is necessary as the validity of the Plaintiffs' proposed action will in the absence of such appointment of Chief Justice depend upon the construction of the said Section of the Constitution.
- (9) The public interest demands that in the absence of the appointment of a new Chief Justice the Supreme Court ought to construe the meaning of the said Section. The mere suspicion in the minds of the public that the Honourable Mr. Cecil Kelsick may not be legally and constitutionally functioning as Chief Justice of Trinidad and Tobago raises a serious threat to the rule of law and the independence of the Judiciary in Trinidad and Tobago.
- (10) In the circumstances the Plaintiffs humbly pray that this Honourable Court would determine the questions of construction raised in the Summons herein.

In the  
High Court  
of  
Justice

No. 5  
Affidavit  
of Lucina  
Cardenas

16th July  
1985

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Sworn to at No:3 Penitence)  
Street, in the town of San)  
Fernando, this 16<sup>th</sup> day of )  
July, 1985. )

Before me

COMMISSIONER OF AFFIDAVITS.

In the  
High Court  
of Justice

This is the exhibit marked "LC1" referred to in affidavit  
of Lucina Gardenas sworn to before me this 16th day of July, 1985.

/s/ Dalton Chadee  
Commissioner of Affidavits

No. 6  
"LC1" -  
Copy writ

LUCINA CARDENAS,  
Solicitor and Conveyancer,  
No. 3 Penitence Street,  
San Fernando,  
Trinidad, W.I.  
Phones: 65-24504  
65-22185

Undated

10

IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando

No. S1292 of 1985.

Between

PETER SOOKOO (an Infant by  
Harry Sookoo his father and  
next friend) and HARRY SOOKOO      Plaintiff      20

And

JOHN ECKSTEIN  
THE MINISTER OF HEALTH OF  
TRINIDAD AND TOBAGO  
&  
THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO.      Defendants

THE STATE OF TRINIDAD AND TOBAGO

John Eckstein the Minister of Health of Trinidad and  
Tobago, 35-37 Sackville Street, Port Of Spain and      30

TO:  
The Attorney General of Trinidad and Tobago, Red House,  
Port Of Spain

YOU ARE HEREBY COMMANDED that within 8 days after the  
service of this Writ on you, inclusive of the day of service, you  
do cause an appearance to be entered for you in an action at the  
suit of PETER SOOKOO (an infant by Harry Sookoo his father and  
next friend) and HARRY SOOKOO and take notice that in default of  
you so doing the plaintiff may proceed therein, and judgment may  
be given in your absence.      40

WITNESS

Chief Justice of Trinidad and Tobago

day of

1985

NOTE: This Writ may not be served later than 12 calendar months beginning with the above date unless removed by order of Court.

In the High Court of Justice

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by Solicitor either (1) by handing in the appropriate forms duly completed at the Sub-Registry, of the High Court at Harris Promenade, San Fernando, or (2) by sending them to that office by post.

No. 6  
"LC1" -  
Copy writ

Undated

(continued)

INDORSEMENT:

The Plaintiff's claim is for damages and interest thereon for personal injuries, loss and damage caused by the negligence of the Defendants, their servants and/or agents, in treatment of the Plaintiff from the 18th day of November, to the 5th day of December, 1984 at the Defendants' Hospital at Sangre Grande and Port Of Spain in the Island of Trinidad.

This Writ was issued by LUCINA CARDENAS, of No. 3 Penitence Street, San Fernando, Solicitor for the Plaintiff whose address is Mac Shine Street, Sangre Grande.

/s/ L. Cardenas  
Plaintiff/s Solicitor

This Writ was served by me at

on the defendant

on the day of 19

Indorsed this day of Signed .....

.....  
.....

In the  
High Court  
of Justice

This is the exhibit marked LC2 referred to in the affidavit  
of Lucina Cardenas sworn to before me this 15th day of July,  
1985

/s/ Dalton Chadee  
Commissioner of Affidavits

No. 7  
"LC2" -  
Copy  
Statement  
of Claim

TRINIDAD AND TOBAGO:

Undated

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

No. S1292 of 1985

10

Between

PETER SOOKOO (an infant by  
Harry Sookoo his father and  
next friend) and HARRY SOOKOO Plaintiffs

And

JOHN ECKSTEIN  
THE MINISTER OF HEALTH OF  
TRINIDAD AND TOBAGO  
&  
THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO Defendants

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STATEMENT OF CLAIM:

1. The Plaintiff an infant born in Trinidad and Tobago on the 5th day of September, 1967 brings this action by his father and next friend, Harry Sookoo.
2. The First named Defendant was at all material times responsible for the management, control and administration of the Sangre Grande District Hospital and the Port Of Spain General Hospital and to provide to the public of Trinidad and Tobago medical specialists and all other medical, surgical and nursing services required at and for the purposes of the said hospitals.
3. The second named Defendant is joined by virtue of the provisions of the State Liability and Proceedings Act Chapter 8:02

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4. On the 18th day of November, 1984 the Plaintiff a Form IV student at North Eastern College, Sangre Grande sustained an injury to his right leg during a game of football at Drambrie Hill, Guaico in Sangre Grande. The said accident necessitated the Plaintiff being carried off the field and taken to the nearest hospital the Sangre Grande District Hospital.

In the  
High Court  
of Justice

No. 7  
"LC2" -  
Copy  
Statement  
of Claim

Undated

(continued)

5. Thereat the Plaintiff was examined by the medical staff on duty and two pieces of wood were applied to his right lower leg. Afterwards on the same day the Plaintiff was transferred to the Port Of Spain General Hospital where he was examined and X-ray photographs revealed a fracture of the right tibia and fibula.

6. At the Port Of Spain General Hospital the Plaintiff was admitted to Ward 12 he was attended to and an above-knee Plaster of Paris cast was applied.

The Plaintiff was discharged on the same day.

7. The Plaintiff was in severe pain and his right ankle was swollen so he attended the Sangre Grande District Hospital on the 20th November, 1984 and complained to the nurses there. The nurses there prescribed some pain killers which the plaintiff took. The plaintiff continued to suffer severe pain.

8. On the 22nd day of November, 1984 the Plaintiff returned to the Sangre Grande District Hospital for medical attention and was requested to go to the Port Of Spain General Hospital which he visited on the said date and there complained of pain to the said right lower leg. The Plaintiff was readmitted to Ward 12 of the said hospital and on the 26th day of November, 1984 the cast was removed and a back slab only was applied to the leg.

9. As a result of the negligent treatment given by the servants and/or agents of the first named Defendant who was also the servants and/or agents of the State of Trinidad and Tobago from the 18th day of November, 1984 to the 30th day of December 1984, the Plaintiff's leg and toes became or was allowed to become gangrenous and/or infected below the knee which necessitated amputation of the said leg.

PARTICULARS OF NEGLIGENCE:

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The First named Defendant's servants and/or agents who were also servants and/or agents of the State of Trinidad and Tobago were negligent in that:

1. In the light of the Plaintiff's history of his said injury and accident they failed to recognise the seriousness of the said injury and failed to have the Plaintiff examined by a more experienced medical staff and they treated the Plaintiff in-expertly.
  2. ~~They failed~~ to perform essential surgery in time, thereby depriving the Plaintiff of the opportunity of gaining a very substantial recovery and/or complete restoration to his pre-accident condition.
  3. Failed to monitor the Plaintiff's progress or lack thereof either properly or at all.
10. The Plaintiff will rely on the necessity of amputation having regard to all the facts and circumstances of this injury as evidence of the negligent treatment

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administered to the Plaintiff by the servants and/or agents of the first-named Defendant and the servants or agents of the State of Trinidad and Tobago.

In the High Court of Justice

No. 7  
"LC2" - Copy  
Statement  
of Claim

11. By reason of the matters aforesaid the Plaintiff has occasioned pain and suffered loss and damage.

Undated

(continued)

PARTICULARS OF INJURIES:

Amputation of right leg below the knee.

PARTICULARS OF SPECIAL DAMAGE

	To Dr. Robertson	\$ 4,400.00
10	To Nursing Home	\$ 3,040.00
	To Cost of below the knee prosthesis	\$ 1,500.00
	To Cost of Medicines	& 700.00
	To cost of travelling	\$ 750.00
	Dr. Mc Intosh	\$ 600.00
		<hr/>
	TOTAL	\$10,990.00
		<hr/>

And the Plaintiff claims damages and interest thereon.

/s/ Ramesh Maharaj  
OF COUNSEL

# EXPRESS

The National Newspaper of Trinidad & Tobago

In the High Court of Justice

SATURDAY JULY 13, 1985

60 CENTS

6325

## Kelsick goes on to December 21

THE Chief Justice of Trinidad and Tobago Justice Cecil Kelsick has been permitted by His Excellency President Ellis Clarke to continue in office after attaining the age 65 on July 15, until December 21.

He was granted permission to continue under Section 136 (2) of the Constitution of Trinidad and Tobago, this being the period necessary to enable him to deliver judgment or do any other thing in relation to proceedings that were commenced before him before July 15.

Justice John Brathwaite, Justice of Appeal who attained the age 65 on May 31, will continue



Justice Kelsick

until October 31 to enable him to deliver judgment or do anything in relation to proceedings that were commenced before him before May 31.

## Police maintain their stand in St James killing

DESPITE reports from members of the Al Muslimeen, Mucurapo Road, that Abdul Kareem, 29, was stabbed seven times by an unknown civilian in St James on Monday night, senior officials of the Police Service maintain that Kareem was stabbed four times.

In an interview with the EXPRESS yesterday, Acting Commissioner of Crime Alec Heller, when asked if there was anything more to add to the police report given to the EXPRESS on Tuesday, said there was nothing more to add except that there were two civilians at the scene of the crime who would support the police report that, in fact, Kareem was stabbed four times by an unknown civilian.

The EXPRESS contacted Dr Chandu Lal, who performed the post mortem, and was told that the police should be contacted in order to ascertain how many times Kareem was stabbed.

When Sergeant Michael Montoute, the police officer heading the investigations was contacted, the EXPRESS was told that the doctor should be contacted to tell the number of stab wounds Kareem received, since the autopsy report only stated the cause of death: a stab wound to the heart.

Heller yesterday told the EXPRESS that investigations are still being conducted and that the search for the unknown civilian is still on. The police are still unable to identify the man.

"LC3"

This is the exhibit marked "LC3" referred to in the annexed affidavit of Lucina Cardenas sworn to before me this 16th day of July, 1985.

/s/ Dalton Chadee

COMMISSIONER OF AFFIDAVITS

NO. 8 - "LC3" Copy article in Trinidad Express newspaper of 13 July 1985 undated

THE EMPRESS

THE Empress Josephine. That charming story of the Martiniquan girl who married Napoleon Bonaparte is, naturally, repeated everywhere. One suspects that the story serves not only to boost Martinique's tourist potential but also acts as a source of inspiration and aspiration: any one of those pretty Martiniquan girls could be, well if not a French Empress, at least married to a prominent Frenchman. RAOUL PANTIN returns from a visit to Port-de-France with a story on the French connection.

WOMEN OF THE WORLD

JUST AS we predicted, the WOMEN'S CONFERENCE in Nairobi runs into politics. Can our women...

No. 8 - "LC3" Copy article in Trinidad Express newspaper of 13 July 1985 undated

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando

No. 9  
Judge's Notes  
of Evidence

NO. S-1292 OF 1985

Undated

In the Matter of the Interpretation of the  
Constitution of Trinidad and Tobago  
and in particular Section 136

BETWEEN

10

PETER SOOKOO (An Infant by  
Harry Sookoo, his father  
and next friend) and  
HARRY SOOKOO

Plaintiffs

AND

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO

Defendant

Before the Honourable  
Mr. Justice Lennox Dayalsingh

20

Mr. R.L. Maharaj & Mrs. L. Maharaj  
for Plaintiff

Mr. M. De Labastide S.C. and  
Mr. J. Carrington for Defendant

NOTES OF EVIDENCE

18/7/85

Originating Summons filed 16th July, 1985

Ord. 32 Reg. 9 Court and Counsel not attended.

Will continue in Chambers.

De Labastide:

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Summons is Originating Summons in a form which requires  
Defendant to appear today. Served at 3.10 p.m. on 16th July, 1985.

Form No. 9 Appendix A to RSC - appearance where appearance not  
required. Form which should have been used is Form 7. State

Solicitor served with Ex Parte order on 16th July, 1985 abridging  
time for entry of appearance to 1 day. No

appearance was entered because none was

/2....

required. It is undesirable for these proceedings to be pending and despite fact of irregularities and one day's notice ready and willing to proceed.

(2) By Consent - 3 document

Admitted.

(i) Letter from Chief Justice to President dated  
28th June, 1985.

(ii) Letter from President to Chief Justice dated 28th June, 1985.

(iii) Copy of Extraordinary Issue of Trinidad & Tobago Gazette  
dated 16th July, 1985.

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Maharaj:

Issue: Whether Chief Justice Kalsick is really in office as Chief Justice after 15th July, 1985.

(1) Affidavit of Solicitor filed 16th July, 1985

(2) Affidavit of Solicitor filed 18th July, 1985.

Section 136:

S/sec. (1) - Sec. 106

"Judge" (p. 12) - Includes Chief Justice ...

Submit - Sec. 136 clearly includes Chief Justice

Subsection (2) - situations in which a Judge could remain after 65.

20

Compulsory retirement age of 65 and discretion in President to extend retirement age of Judge for only 2 reasons. President is not bound to extend retirement age. This is a discretion.

Subsection (3) - special officers are dealt with in sec. 135

Sec. 136(3) does not apply to Judges. Applies to officers - Limited to 135(3).

Assuming applies to a Judge, only legalises 2 functions in subsection (2).

Subsec. 104 - Functions of Chief Justice.

Has various administrative duties

/3....

- (a) Chairman of Judicial and Legal Services Commission
- (b) Chairman of Awards Committee
- (c) Section 104

No. 9  
Judge's Notes  
of Evidence  
Undated  
(continued)

Submit:

There must be specific authority for Chief Justice to perform administrative functions after 65.

Section 103 - Provides for Acting Chief Justice. This would have included doing duties after 65 years if intention was to give Chief Justice powers to perform administrative duties.

10 1962 Constitution - A difference. Sec. 79 (b) - Judge could do judicial work (new matters) even after 65 years. Could have even been Chief Justice. 1976 Constitution did not re-enact this Section. Submit clear intention that Parliament did not intend Judges to do new matters after 65 years.

Submit:

- (1) On attaining 65, person who occupies office as Chief Justice can only function as Judge of Appeal to complete work already started.
- (2) Constitution does not give authority for anyone over 65 to continue in office as Chief Justice.

20 De Labastide

Submit : (1) Within Judiciary there are 3 separate and distinct offices

(1) Puisne Judge, Justice of Appeal and Chief Justice. Note particular separateness of Chief Justice from Justice of Appeal.

(2) Manner of Appointment - 1976 Constitution Section 104(1) - Section 102 - Totally different process. President has a discretion - his own deliberate Judgment Re 104(1) selection made by Judicial and Legal Services Commission. President's acts purely executive.

/4...

No. 9

Judge's Notes of Evidence - Undated (continued)

Compelled to act in accordance with Commission's advice.

Section 101(1) - Two separate offices - Chief Justice and Justice of Appeal. A distinction between a Judge of the Court of Appeal and a Justice of the Court of Appeal. Judges of Court of Appeal comprise the Chief Justice and the Justices of Appeal. Chief Justice is a Judge of the Court of Appeal but he is not a Justice of Appeal

Form of Oath - page 50

(3) Section 136(2)

Submit: "Judge" here includes Chief Justice "Judge" sometimes used comprehensively - Section 137(1) - would include Chief Justice. Three steps (1) Initiation of proceedings (2) Tribunal (3) Suspension or non-suspension: Three procedures -

10

1st - Divided between Prime Minister and Judicial and Legal Services Commission. Notice language subsection (3), (4)

Chief Justice is a "Judge".

(4) Chief Justice given power to extend his own term.

Section 136(2). No distinction made between a Chief Justice and a Judge other than Chief Justice.

Section 136(2) Judge here includes Chief Justice Constitution allows Chief Justice to be a Judge in his own case. Expects Chief Justice to act with propriety. "Acting in accordance with advice of the President - Deprives President of any discretion. Formula used regularly - Section 79(1). President must give permission. Must act in accordance with advice of Chief Justice - Judge "may continue in office .... for such period (how long) ... as may be necessary etc. Relevant to determine period his tenure may be extended.

20

/s....

A necessary construction as a matter of language. If Chief Justice's office extended, he continues to exercise all powers and functions of office. Can't have half Chief Justice. Section 103. Chief Justice can only continue in Court of Appeal as Judge of Appeal by virtue of office he holds.

(5) Section 136(3). Applies to office of Judge by subsection (13)

(14).

(6) 1962 Constitutional provides for appointment of temporary

Judges. Has no impact on extension of office of Judge. Section (80)(1).

10

(2).

Submit:

Chief Justice's office has been extended and is bound to perform his office as Chief Justice.

(6) Summons -

Re (1) President has power

" (2) - No

" (3) - Yes.

(7) Act 25/85 - Tax Appeal Board (Amendment) Act. Power - given to

extend office of Chairman etc. exercisable in accordance with advice

20

of Chairmen.

Maharaj

(1) Chief Justice holds the office of "Judge". This is the Substantive office. Chief Justice has to vacate office of "Judge" at 65 Section 136 (2) - Means continue in office as "Judge".

Either Chief Justice or not Chief Justice Exh. "B"

If it was the intention to enable the Chief Justice to function as Chief Justice after 1965, Constitution would have said so.

/s....

If De Labastide's submission is correct that last 2 lines only limit periods, Chief Justice can start new cases.

Section 136(1) - "shall". Mandatory.

Submit: Section 136(2) not only directed to time factor. If this the case, Constitution would have said so expressly e.g. 103.

(2) Submit also Chief Justice cannot extend his time. Now concede that Chief Justice can have extension of time. After 65, in delivering Judgement, he acts as President.

Fallacy of De Labastide's argument is that Chief Justice can ask for an extension of time to continue as Chief Justice.

10

(3) Contrary to public policy or public interest for Chief Justice to extend his time.

22/7/85

Mr. R. Maharaj & Mrs. L. Maharaj  
for Plaintiff

Mr. J. Carrington for Defendant

Counsel informed that in view of the urgency and public interest involved, Judgement is being delivered from a Draft and that the final Judgement will contain changes in phraseology and form and will include fresh matter which the Court did not have time to include; but substance of Judgement will remain.

20

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando

No. 10  
Judgment of  
Mr Justice  
Lennox  
Deyalsingh

No. S-1292 of 1985

In the Matter of the Interpretation of the Constitution of Trinidad and Tobago and in particular Section 136 22nd July 1985

10

BETWEEN

PETER SOOKOO (An infant by Harry Sookoo his father and next friend) and HARRY SOOKOO

Plaintiffs

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable  
Mr. Justice Lennox Deyalsingh

20

Mr. R.L. Maharaj & Mrs. L. Maharaj  
for Plaintiff

Mr. M. De Labastide S.C. and  
Carrington for Defendant

JUDGEMENT

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This is a sad day (some will say a day of shame) for the Judiciary. Here, in these proceedings, the actions of not only a Judge of the Supreme Court of Trinidad and Tobago but of the Chief Justice, the highest judicial officer in the land, is called in question as being in breach of the Constitution of Trinidad and Tobago of which the Judges are the Guardians. His very continuance in office as Chief Justice is being challenged and this Court has the rather unpleasant and embarrassing duty of pronouncing upon it. However unpleasant and embarrassing it may be however, it is a duty which the Court cannot and must not shirk and in doing its duty, it must not be "a respecter of persons".

No. 10

Judgment of Mr Justice Lennox Deyalsingh

22nd July 1985 The Plaintiffs bring an Originating Summons for the

(continued) construction of Section 136 of the Constitution. The Plaintiffs'

Solicitor, Lucena Cardinas, in her affidavit deposes inter alia that the Plaintiffs propose to commence an action in the High Court by Writ of Summons against the Attorney General and the Minister of Health and then continues:

"(9) There appears to be a fundamental divergence of views in the construction of (Section 136) of the Constitution which in the absence of the appointment of a new Chief Justice of Trinidad and Tobago ought to be resolved before the Plaintiffs commence their action by Writ of Summons against the Attorney General of Trinidad and Tobago and the Minister of Health as mentioned above. This is necessary as the validity of the Plaintiffs' proposed action will in the absence of such appointment of Chief Justice depend upon the construction of the said Section of the Constitution. 10

(9) The public interest demands that in the absence of the appointment of a new Chief Justice the Supreme Court ought to construe the meaning of the said Section. The mere suspicion in the minds of the public that the Honourable Mr. Cecil Kelsick may not be legally and constitutionally functioning as Chief Justice of Trinidad and Tobago raises a serious threat to the rule of law and the independence of the Judiciary in Trinidad and Tobago." 20

The facts leading up to the application are not in dispute and are as follows:

(1) C.A. Kelsick, Chief Justice of Trinidad and Tobago attained the age of 65 years on 15<sup>th</sup> July, 1985. I will, with no disrespect intended, refer to him hereafter as Kelsick J. since whatever the findings of the Court, he remains at the present time a Judge of the Supreme Court. He wrote the President of the Republic of Trinidad and Tobago on the 28<sup>th</sup> June, 1985 as follows:- 30

"June 28, 1985.

In the High  
Court of Justice

No. 10

Judgment of  
Mr. Justice Lennox  
Deyalsigh

22nd July 1985

(continued)

His Excellency Mr. Ellis Clarke, T.C.,  
President,  
President's House,  
ST. ANN'S.

Your Excellency,

I will attain the retiring age of 65 on 15<sup>th</sup> July, 1985. There are several matters on which I have adjudicated that are part heard or in which judgment has been reserved.

10

Under section 136(2) of the Constitution, I advise Your Excellency to grant me permission to continue in office until December 21, 1985 which is the end of the short term, so as to enable me to deliver judgment and to do any other thing in relation to proceedings that were commenced before me prior to my attaining the retiring age.

Yours sincerely,

Sgd. C.A. Kelsick,  
Chief Justice."

(2) The President replied on the said 28<sup>th</sup> June, 1985 thus:

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"28th June, 1985.

The Honourable the Chief Justice  
Mr. Cecil Kelsick,  
Chief Justice's Chambers,  
Supreme Court,  
Port of Spain:

Dear Chief Justice,

I acknowledge receipt of your letter of June 28, 1985.

30

Pursuant to section 136(2) of the Constitution I hereby permit you to continue in office as Chief Justice until December 21, 1985 this being the period necessary to enable you to deliver judgment or to do any other thing in relation to proceedings that were commenced before you before July 15, 1985.

Yours sincerely,

Sgd. Ellis Clarke  
President"

In the High Court of Justice

No. 10

Judgment of Mr. Justice

Lennox Deyalsingh

22nd July 1985 (continued)

(3) Kelsick J. has since the 16<sup>th</sup> July, 1985 continued and is still continuing in office as Chief Justice.

(4) The Plaintiffs' Solicitor is desirous of filing an action against the Attorney General and the Minister of Health in tort and is uncertain "as to whether the said Writ of Summons would be valid ~~if it is witnessed by the Honourable Cecil Kelsick as Chief Justice.~~"

The issue is whether Kelsick J. can continue in office as Chief Justice after attaining the age of 65 years performing all the functions and duties attached to that office, or whether he can continue in office (whatever the designation) but limited therein

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only to completing Court matters already commenced before him. Mr. Maharaj contends that he is limited only to the latter; Mr. De Labastide contends he is not so limited but can continue as Chief Justice performing all the functions of that office for so long as it takes him to complete matters already commenced before him.

The answer to the question lies in the construction of Section 136(1) and (2) of the Constitution. Section 136 provides:

"136 (1) The holder of an office to which this subsection and subsections (3) to (11) apply (in this section referred to as "the officer") shall vacate his office on attaining the age of sixty-five years or such other age as may be proscribed.

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(2) Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge may, with the permission of the President, acting in accordance with the advice of the Chief Justice continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age."

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Other Sections helpful to the determination of the issue referred to by Counsel are:-

"3. (1) In this Constitution -  
.....

"Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge;  
.....

99. There shall be a Supreme Court of Judicature for Trinidad and Tobago, consisting of a High Court of Justice (hereinafter referred to as "The High Court") and a Court of Appeal with such jurisdiction and powers as are conferred on these two Courts respectively by this Constitution or any other law.

10

100. (1) The Judges of the High Court shall be the Chief Justice who shall be ex-officio a Judge of that Court, and such number of Puisne Judges as may be prescribed.

.....

101 (1) The judges of the Court of Appeal shall be the Chief Justice, who shall be President of the Court of Appeal and such number of Justices of Appeal as may be prescribed.

.....

103. Where the office of Chief Justice is vacant or where the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of such office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such other of the Judges as may be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition.

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.....

106. (1) Subject to Section 104(3), a Judge shall hold office in accordance with Sections 136 and 137."

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The Constitution is not to be construed in any narrow pedantic sense (per Lord Wright in James v Commonwealth of Australia (1936 A.C. 578 614) and a broad liberal spirit should inspire those whose duty it is to interpret it, for a Constitution, which provides for the Government of a country, is a living

organic thing which of all instruments have the greatest claim to be construed "ut res magis valeat quam pereat" (it is better for a thing to have effect than to be made void). But this does not mean that the Court is free to stretch or pervert the language of the Constitution for the purpose of supplying omissions or for the purpose of correcting supposed errors. The section to be construed must be looked at as a whole in the context of the Constitution as a whole with a view to giving effect to the intendment of the Legislature.

Counsel has cited no authority in support of their submissions. I take it therefore, that there are no similar provisions in the Constitution of any other country which could be of any assistance to this Court. The general principles of construction of statutes are of course, well known and Counsel did not think it necessary to refer to them assuming I suppose, that the Court is well acquainted with them.

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Mr. De Labastide submits that Section 136(2) empowers the Chief Justice to continue in office as Chief Justice performing all the functions and duties attached to the office of Chief Justice during the period of time that he remains in office with the permission of the President after attaining the age of 65 years and that period of time he says, is predicated upon how long it will take him "to deliver judgement or do any other thing in relation to proceedings that were commenced before him before he attained the age of 65 years". The seeming limitation of functions and duties spelt out in the words just quoted refers to the duration of time he continues in office as Chief Justice and not to the functions and duties he is to perform after attaining 65 years.

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Mr. Maharaj submits that the said quoted words limit the functions and duties of the Chief Justice after he attains 65 years of age. He can stay on he says, but only to complete Court work

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commenced before he attained 65 years of age and not as  
Chief Justice performing all the functions and duties attached  
to that office.

No. 10  
Judgment of Mr.  
Justice Lennox  
Deyalsingh  
22nd July 1985

Both submissions have their attractions and I found (continued)  
the issue, at least during the hearing and immediately there-  
after, not as simple as each Counsel confidently submitted  
that it was. In finding the answer, I must look for the  
intendment of the Legislature in the section as whole as  
well as in the Constitution itself as a whole.

10 I start from what is a clear intent of the  
Legislature and that is that the holders of special offices  
expressly specified in the Constitution must vacate their  
office on attaining the age of 65 years:

Section 136 (1). Those officers are:

- (1) A Judge: Section 106(1)
- (2) The Auditor-General: Section 136(12)
- (3) The Director of Public Prosecutions,  
Chief Parliamentary Counsel and  
Solicitor-General: Section 136(13)

20 The Legislature's intent up to this point is clear. For  
good reason or bad, the holders of the above listed officers  
must retire at 65 years of age. But then, subsection (2)  
goes on to make an exception in the case of "a Judge" and it  
is this exception that the Court is called upon to construe.

The material sections are directed primarily to  
the office of Judge who may be the Chief Justice, a Judge of  
Appeal or a Judge of the High Court. Judges of Appeal appointed  
under Section 104 (that is by the President acting in

In the High Court of Justice

No. 10

Judgment of Mr Justice Lennox Deyalsingh

22nd July 1985 (continued)  
accordance with the advice of the Judicial and Legal Services

Commission) are officially designated "Justices of Appeal" and judges of the High Court, "Puisne Judges." The Chief Justice when sitting in the Court of Appeal is a Judge of Appeal and the President of that Court and when sitting in the High Court, a Judge of the High Court. Justices of Appeal when sitting in Court are together with the Chief Justice, Judges of Appeal. This is the position in law and practice.

Apart from the strictly judicial work when sitting in Court, the office of Chief Justice carries many other constitutional and administrative duties. The Chief Justice is the Head of the Judiciary the Judicial arm of Government. He is the Chief Judge and administrative head of the Judiciary with all that that implies. He is the Chairman of the Judicial and Legal Services Commission which appoints Judges to the Court of Appeal and High Court (Section 110). I am told by Mr. Maharaj from the Bar Table that he is Chairman of the National Awards Committee. All these functions (and others not mentioned which no doubt exist) are distinct and separate from his functions in Court and are of course, of significant import to the office of Chief Justice.

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20

With this background, I come to subsection (2). Three things are clear: (i) it applies only to a Judge and it is an exception from the mandatory requirement in subsection (1) that a Judge (along with holders of other Special Offices under the Constitution) shall vacate office at 65 years of age; (ii) the Judge if he stays on after 65 years of age, cannot commence new Court work. He stays on so far as Court work is concerned, only to complete such work already commenced and this may be delivering reserved judgements in matters fully argued before him before he attained 65 years of age or continuing

22nd July 1985

(continued)

with a part-heard matter commenced before that age. This is the clear intendment of the subsection; and (iii) the mandatory retirement age fixed in subsection (1) can only be changed by a special majority vote in Parliament. Subsection (2) must not therefore, be construed so as to circumvent the prerogative of the Legislature.

10 Mr. De Labastide's submission that the Chief Justice can continue in office as Chief Justice performing all the functions and duties as Chief Justice has an obvious weakness. Court work is an important function of that office. It will therefore, mean that the Chief Justice can commence new Court work during the continuation period. This cannot be so, further, an examination of the wording of subsections (1) and (2) provides some light. Speaking about "the office" involved, subsection (1) says "..... shall vacate his office." Subsection (2) repeats "his office" and then proceeds to change the wording to ".... continue in office". Regarding the retirement age subsection (1) says "..... on attaining the age of 65 years...." Subsection (2) says "Notwithstanding that he has attained the age at which he is required .....to vacate his office" and then proceeds with reference to age to say "that age" on two occasions. If Mr. De Labastide's interpretation is what the Legislature had in mind, it would have been a relatively simple matter to say "may ....continue in his or that office". This would have made it clear beyond the shadow of a doubt that the Judge was to continue in the office he held on retirement be it Chief Justice, Justice of Appeal or Puisne Judge. Continuing, if the Court can fill the lacuna and read the subsection as "may ..... continue in his office" with the :

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attendant right to perform all functions and duties attached to that office, then a conflict arises with the limitation imposed by what follows regarding the work the judge can do after attaining 65 years. "May .....continue in his office" must mean doing Court work including commencing new matters and this is in clear conflict with the rest of the subsection. Mr. De Labastide's submission invites the Court to re-enact or read the sub-section something like this:

" 2. Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office (as Chief Justice) a Judge (Chief Justice) may, with the permission of the President, acting in accordance with the advice of the Chief Justice, continue in his office (as Chief Justice) for such period after attaining that age as may be necessary to enable him to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained that age save that in the case of the Chief Justice, he shall after attaining that age be confined in his functions and duties to delivery of judgement or to any other thing in relation to proceedings that were commenced before him before he attained that age."

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20

I do not think that it is permissible for the Court to read the subsection thus and I must regretfully decline to re-enact or read the subsection in that way.

The submissions of Mr, Maharaj presents less or no difficulty. Since the material sections of the Constitution are primarily directed to the office of Judge, and the subsection limits the functions and duties during the continuation in office to Court work, it seems the clear intention of the Legislature is directed to the Judge continuing in office as a Judge sitting in Court and doing Court work. The Judge therefore continues as a Judge of the High Court or a Judge of Appeal and not as anything else. Kelsick J. would therefore, in this case continue in office as a Judge of Appeal and not as Chief Justice. This construction brings both parts of the subsection in harmony with

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each other; it disposes of the conflict raised by Mr. De  
Labastido's submission and I hold it to be the construction  
intended by the Legislature and therefore, the true  
construction.

No. 10  
Judgment of  
Mr Justice Lennox  
Deyalsingh  
22nd July 1985

(continued)

10 Both Counsel proceeded on the basis that Section  
13F(2) is applicable to the office of Chief Justice. It seems  
to me at first sight (but this without full and careful  
consideration) that an arguable case can be made out for the  
proposition that the section does not apply to the office of  
Chief Justice. There is no difficulty at all in applying the  
subsection to Justices of Appeal and Puisne Judges since these  
Judges do not have any duties other than Court work. Further,  
an argument about the Chief Justice being a judge in his own  
cause will not arise. But this issue was not put before the  
Court for a determination and in any event, I have not had the  
benefit of the assistance of Counsel on the issue, and I would  
therefore, leave the matter alone.

20 This Court considers it necessary to add a final word  
about the construction of subsection (2). It is provision in-  
serted "ex abundanti cautela". The Constitution contemplates  
that a Judge is a personage of integrity and industry and will  
as a rule, complete all his Court work before attaining 65 years  
of age so as to give effect to the clear intention of subsection  
(1). Unforeseen circumstances do however, sometimes but rarely  
arise in the natural order of things, for example a Judge, or  
counsel or litigant may become ill during the course of a hearing  
in a matter before a Judge who is close to the retirement age.  
A re-hearing in such a case could lead to a waste of time and  
additional expenses to the litigants through no fault

of their own. So the Legislature, in its wisdom, inserted this subsection. It is therefore, a provision intended to be brought into play only in exceptional circumstances, circumstances containing therein something of the unexpected and unforeseen. It was not intended to apply otherwise for example, pressure of work, length of the Court list, etc. These are matters for which the remedy lies elsewhere. A Judge is therefore, expected when approaching retirement age, to so order his Court calendar as to leave nothing outstanding by the time he attains 65 years of age. And if he is remiss in so doing, the Chief Justice must ensure that he does what is proper. 10

In the special circumstances that may arise, the Constitution does not contemplate any substantial period of continuation in office for the effect, of any such continuation in office is self-defeating in that while a Judge stays on to complete outstanding Court work, the sittings of the Court are affected because no new appointments to the Court can be made. In effect, the Court operates with one Judge less. At the present time, the Court of Appeal is operating with two Judges less because of the continuation in office of Kelsick J. and Braithwaite J.A. under subsection (2). The Court therefore, cannot sit in the two divisions of which it is comprised and 20

the list of cases awaiting determination increases. This instant situation fortifies the view that subsection (2) is intended to apply only in exceptional circumstances. Regretfully, in recent times it seems that subsection (2) is being utilised as a matter of course. This Court hopes that such a practice will not continue. This Court does not suggest any time limit over which subsection (2) should apply as it depends on unforeseen factors; but in all but the very most exceptional of cases, it should not, in my view, exceed a period of two months. The Constitution requires that a Judge, as a constitutional obligation, complete all his Court work before he reaches the age of 30

retirement.

Now that I have determined the matter, I venture, with the greatest respect and with only the interests of the Judiciary and the Administration of Justice at heart and in mind, to suggest to the Defendant and to Kelsick J. that they should accept the Court's decision and that Kelsick J. should proceed with all expedition to complete what Court work he has outstanding and depart the hallowed precincts of the Judiciary. Nothing of substance will be lost if this course is taken except perhaps, pride of office for a few months by Kelsick J.; and this I suggest is a suitable price to pay in the circumstances.

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This matter and the events leading up to it have caused serious damage to the Judiciary and the Administration of Justice and further litigation may very well result in irreparable change to the Judiciary. If it is necessary to clarify the Legislative intent, this I suggest with respect, can be done by the Legislature in due course. Whatever be the strict legality of the position, Kelsick J. has by his own deliberate action, brought about a situation which constitutes a disservice to an Institution over which he had the great honour to preside and an Institution which should always stand solemn in the public eye. Exemplars of Society (and the Chief Justice stands among the foremost of these) must not only hew to the straight line of the Constitution and the law but must appear to do so. Paul the leader and judge of the Christian Gentile Church of in his letter to the Corinthians said "All things are lawful for me but all things are not helpful and good for others. All things are lawful for me but all things do not edify". The Constitution is predicated upon and Society expects its exemplars to live by the principle enshrined in those words.

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They must have a sense of shame ..... an instinctive teaching for possible action though lawful, is just not done in a civilised Society. They must be ever mindful of the fact that their actions set the direction for the people they are privileged to lead, that (in the saying of the common man) "the thread follows the needle". Theirs is a grave and weighty responsibility to Society and they should not accept the honour of high public office if they are not prepared to fulfil the attendant responsibilities. Like Coasar's wife, they must be above reproach; and reproach has been and is being cast upon the office of Chief Justice and consequently on the entire Judiciary. And this Court thinks it is in duty bound to comment as it has ..... and does so with sadness and with deep regret.

10

In the light of my findings aforesaid, the Court answers the questions raised in this Application as follows:

The Order:

The Court declares that upon the true construction of Sections 136(1) and (2) of the Constitution.

(1) His Excellency, the President of Trinidad and Tobago has no power and/or authority to allow Kelsick J. to continue in office after attaining the age of 65 years on the 15<sup>th</sup> July, 1985 to perform the functions of Chief Justice of the Supreme Court of Trinidad and Tobago.

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(2) The discretion (if any) of His Excellency the President to allow a judge (including a Chief Justice) to continue in office after attaining the age of 65 years is limited to such functions only as enables such judge to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained the age of retirement.

(3) Kelsick J. cannot validly perform the functions of Chief Justice after attaining the retirement age of 65 years. He may continue in him "to deliver judgement or to any other thing in relation to proceedings that were commenced before him before he attained the age of 65 years".

(4) Costs will be taxed and paid by the Defendant to the Plaintiff.

DATED this 22nd day of July, 1985.

Lennox Deyalsingh,  
Judge.

JUDGMENT OF MR JUSTICE LENNOX DEYALSINGH (REVISED)

No. 11  
Judgment of  
Mr Justice  
Lennox  
Deyalsingh  
(Revised)

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando

22nd July 1985

In the Matter of the Interpretation of the  
Constitution of Trinidad and Tobago  
and in particular Section 136.

NO. S-1292 OF 1985

BETWEEN

10

PETER SOOKOO (An Infant by  
Harry Sookoo, his father  
and next friend) and  
HARRY SOOKOO

Plaintiffs

AND

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO

Defendant

Before the Honourable  
Mr. Justice Lennox Deyalsingh

Mr. R.L. Maharaj & Mrs. L. Maharaj  
for Plaintiff

20

Mr. M. De Labastide S.C. and  
Carrington for Defendant

JUDGEMENT

This is a sad day (some will say a day of shame) for the  
Judiciary. Here, in these proceedings, the actions of not only a  
Judge of the Supreme Court of Trinidad and Tobago but of the Chief  
Justice, the highest judicial officer in the land, is called in  
question as being in breach of the Constitution of Trinidad and  
Tobago of which the Judges are the Guardians. His very continuance 30  
in office as Chief Justice, at his own request, is being challenged  
and this Court has the rather unpleasant and embarrassing duty of  
pronouncing upon it. However unpleasant and embarrassing it may be  
however, it is a duty which the Court cannot and must not shirk and  
in doing its duty, it must not be "a respecter of persons".

/2....

22nd July 1985

(continued)

The Plaintiffs bring an Originating Summons for the construction of Section 136 of the Constitution. The Plaintiffs' Solicitor, Lucana Cardinas, in her affidavit deposes inter alia that the Plaintiffs propose to commence an action in the High Court by Writ of Summons against the Attorney General and the Minister of Health and then continues:

10 "(8) There appears to be a fundamental divergence of views in the construction of (Section 136) of the Constitution which in the absence of the appointment of a new Chief Justice of Trinidad and Tobago ought to be resolved before the Plaintiffs commence their action by Writ of Summons against the Attorney General of Trinidad and Tobago and the Minister of Health as mentioned above. This is necessary as the validity of the Plaintiffs' proposed action will in the absence of such appointment of Chief Justice depend upon the construction of the said Section of the Constitution.

(9) The public interest demands that in the absence of the appointment of a new Chief Justice the Supreme Court ought to construe the meaning of the said Section. The mere suspicion in the minds of the public that the Honourable Mr. Cecil Kelsick may not be legally and constitutionally functioning as Chief Justice of Trinidad and Tobago raises a serious threat to the rule of law and the independence of the Judiciary in Trinidad and Tobago."

The facts leading up to the application are not in dispute and are as follows:

10 (1) C.A. Kelsick, Chief Justice of Trinidad and Tobago attained the age of 65 years on 15th July, 1985. I will, with no disrespect intended, refer to him hereafter as Kelsick J. since whatever the findings of the Court, he remains at the present time a Judge of the Supreme Court. He wrote the President of the Republic of Trinidad and Tobago on the 28th June, 1985 as follows:

/3....

"June 28, 1985.

No. 11  
Judgment of  
Mr Justice -  
Lennox Devalsingh  
(Revised)

His Excellency Mr. Ellis Clarke, T.C.,  
President,  
President's House,  
ST. ANN'S.

22nd July 1985

Your Excellency,

(continued)

I will attain the retiring age of 65 on 15th July, 1985. There are several matters on which I have adjudicated that are part heard or in which judgment has been reserved.

Under section 136(2) of the Constitution, I advise Your Excellency to grant me permission to continue in office until December 21, 1985 which is the end of the short term, so as to enable me to deliver judgment and to do any other thing in relation to proceedings that were commenced before me prior to my attaining the retiring age. 10

Yours sincerely,

Sgd: C.A. Kelsick,  
Chief Justice."

(2) The President replied on the said 28th June, 1985 thus:

"28th June, 1985. 20

The Honourable the Chief Justice  
Mr. Cecil Kelsick,  
Chief Justice's Chambers,  
Supreme Court,  
Port of Spain.

Dear Chief Justice,

I acknowledge receipt of your letter of June 28, 1985.

Pursuant to section 136(2) of the Constitution I hereby permit you to continue in office as Chief Justice until December 21, 1985 this being the period necessary to enable you to deliver judgment or to do any other thing in relation to proceedings that were commenced before you before July 15, 1985. 30

Yours sincerely,

Sgd: Ellis Clarke,  
President."

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(3) The President, after consultation with the Prime Minister and the Leader of the Opposition, appointed Mr. Justice Clinton Bernard, a Justice of Appeal, to the office of Chief Justice, with effect from the date on which Mr. Justice Cecil Kelsick vacates that office. The appointment was made on Friday 12th July, 1985: Trinidad and Tobago Gazette (Extraordinary) Vol. 24 No. 202.

(4) Kelsick J. has since the 16th July, 1985 continued and is still continuing in office as Chief Justice.

(5) The Plaintiffs' Solicitor is desirous of filing an action against the Attorney General and the Minister of Health in tort and is uncertain "as to whether the said Writ of Summons would be valid if it is witnessed by the Honourable Cecil Kelsick as Chief Justice."

The issue is whether Kelsick J. can continue in office as Chief Justice after attaining the age of 65 years performing all the functions and duties attached to that office, or whether he can continue in office (whatever the designation) but limited therein only to completing Court matters already commenced before him. Mr. Maharaj contends that he is limited only to the latter; Mr. De Labastide contends he is not so limited but can continue as Chief Justice performing all the functions of that office for so long as it takes him to complete matters already commenced before him.

The answer to the question lies in the construction of Section 136(1) and (2) of the Constitution. Section 136 provides:

"136. (1) The holder of an office to which this subsection and subsections (3) to (11) apply (in this section referred to as "the officer") shall vacate his office on attaining the age of sixty-five years or such other age as may be prescribed.

(2) Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge may, with the permission of the President, acting in accordance

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(continued)

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(continued)

Other sections helpful to the determination of the issue referred  
to by Counsel are:

with the advice of the Chief Justice continue  
in office for such period after attaining  
that age as may be necessary to enable him to  
deliver judgment or to do any other thing in  
relation to proceedings that were commenced  
before him before he attained that age."

"3. (1) In this Constitution -

.....

"Judge" includes the Chief Justice, a Judge  
of Appeal and a Puisne Judge;

10

.....

99. There shall be a Supreme Court of Judicature for  
Trinidad and Tobago consisting of a High Court of Justice  
(hereinafter referred to as "The High Court") and a Court  
of Appeal with such jurisdiction and powers as are conferred  
on those two Courts respectively by this Constitution or any  
other law.

100. (1) The Judges of the High Court shall be the Chief  
Justice who shall be ex officio a Judge of that Court, and  
such number of Puisne Judges as may be prescribed.

20

.....

101. (1) The judges of the Court of Appeal shall be the  
Chief Justice, who shall be President of the Court of Appeal  
and such number of Justices of Appeal as may be prescribed.

.....

102. The Chief Justice shall be appointed by the President  
after consultation with the Prime Minister and the Leader of  
the Opposition.

.....

103. Where the office of Chief Justice is vacant or where  
the Chief Justice is for any reason unable to perform the  
functions of his office, then, until a person has been appointed  
to and has assumed the functions of such office or until the  
Chief Justice has resumed those functions, as the case may be,  
those functions shall be performed by such other of the Judges  
as may be appointed by the President, after consultation with  
the Prime Minister and the Leader of the Opposition.

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106. (1) Subject to Section 104(3), a Judge shall hold  
office in accordance with Sections 136 and 137."

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(continued)

The Constitution is not to be construed in any narrow pedantic sense (per Lord Wright in James v Commonwealth of Australia (1936 A.C. 578. 614)) and a broad liberal spirit should inspire those whose duty it is to interpret it, for a Constitution, which provides for the Government of a country, is a living organic thing which of all instruments have the greatest claim to be construed "ut res magis valeat quam pereat" (it is better for a thing to have effect than to be made void). But this does not mean that the Court is free to stretch or pervert the language of the Constitution for the purpose of supplying omissions or for the purpose of correcting supposed errors. The section to be construed must be looked at as a whole in the context of the Constitution as a whole with a view to giving effect to the intendment of the Legislature.

Counsel has cited no authority in support of their submissions. I take it therefore, that there are no similar provisions in the Constitution of any other country which could be of any assistance to this Court. The general principles of construction of statutes are of course, well known and Counsel did not think it necessary to refer to them assuming I suppose, that the Court is well acquainted with them.

Mr. De Labastide submits that Section 136(2) empowers the Chief Justice to continue in office as Chief Justice performing all the functions and duties attached to the office of Chief Justice during the period of time that he remains in office with the permission of the President after attaining the age of 65 years and that period of time he says, is predicated upon how long it will take him "to deliver judgement or do any other thing in relation to proceedings that were commenced before him before he attained the age of 65 years." The seeming limitation of functions and duties spelt out in the words just quoted refers to the duration of time he continues in office as Chief Justice and not to the functions and duties he is to perform after attaining 65 years.

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Mr. Maharaj submits that the said quoted words limit the functions and duties of the Chief Justice after he attains 65 years of age. He can stay on he says, but only to complete Court work commenced before he attained 65 years of age and not as Chief Justice performing all the functions and duties attached to that office.

Both submissions have their attractions and I found the issue, at least during the hearing and immediately thereafter, not as simple as each Counsel confidently submitted that it was. In finding the answer, I must look for the intendment of the Legislature in the section as a whole as well as in the Constitution itself as a whole. 10

I start from what is a clear intent of the Legislature and that is that the holders of special offices expressly specified in the Constitution must vacate their office on attaining the age of 65 years: Section 136(1). These officers are:

- (1) A Judge: Section 106(1)
- (2) The Auditor-General: Section 136(12)
- (3) The Director of Public Prosecutions,  
Chief Parliamentary Counsel and  
Solicitor-General: Section 136(13)

The Legislature's intent up to this point is clear. For good reason or 20 bad, the holders of the above listed offices must retire at 65 years of age. But then, subsection (2) goes on to make an exception in the case of "a Judge" and it is this exception that the Court is called upon to construe.

The underlying thrust of the material sections is directed to the office of Judge who may be the Chief Justice, a Judge of Appeal or a Judge of the High Court. Judges of Appeal appointed under Section 104 (that is by the President acting in accordance with the advice of the Judicial and Legal Services Commission) are officially designated

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"Justices of Appeal" and Judges of the High Court, "Puisne Judges."  
The Chief Justice when sitting in the Court of Appeal is a Judge of  
Appeal and the President of that Court and when sitting in the High  
Court, a Judge of the High Court. Justices of Appeal when sitting in  
Court are together with the Chief Justice, Judges of Appeal. This  
is the position in law and practice.

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(continued)

Apart from the strictly judicial work when sitting in Court, the  
office of Chief Justice carries many other constitutional and  
administrative duties. The Chief Justice is the Head of the Judiciary,  
the Judicial arm of Government. He is the Chief Judge and Administrative  
Head of the Judiciary with all that that implies. He is the Chairman<sup>th</sup>  
of the Judicial and Legal Services Commission which appoints Judges  
to the Court of Appeal and High Court (Section 110). I am told by  
Mr. Maharaj from the Bar Table that he is Chairman of the National  
Awards Committee. All these functions (and others not mentioned which  
no doubt exist) are distinct and separate from his judicial functions  
in Court and are of course, of significant import to the office of  
Chief Justice.

With this background, I come to subsection (2). Three things  
are clear: (i) it applies only to a Judge and it is an exception from  
the mandatory requirement in subsection (1) that a Judge (along with  
holders of other Special Offices under the Constitution) shall vacate  
office at 65 years of age; (ii) the Judge if he stays on after 65 years  
of age, cannot commence new Court work. He stays on so far as Court  
work is concerned, only to complete such work already commenced and  
this may be delivering reserved judgements in matters fully argued  
before him before he attained 65 years of age or continuing with part-  
heard matters commenced before that age. This is the clear intention  
of the subsection; and (iii) the mandatory retirement age fixed in

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subsection (1) can only be changed by a special majority vote in Parliament. Subsection (2) must not therefore, be construed so as to circumvent the prerogative of the Legislature.

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(continued)

Mr. De Labastide's submission that the Chief Justice can continue in office as Chief Justice performing all the functions and duties as Chief Justice has an obvious weakness. Court work is an important function of that office. It will therefore mean that the Chief Justice can commence new Court work during the continuation period. This cannot be so. Further, an examination of the wording of subsections (1) and (2) provides some light. Speaking about "the office" involved, subsection (1) says "... shall vacate his office". Subsection (2) repeats "his office" and then proceeds to change the wording to "... continue in office." Regarding the retirement age, subsection (1) says "... on attaining the age of 65 years ...." Subsection (2) says "Notwithstanding that he has attained the age at which he is required .... to vacate his office" and then proceeds with reference to age to say "that age" on two occasions. If Mr. De Labastide's interpretation is what the Legislature had in mind, it would have been a relatively simple matter to say "may .... continue in his or that office." This would have made it clear beyond the shadow of a doubt that the Judge was to continue in the office he held on retirement, be it Chief Justice, Justice of Appeal or Puisne Judge. Continuing, if the Court can fill the lacuna and read the subsection as "may .... continue in his office" with the attendant right to perform all functions and duties attached to that office, then a conflict arises with the limitation imposed by what follows regarding the work the judge can do after attaining 65 years. "May .... continue in his office" must mean doing Court work including commencing new

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matters and this is in clear conflict with the rest of the subsection.  
Mr. De Labastide's submission invites the Court to re-enact or read  
the subsection something like this:

"2. Notwithstanding that he has attained the age of which he is required by or under subsection (1) to vacate his office (as Chief Justice) a Judge (Chief Justice) may, with the permission of the President, acting in accordance with the advice of the Chief Justice, continue in his office (as Chief Justice) for such period after attaining that age as may be necessary to enable him to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained that age save that in the case of the Chief Justice, he shall after attaining that age be confined in his functions and duties to delivery of judgement or to any other thing in relation to proceedings that were commenced before him before he attained that age."

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I do not think that it is permissible for the Court to read the  
subsection thus and I must regretfully decline to re-enact or read the  
subsection in that way.

The submissions of Mr. Maharaj present less or no difficulty.  
Since the material sections of the Constitution are primarily directed  
to the office of Judge, and the subsection limits the functions and  
duties during the continuation in office to Court work, it seems that  
the clear intention of the Legislature is directed to the Judge  
continuing in office as a Judge sitting in Court and doing Court work  
and being limited to Court matters commenced before he attained 65 years  
of age. The Judge therefore, continues as a Judge of the High Court or  
a Judge of Appeal and not as anything else. Kelsick J. would therefore,  
in this case continue in office as a Judge of Appeal and not as Chief  
Justice. This construction brings both parts of the subsection in  
harmony with each other; it disposes of the conflict raised by  
Mr. De Labastide's submission.

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Mr. De Labastide in his argument, submitted that the President had no discretion under subsection (2) but had to act as advised by the Chief Justice. Keeping in mind (i) The mandatory retirement age (subsection (1)) and that this subsection can only be amended by a special majority in Parliament, and (ii) The input of the political Directorate in the appointment of the Chief Justice (Section 102) and even in the case of an Acting Chief Justice (Section 103), it would be strange, to say the least, that the Legislature intended that a Chief Justice (although he is expected to act properly) would have the power to extend his own term in office after reaching retirement age by the mere act of advising the President to do so. In my view such an intention should and would have been clearly expressed by the Legislature if that, indeed, was its intent; and this, it has not done. 10

In all the circumstances, I hold that Mr. Maharaj's submission is correct and that the Chief Justice can continue in office as a Judge of Appeal for the purpose of completing Court work commenced before he attained the age of 65 years.

Mr. De Labastide also submitted that the Legislative intent can be clearly gleaned from the Tax Appeal Board (Amendment) Act, 1975 which was passed in the House of Representatives and the Senate on the 14th June, 1985 and 25th June, 1985 respectively and was assented to on the 9th July, 1985. 20

Section 2 of the Act provides:

"(4A) Notwithstanding that his term of office has expired, the Chairman, the Vice-Chairman or an ordinary member of the Appeal Board, may, with the permission of the President acting on the advice of the Chairman, continue in office for such a period after the expiry of his term as may be necessary to deliver judgment, or to do any other thing in relation to proceedings that were commenced before him before his term of office expired." 30

/12....

That subsection no doubt and in clear and express terms say that "the Chairman, the Vice-Chairman or ordinary members" may continue in office after he reaches retirement age with the permission of the President, "acting on the advice of the Chairman". Subsection 136(2) is not so clearly and expressly stated. Further, there can really be no comparison between the Tax Appeal Board and the Supreme Court of Trinidad and Tobago and the Chairman of the Tax Appeal Board and the Chief Justice in the area of functions, powers and duties. And the fact that in 1985, the Legislature gives certain powers to the Chairman of the Tax Appeal Board to extend his term in office does not at all mean that it intends to confer that same power on the Chief Justice. On the contrary, since the Legislature has so clearly spelt out the position in the Tax Appeal Board, it seems to me that if the same position was to apply in the Supreme Court, it would have likewise spelt out the power in the same express terms by providing: "Notwithstanding that he has attained the age by which he is required by or under subsection (1) to vacate his office, the Chief Justice, a Justice of Appeal, or Puisne Judge may, with the permission of the President acting in accordance with the advice of the Chief Justice, continue in office ..."

I cannot see how this Amendment to the Tax Appeal Board Act Ch. 4:50 really helps in this case.

Finally, Mr. De Labastide made an interesting statement during the course of his submissions. He said "You cannot have a half-Chief Justice". I agree. You cannot have a Chief Justice doing the important constitutional and administrative work attached to the office and not the likewise important Court work. And that would be the effect if the construction submitted by Mr. De Labastide is to apply. With Mr. Maharaj's submission, there will be no "half-Chief Justice". Kalsick J. would continue in office as a Judge of Appeal

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completing Court work already commenced.

This Court considers it necessary to add a final word about the construction of subsection (2). It is provision inserted "ex abundantia cautela". The Constitution contemplates that a Judge is a personage of integrity and industry and will as a rule, complete all his Court work before attaining 65 years of age so as to give effect to the clear intention of subsection (1). Unforeseen circumstances do however, sometimes but rarely arise in the natural order of things, for example a Judge, or counsel or litigant may become ill during the course of a hearing in a matter before a Judge who is close to the retirement age. 10  
A re-hearing in such a case would lead to a waste of time and additional expenses to the litigants through no fault of their own. So the Legislature, in its wisdom, inserted this subsection. It is therefore, a provision intended to be brought into play only in exceptional circumstances, circumstances containing therein something of the unexpected and unforeseen. It was not intended to apply otherwise— for example, pressure of work, length of the Court list, etc. These are matters for which the remedy lies elsewhere. A Judge is therefore, expected when approaching retirement age, to so order his Court calendar as to leave nothing outstanding by the time he attains 65 years of age. 20  
And if he is remiss in so doing, the Chief Justice must ensure that he does what is proper and the Chief Justice must, of course, himself ensure that his Court calendar is clear by the time he reaches retirement age.

In the exceptional circumstances that may arise, the Constitution does not contemplate any substantial period of continuation in office for this would constitute a de facto increase in the mandatory retirement age without Parliamentary approval. Further, the effect of any such continuation in office is self-defeating in that while a Judge stays on

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to complete outstanding Court work, the sittings of the Court are affected because no new appointments to the Court can be made. In

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effect, the Court operates with one Judge less. At the present time, the Court of Appeal is operating with two Judges less because of the continuation in office of Kelsick J. and Braithwaite J.A. under subsection (2). The Court therefore, cannot sit in the two divisions

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of which it is comprised and the list of cases awaiting determination, increases. This instant situation fortifies the view that subsection (2) is intended to apply only in exceptional circumstances. Regretfully,

(continued)

10 in recent times it seems that subsection (2) is being utilised as a matter of course. This Court expresses the hope that such a practice will not continue. This Court does not suggest any time limit over which subsection (2) should apply as it depends on unforeseen factors; but in all but the very most exceptional of cases, it should not, in my view, exceed a period of two months. The Constitution requires that a Judge, as a constitutional obligation, complete all his Court work before he reaches the age of retirement.

Both Counsel proceeded on the basis that section 136(2) is applicable for the office of Chief Justice. It seems to me at first sight (but this without full and careful consideration) that an arguable case can be made out for the proposition that the section does not apply to the office of Chief Justice. There is no difficulty at all in applying the subsection to Justices of Appeal and Puisne Judges since these Judges do not have any duties other than Court work. Further, an argument about the Chief Justice being a Judge in his own cause will not arise. But this issue was not put before the Court for a determination and in any event, I have not had the benefit of the assistance of Counsel on the issue, and I would therefore, leave the matter undetermined.

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Now that I have determined the matter, I venture with the  
greatest respect and with only the interests of the Judiciary and  
the Administration of Justice at heart and in mind, to suggest to the  
Defendant and to Kelsick J. that they should accept the Court's decision  
and that Kelsick J. should now proceed with all expedition to complete  
what Court work he has outstanding and depart the hallowed precincts of  
the Judiciary with the honour befitting a retiring Chief Justice.  
Nothing of substance would be lost if this course of action is taken  
except perhaps, pride of office for a few months.

This matter and the events leading up to it have, for some time 10  
now before Kelsick J. reached retirement age, received a fairly wide  
press coverage, most critical of his continuing in office as Chief  
Justice after reaching that age and some threatening legal action  
should he continue in office as Chief Justice. Alas, unfortunately,  
the threat has materialised. All these happenings have caused serious  
damage to the Judiciary and the Administration of Justice and further  
litigation may very well result in irreparable damage to the Judiciary.  
If it is necessary to clarify the Legislative intent, this I suggest  
with respect, can be done by the Legislature in due course. Whatever  
be the strict constitutionality of the matter. Kelsick J. has by his 20  
own deliberate action, brought about a situation which constitutes a  
disservice to an Institution over which he had the great honour to  
preside and an Institution which should always stand solemn in the  
public eye. Exemplars of Society (and the Chief Justice stands among  
the foremost of those) must not only hew to the straight line of the  
Constitution and the Law but must appear to do so. Paul, the leader  
and judge of the Christian Gentile Church of the first century, in  
his letter to the Corinthians said "All things are lawful for me but  
all things are not helpful and good for others. All things are

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lawful for me but all things do not edify". The Constitution is predicated upon and Society expects its exemplars to live by the principle enshrined in those words. They must possess a sense of shame. They must have an instinctive feeling for potential action which is proscribed not only because it is unlawful but which though lawful, is just not done in a civilised society. They must be ever mindful of the fact that their actions set the direction for the people they are privileged to lead, that (in the saying of the common man) "the thread follows the needle". There is a grave and weighty responsibility to society and they should not accept the honour of high public office if they are not prepared to fulfil the attendant responsibilities. Like Caesar's wife, they must be above reproach; and reproach has been and is being cast upon the office of Chief Justice and consequently, on the entire Judiciary. And this Court thinks it is duty bound to comment as it has .... and does so with sadness and with deep regret.

In the light of my findings aforesaid, the Court answers the questions raised in this Application as follows:

The Order:

20 The Court declares that upon the true construction of Sections 136(1) and (2) of the Constitution:

(1) His Excellency, the President of Trinidad and Tobago has no power and/or authority to allow Kolsick J. to continue in office after attaining the age of 65 years on the 15th July, 1985 to perform the functions of Chief Justice of the Supreme Court of Trinidad and Tobago.

(2) The discretion (if any) of His Excellency the President to allow a Judge (including a Chief Justice) to continue in office after attaining the age of 65 years is limited to such functions only as

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enables such Judge to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before the attained the age of retirement.

- (3) Kelsick J. cannot validly perform the functions of Chief Justice after attaining the retirement age of 65 years. He may continue in office as a Judge of Appeal with functions enabling him "to deliver judgement or to any other thing in relation to proceedings that were commenced before him before he attained the age of 65 years."
- (4) Costs will be taxed and paid by the Defendant to the Plaintiff.

Dated this 22nd day of July, 1985.

10

Lennox Deyalsingh,  
Judge.

NOTICE OF APPEAL

REPUBLIC OF TRINIDAD AND TOBAGO:

In the Court  
of Appeal

IN THE COURT OF APPEAL

No. 114 of 1985

No. 12  
Notice of  
Appeal  
23rd July 1985

IN THE MATTER of the Interpretation of the  
Constitution of Trinidad and Tobago and in  
particular Section 136

BETWEEN

10

THE ATTORNEY GENERAL OF TRINIDAD  
AND TOBAGO

Defendant/Appellant

AND

PETER SOOKOO (an infant by Harry  
Sookoo, his father and next friend)  
AND HARRY SOOKOO

Plaintiffs/Respondents

\*\*\*\*\*

20

TAKE NOTICE that the Defendant/Appellant, the Attorney  
General of Trinidad and Tobago, being dissatisfied with the decision  
of the High Court of Justice as contained in a Judgment of Mr,  
Justice Lennox Deyalsingh dated the 22nd day of July, 1985 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 DEFENDANT/APPELLANT further states that the names  
and addresses including his own of the persons directly affected by  
the Appeal are these set out in paragraph 5.

2. The whole of the judgment of Mr. Justice Lennox Deyalsingh  
dated the 22nd day of July, 1985.

30

GROUNDS OF APPEAL

3. The learned Judge erred in law and in the construction of  
Section 136(1) and (2) of the Constitution of the Republic of

- (a) That the Chief Justice could continue to be a Judge of the High Court or of the Court of Appeal after he ceased to hold the office of Chief Justice
- (b) That section 136(2) does not permit a Judge (including the Chief Justice) in the circumstances therein specified to continue, and to continue only, in the particular office which he held when he attained the age of 65.
- (c) That the Chief Justice upon attaining 65 years of age could be continued in office under section 136 (2) for the purpose of performing some of the functions of his office but not others. 10
- (d) That a Judge (including the Chief Justice) who is continued in office under section 136(2) has jurisdiction to deliver judgments and complete part-heard matters, but no jurisdiction otherwise.
- (e) That the construction of section 136 (2) in its ordinary and natural meaning involved some encroachment on the prerogative of the Legislature.
- (2) The learned Judge took into account extraneous and pre-judicial matters of which there was no evidence before him and permitted himself to be influenced by them. 20

4. RELIEF SOUGHT

That the judgment of the High Court be set aside and that in lieu thereof the Court of Appeal declare that the first and third questions asked in the originating summons filed herein by the Respondent be answered in the affirmative and that the second question asked therein be answered in the negative.

That the Respondent do pay the costs of this Appeal and in the High Court. 30

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Notice of Appeal  
23rd July 1985  
(continued)

5.

PERSONS DIRECTLY AFFECTED BY THIS APPEAL:

PETER SOOKOO	Mc Shine Street Sangre Grande
HARRY SOOKOO	Mc Shine Street Sangre Grande
THE HONOURABLE ATTORNEY GENERAL	Red House St. Vincent Street Port of Spain

DATED this 23rd day of July, 1985.

for Chief State Solicitor  
Solicitor for the Defendant/ Appellant

10

TO: (1) The Registrar of the Court of Appeal  
Trinidad House  
St. Vincent Street  
PORT OF SPAIN.

(2) Miss Lucina Cardenas  
#3 Penitence Street  
SAN FERNANDO.

Solicitor for the Plaintiffs/Respondents.

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Judgment of Mr. Justice  
des Iles TRINIDAD AND TOBAGO

7th August  
1985

No. 13  
JUDGMENT OF MR JUSTICE DES ILES

IN THE COURT OF APPEAL

No.114/85

BETWEEN

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO

DEFENDANT/APPELLANT

AND

PETER SOOKOO (an infant  
by HARRY SOOKOO, his father  
and next friend) and  
HARRY SOOKOO

PLAINTIFFS/RESPONDENTS

Coram: G.E. des Iles J.A. - President  
A.T. Warner J.A.  
R.H. Narine J.A.

Dated: 7th August, 1985

Mr. Lionel Jones, Solicitor General  
Mr. Michael de la Bastide Q.C. and  
Mr. Carrington for the Appellant

Mr. Ramesh Maharaj and  
Mrs. L. Maharaj for the Respondents

J U D G M E N T

Delivered by des Iles J.A.

In order to put the matter for determination in this appeal in correct perspective it is necessary that I set out from the outset the nature of the questions which fell to be determined by the High Court on 18th July, 1985 by way of Originating Summons.

On Tuesday 16th July, 1985 what has been described as <sup>an</sup> Interpretation Summons was filed in the High Court by the Solicitor for the Plaintiffs/ Respondents Lucina Cardenas seeking the determination of the following questions:

"(1) Whether upon the true construction of Sections 136 (1) and (2) of the Constitution of Trinidad and Tobago contained in the Schedule to the Constitution of the Republic of Trinidad and Tobago Act Ch: 1:01 of the Laws of Trinidad and Tobago (hereinafter referred to as "the Constitution"). (Sic) His Excellency the President of Trinidad and Tobago Mr. Ellis Clarke has the power and/or authority to allow the Hon. Mr. Cecil Kelsick to continue in office after attaining the age of sixty-five on the 15th day of July, 1985 to perform the functions of Chief Justice of Supreme Court (sic) of Trinidad and Tobago.

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(continued)

(2) Whether upon the true construction of Sections 136 (1) and (2) of the Constitution the discretion of His Excellency the President of Trinidad and Tobago Mr. Ellis Clarke to allow a judge of the Supreme Court which includes the Chief Justice by virtue of Section 3 of the Constitution to continue in office after attaining the retiring age is limited to enabling the judge to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained the retiring age.

(3) Whether upon the true construction of Sections 136 (1) and 136 (2) the Hon. Mr. Cecil Kelsick if he remains in the Office of Chief Justice of Trinidad and Tobago after he attains the retiring age, can validly perform the functions of Chief Justice of Trinidad and Tobago.

(4) Such further and/or other relief as the Court may deem fit.

(5) Costs."

The said Summons was supported by an affidavit of the said solicitor sworn on the said 16th July, 1985 in which she states inter alia that she has been instructed by the Plaintiffs/Respondents to commence proceedings by Writ of Summons against the Minister of Health and the Attorney General of Trinidad and Tobago for damages for negligence in respect of medical treatment which the infant plaintiff received at the Sangre Grande District Hospital and at the Port of Spain General Hospital from the 18th November, 1974 to 5th December, 1984 which resulted in the amputation of the infant plaintiff's right leg and special damages suffered by the adult plaintiff as a result of the said negligence. She further states that because of O 6 R 1 of the Rules of the Supreme Court of Trinidad and Tobago every writ must be in form 2 of Appendix A of the said Rules which necessitates

the said writ having to be witnessed by the Chief Justice and because by an article in the Trinidad Express Newspaper of Saturday 13th July, 1985 there was "evidence" that the Hon. Mr. Cecil Kelsick attained the age of 65 on Monday 15th July, 1985 and the President in the purported exercise of his powers under Section 136 (2) of the Constitution has permitted the said judge to continue in office until 21st December, 1985 and no person had been appointed to fill the office of Chief Justice as from the 16th July, 1985.

In the circumstances the solicitor claimed to be uncertain as to whether the said writ which she was instructed to file on behalf of her clients would be valid if witnessed by the Honourable Mr. Justice Kelsick as Chief Justice as there appears to be "a fundamental divergence of views in the construction of the said section [136] of the Constitution which in the absence of the appointment of a new Chief Justice of Trinidad and Tobago ought to be resolved before the Plaintiffs commence their action by Writ of Summons".

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Paragraphs 9 and 10 of the said affidavit read as follows:-

"(9) The public interest demands that in the absence of the appointment of a new Chief Justice the Supreme Court ought to construe the meaning of the said Section. The mere suspicion in the minds of the public that the Honourable Mr. Cecil Kelsick may not be legally and constitutionally functioning as Chief Justice of Trinidad and Tobago raises a serious threat to the rule of law and the independence of the Judiciary of Trinidad and Tobago.

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(10) In the circumstances the Plaintiffs humbly pray that this Honourable Court would determine the questions of construction raised in the Summons herein."

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As stated above the said Summons came on for hearing on the morning of Thursday 18th July, 1985 apparently less than two clear days after service on the appellant/defendant in the afternoon of Tuesday 16th instant, before the High Court of Justice in San Fernando and the learned trial judge delivered a written judgment thereon on Monday 22nd July, 1985 in which he answered the first and third questions in the negative and the second in the affirmative.

Against such findings the appellant has filed the following grounds of appeal:

- (1) "The learned judge erred in law and in the construction of Sections 136 (1) and (2) of the Constitution of the Republic of Trinidad and Tobago by holding:-
- In the Court of Appeal
- No. 13  
Judgment of  
Mr Justice  
des Iles  
7th August 1985
- (a) That the Chief Justice could continue to be Judge of the High Court or of the Court of Appeal after he ceased to hold the office of Chief Justice.
- (b) That Section 136 (2) does not permit a judge (including the Chief Justice) in the circumstances therein specified to continue, and to continue only, in the particular office which he held when he attained the age of 65.
- (c) That the Chief Justice upon attaining 65 years of age could be continued in office under Section 136 (2) for the purpose of performing some of the functions of his office but not others.
- (d) That a Judge including the Chief Justice who is continued in office under Section 136 (2) has jurisdiction to deliver judgments and complete part-heard matters, but no jurisdiction otherwise.
- (e) That the construction of Section 136 (2) in its ordinary and natural meaning involved some encroachment on the prerogative of the Legislature."
- (2) The learned Judge took into account extraneous and prejudicial matters of which there was no evidence before him and permitted himself to be influenced by them."

In evidence before the learned trial judge was the letter written to the President by the Chief Justice and dated 28th June, 1985 advising the grant of permission to himself to continue in office as follows:

"

June 28, 1985

His Excellency Mr. Ellis Clarke, T.C.,  
President,  
President's House,  
St. Ann's.

Your Excellency,

I will attain the retiring age of 65 on 15th July 1985. There are several matters on which I have adjudicated that are part-heard in which judgment has been reserved.

Under Section 136 (2) of the Constitution, I advise Your Excellency to grant me permission to continue in office until December 21, 1985 which is the end of the short term, so as to enable me to deliver judgment and to do any other thing in relation to proceedings that were commenced before me prior to my attaining the retiring age.

Yours sincerely,

C.A. Kelsick  
Chief Justice."

On the said day the President replied as follows:-

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"

28th June, 1985

The Honourable the Chief Justice  
Mr. Cecil Kelsick,  
Chief Justice's Chambers,  
Supreme Court,  
Port of Spain.

Dear Chief Justice,

I acknowledge receipt of your letter of June 28, 1985.

Pursuant to Section 136 (2) of the Constitution I hereby permit you to continue in office as Chief Justice until December 21, 1985 this being the period necessary to enable you to deliver judgment or to do anything in relation to proceedings that were commenced before you before July 15, 1985.

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Yours sincerely,

Ellis Clarke  
President."

The main thrust of the appellant's case was to the effect that if the words of Section 136 (1) and (2) were given their ordinary natural meaning it will be found that the Sections apply to the office of Chief Justice and that the President has the power and authority to allow (as it is put in the summons) ~~30~~ and permit the Honourable Mr. Justice Kelsick to continue in office as Chief Justice after attaining the age of 65 years. In this regard reference was made to "Statutory Interpretation" by Francis Bennion published in 1984 at page 264 in which in dealing with what is called "the plain meaning rule" he quotes from Volume 36 of Halsbury's Laws of England 4th Edn. at para 585 as follows -

"If there is nothing to modify, nothing to alter, nothing to qualify the language which a statute contains, the words and sentences must be construed in their ordinary and natural meaning."

(continued)

Again at page 374 (ibid) when dealing with the necessity to read a legislative enactment as a whole the learned author refers to the words of Holmes J. to be found in "The Theory of Legal Interpretation" by Olive Wendell Holmes Jr. in these terms

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"You let whatever galvanic current may come from the rest of the instrument run through the particular sentence."

Yet another canon of construction to which the Court was referred at page 36 (ibid) is that the Court seeks to avoid a construction that produces an absurd result since this is unlikely to have been intended by Parliament. Here the courts give a very wide meaning to the concept of 'absurdity', using it to include virtually anything which appears inappropriate, unfitting or unreasonable and later he refers to the older meaning of "absurd" as being 'out of harmony with reason or propriety; incongruous, unreasonable, illogical', a meaning which Judges seem to favour.

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The submission was that if the words of Sections 136 (1) and (2) were given their ordinary natural meaning absurdity would be avoided. It is necessary therefore that the relevant sections be set out for consideration as follows:-

"136 (1) The holder of an office to which the subsection and subsections (3) to (11) apply (in this section referred to as "the officer ") shall vacate his office on attaining the age of sixty-five years or such other age as may be prescribed.

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(2) Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge may, with the permission of the President, acting in accordance with the advice of the Chief Justice, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age."

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"(13) Subsections (1) to (6) apply to the office of Judge."

Judgment of Mr Justice des Iles

7th August 1985 By Section 99 of this Constitution the Supreme Court of Judicature

(continued)

of Trinidad and Tobago is established consisting of the High Court of Justice and the Court of Appeal, and by Section 100 thereof the Judges of the High Court shall be the Chief Justice, who shall be ex officio a Judge of that Court and such number of Puisne Judges as may be prescribed.

By Section 101 (I) of the Constitution the Judges of the Court of Appeal shall be the Chief Justice, who shall be the President of the Court of Appeal, and such number of Justices of Appeal as may be prescribed.

It was submitted that there are three offices in the Judiciary to which appointments may be made and they are:

- (1) Puisne Judge
- (2) Justice of Appeal and
- (3) Chief Justice

and there are 2 Statutes therein being

- (1) Judge of the High Court and
- (2) Judge of the Court of Appeal

The position of the Chief Justice is unique in that by virtue of his office he is ex officio a Judge of the High Court, and in the Court of Appeal he is a Judge of the Court of Appeal by Section 101 of the Constitution. Unless therefore a person fits into one of the two categories i.e. Chief Justice or Justice of Appeal by appointment thereto he cannot sit in the Court of Appeal.

By Section 103 of the Constitution inter alia if the office of Chief Justice is vacant or if for any reason the Chief Justice is unable to perform the functions of his office the President, after consultation with the Prime Minister and Leader of the Opposition, may appoint such other of the judges to perform the functions of the Chief Justice and it was submitted that this expression - such other of the Judges includes a Puisne Judge as well as a Justice of Appeal.

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By Section 104 of the Constitution the President may appoint a person to act in the office of Justice of Appeal or Puisne Judge, where such office is vacant, but the President must be acting in this regard in accordance with the advice of the Judicial and Legal Service Commission. This is an indication

that other than the office of Chief Justice there are only two offices to which appointments may be made i.e. Justice of Appeal and Puisne Judge. Where in the Constitution the expression "office of Judge" is used it is used in relation either to the office of Chief Justice or that of Justice of Appeal, or that of Puisne Judge. This must be so because by Section 3 of the Constitution, the interpretation section, the word "Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge. In this setting the expression "Judge of Appeal" is meant to refer to the office of "Justice of Appeal" as there is no office of Judge of Appeal. There is however a status of "Judge of the Court of Appeal" as was earlier submitted. The word "Judge" in the Constitution is invariably used in its defined meaning so that when the Legislature intends to exclude the Chief Justice it is expressly done, for example in Section 104 (1) as follows:

"The Judges, other than the Chief Justice, shall be appointed by the President, acting in accordance, with the advice of the Judicial and Legal Service Commission."

By Section 107 of the Constitution a Judge shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and for the due execution of his office, as set out in the First Schedule to the Constitution.

In order to illustrate the importance of making appointments to the correct office in the Judiciary the Privy Council decision in the case of Butler v The King (1939) 3 AER 121 was referred to. In that case the facts were that by the Judicature Ordinance 1880 as amended in 1936 the Supreme Court of Trinidad and Tobago consisted of 4 Judges namely the Chief Justice and the 1st, 2nd, 3rd and 4th Puisne Judges. Provision was made in the Main Ordinance for the appointment of acting judges in certain circumstances, such persons to have all the powers of a Judge of the Supreme Court.

In 1931 A Court of Criminal Appeal was established by Ordinance consisting of the Chief Justice and the Puisne Judges of Trinidad and Tobago but made no provision for the appointment of a person to act as a Judge of the Court of Criminal Appeal. The appellant therein had been convicted of sedition in the Supreme Court and the Court of Criminal Appeal dismissed his appeal but that Court was composed of the Chief Justice and two persons who had been appointed to act as Judges of the Supreme Court to hear and determine the Appeal. It was held that the constituent members of the Court of Criminal

Appeal were, by enactment, the Chief Justice and the Puisne Judges of the then Colony and as a person appointed under Section 7 of the Main Ordinance to act as a Judge of the Supreme Court was not a Puisne Judge he could not therefore be a member of the Court of Criminal Appeal. The appeal was accordingly allowed.

The submission of Counsel for the appellant with regard to the interpretation of Sections 136 (1) and (2) of the Constitution was to the effect that whilst a Judge, a Justice of Appeal and the Chief Justice shall vacate their offices on attaining the age of sixty-five years, a Judge may nevertheless continue in office, with the permission of the President, acting in accordance with the advice of the Chief Justice, for such period (emphasis added) as is necessary to enable him to deliver judgment or to do anything in relation to matters which were part-heard before him before becoming 65. 10

It was submitted that if the provisions were read carefully and the words given their ordinary meaning the limitation contained therein was one purely of time and not of function and as such the Chief Justice or any Justice of Appeal or Puisne Judge could continue to perform all his functions including the hearing of new matters during the period of the extension of his term of office (hereinafter called "the extended period") giving priority to the conclusion of the part-heard matters which was the reason for the extension in the first place. 20

It was submitted that the concept of the extended period as well as the use of the expressions "continue in office", "continue in his office" or "continue in that office" were not new and that as far back as 1959 the idea finds expression in Section 64A (1) of the Trinidad and Tobago (Constitution) (Amendment) Order-in-Council, 1959 as follows:-

"64A Subject to the following provisions of this section, the Chief Justice and each Puisne Judge shall hold office until he attains the age of sixty-two years. Provided that the Governor may permit the Chief Justice or a Puisne Judge who has attained that age to continue in office for the purpose of (emphasis added) giving judgment or otherwise in relation to any proceeding heard by him before he attained that age."

.../ Then again

Then again in 1961 in the Trinidad and Tobago (Constitution) Order-in-Council 1961 Section 66 (1) thereof is on the following terms:-

"Subject to the following provisions of this article, a judge of the Supreme Court shall vacate his office when he attains the age of sixty-two years. Provided that the Governor may permit a judge who has attained that age to continue in office for the purpose of (emphasis added) giving judgment or otherwise in relation to any proceeding heard by him before he attained that age."

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By Section 65 (2) it was provided that the Judges of the Supreme Court shall be the Chief Justice and such, number of Puisne Judges as may be prescribed.

Most significantly however in 1962 in Section 76 (2) in relation to a Puisne Judge and Section 80 (2) in relation to a Judge of the Court of Appeal, of the Trinidad and Tobago (Constitution) Order-in-Council, 1962, commonly called the Independence Constitution, such a Judge may with the permission of the Governor General, acting in accordance with the advice of the Chief Justice, continue in office for such period (emphasis added) after attaining the age at which he is required (by that Constitution) to vacate his office, as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

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The change in language from "for the purpose of" to "for such period as may be necessary": is a clear indication by the Legislature of its intention to remove any limitation on the function of the Judge during the extended period, to deal with part-heard matters only, a limitation contended for by the Respondents in this appeal, and that change in wording remains to the present day.

The development of the concept of the extended period, it was submitted, was support for the interpretation placed on Section 136 (2) by the plain meaning rule earlier referred to herein, to which there was no reasonable alternative.

30

An examination of the Constitutional provisions of some Commonwealth Caribbean countries and Guyana submitted to this Court, would disclose that in the Bahamas, Jamaica and Guyana there are two periods which for convenience I shall describe as "extended periods", the first from 62 years to 65 years then the second in terms identical to those of our 136 (2) of the Constitution, but in all cases the relevant expression used is "continue in office" as in our Constitution.

(continued) In the cases of the Constitution of Barbados and of the Associated States, submitted to the Court, however, the position is different. In Barbados by Section 80 (2) of their Constitution the Judges of the Supreme Court are the Chief Justice and such number of Puisne Judges as shall be prescribed. By Section 84 (1) their retirement age is 65. The Governor General may permit a Judge to continue in office until 67 years by agreement in the first instance and the second extension is for a limited purpose as follows:

"Notwithstanding that he has attained the age at which he is required by the provisions of this Section to vacate his office a person may sit as a judge (emphasis added) for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him before he attained that age."

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In the Constitution of the Associated States whilst the first extension permits a Puisne Judge to continue in office from 62 to 65 years and a Justice of Appeal from 65 to 68 years the second extension permits either of them to sit as a judge for the limited purpose of dealing with part-heard matters only.

The expression "sit as a judge" is the authority in the Constitution itself to sit and determine part-heard matters after retirement age, and if such 20 was the intention of the Parliament of Trinidad and Tobago similar language would have been used.

Such was the nature of the submissions for the Appellant herein.

For the respondents the submission was to the effect that Section 136 (2) of the Constitution does not permit the Chief Justice to remain in office as Chief Justice performing all the functions thereof after attaining the age of 65 years, and the President has no power to allow Mr. Justice Kelsick to do so as was held by the learned trial judge in his judgment. What happens when a Chief Justice has to complete work commenced before him before attaining retirement age is that he reverts to the office of judge simpliciter purely and solely 30 for the purpose of delivering judgment and doing any other thing in relation to proceedings that were commenced before him before he attained that age.

Assuming that the President did have the power to extend the term of office of a Judge under that section he had a discretion to do so and he should not have exercised his discretion in favour of extending the term of office of Mr. Justice Kelsick for six months in spite of the provisions of Section 80 (1) (c) of the Constitution which reads as follows:

(continued)

"80 (1) In the exercise of his functions under the Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution or such other law, and, without prejudice to the generality of this exception, in cases where by this Constitution or such other law he is required to act \_\_\_\_\_

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(c) in accordance with the advice of any person or authority other than the Cabinet."

Counsel contended that notwithstanding the provisions of Section 80 (1) (c) of the Constitution and the expression "acting in accordance with the advice of the Chief Justice,"<sup>3</sup> Section 136 (2) thereof, the President had a discretion to grant or refuse the permission to continue in office by virtue of the executive authority being vested in him under Section 74 (1) of the Constitution as follows -

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"The executive authority of Trinidad and Tobago shall be vested in the President and, subject to this Constitution may be exercised by him either directly or through officers subordinate to him."

It was the contention therefore of Counsel for the Respondents that as the President derives his powers from the Constitution if there is no power under the Constitution for either the President or the Chief Justice to extend the tenure of office of a Judge, then the President cannot exercise that authority. If the contention of the Appellant is correct it would mean that the Chief Justice would have the power to extend his own tenure of office and this would be undesirable to say the least.

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It was necessary in this setting to examine the nature of the office of Chief Justice and Counsel submitted that there was a distinction between the office of Judge of the Court of Appeal and Justice of Appeal, and between a Judge of the High Court and a Puisne Judge. He said that a Puisne Judge is the person who holds the office of Judge of the High Court and a Justice of Appeal is the person who holds the office of Judge of the Court of Appeal. He is the personification of the office of Judge of the Court of Appeal.

In attempting to determine the office of Chief Justice we find that by Section 100 (1) of the Constitution the Chief Justice is ex officio a Judge of the High Court and so he is not a Puisne Judge.

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By virtue of Section 5 (1) of the Judicature Act Ch: 4:01

"There shall be no less than six and no more than twelve Puisne Judges and the Chief Justice shall be ex officio a Judge of the High Court."

(continued)

By Section 2 of the said Act "Puisne Judge" means a Judge of the High Court, other than the Chief Justice.

By Section 101 (1) of the Constitution the Chief Justice is a Judge of the Court of Appeal and is President of the Court of Appeal. He said that because of the position of Section 103 in the Constitution i.e. coming right after Sections 101 and 102, the only Judge who could act as Chief Justice was a Judge of the Court of Appeal and not a Judge of the High Court, as had been submitted for the Appellant. 10

Counsel submitted that when a Judge attains the age of 65 he ceases to be a Judge and in Section 136 (2) Parliament permits a Judge when he ceases to be a Judge to continue as a Judge to complete matters that he had started before age 65. It is in that limited jurisdiction that he is able to function. But when he has completed his judgments that is an end of the matter.

Counsel was of the view that it is because the Chief Justice can only perform the limited jurisdiction under section 136 (2) (i.e. to deal with part- heard matters) that he is permitted by that Section to advise the President about himself. In other words, he said, if it were that the Chief Justice could have performed all the functions of <sup>Chief Justice</sup> ~~A~~, it would have been invidious and totally contrary to the rules of natural justice. Hence he urged a construction of Section 136 (2) to the effect that the Chief Justice may advise the President with regard to himself only because he is advising the President in respect of his performing limited judicial work thereby obviating 'any possible mischief' by such advice. If a construction contrary to this view were adopted it would be in breach of one of the basic principles of interpretation that law should serve the public interest and that principle is found in Bennion (supra) in para 127 at page 295. 20 30

In furtherance of Counsel's submission on what he considered to be the proper construction of Section 136 (2) he urged upon the Court the decision of the Privy Council in the case of Endell Thomas v The Attorney General of Trinidad and Tobago (1982) AC 113 in which a Police Officer was dismissed

10 from the Service and sought relief in the High Court and Court of Appeal of Trinidad and Tobago. The principle of construction arising out of this case it was submitted is that the Constitution must be interpreted to avoid the risk of abuse and therefore if the Chief Justice were allowed to advise on his continuing to perform all his functions the provisions may be abused. He therefore contends that the Chief Justice is first and foremost a Judge and that after vacating his office as Chief Justice in some extraordinary way he would just arrive in the office of Judge for the limited purpose for which he contends and that the Judge so serving would be paid in some unexplained manner even by means of an ex gratia award to be determined by the Executive.

Counsel also submitted that in view of the fact that the Chief Justice is a judge first and foremost even without appointment to the office of Judge, there was no need for a Chief Justice who had been a Judge to take an oath upon entering upon his new duties as the oath prescribed is that of a Judge and once that had been taken it sufficed for all offices.

20 I have considered the submissions of Counsel and accept those of Counsel for the Appellant. I hold that under Section 136 (1) of the Constitution the age at which the Chief Justice vacates his office is that of 65 years. I hold that on the authority of The Composition of Legislation by Dreiger of the Saskatchewan Bar, the effect of the word "notwithstanding" with which Section 136 (2) of the Constitution begins is to override the provision in subsection (1) thereof and accordingly that the Chief Justice may continue in the plenitude of his office as Chief Justice with the permission of the President acting on the advice of the Chief Justice, not "for the purpose of" as these words do not appear in the Section, but "for the period necessary" to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained the age of 65 years.

30 I hold that in the exercise of his powers under this Section the President has no discretion and that he must act on the advice of the Chief Justice by virtue of Section 80 (1) (c) of the Constitution. I further hold that whilst the Chief Justice may engage in hearing new matters in cases of extreme urgency, having regard to the underlying purpose of the extended period his prime concern and duty must be the conclusion of part-heard matters. I consider that the construction which I have placed on the relevant sections is totally in keeping with the public interest which Parliament in enacting them intended to subserve.

It should be noted that two months of the extended period granted to the Honourable Mr. Justice Kelsick constitute the Long Court Vacation a fact which will make conclusion of certain matters more difficult in the absence of other members of the Court, who may be out<sup>of</sup> Trinidad and Tobago.

I would accordingly answer the questions raised in the Originating Summons dated 16th July, 1985 herein as follows:

Upon a true construction of Section 136 (1) and Section 136 (2) of the Constitution of Trinidad and Tobago,

1. His Excellency the President of Trinidad and Tobago Mr. Ellis Clarke has the power and/or authority to permit the Honourable Mr. Justice Cecil Kelsick to continue in office as Chief Justice after attaining the age of sixty-five on the 15th day of July, 1985 to perform the functions of Chief Justice of the Supreme Court of Trinidad and Tobago. 10
  
2. The power of His Excellency the President to permit a Judge which expression includes the Chief Justice to continue in office after attaining the age of 65 is not limited to enabling a Judge to deliver judgment or to do any other thing in relation to proceedings commenced before him before he attained that age. His Excellency the President does not act in his discretion in this regard. 20
  
3. The Honourable Mr. Justice Kelsick continues in the office of Chief Justice of Trinidad and Tobago despite having attained the retiring age and he can validly perform the functions of Chief Justice of Trinidad and Tobago. 30

.../ As the

As the questions raised in the said Summons contained certain inaccurate conclusions of law I considered it necessary to make alterations in the form of my answer.

I accordingly hold that the Honourable Mr. Justice Kelsick in the valid and proper exercise of the powers vested in him by Section 136 (2) of the Constitution in advising the President to permit him to continue in the office of Chief Justice until the 21st December, 1985 has broken no law, committed no breach of the Constitution, infringed no principle of natural justice and has performed no disservice to the judiciary. On the contrary in an effort to permit both divisions of the Court of Appeal to function for as long as possible with a view to reducing the delay in determining matters pending before that Court, the learned Chief Justice failed to withdraw his services from hearing new matters up to the very age of retirement and instead of being commended for his undoubted industry therein he has become the target of wholly unwarranted castigation by the learned trial judge in the Court below.

The only person who has committed any breach of natural justice in this regard is the learned trial judge himself who misconstrued the function he was asked to perform by his apparent gross misunderstanding of the relatively simple issue he was asked to determine in the said Summons before him.

The learned judge falls into error from the commencement of his judgment when he states that

"the actions of.....the Chief Justice the highest judicial officer in the lands, is (sic) called in question as being in breach of the Constitution of Trinidad and Tobago of which the Judges are the Guardians."

Having started off on the wrong premise and without any evidence before him as to the reason for the need for the extended period granted nor there being any opportunity to afford the Chief Justice a hearing in his own behalf he launched into an attack on the conduct of the Chief Justice albeit, "with only the interest of the Judiciary at heart and in mind" at page 32 of the record and "with sadness and with deep regret" at page 33 thereof. In the case of Lynch v Lynch PC Appeal No. 13 of 1983 to which we were referred by Counsel for the Respondent, the Privy Council in dealing with the delay in the determination of that matter suspected that there were more than one cause for the same. Surely it would be necessary to know what the reasons for the delay in concluding matters by Honourable Mr. Justice Kelsick were before making any judgment thereon.

The condemnation of the action of the Chief Justice by the learned trial judge is in direct conflict with the maxim of natural justice "audi alteram partem" i.e. the necessity to hear the other side before passing judgment, a principle with which I should have hoped the learned judge would have been familiar.

The passage to which particular reference is made is found on page 32 of the record as follows:-

"Now that I have determined the matter, I venture with the greatest respect and with only the interest of the Judiciary and the administration of Justice at heart and in mind, to suggest to the Defendant and to Kelsick J. that they should accept the Court's decision and that Kelsick J. should proceed with all expedition to complete what Court work he has outstanding and depart the hallowed precincts of the Judiciary. Nothing of substance will be lost if this course is taken except perhaps, pride of office for a few months by Kelsick J. and this I suggest is a suitable price to pay in the circumstances."

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Such infelicitous language will no doubt be viewed by the misguided as a manifestation of strength but it is instead a deplorable and sorely deprecated exhibition of bad taste and insensitivity to say the least. It is difficult for me to understand how a Judge of the High Court of Justice in whom the highest degree of confidence must be reposed could fail to appreciate the harm that would be caused to the Judiciary by the use of language that would of necessity bring the Head of that institution into ridicule and disrepute and can only express the hope that there will be no repetition of this.

I have referred herein to the judgment of the learned trial judge actually delivered in Open Court on Monday 22nd July, 1985 rather than any revised copy thereof appearing in the supplemental record before this Court because I hold that once a judge has delivered a final judgment on any issue whether it be in Chambers or in Open Court, that is the Judgment in the matter and the judge is not entitled to alter or vary the substance of the said judgment in the slightest degree, except for the correction of obvious typographical or grammatical errors that may have crept in, inadvertently.

.../ Before

Before concluding I should like to thank Counsel on both sides as well as those members of the staff of the Registry of the Supreme Court concerned in this regard for the assistance rendered us in delivering this judgment.

In the circumstances I would allow this appeal with costs here and in the Court below.

G.E. des Iles  
Justice of Appeal

In the Court  
of Appeal

TRINIDAD AND TOBAGO

No. 14  
Judgment of  
Mr Justice  
Warner

7th August  
1985

IN THE COURT OF APPEAL

NO. 114/85

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD  
AND TOBAGO

Defendant/Appellant

AND

PETER SOOKOO(an infant by Harry Sookoo, his  
father and next friend) and HARRY SOOKOO

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Plaintiffs/Respondents

Date: 7th August, 1985.

Coram: G.E. des Iles, J.A.  
A.T. Warner, J.A.  
R.H. Narine, J.A.

Appearances:

Mr. Lionel Jones, Solicitor General  
Mr. Michael de la Bastide S.C. and - for the appellant  
Mr. J. Carrington

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Mr. Ramesh Maharaj and  
Mrs. L. Maharaj for the respondents

\*J U D G M E N T\*

Delivered by Warner J.A.

As the history and nature of the proceedings leading to this appeal have been fully set out in the judgment of the learned President, des Iles J.A. I need only touch on two matters connected therewith before plunging into the issues before us.

Abridgement of time for service of the summons was applied for and granted in the Court below. Thereafter the matter proceeded most expeditiously.

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The expeditious hearing and determination befitted the importance and urgency of the constitutional issues raised in the summons. All concerned played their part in having the matter dealt with speedily - the legal representatives of the respondent in seeking an abridgement of time, the Judge in granting the same and the legal representative of the appellant in declining to take technical procedural objections.

Again following the filing of notice of appeal, application for deeming the matter urgent was before us on 25th July and there was co-operation from the representatives of both parties.

10 Our thanks are due to those of our own staff who have had to work extra hours to ensure the keeping of the time-table for delivery of the judgment and availability of copies today.

The second matter on which I am touching is that a change in the facts related to the summons was officially publicised on the same day that the summons was taken out. A Trinidad & Tobago Gazette Extraordinary was published on 16th July 1985 containing the announcement of the appointment of Hon. Mr. Justice Clinton Bernard to the office of Chief Justice with effect from the date on which <sup>Hon.</sup> Mr. Justice Cecil Kelsick vacates.

20 The appeal turns on the interpretation of subsections (1) and (2) of section 136 of the Constitution of the Republic of Trinidad & Tobago, sometimes referred to as the Republican Constitution. The subsections are reproduced here:

- 30
- (1) The holder of an office to which this subsection and subsections (3) to (11) apply (in this section referred to as "the officer") shall vacate his office on attaining the age of sixty-five years or such other age as may be prescribed.
  - (2) Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge may, with

the permission/...3

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the permission of the President, acting in accordance with the advice of the Chief Justice, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

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The definition section of the Constitution is section 3 and the definition of Judge therein contained is as follows:

"Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge". 10

The title Judge of Appeal appears nowhere else in the Constitution so that it is, to my mind, quite obvious that for "Judge of Appeal" one should read "Justice of Appeal".

For the appellant it is contended that the plain grammatical meaning of section 136(2) is that any Judge, whether Chief Justice, Justice of Appeal or Puisne Judge may after attaining age 65 remain in office, that is to say in the office which he held immediately before that date, if the President acting in accordance with the advice of the Chief Justice has given him permission so to do. The one limitation which the appellant 20 says, applies to this permission to remain in office is a limitation of time. The period for which he is allowed to remain is that period which is necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

It is not, the appellant contends, that the powers are limited to performing those functions relating to Court business unfinished at the date the holder of the office attained 65. What the appellant says is that because it would reduce the time available for doing the unfinished judicial business if, during the continuance the 30 holder were to engage himself in doing new judicial business, he should normally refrain from doing new judicial business.

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If the Judge who is permitted to continue in office is the

Chief Justice there will be several functions of that office other than strictly judicial work which he will be under a duty to perform.

Among these functions are being Chairman of the Judicial and Legal Service Commission, under section 110 of the Constitution, appointing the person to preside over the tribunal to review cases of persons detained during<sup>a</sup>/period of public emergency under section 111 of the Constitution, being Chairman of the National Awards Committee under the Schedule to the Letters Patent establishing the order of the Trinity, assigning Magistrates to districts under the Summary Courts Act Ch. 4:20, being Chairman of the Rules Committee under Supreme Court of Judicature Act Ch. 4:01 and under the Marriage Act Ch. 45:01 authorising a marriage where parental consent is required and is not obtainable.

For the respondent the contention is that section 136(2) applies to the holder of the office of Chief Justice but not in relation to the office of Chief Justice. On this contention the holder of the office of Chief Justice will have vacated that office on arriving at age 65, but if he is permitted to continue in office under section 136(2) he continues in the office of Judge. In this way he continues to be a Judge of the Court of Appeal and a Judge of the High Court for such period as is necessary for doing the judicial business which was before him unfinished at the date he attained age 65, and is confined by law to doing such things.

With regard to payment to a person who (as contended for the respondent) held the office of Chief Justice but continues in office as Judge under section 136(2) the submission for the respondent appeared to be that he would qualify for salary as a Justice of Appeal. In the alternative, it was submitted, it would be for the Executive to arrange payment perhaps ex gratia.

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Having stated in broad outline the results contended for on different sides, I proceed to examine the relevant Constitutional provisions in the light of the arguments.

In arriving at the true construction of section 136 the section will not be read in isolation, but in the context of all the relevant parts of the Constitution. Applying the words of Oliver Wendell Holmes Jr. cited at p.374 of Bennion's Statutory Interpretation, "whatever galvanic current may come from the rest of the instrument will be allowed to run through" the particular passages to be construed.

The plain meaning rule will also be followed. As Lord Reid put it in Pinner v Everett [1969] 3 All E.R. 257 at 258:

"In determining the meaning of any word or phrase in a statute the first question to ask is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase".

What is more; where the language permits it the interpretation should avoid a result which is absurd or unworkable, inappropriate, unfitting or unreasonable.

It is not disputed that a person appointed to the office of Chief Justice falls under the description Judge and is the holder of an office to which section 136(1) of the Constitution applies, so that the provision there for vacating his office on attaining age 65 applies to him.

What is hotly contested is whether there is an office of Judge attaching to such a person so that when he has vacated the office of Chief Justice he continues to be a Judge under section 136(2). For the appellant it is contended that there are three distinct judicial offices within the chapter of the Constitution entitled "The Judiciary".

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These are in ascending order Puisne Judge, Justice of Appeal and Chief Justice. There are also two statuses within the chapter. These are Judge of the Court of Appeal and Judge of the High Court. There is, it has been argued, no office of Judge simpliciter. The term "Judge" as used in sections 136 and 137 of the Constitution is said to be a draftsman's term descriptive of the three offices.

10 For the respondent it is argued that there is a substantive office of Judge. A person appointed as Chief Justice thereby becomes a Judge. His office is then Judge of the Court of Appeal. Ex-officio as Chief Justice he also becomes a Judge of the High Court. The Chief Justice is the chief of the Judges of the Court of Appeal. Judge of the Court of Appeal is the office, it is said, and Justices of Appeal are the human personification. Judge of the High Court is the office and Puisne Judges are the human personification. All this leads to the final submission that the tenure of office of a Chief Justice ceases at age 65 but that the person who held the office until attaining age 65, having been given permission to continue in office now continues in his office as Judge with a jurisdiction limited to concluding part-heard matters and giving judgment in matters which were pending at the date of <sup>his</sup> attaining age 65.

20 It can be seen quite clearly from Chapter 7 of the Republican Constitution that there are the separate offices of Chief Justice, Justice of Appeal and Puisne Judge. The Chief Justice holds his office as Chief Justice, while each of the Justices of Appeal holds an office of Justice of Appeal, likewise each of the Puisne Judges holds an office of Puisne Judge.

Section 101 reads as follows:

30 "101 (1). The Judges of the Court of Appeal shall be the Chief Justice, who shall be the President of the Court of Appeal, and such number of Justices of Appeal as may be prescribed.

(2). The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court".

Section 102 lays down the manner in which a Chief Justice is appointed and it will be seen that in section 103 the expression "the office of Chief Justice" is used. That section is reproduced here:

"103. Where the office of Chief Justice is vacant or where the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of such office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such other of the Judges as may be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition".

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In section 100 it is provided that the Judges of the High Court shall be the Chief Justice, who shall be ex-officio a Judge of that Court, and such number of Puisne Judges as may be prescribed.

The sections 100 to 103 inclusive show that:

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1. there is a distinct office of Chief Justice;
2. the principal function of the holder of that office is to be one of the Judges of the Court of Appeal and President of that Court;
3. ex-officio he is one of the Judges of the High Court.

It will be noted that the Court of Appeal consists of the Chief Justice and such number of Justices of Appeal as may be prescribed; while the High Court consists of the Chief Justice and such number of Puisne Judges as may be prescribed.

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This is another indication that Justice of Appeal and Puisne Judge are offices, the number of which must be prescribed. The offices, a fixed number of which must be provided for, are those of Justice of Appeal and Puisne Judge not Judge of the Court of Appeal and Judge of the High Court.

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It will be noted that nowhere in Chapter 7 is there any use of the expression "Office of Judge of the Court of Appeal" or "Office of Judge of the High Court".

One must now turn to Chapter 9 with the title "Appointments to and Tenure of Offices".

Sections 135 to 137 are under the rubric special offices. The concept of special offices is an innovation to be found in the Republican Constitution.

10 Section 136 relates to tenure of special offices. Subsection 1 relates to certain of these. These are the office of Judge, that of Auditor General and those of Director of Public Prosecutions, Chief Parliamentary Counsel and Solicitor General.

20 The word "Judge" appears in section 136(2) and once in section 136(13). While there is agreement that section 136(1) applies to the office of Chief Justice, it is necessary in view of the arguments advanced, to consider whether or not there is a separate office of Judge attaching to the Chief Justice on his appointment and remaining with him after he vacates the office of Chief Justice under subsection (1) so that he may continue as Judge under section 136(2) even though he has vacated the office of Chief Justice under section 136(1). The respondent says that the answer is in the affirmative, the appellant answers it in the negative.

When it is seen in section 136(13) that subsections (1) to (6) apply to the office of Judge, one instinctively turns to section 3 the definition section and the following is the relevant part:- "Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge.

I have already pointed out that the use of the expression "Judge" of Appeal" in section 3 must be a draftsman's error, that

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expression appearing nowhere else in the Constitution.

The use of the word "include" instead of "mean" can only be the result of some apprehension that the word Judge being absent from the names of offices Chief Justice and Justice of Appeal a reader might doubt that these offices were caught by that word.

There is no basis for assuming that Judge of the High Court and Judge of the Court of Appeal are included in the word "Judge" as used in section 136. I take the view that these are statuses not offices.

In my judgment the word "includes" as used in section 3 in the definition of Judge is used as meaning "means and includes" and the word "Judge" used in section 136 must be interpreted in accordance with the definition section.

In so far as the expression "office of Judge" is used in section 106 and section 136 it relates to the specific offices held by the Judges within the definition section. When section 106 provides that no office of Judge shall be abolished while there is a substantive holder of that office, what it means is that none of the offices comprehended in the definition in section 3 shall be so abolished. While there is a substantive holder of the particular office, that is to say the office of Chief Justice, it shall not be abolished. While there is a substantive holder none of the six offices of Justice of Appeal (as prescribed in the Supreme Court of Judicature Act) shall be so abolished nor shall any of the offices of Puisne Judge be so abolished.

Again when section 107 says "a Judge shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office set out in the First Schedule", it means that each of the holders of the offices comprehended within section 3 shall take the oath of his office before entering/...10

entering upon the duties of his office. This view is strengthened by considering the form of oath set out in the First Schedule to the Constitution.

The form of oath is as follows:

I, A.B. having been appointed.....  
of Trinidad and Tobago do swear by.....  
(solemnly affirm) that I will bear true faith and  
allegiance to Trinidad and Tobago and will uphold the  
Constitution and the law, that I will conscientiously,  
impartially and to the best of my knowledge, judgment  
and ability discharge the functions of my office and do  
right to all manner <sup>of people</sup> /after the laws and usages of Trinidad  
and Tobago without fear or favour, affection or ill-will.

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The important part of the oath for present purposes, consists of the commencing words and the words which are omitted and must be inserted immediately after the commencing words when the oath is being taken.

A person appointed Chief Justice does not swear. "I, A.B. having been appointed a Judge". What he says is "I, A.B. having been appointed Chief Justice", Similarly a person appointed as a Justice of Appeal says "having been appointed Justice of Appeal", he does not say "having been appointed Judge", nor does a person appointed Chief Justice swear as having been appointed a Judge of the Court of Appeal. It is the functions of his office that he swears to conscientiously discharge.

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I agree with the submission for the appellant that there are three offices of Chief Justice, Justice of Appeal and Puisne Judge. (It is to one of these three offices that the holder of an office within the Judiciary is appointed and it is one of these which he is required to vacate). The term "Judge" simpliciter was not used in the 1962 Independence Constitution but it was convenient to introduce it into the Republican Constitution for the purpose of putting together the special offices.

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The Chief Justice's presence on the bench of the Court of Appeal is by virtue of his office as Chief Justice. He holds no appointment as a Judge of the Court of Appeal. If he vacates his office of Chief Justice he ceases to have the right to sit in the Court of Appeal.

Where it is provided by a statute that the Judges of a Court shall be the holders of certain specified offices, it is the holders of those offices and not just any bearers of a designation "Judge" who are entitled to constitute that Court. This emerged very clearly from the judgment of the Privy Council in Butler v R [1939] 3 All E.R. 121 delivered by Lord Russell of Killowen. It was an appeal from this jurisdiction. An appeal was to be heard by the then Court of Criminal Appeal. That Court consisted of the Chief Justice and Puisne Judges of Trinidad and Tobago. For the hearing of this appeal two persons were appointed to act as Judges of the Supreme Court, the Supreme Court consisting of four Judges, <sup>one being</sup> the Chief Justice, <sup>three</sup> the others being the Puisne Judges. It was held inter alia that those two acting Judges of the Supreme Court were not Puisne Judges and therefore they were not entitled to sit in a Court "the Judges of which, it is enacted, shall be the Chief Justice and the Puisne Judges of the Colony". This supports the proposition for the appellant that if the Chief Justice is to remain as a Judge of the Court of Appeal after he has attained age 65, he must continue to hold office as Chief Justice.

The opening words of section 136(2) are "notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office". Counsel for the appellant has referred us to the following definition of "notwithstanding" taken from Driedger's "The Composition of Legislation":

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"As a preposition it is used to introduce a phrase modifying the predicate - "he may, notwithstanding his failure to comply with this section" - or to modify the operation of the whole enactment - "Notwithstanding section 10". Its purpose is to override a conflicting provision.

As a conjunction it is used to introduce a subordinate adverbial clause "he may notwithstanding that has failed to comply with this section".

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The words "continue in office" describe a situation which is the antithesis of "vacate his office". Section 136(2) clearly overrides section 136(1).

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The Judge at first instance sought to make a point out of the use of the word "his" between "vacate" and "office" and the absence of any such word between the words "continue in" and "office". He appeared to suggest that this meant that it was "his" office (that of Chief Justice) which had to be vacated but that the words "continue in office" meant that it was some office other than that of Chief Justice in which he was to continue. This argument ignores the fact that in nearly all if not all the instances in which "vacate" appears in the Constitution it is followed directly by the word "his". "Vacate his seat" and "vacate his office" are terms regularly used in the Constitution and it is quite normal that the word "vacate" should be followed by the possessive adjective "his" seeing that one meaning of "vacate" is to give up possession. Again the expression "continue in office" is normal English usage and it would have been quite unnecessary to introduce the word "office" by any adjective, possessive or demonstrative. It was one office which the Chief Justice held, it was in that office that he continued.

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Giving the word "notwithstanding" its true meaning and doing the same to the word "continue" I hold that the effect of section 136(2) is to postpone the vacating of office normally required at age 65 by reason of section 136(1) for such period of continuation as is permitted under the said section 136(2).

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The only one of the three offices in which a Judge may continue is the one to which he was last appointed. If the holder of the office of Chief Justice is to continue in office he continues in the office of Chief Justice. He cannot continue in the office of Justice of Appeal which he did not hold immediately before attaining age 65. He cannot continue as Judge because there is no specific office of Judge and in any event his entitlement to the description Judge depends on his holding the office of Chief Justice. On the plain meaning of the words, my answer to the question whether a Chief Justice who has been permitted to continue in office under section 136(2) can be said to have vacated his office as Chief Justice is "no" 10

The other question of interpretation of section 136(2) is whether the subsection places any limitation on the functions to be performed by a Chief Justice. The plain grammatical meaning of the whole sentence is that the period for which the person continues in the same office is the same period which is necessary for his completion of court business which was in progress before him at the time he attained age 65.

The plain meaning of the words involves no limitation of function.

There is certainly no ambiguity. If one proceeds on the presumption that the holder of an office has vested in him all the powers of that office, no difficulty will arise. A distinction will, however, arise between any limitation which the holder will impose on himself as a result of practical necessity or prudence and a limitation imposed by the law itself. 0

One must now turn to the arguments for interpretation different from the ordinary meaning of the words of section 136(2).

The question whether the Chief Justice would be a Judge in his own cause if he were to advise the President on his continuation in office was touched upon by the Judge but he did not rule upon it. This, he stated, was because it was not argued before him.

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However, before this Court it was raised in this way. Counsel

for the respondent submitted that while it could be lawful for the Chief Justice to advise on his own continuation in office as a Judge, he could not lawfully advise on his own continuation in office as Chief Justice. Further he argued that it would be a breach of natural justice if the President had a discretion to accept or reject the advice of the Chief Justice for his continuing in office under section 136(2), particularly as it would be the Chief Justice who would be charged with holding an enquiry into the conduct of the President, if one became necessary under section 17(1) (d) of the Constitution.

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The substratum of this latter submission is removed once it is verified that the President does not act in his discretion or in his own deliberate judgment under section 136(2) of the Constitution but must act on the advice of the Chief Justice. (See section 80 of the Constitution). Also it would be blowing hot and cold to say in the same breath that it is lawful for the Chief Justice to advise that he continue in office after age 65 as Judge even though without the office of Chief Justice, but that it is contrary to natural justice that he should advise that he continue in office as Chief Justice.

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A further argument used in support of the contention <sup>was</sup> that section 136(2) should not be so construed that a person while Chief Justice before attaining age 65 could by his own action or inaction continue to function in office as Chief Justice after attaining that age. This would operate, it was said, to the detriment of the aspirations of other Judges who may be qualified for and aspiring to that office.

If this argument is being advanced on the principles of natural justice, one feature for bringing those principles into play would be absent. There would be no lis between the incumbent Chief Justice and a Judge aspiring to that office.

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Reliance was placed on Pittiman & Ors. v Benjamin & Ors. (C.A. No.

183/84) in support of the proposition that to give the Chief Justice power

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to give binding advice on his own continuation in office is contrary to  
fundamental justice. That was a case in which individuals were on trial

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before a Court Martial and there was an outward appearance which could  
give rise to suspicion of bias, in that there was a known departmental

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association between prosecuting counsel and the Judge Advocate which nor-  
mally gave them an identity of interests in prosecutions. No one is on  
trial when advice on permission to continue in office as Chief Justice is  
being given.

Yet another submission was advanced. Relying on Bennion op.cit.  
at p.295 para. 127 Counsel for the respondent submitted that the Court,  
when considering which of the opposing constructions of the enactment would  
give effect to the legislative intention, should strive to avoid adopting  
a construction which was in any way adverse to the public interest. The  
public interest would be advanced, it was said, because on the construction  
contended for, there would be some avoidance of delays which now occur in  
the Courts. This would be brought about because the person appointed as  
Chief Justice with effect from the vacating of office by Hon. Mr. Justice  
Kelsick would be able to assume duties as such and a Justice of Appeal  
would be appointed to succeed him. Counsel for the appellant countered  
with the submission that there is provision under section 104 of the  
Constitution by which an acting appointment of a Justice of Appeal can be  
made in the circumstances which now prevail. There is no certainty, he  
argued, that vacancies will necessarily or can be filled promptly if the  
other construction is followed.

I hold that there is no sound basis for the contention that  
construing the enactment, so that Hon. Mr. Justice Kelsick or indeed any  
Chief Justice who is continued in office remains as Chief Justice with  
the functions/...16

the functions of Chief Justice, is adverse to the public interest.

Accordingly I reject the submission regarding the public interest.

One further argument for the respondent's contention that sections 136(1) and (2) should be construed as providing that if a Chief Justice who has attained age 65 is permitted to continue in office as a Judge, but not as Chief Justice, is that every Judge granted permission to continue under section 136(2) is by the words of <sup>the</sup> subsection limited to delivering judgment or doing any other thing in relation to proceedings that were commenced before him before he attained that age. Further, it was in effect contended that whatever the grammatical meaning, the subsection should be construed as contended for the respondent, because the other construction would give rise to a risk of misuse or abuse of power.

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To deal first with the plain meaning of the words. As a matter of ordinary grammatical construction of section 136(2), I have already concluded that there is no limitation of function in section 136(2) and so stated. What section 136(2) says is that the period for which the Judge (including the Chief Justice) shall continue in office is the same period which will be needed to enable him to deliver judgment and complete part-heard matters. All the words which follow the word "period" qualify or limit that word.

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The other argument to which I have already referred was that if section 136(2) were to be construed as providing for no limitation of function, it would mean that any Judge (including a Chief Justice) who was permitted to continue under section 136(2) could begin new Court matters and by expending time on these, frustrate the intantion of Parliament by having the Court business, unfinished when he attained age 65, still unfinished at the completion of the continuation period.

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It was conceded for the appellant that this risk was inherent in the construction argued for on behalf of the appellant. It was not disputed that the object sought to be achieved in enacting section 136(2) was to avoid cases in progress before the Judge just before he attained age 65 having to be taken de novo.

It was however argued for the appellant that Parliament had opted for this risk. It was pointed out that there were two methods of achieving the object of avoiding cases pending when the Judge attained age 65 having to be taken de novo. One of these was to allow the termination to take effect and merely permit the holder of the office, now a former Judge to sit as a Judge for the purpose of completing the incomplete matters. This method was shown to be used in the Constitution of Barbados and in the West Indies Associated States Supreme Court Order 1967.

The other was to postpone the vacating of the office of <sup>the</sup> Judge for a period to be determined as necessary for the completion of the pending Court matters and permit a Judge to continue to hold his office with <sup>his</sup> powers undiminished. This was the method used in our own Constitution and in several Commonwealth Caribbean jurisdictions other than Barbados.

The argument that this was the deliberate choice of our own Parliament was supported by a contrast of the language of the Barbados and Associated States provisions on the one hand and that of our own provision.

In the West Indies Associated States Supreme Court Order 1967 there is section 6(4) which reads as follows:

"(4). Any person appointed to the office of, or to act as, Chief Justice, Justice of Appeal or Puisne Judge may notwithstanding <sup>the vacation of his office or</sup> the termination of his appointment otherwise than in pursuance of section 8 of this order, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceeding heard by him while holding the office of judge".

This allows all Judges who have vacated office, or whose appointments have been terminated otherwise than by removal from office, to sit after having vacated office and complete proceedings which were before them before vacating office.

What is very obvious is that in these cases the Judges do not continue in office. The expression "continue in office" is used in a proviso to section 8 of the West Indies Associated States Supreme Court Order which permits Judges who attain the age at which they must vacate to continue in their office with the permission of the Judicial and Legal Services Commission acting with the concurrence of the Premiers of all the States.

These provisions bring out in bold relief the distinction between allowing a former Judge to sit for the purpose of completing unfinished Court business and continuing a Judge in office for a fixed period whether for a specific purpose or not.

Some reliance was placed for the respondent on the judgment of the Privy Council as delivered by Lord Diplock in Thomas v Attorney General of Trinidad and Tobago [1982] A.C. 113. In that case it was held that to construe section 99(1) of the Independence Constitution as giving a Service Commission the right to remove a public officer without reasonable cause would frustrate the whole constitutional purpose of Chapter VIII of the Constitution. In the result it was construed as meaning "remove for reasonable cause".

In the instant case it was conceded that to construe section 136(2) as providing for no limitation of function would leave some opportunity for abusing the provision by doing new Court work to the prejudice of Court work unfinished at the date of attaining age 65. It was also contended that in the event of a Judge, continued in office under section 136(2) abusing the provision he could be dealt with by removal under section 137.

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In my judgment there is no comparison between the case of Thomas v Attorney General of Trinidad and Tobago (supra) and the instant case. In that case a construction was adopted because the alternative construction would frustrate the whole constitutional purpose of the chapter of the Constitution dealing with the public services. It is not the case here that the construction proposed for the appellant will frustrate the whole constitutional purpose of the chapter on the Judicature or of the provisions for special offices. There is some risk of abuse of one subsection but there is at least technical provision for dealing with the same and the risk appears to be minimal.

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In addition, Parliament in enacting the Constitution and more particularly section 136(2) selected a form of words which showed a preference for allowing continuation in office with full powers, no doubt expecting that Judges continued in office, because hearing of unfinished matters de novo should be avoided, will exercise the prudence and good sense to refrain from attending to new Court business which could interfere with their completion of the unfinished business.

On the whole I see no justification for construing section 136(2) otherwise than according to its plain literal meaning.

A word should be said regarding the several functions of the Chief Justice other than judicial work in the Courts. These are functions of the Chief Justice alone. So long as he remains in office they have to be performed by him. As Counsel for the appellant graphically put it, the bundle of functions of Chief Justice cannot be untied and then distributed among various persons. The literal construction will ensure that the administrative duties of the Chief Justice are performed and that he is lawfully empowered to perform them. Serious public inconvenience could result otherwise.

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The position with regard to salary and allowances would be dubious if the construction sought by the respondent were adopted.

To my mind the proposition, that the Chief Justice continues not as Chief Justice but as a Judge and that his emoluments will perhaps be those of a Justice of Appeal or perhaps the State in its bounty will make some ex gratia payment, is absurd in the extreme.

It runs counter also to the constitutional principle of independence of the Judiciary and to the provisions of section 136(6) of the Constitution which reads as follows:

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"(6). The salary and allowance payable to the holder of any office to which subsection (1) and subsections(3) to (11) apply or an office referred to in subsection (13) to (16) and his other terms of service shall not be altered to his disadvantage after his appointment and for the purposes of this subsection, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted".

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I have dealt in the main with the arguments for the parties. Some of the arguments for the respondent did not fully coincide with the judgment.

I wish specifically to point to two erroneous statements appearing in the revised judgment which have not so far been dealt with. At page 18 the learned Judge appears to say that the mandatory age can only be amended by a special majority in Parliament. This is not so, it is 65 or such other as may be prescribed. While alteration of the terms of the subsection require "special majority", the age itself may be altered by a simple majority passing legislation prescribing an age other than 65.

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In the revised judgment at page 18 of the supplementary record the learned Judge stated that "Keeping in mind.....(11) the input of the political Directorate in the appointment of the Chief Justice/...21

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Mr Justice  
Warner

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1985

(continued).

Chief Justice (section 102) and even in the case of an Acting Chief Justice (see section 103), it would be strange to say the least that the Legislature intended that a Chief Justice (although he is expected to act properly) would have the power to extend his own term in office after reaching the retirement age by the mere act of advising the President to do so. In my view such an intention should and would have been clearly expressed by the Legislature if that indeed was its intent and this has not been done".

Considering that the learned Judge had already stated that Kelsick C.J. had continued in office but not as Chief Justice one cannot but describe the thought processes manifested in this regard as convoluted. Whatever the learned Judge meant by the observation just quoted, in my view, the obvious intention of the framers of the Constitution was to keep the matter of continuation in office which has to be limited in time by the realities of the situation, the number of pending cases etc. as mainly an internal process in the Judiciary subject to the approval of the President who must act on advice.

The considerations in relation to a proposed appointment to the office of Chief Justice which arise before appointment and which may be the *raison d'être* of the requirement for consultation with the Prime Minister and the Leader of the Opposition would hardly arise when the questions are mainly how much unfinished Court business is there?, how long will it take in all the circumstances? Indeed, there has been criticism of the extension by agreement provisions of other jurisdictions in which the Executive decides whether to extend for a period of years which is often two years.

The whole of section 136(2) clearly shows that continuation when there is unfinished Court business is a rather different matter from appointment or acting appointment. In the case of Justices of Appeal and Puisne Judges the Judicial and Legal Service Commission which advised on their appointment is not required to advise on continuation.

/22...

One cannot think of any other suitable office to which the power to advise in relation to a Chief Justice's continuation should be given, seeing that the considerations are mainly of a practical nature.

The question of the Chief Justice being a Judge in his own cause on which the learned Judge said he was not ruling has already been dealt with.

In the result I have come to the conclusion that:

1. The President acting on the advice of the Chief Justice is empowered to give permission for a Chief Justice to continue in office as Chief Justice after he has attained the age of 65 and that he gave such permission in this case;
2. A Chief Justice who continues in office in such circumstances, as Kelsick C.J. in the instant case does, has all the powers and is entitled to perform all the duties of Chief Justice.

I would therefore answer the questions in the same way that des Iles J.A. has done and I agree with the order proposed by him.

Having stated my own judgment on the appeal as such, I must turn to an aspect of the matter on which the Court has been asked to pronounce and on which even if I had arrived at a conclusion opposite to the one which I have expressed, the situation would have required some observation. I refer to the castigation of the Hon. Mr. Justice Kelsick administered by the Judge from the safe and privileged elevation of the High Court bench at San Fernando in the course of his judgment.

Despite the absence of any thing in the summons or in the affidavit filed for the plaintiff calling in question any of the actions of Kelsick C.J. the learned Judge opened his judgment by stating that the actions of the Chief Justice were called in question.

At page 32 of the record in the judgment in original form he appears to suggest that there is something sacrilegious about the continued

presence/...23

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(continued)

presence of Hon. Mr. Justice Kelsick in the hallowed precincts of the  
Judiciary. This must lower the Hon. Mr. Justice Kelsick in the estimation  
of others. ~~Later on~~ the same page he accuses him of having brought about  
by his own deliberate action a situation which constitutes a disservice  
to the institution over which ~~the~~ had the great honour to preside.  
This at least approximates an allegation of unfitness for office.

Lastly at page 33 there is the innuendo that Hon. Mr. Justice  
Kelsick has done or may have done something which is "just not done in a  
civilised society".

One is constrained to observe that while "the law's delay" is 10  
happily absent from these proceedings other ills to which man is heir are  
prominently manifested. They are "the proud man's contumely" and  
<sup>the</sup> "insolence of office" that is to say insult hurled at another by one  
holding office.

Kelsick C.J. must have been lowered in the estimation of the  
man on the priority bus route to whom the information was available  
through the various media.

It has been argued before this Court that the Judge in making  
his comments treated Kelsick C.J. like any other person. The question  
is whether the learned Judge was entitled to treat anyone irrespective 20  
of station in life in the way in which he treated Kelsick C.J.

It was also suggested that the criticism of Kelsick C.J. was  
made in the light of the delay which must have led to the advice for  
extension. It was conceded however that this was not a relevant matter  
to the determination of the question before the Court.

What is certain is that serious adverse reflections have been

cast upon/...24

cast upon Kelsick C.J. on issues which were not before the Court on which he was given no opportunity to state his explanation.

I can only say that the violation of the rights and dignity of Kelsick C.J. by the Judge in his unwarranted comments was a ~~grivous~~ grivous wrong.

Alcalde Warner  
Justice of Appeal

In the Court  
of Appeal

No. 15

JUDGMENT OF MR JUSTICE NARINE

TRINIDAD AND TOBAGO

No.15  
Judgment  
of Mr  
Justice  
Narine

IN THE COURT OF APPEAL

7th  
August  
1985

No. 114/85

BETWEEN

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO

DEFENDANT/APPELLANT

AND

PETER SOOKOO (an infant by  
Harry Sookoo, his father and  
next friend) and HARRY SOOKOO

10

PLAINTIFFS/RESPONDENTS

Dated: 7th August, 1985

Coram: G.E. des Isles, J.A.  
A.T. Warner, J.A.  
R.H. Narine, J.A.

Michael de la Bastide S.C.,  
Lionel Jones - Solicitor General,  
and J. Carrington, for the Appellant.

Ramesh Maharaj and Mrs. L. Maharaj  
for the respondents

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J U D G M E N T

Delivered by R.H. Narine, J.A.

This is an appeal by the Attorney General of Trinidad and Tobago against the decision of Deyalsingh J. on a Summons dated the 16th day of July, 1985, by which the plaintiffs applied to the court to determine the following questions:-

/1. Whether ...

1. Whether upon the true construction of sec. 136(1) and (2) of the Constitution of Trinidad and Tobago contained in the Schedule to the Constitution of the Republic of Trinidad and Tobago Act Ch. 1:01 of the Laws of Trinidad and Tobago (hereinafter referred to as "the Constitution"), His Excellency the President of Trinidad and Tobago, Mr. Ellis Clarke has the power and/or authority to allow the Honourable Mr. Cecil Kelsick to continue in office after attaining the age of sixty five (65) on the 15th day of July, 1985, to perform the functions of Chief Justice of the Supreme Court of Trinidad and Tobago.
2. Whether upon the true construction of sections 136(1) and (2) of the Constitution the discretion of His Excellency the President of Trinidad and Tobago, Mr. Ellis Clarke to allow a Judge of the Supreme Court which includes the Chief Justice by virtue of section 3 of the Constitution to continue in office after attaining his retiring age is limited to enabling the Judge to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained the retiring age.
3. Whether upon the true construction of sections 136(1) and (2) the Honourable Mr. Cecil Kelsick if he remains in the Office of Chief Justice of Trinidad and Tobago after he attains the retiring age, can validly perform the functions of Chief Justice of Trinidad and Tobago.

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(continued)

I too am of opinion that this appeal should be allowed. However because of the undoubted importance of the matter I desire to record some observations of my own.

The answer to the three questions posed in the Summons lies in the interpretation of "the Constitution" and more particularly sections 136(1) and (2).

136(1). The holder of an office to which this sub-section and subsections (3) to (11) apply (in this section referred to as "the officer") shall vacate his office on attaining the age of 65 years or such other age as may be prescribed. 10

and (2). Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge may, with the permission of the President, acting in accordance with the advice of the Chief Justice, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgments or to do any other thing in relation to proceedings that were commenced before he attained that age. 20

The Summons itself concedes in its terms that there is an Office of Chief Justice under "the Constitution" but it was argued otherwise before us. Counsel for the respondent submitted that the substantive office held by the Chief Justice is that of Judge and in relation to the High Court of Justice and the Court of Appeal established under section 99 of the Constitution, he is the Chief Judge, in support counsel referred to sec. 100(1) of the Constitution wherein it is stated:-

The Judges of the High Court shall be the Chief

Justice who shall be ex officio a Judge of that court, and such number of Puisne Judges as may be prescribed.

And to section 101(1), The Judges of the Court of Appeal shall be the Chief Justice who shall be the President of the Court of Appeal and such number of Justices of Appeal as may be prescribed.

10 His argument was to the effect that since the Judges of the High Court shall be the Chief Justice and Puisne Judges, the Chief Justice is a Judge of the High Court. To give this construction to the subsection would be to ignore that part of it which says that the Chief Justice shall be ex officio a Judge of that Court. And the question immediately arises by virtue of what office is he a Judge of that Court? The answer it seems to me, is that he is a Judge of the High Court by virtue of his office - being Chief Justice of Trinidad and Tobago. Here again counsel argued that since the Judges of the Court of Appeal shall be the Chief Justice and a number of Justices of Appeal, the Chief Justice holds the office of a Judge of the Court of Appeal and is the Chief of the judges of that Court.

20 It is agreed that the Constitution should be read as a whole. This canon of construction is expressed in the work Statutory Interpretation by Francis Bennion in the following terms:- (para. 149 at p. 374)

"An Act or other legislative instrument is to be read as a whole, so that an enactment within it is not treated as standing alone, but is interpreted in its context."

At para. 120 at p. 264 of the same work can be found what the author refers to as "the plain meaning rule", hereunder quoted:

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of Appeal

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Judgment of  
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Narine

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1985

(continued)

"It is a rule of law (in this code called "the plain meaning rule") that where in relation to the facts of the instant case -

- (a) the enactment under enquiry is grammatically capable of one meaning only, and
- (b) on an informed interpretation of that enactment the interpretative criteria raise no real doubt as to whether that grammatical meaning is the one intended by the legislator, the legal meaning of the enactment corresponds to that grammatical meaning, and is to be applied accordingly."

And at p. 336 para. 141 (Bennion) it is there stated:-

"The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. Here the courts give a very wide meaning to the concept of 'absurdity' using it to include virtually anything which appears inappropriate, unfitting or unreasonable."

These are the three principal canons of construction which in my opinion are applicable in the present case.

In section 3 of the Constitution Judge is defined. "Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge. To be a member of the High Court a person (other than the Chief Justice) must be a Puisne Judge, and to be a member of the Court of Appeal one can only be a member of that Court if he is a Justice of Appeal or the Chief Justice. The appointment of Chief Justice, and Justices of Appeal and Puisne Judges is governed by section 102

and 104 of the Constitution.

Section 102: The Chief Justice shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

The question may be asked, appointed to what, to an office or not to an office? The answer may be found in section 103 which recognises that the Chief Justice is the holder of the Office of Chief Justice.

It reads:-

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Section 103: Where the Office of Chief Justice is vacant or where the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of such office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such other of the judges as may be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. (Emphasis added).

20

Section 104: Recognises the office of Justice of Appeal and the office of Puisne Judge. (ss.(2) and (3).

In section 106(1) the word "Judge" is used in its defined meaning so too in subsection (2) and therefore these subsections apply to the Office of Chief Justice as well as of Justices of Appeal and Puisne Judges.

Finally, section 107 provides for the oath to be taken by Judges (as defined) - the oath of allegiance and for due execution of his office set out

No. 15

Judgment of Mr Justice Narine

7th August 1985 (continued)

in the First Schedule. The form of oath - - - - -  
insofar as is material for present purposes is as follows:

"I, AB, having been appointed .....of  
Trinidad and Tobago do swear by .....  
and to the best of my knowledge, judgment  
and ability discharge the functions of my  
office ....."

Upon reading of the foregoing sections I have come to the conclusion that there are three Offices in the Judiciary of Trinidad and Tobago namely: the Office of the Chief Justice, the Office of Justice of Appeal and the Office of Puisne Judge. The Puisne Judges sit in the High Court, the Justices of Appeal sit in the Court of Appeal and the Chief Justice sits in both.

Tenure of Office:

Section 136(1): The holder of an office to which this section and subsections (3) to (11) apply (in this section referred to as "the officer"), shall vacate his office on attaining the age of 65 years or such other age as may be prescribed.

Sections 136(1) to (6) apply to Judges. This is to by virtue of subsection (13) which states: "subsection (1) to (6) apply to the office of Judge." There is no contest that it so applies. Subsection (2) however, has been the subject of much argument. That subsection provides:

"Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge may with the permission of the President acting in accordance with the advice of the Chief Justice continue in office for such period after

attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age."

10 The age at which a Judge shall vacate his office is fixed at 65 years (subsection (1)) but in my opinion subsection (2) must be read as an exception to that provided in subsection (1). In the work "Composition of Legislation" by Driedger the word 'Notwithstanding' is explained as a preposition, adverb and conjunction. As a preposition it is used to introduce a phrase modifying the predicate e.g. he may notwithstanding his failure to comply with this section: or to modify the operation of the whole enactment, e.g. notwithstanding section 10. Its purpose is to override a conflicting provision. It is this purpose that subsection (2) of section 136 serves. Subsection (2) prevails over what appears mandatory in subsection (1) and therefore a Judge, as defined in section 3, and includes the Chief Justice, may with the permission of the President continue in office after attaining the age of 65. And to continue in office in my opinion means simply to continue in the Office which the Judge held before attaining the age 65.

20 The next question that arises is, assuming the Judge is continuing in office by virtue of the provisions of subsection (2) is he restricted in time and/or in function. It was submitted on behalf of the respondent that the holder of that office can no longer function as Chief Justice but that he can stay in office for the limited purpose of delivering judgments and/or completing unfinished court work began by him before he attained age 65, but that he stays on in the office of Judge and not as Chief Justice. Therefore as soon as he ceases to be Chief Justice, that is at age 65, he can no longer perform the duties and functions which are those of a Chief Justice fixed by statute or otherwise, some of which have already been referred to in the earlier judgments in this case. It is not disputed that the Honourable Mr. C.A. Kelsick held the Office of Chief Justice. Under and by virtue of subsection (2) of section 136

he continues in that office and I hold that he does so for all purposes without restriction as to his functions, for I see none, either expressed or implied in the subsection or elsewhere in the Constitution and particularly in Chap. 7 thereof.

There is a restriction as to time. In my opinion the language is plain. The length of time necessary to complete unfinished court work will provide the criterion for determining the period of extension of time for vacating the office. I conceive the length of time to be relatively short and having regard to the Judge's commitment to deliver judgment and/or to do any other thing in relation to proceedings commenced before he attains the retiring age, 10 I would not expect him to embark upon any new work, at any rate upon any new work of any complexity or length which would in any way in the slightest degree interfere with the completion of the judgments and other judicial work.

In the instant case the period of extension applied for may appear inordinately long. The factual position is that the long vacation of the Court begins on 1st August and ends on 2nd October (Order 64 & 3, Orders and Rules of the Supreme Court), and Judges invariably as they are entitled by Regulations to do, leave the country. In their absence it becomes impossible to constitute a Court with the three Judges who may have been engaged in un- 20 completed matters began by the Chief Justice and those Judges, in order to continue the hearing, or to get the opinion of or confer with those Judges.

These are matters which will have to await the opening of the new Law Term. At least two months may have to be discounted in this regard.

In order to continue in office the Judge must obtain the permission of the President, acting in accordance with the advice of the Chief Justice. "Judge" in the subsection includes Chief Justice and the President must act in accordance with the advice given. In my judgment, section 80 of the Constitution makes it obligatory for the President to act on the advice of the Chief Justice. To suggest that such a provision permits of Executive interference

is not sound, as it must be recognised that the Executive input is a mere formality. Under the provisions of sections 102 and 104 it is the President who appoints the Judges and the Constitution also gives to him the formal duty to permit a Judge to continue in office.

In the present case the Honourable the Chief Justice advised His Excellency The President and sought his permission to continue in office until December 21, 1985, in terms of subsection (2). By letter of the 28th June, 1985, His Excellency granted permission to the Chief Justice to continue in office as Chief Justice until the 21st December, 1985.

10 It was submitted that the Chief Justice ought not to be placed in a position to advise in respect of his own office and/or that the Executive ought not through His Excellency The President to be in a position to give permission to a Judge to continue in office. That is a matter which could be dealt with in another place. It is the Courts' duty to interpret the legislation, the Constitution, as they find it. This is agreed. But counsel for the respondent reiterated his submission that it was the Court's duty to determine whether the Chief Justice could continue in office as Chief Justice under subsection (2), stating further that if he could it was contrary to the principle enunciated in the Constitution. Counsel did not go on to say what principle he was  
20 referring to.

He did in the course of his submission direct the Court's attention to Shymon Shetreet's book Judge's on Trial, at p. 38 the first paragraph:-

"A mandatory retirement age per se does not render a judge subject to any control or influence whatsoever. If, however, the Executive or any other authority has the power to extend for a certain period the service of a judge who has attained the retirement age, this is a different story altogether, for in that case the Executive or any other authority may use this power as a means of control over judges whose service may be so extended."

30

It seems to me that the passage may be more relevant to some of the other Caribbean Constitutions than it is to ours.

I refer to the Constitution of The West Indies Associated States, The Bahamas, Jamaica, Barbados and The Republic of Guyana. All of these provide for the extension of the age for retirement, with or without a counter-part of our section 136(2). By section 8(1) of The West Indies Associated States Order, 1967 No. 223 for example, the retirement ages fixed are 62 and 65 in respect of Puisne Judges and Judges of the Court of Appeal respectively. The proviso to the section however, permits a Judge to continue in office for a further period not exceeding three years. And this appears, mutatis mutandis to be the pattern in the Caribbean. No such provisions appear in our Constitution. The retirement age is fixed and a Judge may continue in office only as provided for in section 136(2). One thing is certain; there is no room for any political or any real Executive input. 10

The Constitution places upon the Chief Justice the responsibility to advise the President. He is the head of the Judiciary in Trinidad and Tobago and he is expected to discharge that responsibility without fear or favour even when his own office is directly involved.

In the result I find with respect that the answers given by the learned President to the questions raised in the Originating Summons, are the correct answers and I wish to adopt them. 20

I also agree that the appellant should have his costs both here and below.

Before parting I feel impelled to refer to that part of the judgment of Deyalsingh J. beginning "Now that I have determined the matter ....." and continuing. Having answered the questions raised in the plaintiffs Summons the learned Judge proceeded in the most scathing terms to criticise the Chief Justice. Assuming the Chief Justice and indeed His Excellency The President acted wrongly in apparent exercise of a constitutional function, can this justify the strictures levelled in this instance at the Chief Justice. 30

The answer clearly is in the negative. The learned Judge is aware that section 136(2) has on several occasions been utilised in the recent past and adverts to this fact in his judgment. At the highest it may be said that the Chief Justice and His Excellency The President fell into error, that is, of course, if they did. But the erroneous exercise of authority in circumstances as the present, could never in my opinion justify comment in such disparaging terms. The three questions before the court were and are a matter of construction of the Constitution, and no more. It was not an enquiry into the propriety or otherwise of  
10 the individuals concerned. As I understand it, judges are entitled to make comments but with care and a sense of responsibility befitting the high office which they hold.

Ralph Narine,  
Justice of Appeal.

In the Court  
of Appeal

IN THE COURT OF APPEAL, PORT OF SPAIN

No.16  
Order of the  
Court of Appeal

BETWEEN

7th August 1985

THE ATTORNEY GENERAL OF TRINIDAD  
AND TOBAGO

DEFENDANT/APPELLANT

- - - AND - - -

PETER SOOKOO (AN INFANT BY  
HARRY SOOKOO - HIS FATHER  
AND NEXT FRIEND) AND  
HARRY SOOKOO

10  
PLAINTIFF/RESPONDENT

DATED THE 7TH DAY OF AUGUST, 1985

ENTERED THE 7TH DAY OF AUGUST, 1985

BEFORE THE HONOURABLES: MR. JUSTICE GERARD DES ILES

MR. JUSTICE ALCALDE WARNER

MR. JUSTICE RAPLH MARINE

UPON READING the Notice of Appeal filed herein on behalf of the  
above-named Defendant/Appellant dated the 23rd day of June, 1985 and the  
judgment hereinafter mentioned,

UPON READING the Record of Appeal filed herein,

UPON HEARING Counsel for the Appellant and Counsel for the  
Respondent,

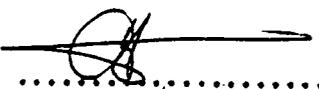
AND UPON MATURE DELIBERATION THEREUPON HAD,

IT IS ORDERED

1. That this Appeal be and the same is hereby allowed.
2. That the decision of the Honourable Mr. Justice Lennox Deyalsingh dated and made on 22nd day of July, 1985 at the High Court of Justice, San Fernando, be and the same is hereby set aside.

AND IT IS FURTHER ORDERED

That the Respondent pay to the Appellant taxed costs both in this  
court and the court of the first instance. 3

  
.....  
Registrar,

A TRUE COPY OF THE ORIGINAL  
WHICH I HEREBY CERTIFY.

  
.....  
CARLTON C. BEST  
DEPUTY REGISTRAR & MARSHAL  
SUPREME COURT

IN THE COURT OF APPEAL

NO. 114 of 1985

In the Matter of the  
Interpretation of the  
Constitution of Trinidad  
and Tobago and in particular  
Section 136.

Between

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent/Defendant  
Appellant

In the Court of Appeal

And

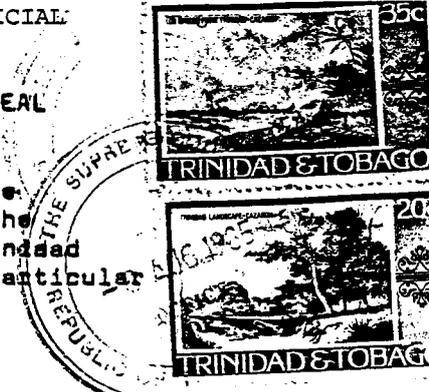
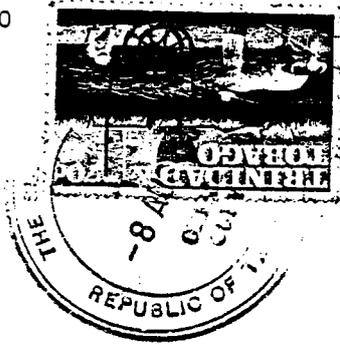
No.17

Order granting final leave

PETER SOOKOO (An Infant to appeal to the  
by Harry Sookoo his father Judicial Committee of  
and next friend) and the Privy Council.

HARRY SOOKOO Applicants/Plaintiff  
Respondents

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DATED THE 7TH DAY OF AUGUST, 1985.  
ENTERED THE 7th DAY OF AUGUST, 1985.  
BEFORE THE HONOURABLES MR. JUSTICE des ILES  
MR. JUSTICE WARNER  
MR. JUSTICE NARINE

UPON READING THE NOTICE OF MOTION of the above-named Plaintiffs/  
Respondents dated the 7th day of August, 1985 and filed herein, AND THE  
AFFIDAVIT OF LUCINA CARDENAS sworn to on the 7th day of August, 1985 filed  
in support thereof

AND UPON HEARING COUNSEL for the Plaintiffs/Respondents

THIS COURT DOETH ORDER:

30

- (a) that time be abridged for the service of the Notice of Motion.
- (b) that the hearing of the Motion be deemed fit for vacation business.
- (c) that conditional leave to appeal to the Judicial Committee of the  
Privy Council against the judgment of the Court of Appeal herein  
dated the 7th day of August, 1985 is deemed to have been granted  
to the Plaintiffs/Respondents and that the Plaintiffs/Respondents  
is deemed to have complied with the conditions in:-

40

- (1) that the Plaintiffs/Respondents have provided to the satisfaction  
of the Court, security in the sum of £500. sterling for the due  
prosecution of the appeal and for security of costs for the said  
appeal and
- (2) that the Record for Appeal to the Judicial Committee of the Privy  
Council be deemed settled to consist of the Record of Appeal

..../ordered

In the Court  
of Appeal  
No. 17

Order Granting  
final leave to Appeal  
to the Judicial  
Committee of the  
Privy Council

(d)  
7th August  
1985

(continued)

(e)

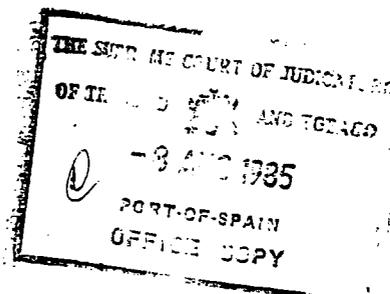
ordered by this Honourable Court in paragraph 3 of its Order dated the 25th day of July, 1985 and filed herein including the supplemental record and the reasons of their Lordships for the judgment and an office copy of the Order of the Court of Appeal in allowing the appeal.

that final leave to appeal to the Judicial Committee of the Privy Council be granted to the Plaintiffs/Respondents against the said judgment of the Court of Appeal herein dated the 7th day of August, 1985.

that costs of this Motion be costs in the cause.

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Assistant Registrar.



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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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IN THE MATTER of the interpretation of  
the Constitution of Trinidad and Tobago  
and in particular Section 136

B E T W E E N :

PETER SOOKOO (an infant by  
Harry Sookoo his father and next  
friend) and HARRY SOOKOO (Plaintiffs) Appellants

- and -

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO (Defendant) Respondent

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R E C O R D O F P R O C E E D I N G S

---

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Ingledeu, Brown, Bennison  
& Garrett  
International House  
26 Creechurch Lane  
London  
EC3A 5AL

Solicitors for the Appellants

Charles Russell & Co.  
Hale Court  
Lincoln's Inn  
London  
WC2A 3UL

Solicitors for the  
Respondent