THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civ. App. No. P023 of 2020

Claim No. CV2019-02271

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Appellant

AND

VIJAY MAHARAJ

Substituted on behalf of the Estate of Satnarayan Maharaj

for SATNARAYAN MAHARAJ

First Respondent

AND

CENTRAL BROADCASTING SERVICES LIMITED

Second Respondent

PANEL:

M. Mohammed, JA

C. Pemberton, JA

M. Wilson, JA

APPEARANCES:

Mr. F. Hosein S.C., Ms. V. Gopaul, Ms. K. Madhosingh, Ms. A. Romain, Mr. S. Julien and Mr. V. Jardine appeared on behalf of the Appellant.

Mr. R. L. Maharaj S.C., Mr. J. Singh, Mr. D. Rambally, Mr. K. Taklalsingh, Mr. S. Ramkissoon and Ms. R. Khan appeared on behalf of the Respondents.

DATE OF DELIVERY: March 26, 2021

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JUDGMENT

Joint Judgment delivered by: M. Mohammed, J.A., C. Pemberton, JA and M. Wilson, J.A.

INTRODUCTION

1. This is an appeal by the Attorney General against the decision of the trial judge in which he found:

   (a) In relation to the issue of substitution, that Vijay Maharaj (VM) could be properly substituted for and on behalf of the estate of the deceased First Respondent, Satnarayan Maharaj (SM).

   (b) In relation to the substantive matter, that **sections 3 and 4 of the Sedition Act Chapter 11:04**:

      (i) Contravene the principles of legality and/or legal certainty in that they are vague, uncertain and therefore illegal, null, void and offend the rule of law;

      (ii) Infringe the right of the individual to enjoy freedom of thought and expression, the right to join political parties and express political views and the right to freedom of the press, which are all tenets of a sovereign democratic state. Individually or collectively, these provisions infringe the binding declaration contained in **section 1 of the Constitution**; and

      (iii) Are, pursuant to **section 2 of the Constitution**, void to the extent of their inconsistency with the **Constitution**.

2. The core issues in this appeal are:

(a) Whether VM was properly substituted on behalf of the estate of SM;

(b) Whether **sections 3 and 4 of the Sedition Act** offend the rule of law and the principle of legal certainty, because the legal profile of the sedition offences is too broad, variable and uncertain; and

(c) Whether **sections 3 and 4 of the Sedition Act** are inconsistent and incompatible with the characteristics, features and tenets of a sovereign democratic state as declared in **section 1 of the Constitutio**n and are consequently void and of no effect as they offend the supremacy of the **Constitution** as provided for under **section 2**.

BACKGROUND

3. SM was a Hindu civil rights leader, religious leader, cultural activist, media personality, journalist and Attorney-at-law. The Second Respondent, Central Broadcasting Services Limited (CBSL), is a company engaged in the supply of multi-media services. SM was the founder and managing director of CBSL. CBSL operates a radio station called Radio Jaagriti. SM hosted a bi weekly "call-in" show called 'The Maha Sabha Strikes Back', which was aired on Radio Jaagriti. During that programme, SM offered commentary and facilitated the opinions of listeners on various issues, which they thought affected Trinidad and Tobago.

4. In April 2019 during the programme, SM allegedly made certain statements which were viewed by the Telecommunications Authority of Trinidad and Tobago (the 'TATT') as *'divisive and inciteful'*. On April 17, 2019, the TATT issued a warning to CBSL.[1] The statements allegedly made by SM were annexed to the affidavit of Ag. Insp. Wayne Stanley

[1] See paragraph 27 of the Affidavit of Satnarayan Maharaj dated May 31, 2019.

(a witness for the appellant).[2] They were as follows:

And now let's get down to Tobago ah little bit and what's happening there. Nothing going correct in Tobago. They lazy, six out ah ten of them working for the Tobago House of Assembly, getting money from Port of Spain. They doh want wok and when they get a job. They go half pass nine and ten o' clock they go for tea, breakfast. The rest of them abled bodied men they doh wah no wok ah tall. Run Crab Race, run Goat Race and go on the beach hunting for white meat. Yuh see ah white girl dey. They rape she, they take away all she camera and everything. This record inno. This is what Tobago is all about but anything they want, they going to get.

So now we have a lot of ferries ahready. Our Prime Minister is renting a ferry to take Tobagonians from Scarborough bring them to Port of Spain so they could buy market in Port of Spain market. They ain't growing nothing dey, they coming to make market inno. From Tobago we paying for them to come and pay (make) market. And you know how much our Prime Minister paying our money? Every day two hundred and sixty three thousand five hundred and eighty dollars a day. For this boat to bring them lazy people from Scarborough to come and make market in Port of Spain and take them back. They wouldn't grow nothing they. They wouldn't grow nothing, when they ketch they crab is to run race and when they mind they goat, is to run race. They come in Port of Spain, growing nothing.

We paying, we the tax payers in Trinidad, we paying. Whatever Tobago wants, Tobago gets and I am saying, we should they change

[2] See the affidavit of Ag. Insp. Wayne Stanley dated October 7, 2019 at "WS 3".

the name of this country? We are no longer Trinidad and Tobago, we are Tobago and Trinidad. We are subservient to them, right. And this big mouth man, rasta man called Attorney General Fitzgerald Hinds, when people make statements, he like to chastise them, insult them. A lady made a statement. Hadad said the government mix messaging of the situation in Tobago was not helping the sea bridge because the government was giving different messages. The response of Fitzgerald Hinds is that, 'if the woman normal'. Once you disagree with them, you are not normal. Once you point out the truth you are not normal. Well I say Hinds go and spend time seeing about your hair because it take you two days to plait them. The woman is normal and I believe she is more normal than you. That is why the fella in Sealots kick water on you, right. (sic)

5. On or around April 17 2019, it came to the attention of the police that an open source publication of these statements was circulating on social media and they commenced an investigation. Legal Counsel advised the police that they should obtain the original broadcast to determine whether the statements might possibly have been of a seditious nature. The police obtained two search warrants for execution at Radio Jaagriti's premises. The first warrant executed on April 18, 2019, was unsuccessful. By the time the second warrant was executed on June 13 2019, it was determined that the statements in question were made on April 9 2019. The second warrant yielded audio and video recordings of the statements imputed to SM. Investigations continued.

6. Because of the ongoing investigations, SM presumed that the police officers held the view that either he or CBSL committed an offence under the **Sedition Act** and they intended to initiate criminal charges against him. He was concerned about the possibility of being criminally charged, prosecuted and sanctioned for *'exercising his right to freedom of*

expression and to conduct himself as a media practitioner'.[3] On May 31, 2019, SM and CBSL filed a constitutional motion challenging certain provisions of the **Sedition Act**, namely, **sections 3, 4 and 13**. By that motion, they sought the following declaratory relief:

(a) *A declaration that sections 3, 4 and 13 of the Sedition Act Ch. 11:04: (i) contravene the principle of legality and/or legal certainty, in that they are vague, uncertain and therefore illegal, null and void and of no legal effect; and (ii) are unconstitutionally vague and offend the rule of law.*

(b) *A declaration that sections 3, 4 and 13 of the Sedition Act infringe the following fundamental rights and freedoms guaranteed under the Constitution of the Republic of Trinidad and Tobago: (i) section 4(a) - the right of the individual to enjoyment of property and the right not to be deprived thereof except by due process of law; (ii) section 4(i) - the right of the individual to enjoy freedom of thought and expression; (iii) section 4(k) - the right to freedom of the press; (iv) section 4(e) - the right to join political parties and express political views; (v) section 4(j) - the right of freedom of association and assembly; and (vi) section 5(2)(h) - the right not to be deprived of the right to such procedural provisions as are necessary for the purpose of giving effect to and protection of the aforesaid rights and freedoms.*

(c) *A declaration that in so far as section 6 of the Constitution may operate to save the impugned enactments of law, it would amount to a denial of the protection of law and/or an unlawful ouster of the court's jurisdiction to determine and preserve the constitutional rights of the respondents.*

[3] See the Affidavit of Satnarayan Maharaj dated June 17, 2019 at paragraph 18.

(d) A declaration that section 6 of the Constitution itself is inconsistent with the respondents' fundamental rights, including access to justice, and is further inconsistent with basic underlying principles of the Constitution and therefore is illegal, null and void and of no effect.

(e) A declaration that sections 3, 4 and 13 of the Sedition Act, either individually or collectively, infringe section 1 of the Constitution in that they are inconsistent and/or incompatible with the characteristics, features and tenets of a democratic state and therefore void and of no effect pursuant to section 2 of the Constitution.

(f) An order that the appellant, his servants and/or agents and/or police officers and all those acting in concert with them or howsoever otherwise be restrained and enjoined pending the final determination of the issues arising in these proceedings and on that determination be permanently restrained and enjoined from exercising any of the powers, rights or duties respecting the enforcement of the Sedition Act against the respondents insofar as it purports to confer such rights, powers and duties on the appellant, his servants and/or agents, including police officers.

7. At the time of the filing of the originating motion, the matter was still at the investigative stage. Apart from the execution of the two search warrants, the police took no further action against SM and CBSL. The police had not interviewed, arrested or charged SM or CBSL for offences under the **Sedition Act**.

8. Subsequent to the filing of the originating motion, SM died. On November 29, 2019, VM, SM's son and one of the executors of his estate, filed an application to be substituted for and on behalf SM's estate. The trial judge, in his ruling dated January 13, 2020, granted the order for substitution for VM to act on behalf of SM's estate.

THE TRIAL JUDGE'S FINDINGS

The Substitution Issue

9. The findings of the trial judge in relation to the application for substitution can be summarised as follows:[4]

(a) **Section 27 of the Supreme Court of Judicature Act Chapter 4:01** is *'always speaking'*, pursuant to **section 10(1) of the Interpretation Act Chapter 3:01.**[5]

(b) The **Supreme Court of Judicature Act** was passed on August 31, 1962, the same date on which the **1962 Constitution** was enacted. Consequently, at the time of enactment, the draftsperson and the Parliament had before them, the "new" remedy under section 6 (which is now found in **section 14** of the 1976 **Constitution**) and they must have logically intended that "cause of action" to include all causes of action inclusive of the "new" causes of action contained in with respect to the **Constitution**.[6]

(c) The Supreme Court could, in an administrative action where no contravention of personal rights was alleged, grant a declaration in favour of a claimant, in the public interest:[7] **Dumas v the Attorney General of Trinidad and Tobago**.[8]

(d) In the discharge of its mandate to resolve administrative actions, which involve the **Constitution**, the court exercises a generous and wide inherent jurisdiction and it must always uphold the supremacy of the **Constitution** and vindicate the

[4] See the Trial Judge's Decision on the Respondents' Substitution Application dated January 13, 2020 at pages 5-9.
[5] See paragraph 21 of the Trial Judge's Decision on the Respondents' Substitution Application.
[6] See paragraph 22 of the Trial Judge's Decision on the Respondents' Substitution Application.
[7] See paragraph 23 of the Trial Judge's Decision on the Respondents' Substitution Application.
[8] [2017] UKPC 12.

rights of aggrieved persons.[9]

(e) The seriousness of the alleged breaches of SM's constitutional rights ought not to be devalued by reason of his death. Even in death, SM's estate should be entitled to pursue the vindication of SM's rights.[10]

(f) **Parts 19.5 and 21.8 of the Civil Proceedings Rules 1998** were the applicable rules in this matter.[11]

(g) There was no other person capable of carrying on the claim as instituted by SM.[12]

The Substantive Issue

10. The trial judge's findings and reasons for arriving at his conclusion on the substantive issue can be summarised as follows:

(a) The trial judge recognized that he was constrained by the decision of The Judicial Committee of the Privy Council (JCPC) in **Matthew v The State of Trinidad and Tobago**.[13] However, to circumvent that decision, the trial judge reasoned that for a law to qualify as a law, it must satisfy the condition precedent of legal certainty. The savings law clause could not operate to save a law that did not satisfy this criterion. There was therefore nothing to be saved.[14]

(b) **Section 3 of the Sedition Act** is linguistically vague and its definition of seditious intent is *'overtly wide'* (sic). The offences in question lack the requisite degree of

[9] See paragraph 26 of the Trial Judge's Decision on the Respondents' Substitution Application.
[10] See paragraph 27 of the Trial Judge's Decision on the Respondents' Substitution Application.
[11] See paragraph 9 of the Trial Judge's Decision on the Respondents' Substitution Application.
[12] See paragraph 16 of the Trial Judge's Decision on the Respondents' Substitution Application.
[13] [2004] UKPC 33.
[14] See the Trial Judge's Reasons at paragraph 85.

clarity to qualify as law. This would subject citizens to arbitrary, selective and/or subjective enforcement. These provisions offend the rule of law and have no place in a sovereign democratic state.[15]

(c) The words in the impugned sections of the **Sedition Act** do not indicate with sufficient certainty, the specific conduct that is prohibited and subject to criminal sanction. The trial judge identified as an example **section 3(1) of the Act** which, according to the trial judge,

> *Defines seditious intent as the bringing of hatred or contempt or the inciting of dissatisfaction against the government."* The trial judge continued, *"What does dissatisfaction mean? The democratic process is strengthened by vibrant opposition which can challenge the efficacy and effectiveness of governmental policy and performance thereby acting as an essential check and balance against the abuse of executive power. While the Act does provide for, pointing out via lawful means, errors and defects, with a view of effecting reform, the character of what may be viewed as "lawful means" may vary from generation to generation and the pointing out of defects and errors may not necessarily be engaged without inciting dissatisfaction. The language used is obviously bad and bitterly broad.*[16]

(d) **Sections 3 and 4 of the Sedition Act** are not clothed with the prerequisite of legal certainty to qualify as a law and therefore violate the rule of law. Accordingly, **section 6 of the Constitution** provides no protection.[17]

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[15] See the Trial Judge's Reasons at paragraph 100.
[16] See the Trial Judge's Reasons at paragraphs 91-93.
[17] See the Trial Judge's Reasons at paragraph 118, 122, 123, 165 and 168.

(e) The wording of **section 13 of the Sedition Act** which provides for the issuance of a search warrant, is clear. However the definition and meaning of an 'offence' under **section 4** is critical to the operation of that section. He opined that given his finding on **section 4**, the powers to be exercised pursuant to **section 13** are premised upon provisions that violate the rule of law.[18]

(f) The savings law clause, that is, **section 6 of the Constitution**, does not apply to **sections 1 and 2 of the Constitution** but is limited to **sections 4 and 5 of the Constitution**. Accordingly, the court's jurisdiction in relation to violations of **sections 1 and 2 of the Constitution** is not fettered or curtailed by **section 6**.[19]

(g) The **sections** are patently inconsistent and are at odds with **section 1 of the Constitution**, which guarantees that Trinidad and Tobago is a sovereign democratic state, as these provisions impose disproportionate and unjustified restrictions on free speech, expression and thought. In addition, the sections violate the rule of law because they lack certainty and are vague and so their status as a law cannot be reasonably justified in this sovereign democratic state.[20]

(h) The declaration in **section 1 of the 1976 Constitution** provides an express, substantial and binding guarantee that the Republic of Trinidad and Tobago is a sovereign democratic state and **section 6 of the Constitution** can offer no immunity to pre-independence laws that violate **section 1 of the Constitution**.[21]

(i) Given that the impugned provisions are inconsistent with the **Constitution**, they are void to the extent of the inconsistency.[22]

[18] See the Trial Judge's Reasons at paragraph 106.
[19] See the Trial Judge's Reasons at paragraph 136.
[20] See the Trial Judge's Reasons at paragraph 165.
[21] See the Trial Judge's Reasons at paragraph 144.
[22] See the Trial Judge's Reasons at paragraph 169.

THE APPEAL

11. This matter, is concerned with interpreting the **Sedition Act** (the **Act**) to determine its constitutionality. To aid in this exercise we shall consider:

    (i) The legal certainty test;

    (ii) The rule of law as a tool of statutory interpretation to determine its compliance with **the Constitution**, the Supreme law of the land as provided for in **section 2** and in particular the fundamental human rights as provided for in **sections 4 and 5 of the Constitution**; and

    (iii) Whether the **Act** satisfies the fundamental requirements set out in **sections 4 and 5**, more importantly integral principle of due process.

    This exercise must engage **section 6 (1) of the Constitution** since the **Act** predated both our 1962 but more important our 1976 Republic Constitution. There have been many schools of thought which have arisen to assist our deliberations and we shall address them as we set about our task.

12. We will examine as well, whether an action such as this could survive the death of one of the original parties so that his estate could be substituted in its place to continue the action for and on behalf of his estate.

[A] The Substitution Issue

An "always speaking" interpretation of section 27 of the Supreme Court of Judicature Act

13. The trial judge handed down his decision on this on the same date as the judgment in the substantive action. Our finding is that the trial judge was correct for the reasons stated below.

14. Critical to whether the substitution application could meet with success is the interpretation of **section 27 (1) of the Supreme Court of Judicature Act** (**SCJA**). **Section 27 of the SCJA** provides that:

> *(1) Subject to the provisions of this section, on the death of any person after 24th December 1936, all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of, his estate; but this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other.*
>
> *(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—*
>
> *(a) shall not include any exemplary damages;*
>
> *(b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;*
>
> *(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.*
>
> *(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—*
>
> *(a) proceedings against him in respect of that cause of action were pending at the date of his death; or*

(b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Compensation for Injuries Act, and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

15. How do we interpret this section? The provisions of **section 27** clearly provide that all actions vesting in a person at the date of death survive for the benefit of his estate. The estate therefore has to decide whether to take the benefit of the action so vested or not. The **SCJA** specifically exempts certain actions, which do not survive a party's death. A plain, ordinary and apparently straightforward approach to the meaning of the section would suggest that it can capture any other actions not specifically exempted, and those can survive death for the benefit of a party's estate.

16. However, we must address whether the provisions of **section 27(1)** are confined to actions that were in existence at the time of the passing of the **SCJA**. This was the approach taken by Gobin J in **Harewood v Mc Honey**.[23] The trial judge in this matter opted to depart from that strict interpretation and employed instead the assistance provided by **section 10(1) of the Interpretation Act**. Was he plainly wrong?

17. **Section 10(1) of the Interpretation Act** provides that, *'Every written law shall be construed as always speaking and if anything is expressed in the present tense it shall be applied to the circumstances as they occur so that effect may be given to each written law according to its true spirit, intent and meaning'*.

18. In **Harewood** that trial judge opined that **section 27 of the SCJA** can be traced to the United Kingdom's Law Reform (Miscellaneous Provisions) Act 1934 and should therefore be read in its historical context. The trial judge expressed the view that the **SCJA** must be construed in the context of the United Kingdom Act. The purpose of the United Kingdom Act was *'to prevent existing rights from being extinguished by the death of the party. Such rights could not include the survival of the right to redress under a Constitution which did not exist at the time of the 1934 enactment'.*[24]

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[23] CV 2006-00365.
[24] **Harewood** at [13]. See also [12] and [14]; and the observations of the House of Lords in **Rose v Ford [1937] AC 826**.

19. In **Bennion on Statutory Interpretation**, the authors posit that, "*in construing an Act … the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the **true original intention**, making allowances for any relevant changes that have occurred since the Act's passing.*[25] According to **Bennion**, the *'always speaking'* or 'living tree' approach is subject to certain exceptions, namely:

(a) An Indemnity Act relieving certain persons from liability in respect of particular breaches of the law;

(b) Acts that form or ratify a contract, for example, an Act implementing an international convention; and

(c) Private Acts.

20. **Section 27(1) of the SCJA** does not fall into any of the exceptional categories outlined above and so its provisions must be construed as though they are *'always speaking'*. To determine whether SM's claim for declaratory relief vested in him, the provisions of **section 27(1) of the SCJA** must be construed in accordance with **section 10(1) of the Interpretation Act**. Sir Rupert Cross, in his treatise on Statutory Interpretation, opined that,

> *The somewhat quaint statement that a statute is 'always speaking' appears to have originated in Lord Thring's exhortations to drafters concerning the use of the word 'shall': 'An Act of Parliament should be deemed to be always speaking and therefore the present or past tense should be adopted, and "shall" should be used as an imperative only, not as a future'. But the proposition that an Act is always speaking is often taken to mean that a statutory provision has to be considered first and foremost as a norm of the current legal system, whence it*

[25] Bennion on Statutory Interpretation (7th Edn.), [14.1].

takes its force, rather than just as a product of a historically defined Parliamentary assembly.[26]

21. Two questions will therefore arise for discussion, the meaning of vested and whether the always speaking approach will include constitutional relief.

The Meaning of "Vested"

22. To determine whether SM's claim vested in him, we must consider first the "ordinary current meaning" of the word "vested". According to 'Osborn's Concise Law Dictionary', the word "vest" means *'to clothe with legal rights'*. The 'Collins Dictionary' defines the word "vested" as *'having a present right to the immediate or future possession and enjoyment of [a right or thing]; not contingent upon anything'*. The 'Practical Law Glossary of Terms'[27] notes that an interest *'vests in a person when that person does not have to meet conditions for that interest to take effect'*. Therefore, according to the ordinary current meaning of the word "vested", a claim or right can vest in a person when it clothes that person with a legal right that is not contingent or dependent upon any condition in order for it to take effect. If the claim or right has vested in a person, it can pass from that person to another immediately (vested in possession) or at a future date (vested in interest). There can be no doubt therefore that SM's claims were vested in him as at the time of his death.

Can those "vested" claims survive for the benefit of SM's Estate?

23. Survival means that the right to bring an action that is vested in the person at the time the action is brought and is therefore capable of being transmitted to his estate on his death. SM's claim was based on constitutional redress in the form of declaratory relief. The trial

[26] Cross on Statutory Interpretation (3rd Edn.), pages 51-52.
[27] Thompson Reuters, 2020.

judge opined that,

> *The seriousness of the alleged breaches of [SM's] constitutional rights ought not to be devalued by reason of his death. Even in death, [SM's estate] should be entitled to pursue the vindication of [SM's] rights and [VM] should be permitted to step into his shoes and act on behalf of his estate.*[28]

24. The conjoined effect of **section 27(1) of the SCJA** and **section 10(1) of the Interpretation Act** (the '*living tree*' approach) allows for the continuation of actions on death even though those actions were not existing at the time of the **SCJA**.

25. This action seeks to impugn **sections 3, 4 and 13 of the Sedition Act** using **sections 1, 2, 4, 5 and 6 of the Constitution**. With respect to the constitutional reliefs sought, the trial judge considered several cases, which involved claimants seeking constitutional redress in the form of declarations on behalf of others and/or their own behalf, one of them being **Fuller v AG**.[29] In **Fuller**, the Court of Appeal considered the provisions of Jamaica's Law Reform (Miscellaneous Provisions) Act (which are similar to **section 27(1) of the SJCA**), on the ground that the remedies provided by the Fatal Accidents Act were not adequate in light of the circumstances of the case. While the facts of that case are distinguishable from our case, we associate ourselves with the words of Harrison JA who said:

> *It is my view that the words of this Act are wide enough to embrace the facts that give rise to an application for constitutional redress. There can be no doubt that, had the deceased survived his ordeal, he could have enforced his right for redress. His estate must, therefore, benefit and the appellant is endowed by law with the necessary locus standi to enforce the right. Although the Act contemplated the enforcement of tortious liability, I think that a wide and purposeful interpretation should be adopted to include*

[28] See the Trial Judge's Decision on the Claimant's Substitution Application, paragraph 27
[29] (1998) 56 WIR 337

public law liability.[30]

26. The trial judge also referred to **Patrice Kareem et al v The Attorney General of Trinidad and Tobago.**[31] In **Kareem**, the Court of Appeal decided that, in certain circumstances a personal representative could have the right to proceed under **section 14(1) of the Constitution**[32] with respect to the violation of rights. This is not the case here. There are two points of distinction. In **Kareem**, the deceased had not brought any action at the date of his death. The Court of Appeal also canvassed whether Mrs. Kareem had the *locus standi* to pursue constitutional relief in her personal capacity for the wrongful death of her husband. In any event, although the facts in **Kareem** are distinguishable, the Court of Appeal held *obiter* that a personal representative could in certain circumstances have the right to proceed under **section 14 (1) of the Constitution**. Accordingly, insofar as the judge relied on that *obiter* statement, he cannot be faulted.

27. The case of **Dr. Chin v Farrell and Anor.**[33] was concerned purely with substitution in a judicial review claim, that is, whether a substitution order ought to have been made so that the hearing of the case could continue. The Court refused the application for substitution and held that there was no private interest to pass. Again, that is not the case here. In **Dumas v The Attorney General**,[34] the JCPC held that a citizen could bring a case in the public interest, provided he or she is not a mere busybody, where he or she alleges that a non-bill of rights provision of the **Constitution** has been infringed. SM did not bring his case in the public interest. Therefore, **Dumas** is not applicable to this case. There can be no question of an absence of *locus standi* or whether the Court has jurisdiction to hear and determine this claim once the provisions of **section 27 (1) of the SCJA** are invoked.

[30] ibid, p 404.
[31] CA Civ 71 of 1987.
[32] Section 14(1) of the Constitution provides that: *For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.*
[33] **Dr. Myron Wing-Sang Chin v Anthony Farrell and Noel Garcia** CA Civ P342/2017.
[34] **Dumas** (n. 8).

28. Further, the **Constitution** is the supreme law [35] and it would not be true to say that the **SCJA** can be interpreted so as to stymie rights created thereunder.

The Procedure

29. Having found that the action was vested in SM at the date of his death and could survive his death for the benefit of his estate the question arises, how is that survival to be effected for the benefit of his estate. The **CPR** provides the methodology for giving life to the provisions of **section 27(1) of the SCJA**.

30. The trial judge opined that the correct procedure for giving effect to the right of the estate to continue the action which survives SM, was to be found at **Part 21.8 of the CPR** which empowers the Court to give directions to enable the proceedings to be carried on. The trial judge discussed as well, **Parts 19.2(5) and 19.5 of the CPR** and came to the decision that **Part 19.2(5)** was inapplicable. We share the trial judge's view that **Part 19.2(5)** is inapplicable since that provision would apply to the situation where **section 27(1) of the SCJA-**rights are not in issue. Cases like **Dr. Chin v Farrell and Anor.**[36] would be relevant to that scenario.

Conclusion

31. On an *'always speaking'* interpretation, SM's claim for constitutional relief was vested in him at his death and therefore survived for the benefit of his estate in the manner required by **section 27(1) of the SCJA**. We find that **Part 21.8 of the CPR** empowers the Court to give directions to the parties and to enable the proceedings to continue. For completeness, we would advert to **Part 19.5 (1)** which provides that the court may substitute a party with or without an application. If an application is to be made it may be made by any person who

[35] Section 2 of the Constitution is discussed below.
[36] **Dr. Chin v Farrell and Anor.** (n. 33).

wishes to become a party. These are the only relevant considerations. We therefore agree with the trial judge and find that he was not plainly wrong. We uphold that part of the trial judge's judgment.

[B] THE LEGAL CERTAINTY ARGUMENT

Basic Rules of Interpretation

32. There are some basic rules of interpretation of constitutions, which are very applicable in this case. They are as follows:

(a) The Constitution is to be read as a whole.[37] Jamadar JCCJ expressed this view when he considered the Belizean Constitution in the decision in **Belize International Services v The Attorney General of Belize**.[38] Remarking on attempts to render a 'spectred' reading of the Preamble, separate and apart from the other provisions in the Constitution, Jamadar JCCJ had this to say at paragraph 303,

> *In fact, in reading the Constitution as a whole, the Preamble adds essential context to and informs the meaning, intention and purpose of the entire constitutional text. To disassociate the two, is to ignore a basic principle of statutory interpretation, that the text is to be read, understood and interpreted in its entire context. Dissociating the two, therefore, disembowels the substantive text of its integrity and authoritative functionality. Doing so deprives the interpretative responsibility of the raison d'etre for the text.*

[37] **George Meerabux v The Attorney General of Belize** at paragraph 33, per Lord Hope of Craighead.
[38] [2020] CCJ 9 (AJ) BZ.

(b) Each section of the Constitution must have meaning, purpose and intent. The Constitution does not contain time-sensitive provisions and none must be imported. Any liberal reading cannot and does not import that character.

(c) Constitutional clauses are not to be read in ascendency. No one clause supersedes the other unless this is clear and unambiguous from the language used. To say otherwise will create uncertainty.

(d) Parliament's role is to *'make laws for the peace, order and good government of Trinidad and Tobago'*.[39] This is not the Judiciary's role.

(e) **Sections 4 and 5 of the Constitution** comprise the fundamental rights provisions, which are entrenched provisions. These provisions can be amended but in accordance with the special majorities as provided for in the **Constitution**.[40]

(f) Following the decision in **Matthew**,[41] **section 6 of the Constitution** immunises any pre-existing law from challenge if such law is in violation of sections 4 and 5.

(g) Principles expressed in cases from other jurisdictions may be of assistance when interpreting the law for application in our jurisdiction. The one caveat is that the legislation governing the case must be compared with ours to ascertain whether they can be applied *mutatis mutandis*.[42]

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[39] The Constitution, section 53.
[40] ibid, section 13(2)
[41] **Matthew** (n. 13).
[42] While the learning in cases like **The State v Khoyratty [2006] UKPC 13** and **DPP v Mollison [2003] UKPC 6** are instructive, the constitutions in those countries are different in material particulars. The two issues are the nature and effect of Section 1 of the Mauritius Constitution and the effect of the savings law clause in the Jamaica and Barbados Constitution.

Whether the relevant sections of the Sedition Act are too vague and therefore do not constitute a "law"

The Submissions

Mr. Maharaj

33. Mr. Maharaj opened his account by stating that **sections 3 and 4 of the Act** offend the rule of law because they lack the legal certainty, precision, predictability and clarity of definition necessary to meet the requirements of the criminal law and consequently, they are inconsistent with **section 2 of the Constitution** and are void and of no effect. He submitted that the terms and descriptions contained in those sections are vague and imprecise and offer no real guidance to citizens as to the conduct that is prohibited by a criminal sanction. In relation to **section 13 of the Act**, which deals with the power to issue a search warrant, Mr. Maharaj submitted that the powers to be exercised pursuant to that section are premised upon **section 4**, which violates the rule of law. He relied on the decision of the JCPC in **Sabapathee v The State (Mauritius)**.[43] There, the JCPC spoke to the principle of legality, which was embodied in the Constitution of Mauritius. This required that a criminal offence had to be defined with sufficient clarity to enable a person to judge whether his acts or omissions would fall within the definition and potentially render him liable to prosecution. Hopelessly vague legislation will be struck down as unconstitutional. He also relied on the decisions in **Gilbert Ahnee and Others v Director of Public Prosecutions**[44] and **Quincy Mc Ewan (et al) v The Attorney General of Guyana**[45] in support of this submission.

34. Mr. Maharaj submitted that the impugned provisions of the **Act** are inconsistent with the rights of protection of the law and due process that are enshrined in **sections 4 and 5 of the Constitution**.

[43] (1999) 4 LRC 403 at page 412.
[44] (1999) 2 AC 294 at page 306.
[45] (2018) CCJ 30.

35. Mr. Maharaj further opined that the relevant provisions of the **Act** are not capable of being saved by **section 6 of the Constitution** because they contravene the principles of legal certainty in that they are too vague and uncertain and therefore cannot be construed as an "existing law" to begin with. He found support in the text, **Fundamentals of Caribbean Constitutional Law**[46] where the authors stated that the existing law had to satisfy the requirements of law which involved it meeting the standard of legal certainty and that the principle of legal certainty was an element of the rule of law.

Mr. Hosein

36. Mr. Hosein, submitted that the relevant sections of the **Sedition Act** are not vague and imprecise and do not violate the rule of law. He submitted that **section 3(2) of the Act** ameliorates to a large extent any generalised language of **section 3(1)**. He further submitted that, in any event, the fact that a law is expressed in broad terms does not mean that it must be held to have failed to reach the required standard. In determining whether a law satisfies the requirement for legal certainty, it is permissible to take into account the way in which the statutory provision has been applied and interpreted by the courts. In support of his argument, Counsel referred us to **Gilbert Ahnee and Others v Director of Public Prosecutions**,[47] **Sabapathee v The State (Mauritius)**,[48] **R v Chief Metropolitan Stipendiary Magistrate ex parte Choudary**,[49] and **Boucher v R.**[50]

37. According to Mr. Hosein, the **Sedition Act** has been in existence since April 9, 1920 and is therefore saved law under **section 6 of the Constitution**. He submitted that the **Act** is accordingly insulated from challenge or invalidation on the ground that it is inconsistent with the fundamental rights entrenched in **sections 4 and 5 of the Constitution**. Further,

[46] "Fundamentals of Caribbean Constitutional Law" by Tracy Robinson, Arif Bulkan and Justice Adrian Saunders, Sweet & Maxwell Thompson Reuters, 1st Edn. 2015.
[47] **Ahnee** (n. 44).
[48] **Sabapathee** (n. 43).
[49] [1991] 1 All ER 313.
[50] [1951] 2 DLR 369.

the provisions of the **Act** are covered by the presumption of constitutionality which:

(a) places a heavy burden on the respondents to establish that the **Act** is unconstitutional; and

(b) allows for its interpretation in a manner which is not in violation of the other provisions of **the Constitution**, consistent with the principle that the provisions of **the Constitution** must be interpreted as a harmonious whole and that no particular provision has primacy over any other: **Meerabux (George) v Attorney General**.[51]

38. Mr. Hosein contended that the trial judge, in determining whether the **Sedition Act** was an "existing law", ought to have directed his mind to whether the Act had the force of law and had effect as part of the law of Trinidad and Tobago before the commencement of **the Constitution**. He submitted that that question must be answered in the affirmative and that the trial judge was bound by the ruling in **Matthew**.[52]

39. Mr. Hosein submitted that if this Court is nevertheless inclined to explore whether the impugned sections of the **Act** are inconsistent with **sections 4 and 5 of the Constitution**, then consideration ought to be given to whether the **Act** pursues a sufficiently important objective, has a rational connection to that objective, adopts the least drastic means to accomplish that objective and is not disproportionate.

The Law, Analysis and Conclusion

40. We reproduce in full, the relevant sections of the **Sedition Act**, which are under scrutiny.

> ***3.*** *(1) A seditious intention is an intention—*

[51] (2005) 66 WIR 113.
[52] **Matthew** (n. 13).

(a) to bring into hatred or contempt, or to excite disaffection against Government or the Constitution as by law established or the House of Representatives or the Senate or the administration of justice;

(b) to excite any person to attempt, otherwise than by lawful means, to procure the alteration of any matter in the State by law established;

(c) to raise discontent or disaffection amongst inhabitants of Trinidad and Tobago;

(d) to engender or promote—

(i) feelings of ill-will or hostility between one or more sections of the community on the one hand and any other section or sections of the community on the other hand; or

(ii) feelings of ill-will towards, hostility to or contempt for any class of inhabitants of Trinidad and Tobago distinguished by race, colour, religion, profession, calling or employment; or

(e) to advocate or promote, with intent to destroy in whole or in part any identifiable group, the commission of any of the following acts, namely:

(i) killing members of the group; or

(ii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

(2) But an act, speech, statement or publication is not seditious by reason only that it intends to show that the Government has been misled or

mistaken in its measures, or to point out errors or defects in the Government or Constitution as by law established, with a view to their reformation, or to excite persons to attempt by lawful means the alteration of any matter in the State by law established, or to point out, with a view to their removal by lawful means, matters which are producing, or have a tendency to produce—

(a) feelings of ill-will, hostility or contempt between different sections of the community; or

(b) feelings of ill-will, hostility or contempt between different classes of the inhabitants of Trinidad and Tobago distinguished by race, colour, religion, profession, calling or employment.

(3) In determining whether the intention with which any act was done, any words were spoken or communicated, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

***4.** (1) A person is guilty of an offence who—*

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) communicates any statement having a seditious intention;

(c) publishes, sells, offers for sale or distributes any seditious publication;

(d) with a view to its being published prints, writes, composes, makes, reproduces, imports or has in his possession, custody, power or control any seditious publication.

(2) Subject to subsection (3), a person guilty of an offence under this section is liable—

(a) on summary conviction to a fine of three thousand dollars and to imprisonment for two years; or

(b) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for five years, and any seditious publication, the subject matter of the charge, shall be forfeited.

(3) Notwithstanding any other written law to the contrary where a person is charged summarily with an offence under this section the Magistrate shall—

(a) inform him that he may, if he so requires, be tried indictably by a jury instead of being tried summarily and explain to him what is meant by being tried summarily; and

(b) after so informing him ask him whether he wishes to be tried indictably by a jury or consents to be tried summarily, and if the person charged requests to be tried indictably, the Magistrate shall proceed with the matter as if it was a preliminary enquiry.

(4) A person shall not be convicted under this section for communicating, importing or having a seditious publication or statement in his possession, power, or control, if he proves that he did not know and had no reason to suspect that the publication or statement was seditious.

41. **Section 6 of the Constitution** provides that,

6. *(1) Nothing in sections 4 and 5 shall invalidate—*

(a) an existing law;

(b) an enactment that repeals and re-enacts an existing law without alteration; or

(c) an enactment that alters an existing law but does not derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.

(2) Where an enactment repeals and re-enacts with modifications an existing law and is held to derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right then, subject to sections 13 and 54, the provisions of the existing law shall be substituted for such of the provisions of the enactment as are held to derogate from the fundamental right in a manner in which or to an extent to which the existing law did not previously derogate from that right.

42. **Section 3 of the Constitution** provides that,

3. *(1)* *In this Constitution— "law" includes any enactment, and any Act or statutory instrument of the United Kingdom that before the commencement of this Constitution had effect as part of the law of Trinidad and Tobago, having the force of law and any unwritten rule of law…*

Are the impugned sections of the Sedition Act void for vagueness? - The Definition of the Offence, in Context

43. The crux of Mr. Maharaj's argument is that **sections 3 and 4 of the Act** are fatally deficient in providing certainty, precision, predictability and clarity of definition and thus they offend the concept of the rule of law and its integral component, the principle of certainty. He contended that for this reason, these provisions should be constitutionally voided.

44. Clarity and certainty in the definition of a criminal offence is very much a question of degree that necessarily involves close scrutiny of the subject matter involved. The fact that a written law is couched in broad terms does not necessarily signify that it is incapable of providing the requisite level of clarity and certainty.

45. In **Sabapathee v The State (Mauritius)**,[53] the JCPC considered section 38(2) of the Dangerous Drugs Act of 1986, which provided that a person shall be a trafficker where, having regard to all the circumstances of the case against him, it can be reasonably inferred that he was engaged in trafficking. The term "trafficking" was not defined in the Act. It was argued that that section breached the principle of legality as the expression of "trafficking" was too vague and the fact that it was not defined in the Act, when taken with the provision that trafficking could be established by the drawing of reasonable inferences, was likely to lead to decisions which were arbitrary and unfair. The court found that that section did not offend against the principle of legality. On this issue, Lord Hope at page 412 said,

> *As the Board held in Ahnee v Director of Public Prosecutions [1999] 1 WLR 1305 there is to be implied in s.10(4) the requirement that in criminal matters any law must be formulated with sufficient precision to enable the citizen to regulate his conduct. So the principle of legality applies, and legislation which is hopelessly vague must be struck down as unconstitutional.* ***But the precision which is needed to avoid that result will necessarily vary according to the subject matter. The fact that a law is expressed in broad terms does not mean that it must be held to have failed to reach the required standard. In an ideal world it ought to be possible to define a crime in terms which identified the precise dividing line between conduct which was, and that which was not, criminal. But some conduct which the law may quite properly wish to prescribe as criminal may best be described by reference to the nature of the activity rather than to particular methods***

[53] **Sabapathee** (n. 43).

of committing it. It may be impossible to predict all these methods with absolute certainty, or there may be good grounds for thinking that attempts to do so would lead to undesirable rigidity. In such situations a description of the nature of the activity which is to be penalised will provide sufficient notice to the individual that any conduct falling within that description is to be regarded as criminal. The application of that description to the various situations as they arise will then be a matter for the courts to decide in the light of experience. In this way the law as explained by its operation in practice through case law will offer the citizen the guidance which he requires to avoid engaging in conduct which is likely to be held to be criminal. (Emphasis added)

46. In **R (on the application of Gillan and another) v Metropolitan Police Commissioner and another**,[54] the appellants had been stopped when innocently attending demonstrations in London, and had been effectively detained for approximately twenty minutes or more before being allowed to proceed. An authorisation had been granted by an Assistant Commissioner for searches to be carried out throughout the capital. On appeal, the appellants contended that the stop and search powers granted under the Terrorism Act 2000 were too wide and infringed their human rights. The House of Lords held that the authorisation had been considered and was proportionate to the threat to the capital. On this issue, Lord Hope at paragraph 54 said,

Guidance as to how the question should be approached is provided by the Strasbourg authorities. ***The European court recognised in Kuijper v Netherlands App No 64848/01 (3 March 2005, unreported) pp 13–14, that legislation may have to avoid excessive rigidity if it is to keep pace with changing circumstances. It may be couched in terms which, because they***

[54] [2006] UKHL 12.

are to a greater or lesser extent vague, must be left to interpretation and application to the facts by the courts. (Emphasis added)

47. In **R v Misra and Another**,[55] the appellants, two doctors, were convicted of gross negligence manslaughter following the death of a post-operative patient under their care. On appeal, the appellants sought to challenge the test of gross negligence manslaughter laid down by the JCPC in **R v Adomako**,[56] that is, whether having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount, in the jury's opinion, to a criminal act or omission. They argued that this test was circular and required the jury to set their own level of criminality which essentially should be a question of law. The appellants raised Articles 6 and 7 of the European Convention on Human Rights and argued that the uncertainty created by the **Adomako**[57] test meant they had been deprived of the right to a fair trial and the uncertainty also meant that at the time the action was committed, it was not possible to determine whether the actions were criminal. Their convictions were upheld. The Court of Appeal of England and Wales found that the **Adomako** test did not infringe the rights enshrined in the Convention. At paragraphs 33-37, Lord Justice Judge said,

[33] Recent judicial observations are to the same effect. Lord Diplock commented:

"The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it. (Black-Clawson International Limited v Papierwerke Waldhof-Aschaffenberg AG [1975] AC 591 at p. 638)."

[55] [2004] EWCA Crim 2375.
[56] [1995] 1 AC 171.
[57] ibid.

In Fothergill v Monarch Airlines Ltd [1981] AC 251 at 279 he repeated the same point:

> *"Elementary justice or, to use the concept often cited by the European court, the need for legal certainty, demands that the rules by which the citizen is to be bound should be ascertainable by him (or more realistically by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible."*

More tersely, in Warner v Commissioner of Police for the Metropolis [1969] 2 AC 256 at p. 296, Lord Morris explained in terms that:

> *"... In criminal matters it is important to have clarity and certainty."*

The approach of the common law is perhaps best encapsulated in the statement relating to judicial precedent issued by Lord Gardiner LC on behalf of himself and the Lords of Appeal in Ordinary on 26th July 1966 [1966] 1 WLR 1234:

> *"**Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual case[s]. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.**"*

In allowing themselves (but not courts at any other level) to depart from the absolute obligation to follow earlier decisions of the House of Lords, their Lordships expressly bore in mind:

> *"... the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law."*

[34] No further citation is required. In summary, it is not to be supposed that prior to the implementation of the Human Rights Act 1998, either this Court, or the House of Lords, would have been indifferent to or unaware of the need for the criminal law in particular to be predictable and certain. ***Vague laws which purport to create criminal liability are undesirable, and in extreme cases, where it occurs, their very vagueness may make it impossible to identify the conduct which is prohibited by a criminal sanction. If the court is forced to guess at the ingredients of a purported crime any conviction for it would be unsafe. That said, however, the requirement is for sufficient rather than absolute certainty.***

[35] ***The ambit of the principle, as well as its limitations, were clearly described in the Sunday Times v United Kingdom [1979] 2 EHRR 245. The law must be formulated:***

> ***"... with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee to a degree that is reasonable in the circumstances, the consequences which any given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unobtainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched***

in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice."

Moreover, there is a distinction to be drawn between undesirable, and in extreme cases, unacceptable uncertainty about the necessary ingredients of a criminal offence, and uncertainty in the process by which it is decided whether the required ingredients of the offence have been established in an individual case. The point was highlighted in Wingrove v United Kingdom [1996] 24 EHRR 1:

> *"It was a feature common to most laws and legal systems that tribunals may reach different conclusions, even when applying the same laws to the same facts. This did not necessarily make the laws inaccessible or unforeseeable."*

[36] ***We can see the practical application of these comments in Handyside v United Kingdom [1974] 17 YB 228, where the Commission considered the definition of obscenity in the Obscene Publications Acts, 1959-1964. This offence is concerned with items which have a tendency to deprave and corrupt, a very general definition, certainly capable on forensic analysis of being criticised on the basis of uncertainty. The Commission nevertheless concluded that the offence was adequately described. In Wingrove itself, the court rejected the argument that blasphemous libel - that is, libel defined in very broad terms as "likely to shock and outrage the feelings of the general body of Christian believers" - was insufficiently accessible or certain.***

> *[37] Since the implementation of the Human Rights Act, the issue of uncertainty has also been addressed on a number of occasions in this court. It has been decided that the offence of making indecent*

photographs of children was sufficiently certain to satisfy Articles 8 and 10 of the Convention (R v Smethurst [2001] EWCA Crim 772); that the offence of publishing an obscene article satisfies the requirements of Article 7 of the Convention (R v Perrin [2002] EWCA Crim 747); and that the offence of causing a public nuisance, by sending an envelope through the post containing salt, which was suspected to be anthrax, contrary to common law, was also sufficiently certain to satisfy the requirements of Article 7, 8 and 10 of the Convention (R v Goldstein [2004] 1 Cr App R 388). In each case the uncertainty argument was rejected. In Goldstein itself, at p. 395, Latham LJ commented:

> ***"The elements of the offence are sufficiently clear to enable a person, with appropriate legal advice if necessary, to regulate his behaviour. ... A citizen, appropriately advised, could foresee that the conduct identified was capable of amounting to a public nuisance."***
>
> ***In our judgment, the incorporation of the ECHR, while providing a salutary reminder, has not effected any significant extension of or change to the "certainty" principle as long understood at common law.*** (sic) (Emphasis added)

48. In **Mc Ewan**,[58] the apex court for Guyana, the Caribbean Court of Justice (CCJ), adjudicated upon section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act, which prohibited every person who, *'being a man, in any public way or public place, for any improper purpose, appears in a female attire; or being a woman, in any public way or public place, for any improper purpose, appears in a male attire'.* The appellants in that case argued that the section was vague and of uncertain scope as well as irrational and discriminatory on

[58] Mc Ewan (n. 45).

the ground of sex, particularly by the use of the words “improper purpose”, “female attire” and “male attire”. It was also argued that the section violated Articles 1, 40, 149 and 149D of the Constitution and was therefore null, void and of no effect. The CCJ found that because the wording of the penal statute was vague, it ought to be struck down for being contrary to the rule of law. At paragraph 80, Saunders PCCJ referred to the minimum objectives required in order for a penal statute to be considered as a valid law:

> ***[80] ... It must provide fair notice to citizens of the prohibited conduct. It must not be vaguely worded. It must define the criminal offence with sufficient clarity that ordinary people can understand what conduct is prohibited. It should not be stated in ways that allow law enforcement officials to use subjective moral or value judgments as the basis for its enforcement. A law should not encourage arbitrary and discriminatory enforcement****.* (Emphasis added)

49. Further, both Rajnauth-Lee JCCJ and Anderson JCCJ expressed the view that an Act, which created a crime based on intention without a corresponding illegal act was vague and created uncertainty. On these grounds, *inter alia,* the provision was struck down and declared unconstitutional.[59]

50. Turning to the present case, one of the trial judge’s primary lines of reasoning was that certain terminology employed by the legislation was inherently vague. By way of one example, he queried the meaning of “raising discontent or disaffection” (**section 3(1)(c) of the Sedition Act**).[60] The trial judge in our view did not pay sufficient regard to the critical qualifying effect of **section 3(2) of the Act**. This subsection delineates with sufficient clarity the outer boundaries of the offence, articulated no doubt in more generalised language in

[59] See paragraph 96 per Anderson JCCJ: “*it fails to provide fair notice to an ordinary person of reasonable intelligence of the conduct necessary to conform with the provision. The flipside of this is that the section confers unacceptably broad discretion on state officials to arrest and charge at will. …”.*
[60] See paragraph 92 of the Trial Judge’s Reasons.

section 3(1).

51. The offence of sedition is unquestionably one which, by its very nature, is acutely time, issue and context sensitive. The socio-cultural and political issues of one generation are often not those of preceding or succeeding generations. An eloquent statement of this reality is contained in the decision in **Boucher v R**[61] where Kerwin J. said at pages 281-282,

> ***In coming to a conclusion on this point, the jury is entitled to consider the state of society or as it is put by Chief Justice Wilde in his charge to the jury in The Queen v Fussell 1848 St Tr N.S 723:***
>
>> ***You cannot as it seems to me form correct judgment of how far the evidence tends to establish the crime imputed to the defendant without bringing into that box with you knowledge of the present state of society because the conduct of every individual in regard to the effect which that conduct is calculated to produce must depend upon the state of the society in which he lives. This may be innocent in one state of society because it may not tend to disturb the peace or to interfere with the right of the community which at another time and in different state of society in consequence of its different tendency may be open to just censure.***
>
> *This, it should be noted, was said at trial at the Central Criminal Court before the Chief Justice Baron, Parke and Maule. An instruction to the same effect was given in Reg Burns supra by Cave of whose charge it is stated generally at page 88 of the 9th edition of Russell on Crime that the present view of the law is best stated therein.* ***Reference might also be made to the words of***

[61] **Boucher** (n. 50).

Coleridge in his charge to the jury in the later case of Rex Aldred 1909 22 Cox C.C:

> ***You are entitled also to take into account the state of public feeling. Of course there are times when a spark will explode powder magazine; the effect of language may be very different at one time from what it would be at another.***

(Emphasis added)

52. The definition of an offence might appear to be couched in somewhat broad terms, for example, **section 3(1)(c) of the Sedition Act** which provides that *'a seditious intention is an intention to raise discontent or disaffection amongst inhabitants of Trinidad and Tobago'*. However, that by itself does not imply invalidity for reason of lack of certainty. Context is everything with respect to an offence, the primary objective of which is to safeguard and maintain public order and safety. To achieve that objective in a manner consistent with evolving circumstances and standards, it is rationally discernable that the offence of sedition might necessarily have had to be framed in somewhat broad terms in order to encompass a variety of situations at different points in time. This factor by itself does not make the impugned sections of the **Act** void on constitutional grounds. Some level of elasticity is not an uncommon feature in the definition of certain criminal offences as the passages referred to above indicate. This allows the requisite adaptive flexibility that is particularly necessary for the offence of sedition.

53. Some aspects of the offence of sedition, by their very nature, (unlike many other criminal offences of which three examples are murder, rape and robbery), are not capable of a precise definition. They are therefore best described by a general reference to the nature of the activities as opposed to the methods by which they can be committed, since they can occur in many varied circumstances.

54. In this way, the sedition laws would retain a level of flexibility to keep pace with changing circumstances and societal evolution. By way of example, the conduct of an individual may be considered innocent in one state of society, as it would not have the tendency to disturb the peace or raise discontent or disaffection amongst the public. However, at another time, in a different state of society, such conduct may very well have such a tendency. Similarly, actions which historically might have had a tendency to deprave and corrupt or to shock and outrage the feelings of the general public or sections of the public, would not necessarily have the same impact in contemporary times.[62]

55. In addition, the essence of the offence of sedition is the dissemination of words, however published. It is therefore clear that the offence cannot be time bound and must be accorded flexibility to keep pace with advances in communication.[63]

56. **Sections 3 and 4 of the Sedition Act** are couched in terms which are adequate to provide fair notice to individuals, if need be, with appropriate legal advice (having regard to precedent and the general rationale behind the legislation), of the conduct which is to be regarded as criminal. The relevant sections of the **Act** are also sufficiently precise to enable individuals, with requisite legal advice if needed, to regulate their conduct and to foresee any consequences which any given action may entail. It is clear that such consequences are not required to be foreseeable with absolute certainty (**Sabapathee v The State**[64]; **R v Adomako**[65]).

57. The present case is distinguishable from **Mc Ewan**.[66] There, the CCJ found that the relevant section was profoundly and impermissibly vague and in addition, conferred an unacceptably broad discretion on State officials to arrest and charge at will. In the present case however, some parts of the sedition laws under scrutiny are, by their very nature,

[62] In his oral arguments, Mr. Hosein used the publication 'Lady Chatterly's Lover' as an example of this.
[63] Dissemination through cyberspace will be captured by the offence.
[64] **Sabapathee** (n. 43).
[65] **Adomako** (n. 56).
[66] **Mc Ewan** (n. 45).

incapable of utterly precise definition. This does not mean that those sections have failed to reach the required standard of legal certainty. Those sections are somewhat open-ended so as to capture various situations which are eminently time, issue and context sensitive.

58. We note in any event that not all of the impugned sections of the **Sedition Act** are couched in somewhat broad terms. For example, the provisions of **section 3(1)(e) of the Act**, which relate to acts akin to the incitement of genocide, is a particular manifestation of the offence of sedition, the nature of which is only reasonably capable of one specific definition.

Context and Time - Social/Cultural/Racial Issues - Aids to statutory interpretation

Mr. Maharaj

59. Mr. Maharaj made two distinct points in relation to this issue. The first was his reference to the Sir James Stephen's definition of sedition. Counsel helpfully traced the history of the sedition law by reference to, *inter alia*, **Sir James Fitzjames Stephen's 8th edition "Digest of the Criminal Law of England"** ("Stephen's Digest"). Counsel submitted that the **Stephen's Digest** contains the most authoritative source of the common law on sedition. The **Trinidad and Tobago Sedition Ordinance 1920** was introduced at a time when citizens did not have the right to choose their representatives in government – Trinidad and Tobago was a crown colony and the purpose was to prevent criticism of the King and his officials. He submitted that sovereignty was in the Crown and during that period, the King could do no wrong. He argued that since 1976, this had changed and consequently, the sedition laws, because of their repressive nature, width and uncertainty are obviously inconsistent with the notion of sovereign democratic statehood.

60. During this discourse, we enquired of Mr. Maharaj if we should consider the context of our society and our particular position at certain points of time, in addressing the issue of whether the impugned sections of **Sedition Act** are uncertain. He submitted tersely, *inter*

alia, that those issues were not matters for the court. In his view, the court, under **the Constitution**, had to decide whether the sedition laws met the legal requirements of a law or whether they offend **the Constitution**. He submitted that if the court found that it does not offend **the Constitution** and does in fact meet the legal requirement, the appeal ought to be allowed. He contended that the court cannot dabble in politics and that the issues before it, are legal and constitutional issues that do not involve determining or anticipating what could possibly happen in Trinidad and Tobago on the social field or on the political field.

Mr. Hosein

61. On this issue, Mr. Hosein submitted, *inter alia*, that whilst certainty is highly desirable, in respect of the sedition laws, it may bring in its train excessive rigidity when the law must be able to keep pace with changing circumstances.

Law, Analysis and Conclusion

References to the Hansard

62. Our research disclosed that Mr. Maharaj's views echoed those discussed in depth in the 1920 Hansard Report. The rule in **Pepper v Hart**[67] is apposite. The rule permits reference to parliamentary material to illuminate on the meaning of words used in legislation where three conditions are satisfied. Those conditions are: (i) the legislation is ambiguous or obscure or leads to an obscurity, (ii) the material relied upon consists of one or more statements by a minister or other promoter of the bill and (iii) the statements relied on are clear.

[67] [1993] AC 593. This rule has been adopted in Trinidad and Tobago see a recent application in The Permanent Secretary, Ministry of Social Development and Family Services and Central Public Assistance Board v Ruth Peters Civil Appeal P366/2016 delivered on 5 June 2020.

63. Further, in **Gopaul v Baksh**[68] the JCPC acknowledged that the Hansard can also be used to explain the general background and purpose of an Act. In this regard, the JCPC stated,

> *The Board was provided with a good deal of material about the statute's origins and passage through Parliament. None of that material meets the stringent requirements of Pepper v Hart [1993] AC 593. It cannot therefore be determinative of the particular issue of statutory construction that the Board has to decide. But the material does help to explain the general background, and the mischief (referred to in Parliament as a crisis) which the Land Tenants Act was intended to remedy.*[69]

64. In other words, while there is a general rule, which limits its use as an aid to statutory interpretation, the Hansard can be used to explain the general background and purpose of legislation. In **The Attorney General of Trinidad and Tobago v Hadeed**[70] our Court of Appeal utilised the Hansard to determine the purpose of an amendment to the **Legal Profession Act**. It is in this second sense that we use it as part of our analysis to explain the general background and purpose of the **Sedition Act**, and the reason for its continued relevance in its present form.

65. In relation to Mr. Maharaj's argument, that the Stephen's Digest represents the "gold standard" in the Commonwealth in respect of the definition of sedition, the comments of the Solicitor General during the debate of the Legislative Council on the Seditious Publications Ordinance on March 19, 1920[71] are pertinent. At page 79, the Solicitor General in explaining why Justice Stephen's definition was not adopted said,

[68] [2012] UKPC 1.
[69] ibid, paragraph 3
[70] Civil Appeal No. P310/2019.
[71] See the Hansard Reports on the Seditious Publications Ordinance at Appendix 1.

> *The definition of sedition embodied in this Bill (notwithstanding all that people have said to the contrary) is considerably less drastic than the law of sedition as defined by the British common law. I will endeavour, briefly, to explain how the matter stands. In the first place, by a seditious libel at common law, truth of the libel is no defence whatever. The sole question is did the accused person intend by his acts or writings or speech to raise discontent or cause disaffection and so on as the case may be... [In] this Bill this principle is qualified to a very great extent. The only definition which, as far as I know, has ever been attempted of sedition was done by the late Mr. Justice Stephens and suggestions have been made in the press that this definition should be adopted in its entirety... Mr. Justice Stephens' definition starts by saying (as it does in this Bill) that a seditious intention is to bring into hatred or contempt His Majesty, or to excite disaffection against the Government, or otherwise than by lawful means to alter established laws, or to raise discontent or disaffection among His Majesty's subjects by promoting feelings of hostility or ill-will among different classes... Mr. Justice Stephens goes on to say that an intention is not seditious if it intends to show that His Majesty has been misled or mistaken, or intends to point out errors with a view to alteration, or to excite His Majesty's subjects by lawful means to procure the alteration of any established matter, or to point out with a view to removal by lawful means, matters which may be producing discontent or ill-will. The difficulty of this definition which has been found and pointed out by judges in deciding cases is that it is not quite exhaustive...* (sic)

66. The Solicitor General continued at page 81,

> *…But it was considered that in drafting this Bill in a community like this an attempt ought to be made to explain to the community what sedition is... Then the Law Officers came to the conclusion that if they did define sedition it would not do to leave it in this somewhat nebulous state in which it was left by Mr.*

Justice Stephens. (In fact a bill dealing in some ways with the same subject was introduced into British Guiana containing a definition of sedition based on that of Mr. Justice Stephens, and this very criticism was at once brought against it). The Law Officers of the Crown here came to the conclusion that probably the real test as to whether criticism was seditious or not was if criticism was based on facts which were untrue, and untrue either to the knowledge of the person publishing them, or that the person publishing them deliberately shut his eyes and refused to find out when he could easily and perfectly well have found out whether they were true or not. And that is all which this definition which has been so much criticised really provides. Mr. Justice Stephens said that if you published matter intending to raise discontent it is seditious unless it is legitimate criticism, but that was undefined. ***All this Bill says is that it is only seditious if you intend to do it by a false statement or a misrepresentation, or a misleading inference as to the facts and motives of a person…*** (sic) (Emphasis added)

67. There were three stages in our evolution to the nation that we are today - from Crown Colony to Independence, where the monarch in England was and remained the Head of State, to full autonomy as a Republic where our President is now the Head of State.

68. We have looked at the Hansard Report of the Legislative Council debates in 1920, which proved that the concerns addressed then, the circumstances which prompted the introduction of the legislation were no different to the circumstances of this case. According to His Excellency, Sir John Robert Chancellor, at the root of the proposed ordinance was the prevention of dissemination of *'propaganda of a seditious character aimed at exciting racial animosities. … I recognize that there are sincere and earnest critics of this Bill who believe that its object is to stifle legitimate criticism of the action of*

Government. I hope that I may be believed when I say that I should be no party to so foolish and so archaic a policy'.[72]

69. Further along in the Hansard, there are arguments along the lines advanced by Mr. Maharaj and the trial judge.[73] These were debunked by the further explanation of the premise of the legislation. As stated by His Excellency, *'The **sole object** of this Bill is to put an end to that pernicious propaganda, and **to re-establish in the Colony that harmony between all classes** that has in the past redounded to the credit of Trinidad, and made it a pleasant place to dwell in…'*[74] (Emphasis added) Those views as advanced by Mr. Maharaj and as espoused by the trial judge therefore hold no sway.

70. Suffice it to say that the protection of the racial harmony in Trinidad and Tobago was at the time of its enactment and remains today the telos of the **Sedition Act**, especially in its present form. This passage explaining the reason for the introduction of the ordinance supports the view that not all of the rules and laws in existence during the Crown Colony era became or become otiose today.

71. Our nation's fathers recognised this fact, which saw expression in the 1962 and 1976 Constitutions in the form of Savings Law clauses. To bring the Act more in line with the thrust of both the Independence and Republican Constitutions, our Parliaments, in 1962 and in 1976 amended the **Act** to introduce significant changes to the definition of some of the offences in the **Sedition Act**.[75] By so doing, the post-Independent and Republican Parliaments endorsed the continuing relevance of the **Sedition Act** to our nation.

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[72] See the Hansard Report, March 19, 1920 at page 78. Sir John Robert Chancellor was the 7th Governor of Trinidad and Tobago. He presided from June 1, 1916 – December 31, 1921.

[73] See Appendix 1.

[74] Hansard Report of the Legislative Council Debate, at page 78.

[75]The changes include new definitions for certain words in particular offences for example in section 2 (1) for "identifiable groups" "publish" and "statements", in section 2 (2) by introducing a deeming section for an aspect of the *mens rea* and by repealing and replacing section 3 (d) and adding a new section 3(e).

72. We are of the view, as stated in **Boucher**,**[76]** that in interpreting the impugned sections of the **Sedition Act** we have to be mindful of *"the state of society"* rather than adopt a rigid interpretation. We are fortified by the view of Sir Rupert Cross who said that Acts of Parliament have:

> ***A legal existence independently of the historical contingencies of its promulgation, and accordingly should be interpreted in the light of its place within the system of legal norms currently in force****. Such an approach takes account of the viewpoint of the ordinary legal interpreter of today, who expects to apply* ***ordinary current meanings*** *to legal texts, rather than to embark on research into linguistic, cultural and political history, unless he is specifically put on notice that the latter approach is required.*[77] (Emphasis added)

73. We must effect a balance. In examining any law, one cannot rely or find support solely on the historical social, cultural or political context without considering equally present day circumstances. We cannot ignore the present while vigorously embracing the past. History must be recognized and put in its proper place. To assess the issues presented in this case, we must have recourse to the modern context and the mischief still to be cured. In that way, context as a tool for interpretation cannot be faulted. This use of contextual interpretation, both historical and modern, is well recognized by contemporary apex courts. This was the approach by the CCJ in **Mc Ewan**[78] and it commends itself to us. That approach assumes an even greater significance since in this case we are concerned with the interpretation of the **Constitution** and moreover, the constitutionality of the **Sedition Act**.

[76] **Boucher** (n. 50).
[77] Cross on Statutory Interpretation pages 51-52.
[78] **Mc Ewan** (n. 45). This method of interpretation is commonly used in the Supreme Court of the United States of America.

74. Involved in this approach inevitably is taking judicial notice of the socio-cultural and racial dynamics of Trinidad and Tobago at the time of interpreting sections of the **Sedition Act**. Our courts have over time, discussed the concept of taking judicial notice of matters. It is clear that judges are entitled to bring their knowledge and experience to bear to effect meaningful justice and are entitled to take cognizance of societal and cultural norms that are relevant to matters before them to be decided, in order to make effective decisions.

75. The learned authors of **Phipson on Evidence 18th Edition** observed at paragraph 3-02 that,

> *Some facts are so notorious or so well established to the knowledge of the court that they may be accepted without further enquiry…Such matters do not require to be pleaded...*
> *[Those] …. cover(s) matter(s) which are so notorious or undisputable that it would be a waste of resources to require a party to prove them through evidence…*

76. Further, the authors of **Halsbury's Laws of England, Volume 12 (2015)** noted at paragraph 459 that, *"a court or judge will not require the prosecution or defence to prove a fact that is considered to be self-evident or a matter of common and unchallenged knowledge."*.

77. In **Mc Ewan**[79], the particular statute under scrutiny was one that was intended by the legislature to punish crossdressing. Their Lordships paid attention to the historical mores in which the law was passed and contrasted that era with what obtains in modern Guyanese society.[80] The Panel made the important observation that law and society are dynamic and not static.[81]

[79] ibid.
[80] See paragraphs. 29-34 of the judgment.
[81] See para 41 *supra.*

78. In our own courts, Jamadar JA (as he then was) in the decision in **The Law Association of Trinidad and Tobago v Archie**[82] opined at paragraph 105,

> *Interpreting and applying the law must at times be undertaken in the socio-political context in which it exists… I remain of the view that socio-political context, which includes historical, cultural, anthropological, economic and other social science analyses, is a necessary and important aid to the interpretation and application of the law if one is to genuinely develop a Caribbean jurisprudence. In my opinion, cases like Dumas v AG (supra), Sankar v AG, 98 Khan v Mc Nichols, 99 Roodal v State, 100 HV Holdings Ltd v Incorporated Trustee of the Presbyterian Church of Trinidad and Tobago, 101 Francis v Hinds, 102 and Sanatan Dharma Maha Sabha et al v AG, 103 all demonstrate the use and usefulness of this approach in apt cases.*

This decision was approved by the JCPC.

79. With Trinidad and Tobago's population of approximately 1.3 million,[83] 35.4 %[84] being of East Indian descent and 34.2%[85] being of African descent[86], and each of these two groups being largely affiliated with one of the two main political parties, the **Sedition Act** continues to be relevant to address any issues that might arise due to racial, ethnic or cultural

[82] Civil Appeal P075/2018.

[83] Trinidad and Tobago Ministry of Planning, **Central Statistical Office 2011 Population and Housing Census Demographic Report** < https://cso.gov.tt/census/2011-census-data> Accessed 21 Dec, 2020.

[84] Ibid.

[85] Ibid.

[86] The population of Trinidad is mainly multi-racial, with approximately thirty-seven percent being of East Indian descent, approximately thirty-one percent being of African descent, approximately twenty-three percent being of mixed race and the remaining population being mainly of Caucasian, Chinese, Syrian/Lebanese and Portuguese descents. The population of Tobago is comprised of persons who are primarily of African descent, accounting for approximately eighty-five percent of the population. Persons of East Indian descent make up approximately two and a half percent of Tobago's population and mixed race persons make up approximately eight percent of Tobago's population. The remainder of Tobago's population is comprised of persons of Caucasian, Chinese, Syrian/Lebanese and Portuguese descents – See the Trinidad and Tobago Population and Housing Census Demographic Report of 2011– published by the Central Statistical Office of Trinidad and Tobago (the CSO). (There are no more recent statistics published by the CSO on their website).

differences between these two main racial groups, as well as among the other racial groups and any of these two main racial groups.

80. Despite a statement in our national anthem that *'here every creed and race find an equal place*', our twin-island State, sometimes described as a cosmopolitan and rainbow country, has not been free of racial tensions.

81. Frances Henry in her publication "**Race and Racism in Trinidad and Tobago: A Comment"**[87] was of the view that four kinds of racism exist in Trinidad and Tobago,

> *i. Individual racism: people have biased and stereotyped views of each other;*
> *ii. Systemic or institutional racism: discrimination based on ethnicity evident in employment practices, housing preferences and social clubs;*
> *iii. Everyday racism: many ethnic jokes, comments, insults, small acts of differential treatment such as preferring one's own ethnic group member in service such as banks, schools; and*
> *iv. Cultural racism in popular culture such as calypsos, which is embedded in the value system and expressed in cultural practices and performances*

82. In **Race and Color in Trinidad and Tobago,**[88] Nakeba Stewart opined that,

> *Similar to other places, race permeates every aspect of social life in Trinidad. Race can determine one's access to wealth, status, political power and prestige. Throughout Trinidad's history there have been schisms within ethnic, social class, culture, religious and sexual parameters, leading to a lack of social cohesion. The absence of social solidarity has had comprehensive implications of the national identity of Trinidadians. (sic)*

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[87] Caribbean Dialogue: A Journal of Contemporary Caribbean Policy Issues, Vol 3, No 4 (1998).
[88] **Trinidad and Tobago News Forum <**http://www.trinidadandtobagonews.com/forum> Accessed 10th Jan, 2021.

83. A Trinidadian residing abroad expressed her opinion in one of our national newspapers in these terms –

> *Ethnocentric cultural divides were always clearly (although quietly) delineated and were reinforced through self-selective residential, educational, and religious homogeneity. Divisions were to be expected in a society where core aspects of our identity were centred in experiences shared predominately (and often exclusively) with members of our own race.*[89]

84. A quick reflection on the years following our independence reveals that certain issues have led to racial tensions between certain racial groups in our country. The examples are many. There was a Black Power Rebellion in 1970. Selwyn Cudjoe in his article 'The Racial Divide'[90] explained that, *'disappointed that Black people were still being denied jobs and position because of their color, the Black Power Rebellion added the struggle of anti-blackness to the national agenda'.*

85. There is also often racial tension before and after elections in Trinidad and Tobago. This sometimes results in racial slurs being hurled by individuals of one racial group to those of another. Before the Tobago House of Assembly elections, a member of one party, warned voters at a rally that, *'there is a ship at Calcutta waiting to sail to Tobago'* – referring to the Fatel Razack, a ship that brought the first batch of East Indian indentured labourers to work on sugar plantations in Trinidad.[91] After the 2020 General Elections, epithets, similar to those used during the Rwandan Genocide,[92] were being used in Trinidad and Tobago by disgruntled voters to describe an ethnic group in a derogatory manner. In relation to the 2020 General Elections, the situation was such that the Catholic Bishop Gordon felt

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[89] Letter to the editor by Ashley-Anne Elias Bonhert, **Trinidad and Tobago Newsday**, (Port of Spain August 2020).
[90] Cudjoe, S. The Racial Divide. **Trinidad and Tobago Express Newspaper**. (Port- of Spain November 16, 2020)
[91] Newsday newspaper, Jan. 13, 2013, reported by Andre Bagoo.
[92] Hintjens, H - **Explaining the 1994 Genocide in Rwanda**. The Journal of Modern African Studies , Volume 37 , Issue 2 , June 1999, pages 241 – 286: The 1994 civil war in Rwanda between the 2 ethnic groups the Hutus and Tutsis lead to a Genocide resulting in the slaughter of 800,000 Rwandans. During the Genocide, hate propaganda which included statements such as "weed out the cockroaches" meaning kill the Tutsis, were circulated by Rwanda's media bodies.

compelled to say that*, 'This election was one of the most racially charged that I can remember'.*[93]

86. In construing the impugned sections of the **Sedition Act** in this case, we, like the court in **Boucher**, cannot divorce from our minds the socio-cultural dynamics of Trinidad and Tobago. This court, as the domestic intermediary appellate court, is very well-seised of those dynamics. A racially charged comment when made to a 'mas player'[94] on Carnival Monday[95] dancing to Soca music[96] may have a different impact if made either before or after a General Election. Context is an important tool in determining the constitutionality of a law. A sterile approach to constitutional interpretation cannot be relevant or desirable and will certainly belie the principle of flexibility in the interpretation of constitutions, recognised as valid by the JCPC.[97]

87. We do not agree with Mr. Maharaj's submission that 'context' is irrelevant. Nor do we agree that the **Sedition Act** needs to be interpreted in the context of the common law from which it was enacted.[98] We are of the view that in the interpretation of the **Act**, using 'context' as described above as an interpretative tool, will lead to the conclusion that the impugned portions of the **Act** are not vague; nor do they lack the certainty required for citizens to have fair notice of the conduct that is prohibited and the sanctions for failure to obey the relevant law.

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[93]Phillips, L - **After racism in elections, Trinidad Archdiocese explores tensions**. National Catholic Reporter (https://www.ncronline.org) Accessed on Sep 2, 2020.

[94] Mas players are "the parade participants who purchase a costume and march in the parade." https://www.carnivaland.net/caribbean-carnival-terms/.

[95] "A period of public revelry at a regular time each year, typically during the week before Lent in Roman Catholic countries, involving processions, music, dancing, and the use of masquerade. Oxford Dictionary 3rd Edn. (OUP, 2011).

[96] "Soca is a blend of Soul and Calypso Music." *Merriam*-Webster Dictionary, 2nd Edn. <https://www.merriam-webster.com/dictionary/soca> Accessed 21 Jan. 2021.

[97] **Ministry of Home Affairs v Barbosa** [2019] UKPC 41 at paragraph 45.

[98] Mr. Maharaj's submitted in essence that the general principle under the reception of law doctrine as stated in the Canadian case of Pollock v Manitoba, should apply. This doctrine argues that a statute must be interpreted in the context of the common law in which it was enacted not in relation to the local circumstances.

The Importance of Precedent: The ability of the courts to provide interpretative guidance

88. There is no gainsaying that precedent may be usefully deployed in exploring the precise parameters of an offence and in interpreting them in such a manner, insofar as this is permissible, to be consistent with contemporary mores. A classic illustration of this for the offence under constitutional scrutiny is the case of **Boucher**[99] where, in circumstances where there was no definition of seditious intention in Canada, the Supreme Court read into the Act a requirement of *mens rea.* At pages 280-281, Kerwin J said,

> ***The question of seditious libel is always one of great delicacy, requiring from the trial judge an instruction distinctly drawing to the attention of the jury the various elements that must be found before they may convict of the offence charged and applying the law to the evidence in the record.***
>
> ***The main element which it was necessary for the jury to find was an intention on the part of the accused to incite the people to violence or to create a public disturbance or disorder****: Reg. v. Burns supra; Reg. v. Sullivan (1); Rex v. Aldred (2); The King v. Gaunt not reported but referred to in a note in 64 L.Q.R.* (Emphasis added)

89. In the context of a trial, the offence of sedition readily lends itself to the adoption by the trial judge of well-established common law principles which instruct the tribunal of fact (whether the jury or a judge) on the manner in which the case is to be assessed. This would militate against any strictures of the statutory provisions, which are couched in necessary broad terms. The offence of sedition is one against public order and safety and has to be assessed against the particular circumstances at the relevant point in time. Therefore, the trial judge can properly have recourse to and direct the jury (or himself as the case may be), in line with decided cases which set out various considerations that ought to be borne

[99] **Boucher** (n. 50).

in mind in the assessment of the case. Such considerations may include:

(a) that the tribunal must have regard to the context of the present day society and the issues facing the present day society;

(b) that the mere use of tall and turgid language may not necessarily be offensive;

(c) that the tribunal must not hold a person to account for something that might have been said in the heat of the moment; and

(d) that there must be a certain level of latitude given to an accused and that the tribunal must give due accord to freedom of expression.

This approach does not undermine the statutory definition of sedition but rather, it promotes a balance between the public order and safety objectives of the legislation and the countervailing factor that appropriate scope should be accorded to freedom of expression.

Conclusion

90. Based on the foregoing analysis, we are of the view that **sections 3 and 4 of the Sedition Act** do not violate the principle of legal certainty. Those sections meet the objectives required to be deemed valid law in that,

(a) they provide fair notice to citizens of the prohibited conduct;

(b) they are not vaguely worded;

(c) they define the criminal offence with sufficient clarity that ordinary persons (with appropriate legal advice if necessary, and having regard to precedent), can understand what conduct is prohibited; and

(d) they are not couched in a manner that would allow law enforcement officials to use subjective moral or value judgments as the basis for its enforcement – any such risk is alleviated by the statutory requirement for the DPP's consent for prosecution.[100]

Are the impugned sections of the Sedition Act saved by virtue of section 6 of the Constitution?

The Submissions

Mr. Maharaj

91. Mr. Maharaj commended a potential approach to the savings law provision posited by the learned authors of the text **Fundamentals of Caribbean Constitutional Law**[101]. At a broader and more fundamental level, he also invited us to consider and to in effect adopt the lines of reasoning in respect of savings law provisions taken by the CCJ in **Nervais v R** and **Severin v R**[102] (referred to in **Mc Ewan**[103]).

Mr. Hosein

92. Mr. Hosein submitted that given the blanket nature of the savings law provision in our **Constitution** in contradistinction to other Caribbean constitutions, this court is unequivocally bound by the decision in **Matthew**[104].

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[100] Considered later in this judgment at paragraphs 116-124.
[101] **Fundamentals of Caribbean Constitutional Law** (n. 46).
[102] [2018] CCJ 19 (AJ).
[103] **Mc Ewan** (n. 45).
[104] **Matthew** (n. 13).

93. Senior counsel on both sides developed the nuances involved in their respective arguments. Without reproducing those nuances, with respect, we proceed to our analysis and conclusion.

The Law, Analysis and Conclusion

94. The trial judge in this case correctly found that he was bound by the ruling of the JCPC in **Matthew**[105]. In an effort to circumvent **Matthew's** full impact however, he went on to say that he was inclined to adopt the approach by the learned authors of the text **Fundamentals of Caribbean Constitutional Law.** The authors opined that in order for the savings law provision to protect an existing law, that law, as a condition precedent, must satisfy the criteria of legal certainty.[106]

95. In the present case, the trial judge applauded the approach of the CCJ in **Nervais and Severin**[107] in relation to the treatment of the applicability of the savings law clause and pre-independence laws in Barbados.[108] That decision significantly limited the restrictive impact of savings law clauses in cases challenging colonial laws. The CCJ declared that the mandatory death penalty in Barbados was unconstitutional and that the savings law clause was not a barrier to that declaration.

96. The trial judge also referred to the part of the CCJ's judgment in **Mc Ewan,**[109] which addressed the savings law clause in the Constitution of Guyana.[110] The CCJ concluded that the savings law clause did not preclude them from testing the impugned section of the Summary Jurisdiction (Offences) Act for its compatibility with Guyana's Constitution. The CCJ opined that if one part of the Constitution appears to run up against an individual's

[105] **Matthew** (n. 13).
[106] See paragraph 85 of the Trial Judge's Reasons.
[107] **Nervais and Severin** (n. 102).
[108] See paragraph 74 of the Trial Judge's Reasons.
[109] **Mc Ewan** (n. 45).
[110] See paragraph 73 of the Trial Judge's Reasons.

fundamental right, then, in interpreting the Constitution as a whole, courts should place a premium on affording the citizen his/her enjoyment of the fundamental right, unless there is some overriding public interest.

97. In considering how the savings law clause in the **Trinidad and Tobago Constitution** operates, the JCPC in **Matthew**[111] decided that at the commencement of the **Constitution,** an existing law is saved from the Court's review of whether that law contravenes **sections 4 and 5 of the Constitution**.

98. Three observations are apposite at this juncture. The first is that elements of the CCJ's reasoning in **Nervais and Severin**[112] and **Mc Ewan**[113] appear to have been influenced by Lord Bingham's minority decision in **Matthew**. In **Matthew**, the Board frontally canvassed different approaches to interpreting savings law provisions. By a majority, albeit a very bare one, the Board preferred a particular approach. The second observation is that emerging ideologies on the contemporary relevance of savings law provisions cannot take paramountcy over the doctrine of binding precedent. The third observation is that the decision in **Mc Ewan** must be placed in context. As an apex court, the CCJ can embark on the exercise of setting binding judicial precedent. This court is however bound by the interpretation of the savings law clause as espoused by the JCPC in **Matthew**. Whilst we appreciate why Mr. Maharaj might be attracted to the reasoning in **Nervais and Severin** and **Mc Ewan**, the savings law clause as interpreted by the JCPC in **Matthew** negatives its applicability to any argument that may be used by the respondents to defend its position. Given our findings, we are not in a position now to advocate the escape from the inevitable blanket effect of the savings law clause, which operates to save the **Sedition Act** in its entirety.

[111] **Matthew** (n. 13).
[112] **Nervais** and **Severin** (n. 102).
[113] **Mc Ewan** (n. 45).

99. We are not persuaded that we should follow the course proposed by Mr. Maharaj for the reasons adverted to above. In the circumstances, we are unable to find favour with the position adopted by the trial judge on this issue. Accordingly, we are of the view that **sections 3 and 4 of the Sedition Act** are existing laws saved by **section 6 of the Constitution**.

Whether the rule of law is an interpretation principle or a core constitutional principle

The Submissions

Mr. Maharaj

100. Mr. Maharaj contended that the relevant portions of the **Sedition Act** are fatally lacking in clarity and do not accord with the rule of law which is a core, underlying, constitutional principle. It was submitted that integral to the concept of the rule of law is the principle of legality, which entails the principle of certainty in the definition of criminal offences and achieves four purposes, namely,

(i) fair notice of the prescribed conduct;

(ii) foreseeability of the consequences of the action to the person whose conduct is being regulated;

(iii) it must be done in an accessible fashion; and

(iv) there must be a delineation of a discretion in reasonably clear terms so as to avoid arbitrary and inconsistent law enforcement, prosecution and interpretation.

Mr. Hosein

101. Mr. Hosein submitted that the impugned sections of the **Sedition Act** are not vague and imprecise and do not offend the rule of law. He submitted however that according to Lord

Bingham in his publication **The Rule of Law (2010)**,[114] the rule of law is a broad, amorphous concept. He submitted that for counsel for the respondent to toss in this potent concept without defining the limits of its applicability and without giving particular substance to it, reduces this argument to a generalised submission.

102. In oral arguments before the court, Mr. Hosein submitted that the rule of law has different facets, for example, (i) the circumstances surrounding compliance with the law and the trial of an accused and (ii) use as an "interpretative lens" where the statute is vague. He submitted that in the particular context of this case, which concerns the interpretation of statute, the rule of law cannot be considered in a "macro", jurisprudential sense as contended for by the respondent but rather, it must be considered on a "micro level", as an interpretation tool in order to conform with, among other things, the interpretation rules and the principle of legality. He relied on the decision in **Boucher v R**[115] in support of the proposition that the court can interpret the **Sedition Act** in a manner that is consonant with modern principles of justice. Mr. Hosein, in his oral arguments, referred to the introduction of laws to abolish the general elections as an example of what he conceived to be the operation of the rule of law at a "macro" level.

The Law Analysis and Conclusion

103. Insofar as we have reasoned earlier in the judgment that **sections 3 and 4 of the Sedition Act** are not lacking in certainty and clarity, the principle of certainty sub-facet of the umbrella concept of the rule of law is not violated.

104. The concept of the rule of law is undoubtedly one that is writ large. It is an essential supra-

[114] On November 16, 2006 the Centre for Public Law (established under the aegis of the Faculty of Law of the University of Cambridge) held the sixth in the series of lectures in honour of Sir David Williams. The lecture, entitled *"The Rule of Law"* was given by The Rt. Hon Lord Bingham of Cornhill KG, House of Lords. https://www.cpl.law.cam.ac.uk/sir-david-williams-lectures/rt-hon-lord-bingham-cornhill-kg-rule-law.
[115] **Boucher** (n. 50).

constitutional principle which has several dimensions. These are helpfully broken down into eight sub-rules by Lord Bingham in 'The 6th Sir David Williams Lecture on the Rule of Law'. We find it useful to highlight three of them, namely:

> ***… [T]he law must be accessible and so far as possible intelligible, clear and predictable****.*
>
> *…*
>
> *… [T]he law should apply equally to all, save to the extent that objective differences justify differentiation.*
>
> *…*
>
> *… [T]he law must afford adequate protection of fundamental human rights.*[116]

105. Lord Bingham noted that the framers of the UK's Constitutional Reform Act 2005 did not attempt to define the rule of law. His Lordship proffered that this may have been because it was recognized that it would be extremely difficult to formulate a succinct and accurate definition suitable for inclusion in a statute. The framers therefore preferred to leave the task of a definition to the courts if and when the occasion arose.[117]

106. We agree with Mr. Hosein's argument that the aspect of the rule of law which has been interrogated in this case, the principle of certainty, is one, to use his terminology, which exists at the "micro level", that is, which involves an exercise of interpretation. There are no deeper constitutional, structural issues implicated which require examination of the rule of law at a "macro", jurisprudential level, as contended for by Mr. Maharaj. Two examples of the operation of the rule of law at a "macro level" would be the introduction of legislation to abolish general elections and the removal of the question of bail from the purview of the Judiciary. The former would involve the violation of a core rule of law principle of sovereign

[116] The 6th Sir David Williams Lecture on the Rule of Law, pages 6, 12 and 13.
[117] See page 4 of The 6th Sir David Williams Lecture on the Rule of Law.

democratic governance and the latter would violate the fundamental principle of the separation of powers. No such "macro level" issues are remotely implicated in this challenge.

107. In the decision of the CCJ in **Belize International Services v The Attorney General of Belize**,[118] Jamadar JCCJ, in examining the 'deep structure' doctrine which originated in India,[119] said at paragraphs 304 and 329,

> *[304] …clues as to what is constitutive of the basic and fundamental features, principles, and values of Belizean constitutionalism, are not limited to the literal content of the Constitution as text per se. Some are predictably unwritten, to be discerned from overall structure, context, and content, albeit of the Constitution itself, as well as from broader historical, cultural, and socio-legal contexts.* ***Constitutional common law, as developed by independent Caribbean Judiciaries (as the third arm of Government) and elsewhere, has also discovered and revealed structural and substantive features and values that constitute this basic 'deep' structure. Three are now uncontroversial – the separation of powers, the rule of law (as including both due process and protection of the law) and, the independence of the judiciary (with the associated power of judicial review in relation to both constitutional and administrative actions).***
>
> *[329]* ***Robinson, Bulkan and Saunders****, in what is essentially a commentary on the Belizean jurisprudence, warn however that: 'What the Belizean cases fail to do is offer clear guidance and restraints on when this exceptional power of judicial review will be exercised; in other words, what is the threshold for the doctrine?'****(In the context of striking down constitutional***

[118] **Belize International Services v AG of Belize** (n. 38).

[119] Kesavananda Bharati & Ors. v State of Kerala & Anr. AIR 1973 SC 1461.

amendments that satisfy procedural requirements but run afoul of the basic structure.) In this specific context, they seem to suggest that the basic 'deep' structure doctrine should only be invoked if a constitutional amendment 'amounts to a substantial threat' to these basic 'deep' structure constitutional values and principles. *While that may be true in such instances, this is not a case of constitutional amendments.* ***However, their caveat is important; the use of the basic 'deep' structure to review governmental action ought not to be lightly invoked, and is most justifiable when what is at stake is a serious threat to, or undermining of, fundamental and core constitutional values and principles.*** (Emphasis added)

108. Bearing in mind the above and the important caveat by the authors **Robinson, Bulkan and Saunders**, this reinforces our reasoning that the aspect of the rule of law interrogated in this case ought to be viewed through the "micro" lens, as an interpretative tool, as there is no substantial threat to the basic 'deep structure' constitutional values and principles.

Does the Act satisfy the fundamental requirements set out in Sections 4 and 5 of the Constitution, in particular "due process"?

The Protective Safeguards

The Submissions

Mr. Maharaj

109. To Mr. Maharaj, the requirement for the consent of the DPP before prosecution under **section 9 of the Sedition Act**; the opportunity afforded to an accused to proffer a submission of no case to answer at the trial; and the ability of the judge at the trial to give

appropriately tailored directions, are practically of no real assistance to an accused. These, he submitted, introduce an inappropriate level of subjectivity, predilections and uncircumscribed, undelineated discretion.

110. Mr. Maharaj also submitted that the independence of the DPP and the fact that the DPP must consent to a prosecution to be laid under the **Act** is an irrelevant factor in the determination of the constitutionality of **sections 3 and 4 of the Sedition Act**. He submitted that the independence of the DPP cannot cure the unconstitutionality of those sections.

Mr. Hosein

111. Mr. Hosein submitted that there are certain safeguards in place to deal with an arbitrary application of the relevant sedition provisions. One of those safeguards is the requirement for the consent of the DPP before prosecution under **section 9 of the Act** which effectively vests the decision to prosecute in the DPP. He submitted that there is a public interest in allowing such an independent and constitutionally protected Office to decide whether or not to prosecute offences under the **Sedition Act**, particularly where there is no allegation of political interference or other form of abuse of power.

112. He submitted that another safeguard is the availability in the trial process of a number of remedies to ensure a fair trial, which include submissions of no case to answer and appropriately tailored judicial directions. Mr. Hosein also submitted that the **Sedition Act** does not interfere with an accused's due process rights which allow him to raise a plea in bar at trial which could result in the dismissal of charges or a permanent stay of the prosecution. He submitted that collateral attacks are therefore discouraged by the courts, particularly where the court has at its disposal mechanisms to guard against abuse of the criminal process. Those mechanisms are not limited to securing an accused's fair trial rights but also extend to protecting accused persons from unlawful antecedent executive action. This is because the criminal courts are equally charged, as a constitutional court, to ensure

the maintenance of the rule of law (**R v Horseferry Road Magistrates' Court ex parte Bennett**[120]).

113. Mr. Hosein also adverted to the value of precedent in establishing consistency and certainty in ensuring that the sedition laws are applied in a manner which is consistent with due respect for freedom of expression.

The Law, Analysis and Conclusion

114. One aspect of Mr. Maharaj's arguments on the lack of certainty in the definition of the offence of sedition pivoted on the politically selective and in general, arbitrary development of the offence.

115. However, the **Sedition Act** presents two distinct safeguards. They are: (i) the DPP's consent to prosecute an offence; and (ii) the intrinsic nature of the trial process.

The DPP's Consent

116. The Office of the DPP Office is established by **section 90 of the Constitution** and is an independent one of high pedigree. For the vast majority of criminal offences, the law places no obligation on police officers to consult with the DPP during the course of investigations. Among the panoply of criminal offences, comparatively few require the explicit consent of the DPP before a charge is preferred. The offence of sedition is one of them and this is provided for by **section 9 of the Sedition Act**, which states:

> *A person shall not be prosecuted under this Act without the written consent of the Director of Public Prosecutions.*

[120] [1994] 1 AC 42.

117. The underlying reason for including in a statute, a restriction on the bringing of prosecutions is to protect against the risk of prosecutions being brought in inappropriate circumstances. This was adverted to by Lord Hope in the decision in **R (on the application of Purdy) *v* Director of Public Prosecutions**,[121]

> ***The Director's discretion***
>
> *[44] It has long been recognised that a prosecution does not follow automatically whenever an offence is believed to have been committed. In Smedleys Ltd v Breed [1974] AC 839, 856, Viscount Dilhorne made these comments on the propriety of instituting a prosecution under the food and drugs legislation in that case:*
>
> > *"In 1951 the question was raised whether it was not a basic principle of the rule of law that the operation of the law is automatic where an offence is known or suspected. The then Attorney-General, Sir Hartley Shawcross, said: 'It has never been the rule in this country – I hope it never will be – that criminal offences must automatically be the subject of prosecution.' He pointed out that the Attorney-General and the Director of Public Prosecutions only intervene to direct a prosecution when they consider it in the public interest to do so and he cited a statement made by Lord Simon in 1925 when he said:*
> >
> > > *'… there is no greater nonsense talked about the Attorney-General's duty than the suggestion that in all cases the Attorney-General ought to decide to prosecute merely because he thinks there is what the lawyers call a case. It is not true and no one who has held the office of Attorney-General supposes it is.'*

[121] [2009] UKHL 45.

Sir Hartley Shawcross's statement was indorsed, I think, by more than one of his successors."

[45] The purpose of section 2(4) of the 1961 Act must be understood in the light of this background. It was submitted for Ms Purdy that it was clear that Parliament did not intend that all those who might be guilty of an offence under section 2(1) should be punished or even prosecuted for the offence. In Dunbar v Plant [1998] Ch 412, 437, Phillips LJ said that this was the logical conclusion to be drawn from the provision in section 2(4). But I would accept the view of the Court of Appeal that this observation does not fully reflect the purpose of the requirement for his consent. ***As it said in para 67, the better approach is to be discerned in the Law Commission's Report, Consents to Prosecution (No 255), para 3.33, where it quoted from the Home Office Memorandum to the Departmental Committee on section 2 of the Official Secrets Act 1911 (The Franks Report, 1972, Cmnd 5104, vol 2, p 125, para 7), in which the point was made that the basic reason for including in a statute a restriction on the bringing of prosecutions was that otherwise there would be a risk of prosecutions being brought in inappropriate circumstances.*** (Emphasis added)

118. The decision in **Inshan Ishmael v The Attorney General of Trinidad and Tobago**[122] exemplifies the important safeguard that is the DPP's consent, in the context of the making of applications by the police under certain sections of the **Anti-Terrorism Act.**[123] In that case, the appellant was arrested under the **Anti-Terrorism Act** and was subsequently charged under **section 105 of the Summary Offences Act.**[124] The charge was subsequently withdrawn without explanation. The appellant challenged the constitutionality of the **Anti-Terrorism Act**, which was passed by a simple parliamentary majority, on the ground that it

[122] Civ. App. No. 140 of 2008.
[123] Chapter 12: 07.
[124] Chapter 11:01.

was inconsistent with **sections 4 and 5 of the Constitution** and required a special parliamentary majority pursuant to **section 13 of the Constitution**. In the alternative, he challenged the constitutionality of **sections 23, 24, 32, 33, 34, 36 and 37 of the Act** for the same reasons.

119. The appellant argued, *inter alia*, that **section 23 of the Anti-Terrorism Act** offended **sections 4 and 5 of the Constitution** because the remedy of habeas corpus was unavailable in the case of a detention which was authorized by a judge of the High Court. He also argued that **section 24 of the Act** contravened **section 5(2)(h) of the Constitution** because there are no safeguards in **section 24** which permit an interrogated person *'to know the reason for the order against him'*.

120. In delivering the judgment of the court, Bereaux JA considered whether the **Anti-Terrorism Act** as a whole, or in the alternative, any of the impugned sections, is/are inconsistent with **sections 4 and 5 of the Constitution**. He concluded that the Act as a whole is imbedded with safeguards which protect the rights of the person whose affairs are, or whose property is, under investigation and that a sufficient balance is struck between the individual rights of the citizen and the interests of the State.

121. In his reasoning, Bereaux JA referred to the provisions of **sections 23 and 24 of the Anti-Terrorism Act**. **Section 23(1)** provides that a police officer may, for the purpose of preventing the commission of an offence or preventing interference in the investigation of an offence under the Act, apply *ex parte*, to a Judge in Chambers for a detention order. That section is subject to **section 23(2)**, which provides that a police officer may make such an application only with the prior written consent of the DPP. Bereaux JA found that under this section, there are more than sufficient safeguards for the rights of the subject. At paragraphs 55-56, he said,

> *[55]…**Even before the application is made, the consent of the Director of Public Prosecutions is required. Both the Director of Public Prosecutions and a high***

***court judge are independent public functionaries**.*

*[56] **Both are expected to bring independent and impartial points of view to bear in the decision making process. The decision to seek a detention order is thus reviewed by two independent functionaries.*** (Emphasis added)

122. **Section 24(1) of the Anti-Terrorism Act** provides that a police officer of the rank of Inspector or above may, for the purpose of an investigation of an offence under the Act, apply ex parte to a Judge in Chambers for an order for the gathering of information from named persons. However, **section 24(2)** provides that an application under **section 24(1)** may be made only with the prior written consent of the DPP. At paragraph 59 of the judgment, Bereaux JA found that this section is unexceptionable and emphasised the safeguard of the added requirement that the application must first be approved by the DPP.

123. The statutory requirement of the consent from the DPP provides a critical filter through which the evidence gathered is evaluated by a high constitutional Officeholder. In March 2012 the Office of the DPP published 'The Code for Prosecutors' (the Code) which sets outs transparently, the various factors which must be weighed in the balance in deciding whether to institute a prosecution. The code provides that prosecutors must only decide to continue a prosecution when the case has passed through both stages of the 'Full Code Test' which comprises the 'Evidential Stage'[125] and the Public Interest Stage'.[126]

124. The requirement for the DPP's consent for prosecution for the offence of sedition is therefore a potent safeguard against potential abuse. As a matter of distinction, there were no such safeguards in the legislation under scrutiny in **Mc Ewan**.[127]

[125] The Code for Prosecutors, Parts 7.4 and 7.5.
[126] ibid, Part 7.14.
[127] **Mc Ewan** (n. 45). Anderson JCCJ opined that the section conferred an unacceptably broad discretion on state officials to arrest and charge at will. See Mc Ewan at paragraph 96.

Intrinsic Safeguards in the Trial Process

125. The second broad safeguard against potential abuse under the **Sedition Act** is intrinsic to the trial process, by virtue of a defendant's ability to advance pertinent arguments at different stages of the trial. For example, it is open to a defendant to apply for a permanent stay of the indictment on the basis that the prosecution constitutes an abuse of process. Also, at the close of the prosecution's case, there is the opportunity to advance a submission of no case to answer.

126. Finally, as has been adverted to at paragraph 89 above, the trial judge in his charge to the jury (or in directing himself) has the ability to ameliorate any strictures of the statutory definition of sedition by infusing the common law evaluative approach which would enable contemporary mores to be appropriately factored into account. The very nature of the offence of sedition, being one that is time, context and issue sensitive, readily permits such an approach, which allows the trial judge to suitably tailor his directions in a manner which ensures that contemporary attitudes towards freedom of thought and expression are accorded appropriate latitude and are duly factored into account by the tribunal of fact.

[C] SECTION OF 1 OF THE CONSTITUTION AND THE MEANING OF "SOVEREIGN DEMOCRATIC STATE"

The Submissions

Mr. Maharaj

127. Mr. Maharaj's main submissions on the application of **section 1 of the Constitution** to this case may be summarised as follows:

(a) The sedition offence itself as far as it applies to **section 1 of the Constitution** is '*inconsistent with Trinidad and Tobago being a sovereign democratic state having* *regard to the change of the constitutional status from a Crown colony to an independent country to a sovereign democratic state'*;[128]

(b) Further, the impugned sections of the **Sedition Act** are vague, uncertain and in violation of the rule of law.

(c) The rule of law finds expression in **section 1 of the Constitution**. **Section 1** is more than a mere empty, general statement but is a '*real bastion to protect and perpetuate among other things the rule of law and the existence of an independent judiciary'.*[129]

(d) **Section 1** is a '*binding declaration and it can be enforced in the court if there is an attempt'*[130] to step away from its provisions. It is fortified by **section 2**, which provides that *'any law that is inconsistent with the constitution'* can be declared void to the extent of the inconsistency.

(e) The overarching nature of **section 1 of the Constitution** is such that **section 6** is to be read as subordinate to it.

(f) In 1971, the **Sedition Act** was amended with a special majority so that Parliament recognized that the offending **sections, 3, 4 and 13 of the Act** were inconsistent with **sections 4 and 5 of the Constitution**. Those **sections** breach the fundamental rights that are not saved by **section 6** and therefore individually and collectively, the impugned sections of the **Act** contravene **section 1 of the Constitution**.

[128] Transcript of these proceedings heard on July 24, 2020, at page 65, lines 8-13.
[129] ibid at page 62, lines 38-40.
[130] ibid, at page 53, lines 25-29.

Mr. Hosein

128. Mr. Hosein's submissions on this issue can be summarised as follows:

(a) It is quite clear that **section 1's** declaration that Trinidad and Tobago is a '*sovereign democratic [State]',* cannot support the view espoused by either the trial judge or Mr. Maharaj. That view is that a law, which is in violation of **sections 4 and 5 of the Constitution**, even though saved by **section 6** and therefore immunized from being struck down, can still fall short of being legally enforceable if it violates **section 1 of the Constitution**.

(b) Counsel distinguished the decision in **The State v Khoyratty**[131] from the case at bar. The distinction lay in the fact that the similar declaration in the Mauritius Constitution that Mauritius was a democratic state was not merely preambular in nature. It was '*an operative binding provision'.*[132] It is an entrenched provision by virtue of the mechanism for amendment contained in section 47(3) of that Constitution which militated against the abolition of a right to bail by ordinary legislation. This gave the State the responsibility to consolidate and protect the democratic foundation of that society.

(c) Our **section 1** is not entrenched, as any amendment is subject to a simple majority. In **Khoyratty**, the legislation under review sought to circumscribe the Judiciary's oversight on the granting of bail. It was argued that the impugned section violated the doctrine of the separation of powers, which was enshrined by the declaration contained in section 1 of that Constitution.

(d) If an Act is deficient at all or whether it is uncertain, it cannot fall to be resolved by

[131] [2006] UKPC 13.
[132] Transcript of these proceedings heard on July 24, 2020, at page 21, line 11.

alleging that there has been a breach of **section 1 of the Constitution**. **Section 1** does not import the rights contained in **sections 4 and 5 of the Constitution**. **Sections 3 and 4** do not share the same characteristic as **section 1**. If they did, one of the provisions will be otiose.

(e) **Sections 4 and 5** are entrenched provisions. **Section 2** lends support to **sections 4 and 5** and is the conceptual basis of these sections. If **sections 4 and 5** are the relevant sections to support the argument of unconstitutionality, those sections must be frontally applied. If the challenge is blocked by **section 6**, then one cannot scout the **Constitution** to see where redress may lie. That is not in keeping with proper constitutional interpretation and the enforcement of the fundamental and guaranteed provisions.

(f) It is clear that the impugned provisions of the **Sedition Act** violate **sections 4 and 5** but that **section 6** saves those provisions from scrutiny under **section 1 of the Constitution**. That is the crux of the matter.

(g) Even if the issue were to be examined using the rule of law principle, that principle of interpretation is not a stand-alone principle to strike down a law on the basis that it is vague and violates a stretched ambit of **section 1**. There is nothing vague about the **Sedition Act**. In any event, **section 1** cannot be used to challenge laws on the basis of vagueness.

(h) **Section 1** *'deals very clearly with structural issues. … **Sections 4 and 5** deal with breaches and [the] rule of law at the macro level and [the legislation in question] is either saved or it is not saved. … [In] any event, there is always the interpretation part of it to achieve the principle of legality'.*[133]

[133] Transcript of these proceedings heard on July 24 2020, page 40, lines 18-24.

The Law, Analysis and Conclusion

129. We recall the rules of interpretation set out at the dawn of this judgement. Bearing these rules in mind, it is clear that **Khoyratty**[134] is distinguishable from this case. Suffice it to say, that we agree with Mr. Hosein's interpretation of the case as stated above. We therefore agree with his conclusion of the inapplicability of that case to the case at bar.

The nature of section 1 of the Constitution

130. The question to be addressed is, what is the nature of **section 1 of the Constitution**? Does that section create a path of challenge in and of itself, as advocated by Mr. Maharaj and supported by the trial judge? Or, should it be interpreted as a provision that is used when the structure of our nationhood is under attack, as advocated by Mr. Hosein? If the former, it stands to reason, and we agree with Mr. Hosein on this, that the burden falls on he who alleges that the sections of the **Sedition Act** complained against strike against the heart of the nation as a sovereign democratic State.

131. Having set this stage, we refer to **section 1** of our **Constitution:**

> *(a) The Republic of Trinidad and Tobago shall be a sovereign democratic State.*
>
> *(b) Trinidad and Tobago shall comprise the Island of Trinidad, the Island of Tobago and any territories that immediately before the 31st day of August 1962 were dependencies of Trinidad and Tobago, including the seabed and subsoil situated beneath the territorial sea and the continental shelf of Trinidad and Tobago ("territorial sea" and "continental shelf" here having the same meaning as in the Territorial Sea Act and the Continental Shelf*

[134] **Khoyratty** (n. 131).

Act, respectively), together with such other areas as may be declared by Act to form part of the territory of Trinidad and Tobago.

132. We are of the view that as a first step, it is necessary to state the meaning of *'sovereign democratic state'*. Both counsel did not spend much time on the meaning of sovereignty. They lay their attention at the door of the word *'democratic'*.

133. We thank Mr. Maharaj especially for his submissions. Mr. Maharaj explained the concept and origin of democracy in Trinidad and Tobago using the class-based liberal western model. Counsel traced the various stages of governance and asserted that it was at independence that our sense of self-determination was asserted. To be true to that, any law that was imported which attempted to derogate from that right could not have survived the change in the system of our governance. The road to self-determination meant that colonial structures and laws were antithetical to our continued existence as a sovereign democratic state. This view found much favour with the trial judge.[135] As a result, both the trial judge and Mr. Maharaj opine that **section 6**, the savings law clause, was otiose and any law saved by its operation was in violation of this provision.

134. Mr. Hosein explained his concept of democracy as (a) the people must decide who governs them; and (b) fundamental rights are to be protected by an independent Judiciary. Further, **section 1** has to be interpreted on a "macro" level, meaning that the section is structural in its application. Whilst it is not preambular in nature or a statement of mere verbiage, it is not entrenched. Furthermore, **section 1** cannot be elevated to a section giving rights of challenge where those challenges are blocked by the clear provisions of **section 6** and the binding *dicta* of the JCPC in **Matthew**.[136] Mr. Hosein did not ascribe his view to any model.

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[135] The same arguments were used to support the arguments traversed in the part of the judgment dealing with context and shall not be repeated.
[136] **Matthew** (n. 13) at [3], [16] – [20], per Lord Hoffman.

‘Sovereign Democratic State’ and the effect of the interpretation of section 1 of the Constitution

135. What is democracy? Political commentators like **Macphearson**[137] opine that democracy in the emergent post-colonial states such as Trinidad and Tobago is ‘*the dictatorship of a general will over an undifferentiated people’.*[138] The notion of class therefore, does not feature in these post-colonial societies. This is unlike the basis of liberal Western democracies and also, the communist style democracies, based on the market society, economic might and their attendant class structures. **Macphearson** continues, ‘*To be democratic in a broad sense means to be moving towards a firmly held goal of an equal society in which everybody can be fully human’.*[139] Democracies such as those in the emergent post-colonial states hold fast to the ***‘requisite equality of human rights or human freedom’*** and *‘put first on their agenda the move away from market society… Believing… that the most important thing is reformation of society’.*[140]

136. Perhaps the clearest expression of intent or those which best encapsulate the spirit and intendment of the words *“sovereign democratic state”* which eventually found its way to **section 1** of the **Constitution**, came from Mr. Bhola Singh[141] who offered,

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[137] **Crawford Brough Macpherson** OC FRHistS FRSC (1911–1987) was an influential Canadian political scientist who taught political theory at the University of Toronto. Macpherson gave the annual Massey Lectures in 1964. He was made an Officer of the Order of Canada, Canada's highest civilian honour, in 1976. The Canadian Political Science Association presents an annual C. B. Macpherson Prize for the best book on political theory written by a Canadian. Macpherson died on 22 July 1987.

[138] See “The Real World of Democracy” by C.B. Macphearson, Oxford University Press, London 1966. First published by the Canadian Broadcasting Corporation 1965, p. 31.

[139] Macphearson, p. 33.

[140] ibid, at 59. 1. This, we proffer, is the view of democracy most applicable to post-colonial independent states like Trinidad and Tobago. That is the context in which our independence was fought for, and won and, we state, as was understood by the framers of our Constitution. The members of the Joint Select Committee formed to discuss the provisions of the 1976 Constitution recognized the importance of describing and ascribing the nature of our society in that Constitution. Senator D. Solomon, according to Mr. I. Julien, agreed that Trinidad and Tobago should be a sovereign democratic state. Mr. F. Prevatt went on to explain that the words were not intrinsically magical but that it was the provisions of the Constitution that would make Trinidad and Tobago democratic. In other words, *‘a democratic society comes out of the Constitution’* .

[141] Mr. Bhola Singh was the representative of the Indian National Congress. See page 579 of the Minutes of the Meeting of the Joint Select Committee held on November 12, 1975. Mr. R Sampat-Mehta expressed his view of democracy as *“a system of government which takes into account the needs of, aspirations and wishes of the majority of the electorate”* – See Appendix 2.

The Constitution of a country is the means by which the people of a country govern their affairs… In deciding what sort of Constitution we want for our country, whatever we do, we must provide the people with the means of governing themselves on the basis that they are all the citizens and not entitled to more than the others to a special representation on the grounds of wealth, class, color or creed.

We are of the opinion that the time it is now ripe for… the country of Trinidad and Tobago… To enjoy the privilege of having a fully democratic Republic form of government to assume responsibility of carrying on the new Government…

137. Many Constitutions have adopted and embraced this statement of the nature of its nationhood in many ways.[142] In fact, in the joint minority decision in **Barry Francis and Roger Hinds v The State**,[143] Archie CJ and Jamadar JA (as he then was) in commenting on section 1 said, *'By section 1 of the constitution, Trinidad and Tobago is described to be a 'sovereign democratic state'. This expression describes the most essential nature of the Nation'*. As a result, we are of the view that **section 1** is a solemn declaration of statehood, using as a descriptor, *'sovereign democratic state'*.

Sections 1, 4, 5 and 6 of the Constitution and the Rule of Law argument

138. The framers of our **Constitution** recognised the contradiction between equality and freedom and balanced the tension caused by these apparent contradictors. This view is

[142] This is a modern Constitution of a British Overseas Territory, The Turks and Caicos Islands. How much more so is there to be recognition of our nationhood but by a solemn statement in our Republican Constitution?
The people of the Turks and Caicos Islands … Affirm their intention to

- maintain the highest standards of integrity in their daily living;
- **commit to the democratic values of a just and humane society pursuing dignity, prosperity, equality, love, justice, peace and freedom for all;**
- ensure a vibrant diversified economy, work to provide full employment opportunities, and protect their posterity.

(Turks and Caicos Constitution Order 2011)

[143] Criminal Appeal Nos. 5 and 6 of 2010 (TT) at paragraph 48.

borne out when one reads carefully the structure of the human rights regime. Fundamental rights are enshrined and guaranteed in **sections 4 and 5**.[144] **The Constitution** however, allows for the legitimacy of laws that curtail those rights and freedoms, either through **section 6**, saving of existing laws, or through justification by virtue of **section 13**.

139. **Section 1** does not create fundamental rights. We agree with Mr. Hosein that the section does not create rights in addition to the fundamental human rights that can be enforced under **sections 4 and 5**. It is a statement, by which the State embraces through its declaration of sovereignty, democracy and statehood, the existence, entrenchment and protection of those rights for its people. The fundamental statement of our nationhood is not meant to give life to litigation alleging breaches of **sections 4 and 5**.

140. Should it be argued that an Act or provisions of an Act violate the fundamental rights and freedoms, its challenge must face the question, 'is it a law that is saved by **section 6**?' That question cannot be evaded by resorting to any suggestion that it violates the very foundation of our Republic as stated in **section 1**. **Section 1** is not a fallback section to be used if challenges under **sections 4 and 5** are blocked by **section 6.**

141. To the extent that the contrary view is held, we cannot agree.

142. Further, if it is alleged that an Act is vague and uncertain and offends the rule of law principle, the question cannot be resolved by recourse to **section 1.** We agree with Mr. Hosein that the rule of law argument is misplaced in this context. **Section 1** does not lend itself for use in that way. We do not agree with the approach taken by either the trial judge or by the respondent in its arguments and submissions. Even if we did, how does this **Act** and the allegedly unlawful provisions violate the principles of democracy and the concept of *"sovereign democratic state*" under **section 1** as the framers and eventually Parliament

[144] It is interesting to note that the fundamental rights provisions in both the 1962 and 1976 Constitutions were modelled on the Canadian Bill of Rights.

understood them? What are the constitutional violations, which will support the argument that the law is anti-democratic?[145]

143. We reiterate that **section 1** is not a "*mere empty general statement"* but is a fundamental and solemn declaration of our nationhood and signals to all that we hold dear, our sovereignty and our democratic ideals and means of governance.

The nature of section 2 of the Constitution and its impact, if any, on section 6[146]

144. **Section 2 of the Constitution** provides that, *'This Constitution is the supreme law of Trinidad and Tobago and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency'.*

145. Mr. Maharaj made no submissions on the nature of **section 2 of the Constitution** and its impact if any on **section 6**.

146. Mr. Hosein's submission was that **section 6** when properly construed, is an express exception to **section 2**. This was the legislature's intention. He relied on **Boyce and Anor v R**.[147] Further, **section 6's** life as an operational part of **the Constitution**, continues unless changed by an amending Act of Parliament. Mr. Hosein contended that **section 6 of the Constitution**, does not have the *sunset character* as in the Belize Constitution. He submitted that, we cannot recede from the JCPC's statement that in Trinidad and Tobago, the nature of and applicability of **section 6** saves any pre-independence legislation that violates the fundamental rights provisions contained in **sections 4 and 5**. Further, Mr. Hosein contended that **section 6** cannot be read as otiose, unnecessary or have its legality questioned. That function resides solely in Parliament's sphere.

[145] Debate on the Constitution (Republic) Bill commenced on 12th March 1976 and ended on March 15th 1976 with amendments but none touching and concerning either section 1 or 6. There is nothing recorded that there was any further discussion by Parliament on the meaning and effect of *"sovereign democratic state".*
[146] See the discussion on section 6 *infra.*
[147] (2004) 64 WIR 37.

147. We have no disagreement with Mr. Hosein's analysis and conclusion and see no need to challenge this interpretation. In fact, this analysis recognizes and conforms to the basic "deep structure" analysis, which seems to be the modern approach to deliberating on matters of this nature. Borrowing the views of Jamadar JCCJ, it is this basic "deep structure" that is at the core of our "*democratic participatory constitutionalism*" as exists in Trinidad and Tobago to wit, the separation of powers, the rule of law and the independence of the Judiciary. At paragraph 322 of the **Belize International Services**[148] case, Jamadar JCCJ explained that,

> *This idea of a basic 'deep' structure is not new. In the common law, post-colonial era, the Basic Structure doctrine emerged most notably as an Indian judicial principle. The Indian doctrine emanated from the seminal case of Kesavananda Bharati & Ors. v. State of Kerala & Anr., 209 and several other cases, where the Supreme Court of India emphasised that the essence of the basic 'deep' structure lies in the inherent and essential features, principles and values, that give identity, coherence and durability to a constitution, and by which all amendments to a constitution, legislative changes, and administrative actions are to be assessed and judged.*

148. Based on all of the above, the inescapable conclusion is that **section 2** cannot be used to launch a collateral attack on the meaning and effect of **section 6.** Any change to that section resides wholly within the province of Parliament. The court cannot do what Parliament is mandated to do by the very **Constitution** that we uphold. Our decisions must be grounded in our realities.[149]

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[148] **Belize International Services v AG of Belize** (n. 38).

[149] It is noted that in his contribution before the Joint Select Committee, Mr. J. I. A. Manswell, General Secretary of the Public Service Association, which represents public servants had this to say: *there should be some effort to bring the existing laws of the country into line with the spirit of the Constitution at the that a period be given permit this to be done…"* In the contributor's mind, the role of the Law Revision Commission ought to have been "*not only to review the laws and update them, but to ensure that the guarantees which are given by the Constitution have some real meaning. ".* This was view not accepted by the Parliament and therefore this court must abide by that decision. This court however identifies with that sentiment.

149. **Section 5(1)** of our **Constitution** provides that no law may *'abrogate, derogate or infringe'* any of the rights and freedoms recognised by the **Constitution**. Implied in this, is the court's power to modify or strike down any legislation captured by **section 5(1)**, in an appropriate case. Based on our reasoning and decision, this is not such a case.

Conclusion

150. Based on our reasoning on this issue, we conclude that:

(a) It is not possible to get around the JCPC's statement on the interpretation of **section 6**. Pre-independence law is saved law and is applicable as law, notwithstanding that the provisions violate **sections 4 and 5 of the Constitution**. Parliament must effect a change to the nature and effect of **section 6**.[150] Any question of proportionality will be applicable to post-1976 laws.

(b) **Section 1** is not a "fallback" section. That **section** cannot be used as a "fill in" section to give rights to constitutional redress when none is due.

(c) The *'rule of law'* principle is not "wrapped-up" in the provisions of **section 1**, sovereign democratic state. This is made very clear from a critical examination of **Khoyratty**[151]**.**

(d) Vagueness and uncertainty as legal principles cannot reside under the provisions of **section 1**.

[150] In the Turks and Caicos Islands the Existing Law Clause is manifestly different and maybe worth considering. It provides that existing law ***"shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution".***
It is interesting to note the following provision:
(2) The Governor may, by regulations published in the Gazette, at any time within twelve months of the appointed day make such modifications or adaptations to any existing law as appear to the Governor to be necessary or expedient for bringing that law into conformity with the Constitution or otherwise for giving effect or enabling effect to be given to the Constitution; and any existing law shall have effect accordingly from such day (not being earlier than the appointed day) as may be specified in such regulations.

[151] **Khoyratty** (n. 131).

(e) Neither **section 1** nor **section 2** can be used to evade the clear effect of **section 6,** whether on the basis of the view that the **Sedition Act** violates the separation of powers doctrine or the rule of law as an interpretation rule. This is because any challenge to the **Sedition Act** must fall within its *'violation'* of the fundamental human rights of free speech and association. Cases cited by Mr. Maharaj like **Misra**[152] are all fundamental rights cases and are distinguishable from the case at bar.

151. Having come to those conclusions, we do not agree with either the trial judge or Mr. Maharaj on the treatment of **section 1** or **section 2 of the Constitution** as paths to impugn an Act or sections of an Act, which they complain of being in violation of **sections 4 and 5** in that there is a fetter on freedom of speech. **Sections 1 and 2** cannot be used in this way. If there is a clear violation of **sections 4 and 5** then the attack must be brought there. There is no need to pray in aid any other section to achieve the ends of that mission. If that mission must fail because of **section 6**, then any challenge must fail. Based on our findings in this case, this court cannot depart from the JCPC's clear exposition of the law in **Matthew**[153] and no amount of legal gymnastics will allow us to travel along that other road.

[D] OTHER ISSUES

The Prematurity and Academic Nature of SM's Claim

152. Mr. Hosein and Mr. Maharaj mounted formidable arguments on the questions whether SM's claim was premature and whether it was academic in nature. One of Mr. Hosein's main complaints, is that the trial judge failed to treat with these issues and further, that the trial judge gave no reasons for not doing so. A trial judge is not obliged to address in his judgment every issue raised by Counsel in argument. Mendonça JA in **AG v Ayers-Caesar**,[154] made that quite clear when he said that there is, '*no obligation on a judge to set out every*

[152] **Misra** (n. 55).
[153] **Matthew** (n. 13).
[154] **The Attorney General of Trinidad and Tobago v Marcia Ayers-Caesar** Civ. App. No. 304 of 2017.

reason that weighed with him in coming to his decision. The obligation is to give at least one… adequate reason for his material conclusions, that is to say a reason that explains to the reader and the appeal court why one party lost and the other succeeded'.[155]

153. We cannot say that the trial judge failed to discharge his responsibility and therefore was plainly wrong in his handling of these issues. There was no obligation, which was shirked. It is not open to us to accept Mr. Hosein's invitation to pronounce on these issues for the reason that the trial judge failed to address them. Further, we do not think that any pronouncements will in any way advance, our decisions on the core issues addressed in this appeal. Accordingly, we decline the invitation to pronounce on these matters.

SUMMARY OF THE DECISION

154. Our findings on the issues raised in this appeal can be summarised in the following way:

The Substitution Issue

(a) The trial judge was not plainly wrong to order that the estate, represented by VM, be substituted for SM. This part of the appeal is therefore disallowed and the trial judge's reasons and order upheld.

The Legal Certainty Argument

(b) **Sections 3 and 4 of the Sedition Act** do not violate the principle of legal certainty. They meet the objectives required to be deemed valid law in that they:

i. provide fair notice to citizens of the prohibited conduct;
ii. are not vague;

[155] ibid at paragraph 11 where Mendonça JA also referred to **Smith v Molyneaux [2016] UKPC 53**.

iii. define the criminal offence with sufficient clarity that ordinary persons (with appropriate legal advice if necessary, and having regard to precedent) can understand what conduct is prohibited; and

iv. are not couched in a manner that would allow law enforcement officials to use subjective moral or value judgments as the basis for their enforcement.

(c) The aspect of the rule of law interrogated in this case, the principle of certainty, ought to be considered on a "micro level", that is, involving an exercise of interpretation. There are no deeper constitutional, structural issues implicated which require examination of the rule of law at a "macro", jurisprudential level.

(d) Despite the modern trends of interpreting savings law clauses that have been adopted in relation to the constitutions of some of our Caribbean neighbours, which we appreciate, we must be mindful of the specific wordings of their clauses which are different to ours.

(e) This court is bound by the decision of the JCPC in **Matthew**[156] in which it was held that **section 6 of the Constitution** immunized and continues to immunize existing law from challenge. This can only be changed by Parliament. Therefore, the savings law clause operates to save the **Sedition Act** in its entirety. In any event, the challenges mounted against the **Act** do not warrant our intervention particularly when viewed through the lens of the safeguards in place.

(f) There are certain safeguards in place which protect against arbitrary application of the **Sedition Act**, which include the:

i. requirement for the consent of the DPP before prosecution under

[156] **Matthew** (n. 13).

section 9 of the Act;

ii. ability of a defendant at trial to advance a submission of *'no case to answer'* or to apply for a permanent stay of the indictment on the basis that the prosecution constitutes an abuse of process; and

iii. ability of trial judges to ameliorate any strictures of the statutory definition of sedition by infusing the common law evaluative approach.

Sovereign Democratic State and Supremacy of the Constitution

(g) The solemn declaration of our status as a sovereign democratic State contained in **section 1** and the declaration of the supremacy of the **Constitution** in **section 2** cannot be used as paths to impugn an Act or sections of an Act, even if they are found to be in violation of the fundamental rights enshrined in **sections 4 and 5.**

(h) If there is a clear violation of **sections 4 and 5 of the Constitution**, then the attack must be launched there. There is no need to pray in aid, any other section. If the attack fails because of **section 6 of the Constitution**, then so be it. There is no legal argument that can catapult us over **section 6**, or the JCPC's clear exposition of its effect in **Matthew**[157].

155. In the premises, we must allow the appeal in part against the trial judge's decision.

DISPOSITION

156. In the circumstances, the trial judge's findings and order in relation to VM's substitution application stand. However, the trial judge's findings, declarations and orders regarding the constitutionality of **sections 3 and 4 of the Sedition Act** are set aside and the appeal allowed in that respect

[157] ibid.

ORDER

(1) The appeal is allowed in part.

(2) The Order of the trial judge with regard to the substitution of the estate represented by Vijay Maharaj for Satnarayan Maharaj is upheld.

(3) The declarations and orders of the trial judge with regard to sections 3 and 4 of the Sedition Act are set aside.

COSTS

157. We have invited and heard submissions on the issue of costs. Bearing in mind the far reaching implications of this decision, the Panel has decided that each party will bear its own costs.

*As a **post-script**, we wish to note that we are quite cognizant that some jurisdictions are engaged in the debate of how optimally to strike the balance between giving the fullest reasonable accord to freedom of expression and the countervailing need to ensure that public order and safety is duly maintained. While recognising the essential character of freedom of expression, a torrent of inappropriate words may lead on occasion to devastating consequences. The power in the tongue and in the pen ought not to be underestimated. This thought was captured by Barry C. Black, the Senate Chaplain, during a prayer at the closing of a joint session of the United State Congress after rioters stormed the United States Capitol on January 6, 2021,*

"These tragedies have reminded us that words matter, and that the power of life and death is in the tongue."

The Panel wishes to gratefully acknowledge the thorough assistance of Judicial Research Counsel:

Mr. Pravesh Ramlochan
Ms. Koya Ryan
Ms. Candace Layers
Ms. Gillianna Guy.

/s/ Mark Mohammed
Justice of Appeal

/s/ Charmaine Pemberton
Justice of Appeal

/s/ Maria Wilson
Justice of Appeal

Appendix 1: The Hansard Reports on the Seditious Publications Ordinance 1920

to refer the matter not to the whole Council but to a committee of the Council who it was thought would be able to go into the details of the provisions of the Bill and give effect to them. With the leave of the Council I move the second reading of the Bill. Mar. 5, 1920

The Colonial Secretary seconded.

The Bill was read a second time.

His Excellency: On the last occasion I referred it to a Select Committee with the Attorney-General as Chairman, Dr. Prada, Dr. Laurence, Mr. A. H. Wight and the Inspector-General of Constabulary. I ask these gentlemen if they will again serve on the Select Committee, all of whom did credit to it.

Approved.

THE SEDITIOUS PUBLICATIONS ORDINANCE, 1920.

The Attorney-General: I have the honour to move the second reading of an Ordinance to provide for the punishment of seditious acts and seditious libel, to facilitate the suppresion of seditious publications and to provide for the temporary suspension of newspapers containing seditious matter. The principle of this Bill is that it is the duty of the Government to do all in its power to prevent people's minds being poisoned by seditious utterances and publications such as tend to create discontent and ill-will against the Government and stir up discontent and strife between the different classes and races of the community. Now that is the principle and object of this Bill. With that object the Bill sets out in some detail what is conceived to be the existing law in a manner more accessible to the public than it would be if they had to refer to decisions and law books and other authorities in which the law as to sedition is laid down. But in the opinion of my learned and Hon'ble friend the Solicitor-General and myself, the Bill makes no difference in the law of sedition as it exists to-day, but it enters into some detail to interpret and define what is sedition so that people concerned in journalism and utterances of the kind referred to might be able to know what it is, and be helped and guided to a knowledge of the limits within which they may go in their speeches and their publications. That is the first part of the Bill, the first four sections, which set out in detail the different acts which constitute sedition and provide a penalty for it. Now I wish to say here that there is a law against sedition now, but it merely is to the effect that sedition is an offence punishable by fine and imprisonment the latter being limited to two years. This bill now being introduced goes further; it leaves the punishment for sedition just where it was as regards imprisonment but defines the amount of fine, so that whereas the amount of fine which a Court could impose before this bill was unlimited, this bill limits it to £1,000, that being a matter in the discretion of the Court to apply in the particular case which

Mar. 5, 1920. it may have before it. With that exception the Bill effects no alteration in the existing law on the subject. If it is found as a result of discussion that there is any alteration that is a matter for consideration and for the decision of the Council, but as at present advised in my opinion and in the opinion of the Law Officers it merely reproduces the existing law of the country and only limits the fine to be imposed for sedition. I had proposed by way of elucidating the meaning of sedition to have read an extract from a decision which is really a classic in the law reports—the well-known case of the King against Burns which deals with the subject of sedition—but I have not got it with me. Sedition is the writing or doing of an act with seditious intention. The Ordinance states the different acts which have been held by Courts of Law to be seditious utterances or publications and I wish to make this point clear that it is not intended to make any difference by this bill in the existing law of sedition. The Bill proceeds to give the Governor in Executive Council power to prohibit the importation of seditious publications. Next it gives to the Supreme Court power to suspend the publisher and to prohibit the publication of any newspaper habitually containing seditious matter. I shall deal with this further on. Necessarily a bill of this kind has attracted a considerable amount of public attention; there have been articles in the newspapers, letters and criticisms generally of the bill and it is right and proper that in introducing a bill of this kind I should address myself to the criticisms with a view to meeting them fairly and squarely (*Hear, hear.*) There was first of all a protest by the Workingmen's Association which I propose to read. It is dated the 26th of February, to His Excellency the Governor, and is as follows:—

"May it please Your Excellency:

We, the undersigned on behalf of the Workingmen's Association of Trinidad, Incorporated, most respectfully beg to forward to Your Excellency our most solemn protest against the Bill entitled 'Seditious Publication Bill,' which it is proposed to be entered on the Statute Book of the Colony on the grounds that it is not only obviously unnecessary, but un-English.

2. And it will not only affect the freedom of the Press, but the community as a whole, the more so as there is already an Ordinance governing Sedition.

3. We view it with grave apprehension, because if it becomes law it will threaten the rights and privileges of the people of the Colony, stir up their feelings, and cause very great dissatisfaction among them.

4. During the trying and exciting times of the recent great war, and even to the present day, the people have behaved themselves as every other loyal British subject in the Empire has hitherto done—a true indication of the temperament of the Press and people under Your Excellency's government.

5. We also view the Bill as the outcome of the mistakeable and misguided opinion of the nature of the people of the Colony.

6. We duly hope that Your Excellency will give this Memorial your sincere consideration, and come to a decision satisfactory to the masses—liege subjects of His Most Beloved and Gracious Majesty. Mar. 5, 1920.

We are,

Your Excellency's most humble, loyal and obedient Servants."

It is signed by David A. Headley and others. There is another representation from a branch of the Workingmen's Association at Carapichaima signed by a number of persons and dated the 2nd of March, 1920. It is as follows :—

"Whereas as was announced at the last sitting of the Legislative Council that it is the intention of the Executive Council of Trinidad to place on the Statute Book of the Colony a bill entitled 'The Seditious Publications Bill.'

Be it resolved that this Association (the Carapichaima Branch of the Workingmen's, Association Incorporated) record its protest against this form of legislation which deprives us, as a people, of the liberty of ventilating our grievances in the Press, thus narrowing to an immeasurable extent our rightful freedom as British subjects. We have always been, and now, even now, are loyal subjects of the King, so we apply hereby for a continuation of the numerous privileges we have hitherto had the good fortune to enjoy under the principles of the Magna Charta as laid down by the British Empire. Thus briefly we state to you our position and pray that this our petition may receive your honourable consideration, as we think we have found this bill to be wholly unnecessary. Your petitioners, in duty bound, pray to be, and to remain:

Your Excellency's most humble and obedient Servants,

JAMES ALFRED O'CONNOR and others."

Well now, I wish at this stage to say: Do the people who sent in those representations really believe—do they really in their heart of hearts believe that the Government is contemplating doing anything to curtail their liberties? I give them my personal assurance for what it is worth that that is not so; and I speak with a knowledge of the community in which I was born; with a knowledge of the workingman for years, and I assure you that nothing of the kind is intended by this bill. There is no intention to curtail in any way either the rights or just privileges of the community. What is intended is to try and save the less informed and ignorant among the community from being led away and poisoned by bad doctrines and teachings through the misleading and misguidance of agitators. That is what I am addressing myself to and that is what the bill is addressed to. It is to save people from themselves. As you know nothing is worse than bad example. Education it is true is proceeding here but still you know it to be a fact that there is a large number of uninstructed people here who rely for guidance on those whom they believe to be better instructed than themselves and they go by that guidance. I put it to those people that if they have been told that there is anything in the bill intended to curtail their full rights in

Mar. 5, 1920. anyway they have been misled and are mistaken. I state that on my honour and on behalf of the Government of the Colony. And I ask those who hear me to think of it and believe that one would not make such a statement if one did not absolutely believe it to be so. That is why I ask you to consider well before coming to the conclusion that the Government of the Colony was in anyway seeking to curtail the freedom of the Colony. It is suggested that the liberty of the Press is to be interfered with. The Government regards the Press as one of its greatest helps and assistance in the administration of affairs. Governments cannot know everything; it must rely to a great extent on information that comes to it. From time immemorial it has looked to the Press as the means whereby grievances are aired, views are expressed and Government action is criticised. This I hope will be the case in Trinidad in the future as it has been in the past. No sensible Government would ever propose to curtail the liberty of the Press. The Government welcomes all discussion, the fullest, fairest and frankest discussion of every measure the Government proposes to introduce which the public might think proper subjects for legislation. In one of these documents I just read it is stated that this Ordinance would have the effect of preventing people who believed there ought to be representative government in this Colony from discussing it in the Press. That is not a fact. Discuss representative government, discuss anything that is deemed to be of benefit of the community. The Press is open to all, but let that discussion be fair, let it not begin by misrepresenting facts. As will be seen from the terms of the bill most of the particular forms of sedition referred to in paragraph 3 begin with the words "by "means of any false statement or misrepresentation of facts or "of the motives or intentions of any person or by means of any "misleading inference." Surely no sane man, no right minded man wishes to be free to make false statements and make false representations of the motives or intentions of anyone and certainly not of the Government. Because when misrepresentation is made with regard to the intentions of a private individual, it is his affair, but when the good faith of a Government is impugned without ground and the Government is held up to obloquy and contempt the effect of that, especially upon the unreasoning members of the community, is to fill them with the idea that the Government is not doing its work honourably and well and is administering the Colony improperly and wrongly. That is a wrong thing to do and no one can reasonably object to any law which in terms tells him that he can discuss any subject under the sun but that he must not in so doing make false statements or misrepresentations because in that way ignorant people are misled and would come to the conclusion that the Government is unworthy of their confidence and support. Then there was a statement that the bill was due to the Government's misguided opinion of the Colony. I venture to say that the Government has no misguided opinion of the Colony. I take it that the people here are no better or worse than any ordinary population in any other Colony or part of the British Empire. They are no less industrious or enterprising, but are in every way worthy citizens. And when the Government is accused of having a misguided opinion of the people I can assure the Council that that is not a fact and that the Government has got a very correct idea of the people. The people here are very good and there is no reason to condemn them but it is not suggested for a moment anywhere in the bill that the people as a lot are seditious. What is represented in this bill is that unfortunately there are some persons who are seditiously inclined and even if they are not here for the moment, you know from the trend of affairs in the world to-day, that to-morrow evil-disposed persons might come here and seek to divert an industrious population from their proper work of doing their business which is to earn their livelihood. That is the reason for introducing this bill—to save the country from being misled and not to deprive any member of the community of his fullest rights of discussion and of criticism. If I had to name the Ordinance I should say it was an anti-poison Ordinance (*laughter*). You know there is legislation to prevent bad food and drink being imported into the Colony because of its poisonous effect on the body of man. For the same reason the Government is anxious to prevent poisonous matter being introduced into the minds of men, so that they should be brought up to believe that the Government was corrupt and not righteous and so introduce a feeling of discontent which must be detrimental to the community and lead to events and acts which makes one blush for the fair reputation of the Colony. We don't want as a colony to be appearing from time to time in the newsprints of the world as a place where there is always some form of disturbance or resistance to proper authority and Government action. That is the object of the bill and any one who says that the Government intends to deprive people of their fullest rights as British subjects is saying what is really not correct. I have dealt with the general situation with regard to the law of sedition but I now come more particularly to the provisions such as the power to prohibit the importation of seditious publications. Surely no one wishes to say in a community like ours, where there are many people not well instructed and not well informed, that publications calculated to upset and make them disloyal and work up in their minds any idea of a racial war or a class war are a good thing for the community or the people. This is an old colony that became a British possession in 1797 and ever since this colony has gone on increasing in prosperity until we have come to a time of greater prosperity than has ever been achieved before. It is the duty of every man in this community to do all the work he can to help to develop

Mar. 5, 1920.

MAR. 5, 1920. the country—for his own sake and his country's sake. That is why the Government is grieved to think that the admission of misleading and seditious matters and articles from the Republic of the United States of America should be permitted to enter into the Colony and divert men's minds from their real business which is work, and by that term "work" I do not mean only the labouring classes but every man in the Colony has to work all his life from the highest to the lowest. And nothing should be allowed to divert men from their work and stir up differences and trouble and take them off their natural business, the important and great duty, which has been their duty ever since the days of Adam of working and developing their own prosperity and happiness. There is not one word in the bill intended to make conditions in the Colony anything but happy and progressive with the fullest liberty to all men. Then as to the way in which these powers are to be exercised, dealing with the importation of seditious publications will be left to the Governor in Executive Council. That in itself ought to convey the idea to the Council that it will not be done in a hurry but with consideration and deliberation. Such a power is rightly and properly vested in the Governor, who is responsible for the good order and peace of the Colony. Then there are clauses which deal with the supervision of newspapers containing seditious matters. Newspapers containing right and proper discussion, however strong and critical, of Government action have nothing to fear, but newspapers containing seditious matter can on the information of the Attorney-General and the order of the Court be suspended. There you have two safeguards. The Attorney-General, whoever he may be, is, it must be remembered, a lawyer, and must have a traditional respect for law and the freedom and liberty of the Press and I cannot imagine any Attorney-General who would lightly and wantonly take action of the kind without overwhelming necessity for so doing. But even if he did he would have to apply to the Supreme Court which is still left untramelled and to do what it considers right. It would have to be satisfied that the Attorney-General's application was justified before making an order to suspend a newspaper. The same thing applies to the prohibition of seditious publications, the details of the bill as to which will be discussed in committee. I submit, Sir, that that is the principle upon which this bill is based. I submit that it is a right principle, that it is proper legislation intended for the benefit of the whole community. It is legislation which this Council should welcome. If there are any details in which the bill can be improved, the Government will welcome them, but the principle is one intended to keep the minds of the people of this community from being poisoned by those who ought to know better but who constitute themselves agitators and promoters of sedition (*applause*).

The Colonial Secretary seconded.

The Hon. Dr. Laurence: May I ask a question without prejudicing my right to speak? Representations have been made in certain quarters of the community, suggesting that the second reading should not be taken to-day; that is being taken already so I can't prevent that. Mar. 5, 1926.

His Excellency: It will not be passed to-day.

The Hon. Dr. Laurence: I have been asked to support that representation to Your Excellency but unless the Government has any intention of dropping the bill altogether I must confess I don't see any advantage in so doing, that is, supposing that representation is strong enough and the debate strong enough, there might be some advantage to be gained in postponing the second reading, if the Government would drop the bill altogether, otherwise I don't see any use in postponing the debate on the second reading, though I should like to see the final voting postponed for another meeting. All the members might possibly not like to speak on this occasion. Though if it is postponed, considering what has been said to-day, further representation might be made and other members might feel to join the debate and better address themselves to the bill. I feel called upon to say so as I was entrusted with the representation.

His Excellency: My answer to that is that the Government has no intention of dropping the bill or hurrying it through. If my Honourable friend wishes to move the adjournment of the debate on the second reading he can do so; otherwise the second reading will be taken and the Committee stage will be adjourned.

The Hon. Dr. Laurence: It is with some regret, genuine regret, that I contemplate the necessity for introducing a bill of this kind into the House, a necessity which is implied from the fact that it has been introduced by the Government, or at least that a necessity exists in the mind of the Government. I also contemplate with regret the possibility of an ordinance framed in the way in which it is being put before the House finding a place on the statute book of the Colony. My reason is not far to seek. I feel that in reality, with regard to a necessity, there is no necessity for it. I have listened to-day to the introduction of my Honourable friend who has assured the House that it is really an elaboration of the existing law. I ask for my information.

The Attorney-General: Not the whole bill—the first four sections. I dealt afterwards with the other sections with regard to prohibition.

The Hon. Dr. Laurence: I take it at that—the first four sections. Unlearned as I am in the existing law with respect to sedition, may I ask my Honourable friend whether the law of sedition is epitomised in Ordinance 22 in the Criminal Offences Ordinance, where in section 6 there is a reference to sedition. I "see sedition: writing and publishing or printing and publishing "any seditious libel or publishing any obscene printing, writing

Mar. 5, 192). "or picture." I presume that my Honourable friend refers to this because the punishment is not exceeding two years and unlimited fine. Is that law the law of sedition?

The Attorney-General: That is so.

The Hon. Dr. Laurence: If that is the extent of the law of sedition and my Honourable friend holds that the first four sections of the proposed Ordinance is just an elaboration of the former then I certainly think that ignorance would have been bliss for myself. To think that these apparently simple words interpolated in a lengthy section connote all that is described in about 3 pages of the bill. I regret that the information does not add to my happiness; the ignorance I felt before was very much more reassuring than the present knowledge. To think that those few words expose me or any other citizen to all the pains and penalties of the first four sections of the new bill is both new and disconcerting. I don't think that it is necessary. The second reason is I don't think it is necessary or pacifying since repressive legislation seems always to carry a sting in the tail. However my Hon'ble friend might describe the ordinary result of the operation of the bill, there is a suggestion all through of sedition and disloyalty and of the existence in this island of Trinidad or possible existence of sympathy with it; more than that the probable existence of people who would be inclined to carry on sedition along the lines foreshadowed by the Bill. I feel that it is a mistake to tell the people without some compelling or urgent necessity that there is a possibility of their being found guilty of such a large series of offences created by the law about to be passed to-day. Though they might have been contained in that simple sentence I read about sedition still I could never have thought that it carried in itself all the Bill seems to suggest to-day. We are, Sir, part and parcel of the British Empire. All around this table are not ignorant of the effect of repressive legislation in more than one part of this Empire. It seems to me that it has done more harm than good; it seems that it has more often raised more antagonistic feeling and led to more opposition than it tends to promote loyalty. Under the circumstances, I don't think we should follow in the wake of those countries, I don't care to name them—they are both very close to the Homeland, and just the opposite end of the Empire—in which the result of severe legislative measures has been keener and stronger opposition to Government, and speaking more particularly of the Government, I think repressive legislation has tended to what no Government should like to see result. That is to do away largely with the open, free, candid and I was going to say almost fearless criticism of the Government, and to drive those who have something to say and are not so careful in saying it in terms which might not expose them to the operation of a law of this kind, to an underground life where the dissemination of disloyal sentiments will have more effect than in the open air which acts as a sort of natural disinfectant to healthy minds and loyal sentiments to one's country. That is the effect of repressive legislation in general. When I come to this Colony, I for my own part cannot see any necessity for it. The Government may have knowledge beyond that which I possess and might feel it is its duty to introduce legislation of this kind. But I certainly have a fair knowledge of the Colony, a knowledge of the sentiments, ideas, and feelings that exist in lots of the classes in this community. I think it is a pity to tell the people as you are telling them by this bill that the Government realises the possibility of the development of a spirit of disloyalty or tell them that the Government suspects its development and has to make premature arrangements for suppressing or repressing it. I can see no necessity for it in Trinidad. When I come to the principle of the Bill itself, it is I am told to prevent the Government being criticised wrongly or being spoken of in such terms as would bring it into disrespect. It is quite possible all that interpretation might be quite according to English law and quite right from a large standpoint but there are points which don't need to be put in the Bill. Take for instance section 3 (a). There is no question of the people here thinking in any spirit of contempt of His Majesty the King. Royalty is almost unanimously synonymous with loyalty here, we being all united to represent the power of the great Empire to which we belong. Nobody except one who was qualifying for St. Ann's would think of writing to induce hatred or contempt of the King locally. When I come to the Government I don't need to think a second in the matter. My Hon'ble friend said he did not think it was intended to stop criticism of the Government yet I feel that the very existence of this detailed description of all these offences would suggest to any one desiring to criticise the Government that it would be advisable to sail as closely to the wind as possible without over-stepping the limit, which would lead to a far more acrimonious discussion of the Government and its acts than if the law is allowed to remain where it stands with people knowing that there is a certain limit to honest criticism of the Government when they would have no desire to escape from the four corners of this law. When you take care to say that misrepresentation of the motives of the Government would constitute a seditious act, that if you misrepresent the Executive that would constitute a seditious act, it seems to me that the Government is laying down a line of procedure which would urge it on to action when it might be totally undesirable, some ignorant person might make some statement which might bring him within the four corners of the law and the prosecution of such a person might develop into persecution and the result would be far worse than if no notice is taken of the statement. With regard to the Legislative Council, I as a member feel that **Mar. 5, 1920.**

Mar. 5, 1920. it is a body which should be criticised and the more criticism it got the better we got on. The Executive is even more criticised. When it comes to the Executive one is more apt to misrepresent the motives of the Executive than of the Legislative Council because one has to take Executive acts for what they are worth on the surface, one might put the very best motives and another the very worst, but in the Legislative Council the members speak in the presence of the public where their actions can be criticised and their motives easily challenged. Still there are occasions when matters perhaps of a political nature would engage the attention of this Council and it is quite possible that even members or individuals might suggest motives not of the highest kind which might bring the person to whom they were attributed into a certain amount of contempt, yet I feel that unless there is some urgent compelling reason that things were best let alone. If you have got a law so categorically laid down I don't see how the Government could help itself in taking such action, action which might result in much more harm to the Colony than if these things were overlooked. I have been sharing in whatever public life there is here for many a year now and while here and there there have been unfair, unkind, injudicious and semi-seditious criticism of public men, I don't think the Government or any individual has been any the worse for it. Once a man lives a perfectly upright life he has nothing to fear and although criticism has been irritating at times, I think the final verdict could always be very well left in the hands of the public and not have to be decided in a Court of Law. I am just the antithesis of an Irishman. He is always against, I am always for the Government. I believe in good sound Government but my support is conditional and is proportional to the deserts of the Government and so long as the Colony has an honest upright and straightforward Government, one that could rule with firmness but sympathetic firmness—sympathy is essential—personally I have no fear and will always support it. And I feel that it would have adequate support in the Colony, a support which would go far or all the way which the Government needs it to go and will go far to neutralise anything like opposition which the most uncontrolled fire-eater can attempt to bring about in this Colony. That is my feeling in the matter. This Colony is too loyal and a large number of people know too well they share in the advantages of the prosperity of the Colony and common-sense is too marked for there to be need of a statute of this kind on the Statute book. Let sleeping dogs lie. If those are the things committed in the Criminal Offences Ordinance let us not tell everyone we meet that he is a possible sedition-monger. Let us feel that the Colony is a loyal one—I am not speaking with regard to the prohibition of literature, that's a trifle, a mere detail—I am speaking of the larger question of Government, if the Government wants to secure the simple support of the people I have no hesitation in saying that a bill of this kind will do more harm than good. The people want sympathy, consideration and kindness. We have in this Colony a large number of people who have no knowledge of Government beyond the fact that they have to pay taxes and they realise they have to obey laws. That is the extent of their knowledge of what Government means. They know nothing of the burning questions of representative government, as in the large bulk of colonies and it would be a pity to make it felt that those who are trying to advocate in their own way—may be a misguided way—the claims of the different classes of the community have to sail so close to the wind and always have to keep their weather eye open to see if they could get to windward of the Government or the class they were probably speaking against. In introducing some of these sub-sections and putting them in such plain English, I think the Government is skating on very thin ice. The Government should endeavour, whatever might be the facts underlying the feeling in the Colony in general, to ignore them and to realise that in a mixed community there will always be feeling. Let us not recognise that there is any class hatred or race hatred and the less the possibility of its finding recognition in that Council the better it will be, I think, for the Colony generally. I don't see my way to support this bill. With regard to the other parts about the literature, I think the Government is quite right to secure the purity of the Colony and purge it of everything that is noxious and of everything that tends to undermine what we are endeavouring to build up by our schools, a healthy mind in a healthy body. Beyond that I cannot support the bill as it stands, especially dealing with the first part. I must confess that I don't see my way to support these clauses and I should regret, Sir, that your name and the name of your Government which has had such an opportunity of doing useful work in the new era which has dawned should go down to posterity as a synonym for repressive legislation and as marking the epoch when legislation of this kind was thought necessary in a colony such as ours (*applause*). Mar. 5, 1920.

His Excellency: Unless somebody moves the postponement of the debate on the second reading, I propose to take the second reading and leave the committee stage over for another meeting of Council.

The Hon'ble. Dr. Laurence: I can't move it myself but if it is the desire of the House—

His Excellency: Well I can only know the desire of the House if somebody moves it.

With the leave of the Council, the Solicitor-General moved the debate on the second reading be adjourned to the next meeting of the Council.

Seconded by Hon'ble Dr. Prada

Agreed to.

Mar. 5, 1920. THE MUNICIPAL CORPORATIONS (AMENDMENT) ORDINANCE 1920.

The Attorney-General: I move the second reading of an Ordinance to provide for the repeal of section 117 of the Municipal Corporations Ordinance, No. 210. The object is to relieve the Borough of Arima from the payment of certain annual contributions to general revenue towards the expenses of Elementary Education, Public Hospitals, Poor Relief, Vaccination, Registration and other things. The Government has agreed that the representations of the Borough are sound and has agreed to relieve it of these payments. This Bill is introduced to give effect to that decision. The effect of the Bill will be to exempt the Mayor and Burgesses of Arima from payments for 1918 and 1919 which were not made and all future payments as well. These were the instructions on which the Bill was drafted, but I am instructed since that that payment for the year 1918 was made about the time of the presentation of the petition from the Arima Burgesses. I think it is right to pass the Bill as it stands and the Government will consider whether it would reimburse the payment for 1918 to the Borough. I move the second reading of the Bill.

The Colonial Secretary seconded.

Agreed to.

The Hon. Dr. Prada. May I congratulate the Government on this tardy act of justice to the Borough of Arima. The Municipality of Port-of-Spain was relieved of these charges as far back as 1899, I believe, and San Fernando last year. Now Arima comes in, I congratulate the Government.

His Excellency: Rather congratulate Arima (*laughter.*)

The Attorney-General: I move the Council go into Committee.

The Colonial Secretary seconded.

All the clauses with the preamble and title of the bill were adopted in Committee without change.

On the motion of the Attorney-General, seconded by the Colonial Secretary, the Council resumed and the Bill was read a third time and passed.

THE COMPANIES (FOREIGN INTERESTS) ORDINANCE 1920.

The Attorney-General: I have the honour to move the second reading of a bill to prohibit the alteration, except with the consent of the Governor, of Articles of Association or Regulations which restrict Foreign Interests in Companies, and for other purposes therewith. Honourable Members are aware it is usual as a condition to giving consent to the acquisition of oil-bearing lands that the company should insert in its Articles of Association a provision for exclusion of foreign interests from the company. As the law at present stands it would seem that a company having obtained the Governor's consent can evade these provisions by altering its articles of association, as that right is given under section 15. The object of preventing companies from altering their articles of association without the consent of the Governor is because it is clear that if they can do that they could defeat the object of the Governor in restricting foreign interests. Mar. 5, 1920.

The Colonial Secretary seconded.

The House went into Committee for the consideration of the Bill on the motion of the Attorney-General and all the sections with the title and preamble were passed as they stood.

The Attorney-General moved the resumption of Council and the Bill was read a third time and passed.

THE STAMP DUTY ORDINANCE.

The Receiver-General: I have the honour to move the second reading of a Bill to amend the Stamp Duty Ordinance 1908. The "objects and reasons" endorsed on the Bill briefly explain its necessity. Not only is no increase of stamp duty proposed but a considerable relief is intended. Honourable Members will recollect that the Labour Exchanges Ordinance provided that labourers seeking employment could be provided with railway tickets if they signed an agreement that the cost of the ticket could be deducted from their wages. The stamp duty on such agreements would be sixpence and this Bill will exempt them. In the schedule to the Stamp Duty Ordinance "Debenture" comes under two heads. In one it is treated as a conveyance and liable to 2/6 transfer duty per £100, and as a mortgage at the rate of three pence per £100 or one-tenth of the former rate. This has caused some confusion to the commercial public who have been converting their businesses into limited companies. The legal definition of a "Debenture" is a mortgage bond not secured by the pledge of any specific asset, such as the debentures which are contemplated under the proposed loan and the amendment will place "Debentures" in the category by which they are for transfer purposes liable to only three pence per £100 of their amount and remove all doubt in that respect. In determining the liability to stamp duty, regard must be had to the substance of the transaction rather than the form. It has been found that in certain transactions documents not under seal or executed as deeds are effecting the same purpose as if they were a bond or covenant and escaped *ad valorem* duty of 2/- on £100, and the object of adding certain words to "Bond" in the Schedule of the Ordinance is to render the instruments mentioned liable to the stamp duty of a bond. This amendment corrects that omission, making it exactly the same as the Imperial stamp duty on which this is framed.

The Attorney-General seconded.

Extraordinary ' page 132, Estimates for 1920, for the drainage of the swamp at Louis D'Or Estate, Tobago (being an excess on estimate of £168 recommended by the Finance Committee on 26th June, and adopted by the Legislative Council on the 11th July, 1919)." Mar. 19, 1920.

This is for the payment of half the cost of the improvement, and is due to the increased cost of materials.

Agreed to.

The Council resumed.

After report, on the motion of the Colonial Secretary, seconded by the Auditor-General, resolutions (2) to (14) were approved by the Council.

SEDITIOUS PUBLICATIONS ORDINANCE.

The Council resumed the debate on the second reading of " A Bill to provide for the punishment of Seditious Acts and Seditious Libel, to facilitate the suppression of Seditious Publications and to provide for the temporary suspension of Newspapers containing Seditious Matter."

His Excellency: It will be remembered that at our last meeting the discussion on the Seditious Publications Ordinance was adjourned by the Solicitor-General. Before he resumes the debate, I think it expedient that I should make a few remarks to the Council. With the observations made by the Hon'ble and learned member (Dr. Laurence) at last meeting on this Bill I see no reason to disagree. They were both wise and true. I agree with him that there is not and there never has been any question as to the loyalty of the people of Trinidad to His Majesty the King, and to the British Empire. I venture to express a hope that they may be afforded an opportunity of demonstrating their loyalty to His Royal Highness the Prince of Wales within the next six months, although I have at present no official information on the subject. I agree with him as to the undesirability of saying anything about sedition or racial antipathies if reference to these matters can be avoided. But we must face facts: it is vain to pretend things are what they are not. It is not perhaps within the knowledge of the majority of the members of this Council or of the majority of the inhabitants of this Colony, but it is within my knowledge, that propaganda of a seditious character aimed at exciting racial animosities is being carried on in this Island now, by a few ill-disposed and foolish persons. These agitators are for the most part, I am glad to say, not Trinidadians but foreigners or natives of other Colonies. If that agitation is not put an end to, incalculable harm will be done to everybody in this Colony.

Mar. 19, 1920. The sole object of this Bill is to put an end to that pernicious propaganda, and to re-establish in the Colony that harmony between all classes that has in the past redounded to the credit of Trinidad, and made it a pleasant place to dwell in. I recognise that there are sincere and earnest critics of this Bill who believe that its object is to stifle legitimate criticism of the action of Government. I hope that I may be believed when I say that I should be no party to so foolish and so archaic a policy. What the Government needs is more rather than less constructive criticism. For such criticism, whether in this Council or in the press or elsewhere, I have always been grateful; and I have always tried to profit from it. In view of the apprehensions that appear to be felt in regard to the Bill, I may say that I set no particular store by the precise definitions of sedition as set forth in section 3 of the draft bill. When the Bill is in Committee I shall be prepared to discuss and to accept amendments to that section which may serve to allay the fears of those who think that section 3 as it now stands might prevent them from saying things which in the interest of the public ought to be said. But I must make it quite clear that I regard it as essential in the interests of the peace and good order of the Colony that this Bill should be passed; and the sooner it is passed and behind us the sooner will it be possible to relegate to obscurity those delicate and difficult questions which only the malevolence of a few foolish and ill-disposed persons has recently brought into prominence.

The Solicitor-General: After your remarks, Sir, it is hardly necessary to show the necessity for this bill. One can quite well understand that ordinarily the respectable members of the community know nothing about the existence of this propaganda; it is not done on the house tops, otherwise it would be very easy to deal with it, but it is done in a very insidious way—by small meetings in private houses or more often—as the information available shows—by private conversations in the streets and so on. There has been considerable criticism of the details of this bill, and although the Committee stage would be more appropriate to deal with such matters, the opposition to the bill is so based on details, that I think it advisable to try and explain some of the points which have been objected to. Much of the criticism, to my mind, has been useful and informing; some of it, I confess, has appeared to me a little wild. But, personally, I am so entirely in agreement with Your Excellency's remarks as to the value of criticism of public matters, that I would be the last to say anything which showed that I disliked criticism in any way. I think it a great pity that more people in this colony do not take the trouble to read and study these bills before they are passed. Nothing is more aggravating to a law officer if he drafts a bill and does the best he possibly can with the knowledge at his disposal and that bill is passed without a word of criticism and a day or a week afterwards some one **Mar. 19, 1920.** comes along and says "Now look at this; this won't work at all." If they had taken the trouble to read it before it was passed, that criticism would have been dealt with at once. Now, Sir, the chief criticism has been on the definition of sedition. As Your Excellency has remarked, the Government does not set any particular store by it, but it may surprise Hon'ble Members to learn, and be interesting possibly to people outside also to know, that really the definition of sedition as embodied in this bill (notwithstanding all that people have said to the contrary) is considerably less drastic than the law of sedition as defined by the British common law. I will endeavour, briefly, to explain how the matter stands. In the first place, by a seditious libel at common law, truth of the libel is no defence whatever. The sole question is did the accused person intend by his acts or writings or speech to raise discontent or cause disaffection and so on as the case may be; in fact it has been said that "the greater the truth, the greater the libel." Well, Hon'ble Members will notice that in this Bill this principle is qualified to a very great extent. The only definition which, as far as I know, has ever been attempted of sedition was done by the late Mr. Justice Stephens, and suggestions have been made in the press that this definition should be adopted in its entirety. It runs on these lines: Mr. Justice Stephens' definition starts by saying (as it does in this Bill) that a seditious intention is to bring into hatred or contempt His Majesty, or to excite disaffection against the Government, or otherwise than by lawful means to alter established laws, or to raise discontent or disaffection among His Majesty's subjects by promoting feelings of hostility or ill-will among different classes. (This may not be verbatim, but it is the substance of it). There is no qualification as to the truth or otherwise of the matter, but only whether it is calculated to have that intention. Mr. Justice Stephens goes on to say that an intention is not seditious if it intends to show that His Majesty has been misled or mistaken, or intends to point out errors with a view to alteration, or to excite His Majesty's subjects by lawful means to procure the alteration of any established matter, or to point out with a view to removal by lawful means, matters which may be producing discontent or ill-will. The difficulty of this definition which has been found and pointed out by judges in deciding cases is that it is not quite exhaustive. It is possible to have criticism—to have a publication of words or written

Mar. 19, 1920. matter—which although it points out matters which ought to be removed, yet does so in what may be called such a malignant way as to raise disaffection seriously against the Government or the Crown, and no criterion is given by that definition to decide whether it is legitimate criticism or whether it is sedition. Now, so far as I know, since Mr. Justice Stephens wrote his work in the eighties, there have been, I am happy to say, very few cases of sedition and all that the learned judges have been able to say is this: "Well, gentlemen of the jury, it depends on circumstances." I think Hon'ble Members will agree with me that that is not a very informing guide. In fact, there is a case where the Right Hon'ble Mr. John Burns, in less happy days, was prosecuted for sedition. He was alleged to have addressed a meeting in Trafalgar Square with the object of exciting a riot; in fact a riot did occur and among the other damage done the glass windows of the Carlton Club were broken. Anyhow, I am glad to say that Mr. Burns was acquitted, and in the course of that case the Judge (Mr. Justice Cave) said to the Attorney-General, when the latter read the definition of Mr. Justice Stephens: "Mr. Attorney-General, do you say that if I point out that bakers are underpaid, I am exciting sedition because I may undoubtedly raise discontent among bakers?" All the Attorney-General was able to say was: "Well M' Lud, it depends upon circumstances," and ultimately the judge left it to the jury saying "You may decide, gentlemen," and so they did. And that brings me to another most important point. The real fact of the matter is that these definitions of sedition are not very important, because, so far as the punishment of the individual is concerned, it depends entirely on the verdict of the jury. In the old days—in the Seventeenth Century—it was not so: a Judge then gave a ruling as a matter of law that the words spoken or written were seditious and when he had done that all that the jury had to decide was whether the accused person had spoken or written those words. If he had they were bound to bring in a verdict of guilty, and needless to say in the Seventeenth Century some matters were held to be seditious which now seem rather appalling as sedition. That, however was altered by Act of Parliament, which provided that in every case of seditious libel the jury are entitled to say of themselves whether the matter put before them is seditious or not, and this has been found in practice to solve the question, as far as the punishment of individuals is concerned, because juries can be trusted to use their common-sense, and they can and do refuse to convict in prosecutions where really the criticism was fair. Whatever definition.

therefore, we introduce here, the fact remains clear that it is to be left to the jury in every case, so that the definition is not so important as it sounds. But it was considered that in drafting this bill in a community like this an attempt ought to be made to explain to the community what sedition is, and I venture to suggest that if this bill had been introduced without it containing any definition of sedition there would at once have been an outcry and people would have said: "Why do you not define what sedition is? You introduce horrible penalties for a crime of which we have not the slightest idea whether it is being committed or not." Then the Law Officers came to the conclusion that if they did define sedition it would not do to leave it in this somewhat nebulous state in which it was left by Mr. Justice Stephens. (In fact a bill dealing in some ways with the same subject was introduced into British Guiana containing a definition of sedition based on that of Mr. Justice Stephens, and this very criticism was at once brought against it). The Law Officers of the Crown here came to the conclusion that probably the real test as to whether criticism was seditious or not was if criticism was based on facts which were untrue, and untrue either to the knowledge of the person publishing them, or that the person publishing them deliberately shut his eyes and refused to find out when he could easily and perfectly well have found out whether they were true or not. And that is all which this definition which has been so much criticized really provides. Mr. Justice Stephens said that if you published matter intending to raise discontent it is seditious unless it is legitimate criticism, but that was undefined. All this bill says is that it is only seditious if you intend to do it by a false statement, or a misrepresentation, or a misleading inference as to the facts and motives of a person, and I am sure that nobody would wish to publish intentionally a misleading influence or false representation. Apparently some critics, by reading only part of the bill and isolating it from the rest, have managed to persuade themselves that you could be punished for publishing an inference which was incorrect, although there was no intention to mislead. Well, that is not the case, as may be seen if the bill is carefully read. (Perhaps that is hardly worth mentioning and I only refer to it in order to say that the Government did not intend to perpetrate these oppressive measures with which they have been charged.) I think, however, that the criticisms have been very valuable if only for the reason of showing that the definition is not intelligible to the ordinary person, and I feel myself that in passing a criminal Mar. 19, 1920.

Mar. 19, 1920. measure, as far as possible a definition should be made which is intelligible to the ordinary person. As Hon'ble Members see, therefore, the Government propose at a later stage to substitute a simpler definition of sedition which is founded on Stephens but which has been slightly altered in such a way as to remove the difficulty which I have mentioned. As far as the Government is concerned, I can assure Hon'ble Members that this will make it really far easier to administer the bill than if the existing definition had been allowed to remain Then again, in connection with the suspension of newspapers, at present there are two cases in which it can be done. One is where it is proved to the satisfaction of the court that a newspaper is habitually publishing seditious matter or matter having certain seditious purposes, and the other is where the newspaper has been convicted of publishing seditious libels. In the opinion of the Government the first class of case—that is where the newspaper is proved to have habitually published seditious matter—is not of very great importance. It is on reflection hardly conceivable that a newspaper could habitually publish seditious matter without there being a real occasion on which it ought to be prosecuted and convicted (*hear, hear*) and therefore the Government proposes to move an amendment limiting this section to occasions where a conviction has been obtained for publishing a seditious libel, and also to give a discretion to the court as to the period for which a newspaper should be suspended, and also as to whether or not the persons convicted in the newspaper should be prohibited from working for newspapers during that period. It is obvious that if the suppression of a newspaper is to be of any use, it must be done thoroughly. Broadly speaking, it is not the slightest use ordering a newspaper to be suspended when all that the publisher, printer and editor have to do is to issue another newspaper on the morrow perhaps having a different size of sheet and a different title and a different set of type. It is obvious, therefore, that if the measure is to be of any use at all, these powers should be given to the court to exercise in proper cases. I do not think that the other minor points of criticism are of sufficient importance to deal with at this stage. But there is one remark which I should like to make in conclusion and it is this: In many statements in the press and in other places, my Hon'ble friend the Attorney-General has been accused (I can only use that word) of making a statement which in fact he never made, and this is of some importance. He is alleged to have stated that the bill made no alteration in the law of sedition. Hon'ble Members will remember that all that my Hon'ble and learned friend said is that as regards the first four sections the bill made no alteration in the existing law, and that, for all practical purposes is correct. *(Applause.)*

His **Excellency** then put the motion for the second reading.

The Hon. Dr. Laurence asked for a division, which resulted as follows :— Mar. 19, 1920.

For—18.	*Against—2.*
The Hon. M. Rostant.	The Hon. Dr. Laurence.
„ A. H. Cipriani.	„ Dr. Prada.
„ H. S. Fuller.	
„ A. H. Wight.	
„ G. Fitzpatrick.	
„ A. Fraser.	
„ W. G. Kay.	
„ Sir Henry Alcazar.	
„ Acting Collector of Customs.	
„ Receiver-General.	
„ Protector of Immigrants.	
„ Surgeon-General.	
„ Director of Public Works.	
„ Inspector-General of Constabulary.	
„ Auditor-General.	
„ Solicitor-General.	
„ Attorney-General.	
„ Colonial Secretary.	

The motion was carried and the bill read a second time.

On the motion of the Solicitor-General, seconded by the Colonial Secretary and agreed to, the Council went into Committee on the bill.

Clause 1:

On the motion of the Solicitor-General, the word "*sedition*" was substituted for the words "*seditious publications*" in the first and second lines, the learned member stating that the bill had now gone considerably beyond seditious publications.

Clause 2:

The Solicitor-General: I now move that the word "*having*" be substituted for the words "*appearing to have*" in the last paragraph but one of this clause. The words "*appearing to have*" correctly represent the common law, which is that a person's intentions are to be judged by his acts and deeds and speeches. If a person writes a document or makes a speech which when judged by ordinary people appeared to be seditious, the law says that man must be presumed to have intended what he has done. But a great deal of criticism and misunderstanding has been directed to that paragraph (I do not quite know why) and in order to avoid any misunderstanding I have thought it better to strike it out.

Mar. 19, 1920. The Hon. Dr. Laurence: Is that not prejudging the position? If a man is brought up under this, "appearing to have" seems more satisfactory. I should like to ask the learned member in charge of the bill what is the real meaning of the expression Court means the Supreme Court? Does that mean that anyone brought up for sedition is to be tried by a judge and jury?

The Solicitor-General: No.

The Hon. Dr. Laurence: By a judge alone?

The Solicitor-General: With a jury.

The Hon. Dr. Laurence: That is what I asked.

The Director of Public Works: You asked the meaning of "Supreme Court."

The Hon. Dr. Laurence: I was endeavouring to ascertain whether it was at the instance of a single judge, or judges of the Supreme Court, or a judge with a jury as well.

The Solicitor-General: With a judge and jury. Certain clauses of the bill confer powers on the Supreme Court without a jury. Where an individual is to be tried and punished for the crime of sedition under the bill, the conviction must be on indictment before a jury in the ordinary way. Where, however, the question arises of the suspension of a newspaper after conviction, the question will then be for the judge who tries the case. Where a man is to be convicted and punished it is for the jury. Where tried and convicted for seditious libel, if the Court is asked to suspend the publication of the newspaper, it is for the judge. This is, in effect, part of the punishment.

Sir Henry Alcazar: Punishment is always for the court.

The Hon. Dr. Laurence: I understand that. What about the other party appearing?

The Solicitor-General: I will ask the leave of the Council to withdraw the amendment.

His Excellency: It is intended to be less drastic.

The Hon. Dr. Prada: I think you had better leave it "having."

The Solicitor-General: Very well. It will still be for the jury to say—supposing a man is accused of publishing a seditious publication—if he has done so. A seditious publication is defined as a publication having a seditious intention, and it is still for the jury to say whether it has a seditious intention or not. It makes no difference.

Agreed to and the clause passed as amended.

Clause 3:

The Hon. Dr. Prada: I have given notice of certain amendments which, I believe, have precedence of those in the hands of my Hon'ble and learned friend. In drafting them I had recourse to a well-known legal work Halsbury's "Laws of England."

I may say it was a very pleasant surprise to me to see the notices of amendments including not only everything I took from this work, but a good deal of which I did not dare give notice of. With the leave of the Committee, I beg to withdraw my amendments, reserving the right to criticise some of the sections. May I suggest that this be put by paragraphs? Mar. 19, 1920.

Agreed to, and the Hon'ble Member's proposed amendments withdrawn.

His Excellency: If you take (*a*), (*b*), (*c*) and (*d*) separately I think you will make it easier to follow.

The Solicitor-General: I move the following amendments, of which notice has been given. I have already explained the matter so fully that I do not think there is anything more that I can usefully add:—

3.—(1.) *A seditious intention is an intention*

(*a.*) *to bring into hatred or contempt, or to excite disaffection against the person of His Majesty, his heirs or successors, or the Government and constitution of the United Kingdom, or this colony, or any other British Possession or Protectorate, as by law established, or either House of Parliament, or the Executive or Legislative Councils, or the administration of justice.*

(*b.*) *to excite His Majesty's subjects to attempt, otherwise than by lawful means, to procure the alteration of any matter in Church or State by law established.*

(*c.*) *to raise discontent or disaffection amongst His Majesty's subjects, or*

(*d.*) *to promote feelings of ill-will and hostility between different classes or races of such subjects.*

The Hon. Dr. Prada: With regard to (*a*), is it necessary to include in a measure merely applicable to this colony any reference to other British possessions or protectorates? We do not know what we commit ourselves to when we do this. We know that there are other possessions or protectorates where the laws, in the opinion of others of His Majesty's subjects than those living there, are objectionable. We know, for instance, that His Majesty's East Indian subjects here cannot love the laws of the colony of Natal. We know, again. that there are certain other parts of His Majesty's possessions where others of His Majesty's subjects, on account of colour, are not allowed to go. Is it desirable that these people are not to be allowed to express their opinion freely as to the methods of Government adopted in these places?

His Excellency: Certainly they could.

Mar. 19, 1920. The Hon. Dr. Prada: Would it be sedition, having regard to what happened in Natal, if an Indian or a coloured man, for example, were to express an adverse opinion about or say he has a supreme contempt for a British colony which kept him out of that British colony.

His Excellency: That would certainly not be sedition.

The Hon. Dr. Prada: It would not be under this?

His Excellency: No, no.

The Hon. Dr. Prada: I think it unnecessary and altogether new. With regard to the Houses of Parliament also, I have a similar objection to offer. Our House of Parliament is, I suppose, this Council and our Cabinet the Executive Council, and I do not see that it is necessary to include this reference to "either House of Parliament." I see that Downing Street is not included, so I suppose we can say what we like about that (*laughter.*) Persons in this colony may entertain academic opinions about Parliament, which may be Labour, or Liberal or Conservative, and they might express academic opinions which might be seditious according to the bill, because they might feel contempt for the action of the House. I think it would be an improvement to leave out British possession or protectorate and Houses of Parliament.

The Hon. Dr. Laurence: I find it difficult to get behind the intention of the Law Officers in drafting some of these amendments. There seems to be disregard for local conditions and simply a grafting of what suits England on to the local tree, shall I say. My Hon'ble friend has referred to (*a*), but take also (*b*) which reads "to excite His Majesty's subjects to attempt, otherwise than by lawful means, to procure the alteration of any matter in Church or State by law established." We have got no state church here, as seems to be implied by this reference, and why is this necessary? For a bill of this kind to become law it naturally has to give expression to some hard facts and views with respect to the inhabitants of this colony. I plead with the Government that we should not make the situation broader than is necessary. The introduction of these matters seem to suggest, to my mind, without intending to be personal to my friends on the other side, that the fullest consideration has not been given to the differences obtaining between Trinidad and Tobago and Great Britain. It seems as though the Government is out to get somebody and has spread the net as wide as possible. I do not say that this is the case, but it is a perfectly legitimate criticism in the circumstances and this is where one of my essential criticisms of the bill comes in. There are so many things in connection with political matters with which one is bound to deal, for example the intentions of the Government and the Legislative Council, that unless it is absolutely necessary and intended to interfere, these things are better disregarded, as

I am sure they are disregarded in England, if all what is to be read in the newspapers there and what I hear is true. I ask whether there is any necessity for this description, explanation or definition of sedition? Your Excellency has informed this House that there is in our midst in this colony certain propaganda which is working adversely against the Government, or at any rate along seditious lines. Your Excellency was also careful to say that there was not the slightest hint of the bill being directed against the loyalty of the people of this colony. Again, I think I understood Your Excellency to say that it was essentially directed against certain mischievous people of ill-will who have come to these shores and are abusing the privilege of asylum which they find here. What necessity is there to disturb the even tenor of our life in this colony in order to meet a situation of this kind? Is it not one of the easiest things in life for the Law Officers of the Crown to find some means of expelling undesirables from the colony? I am not a lawyer though Your Excellency did make a mistake and address me as your learned friend. Mar. 19, 1920.

His Excellency: Medical men are learned too.

The Hon. Dr. Laurence: Cannot my learned friends opposite find some means of expelling these people from the colony? Are the Government so hard-pressed by the necessities of the case that the whole colony has to be brought under the operation of a law of this kind, disturbing ordinary conditions? Sundry outbursts will occur in the best-regulated families. The people here are thoroughly loyal.

His Excellency: Hear, hear.

The Hon. Dr. Laurence: What then the necessity of branding the whole colony?

His Excellency: There is no branding.

The Hon. Dr. Laurence: Except for the explanation which Your Excellency gave a while ago when you took the House into Your Excellency's confidence, it would have gone out that this was a seditious colony. It is quite within the right of any one to suggest different intentions on the part of the Government, but it is only now we know the intentions of the Government, and that these matters are directed against outsiders and in the interests of this colony. Is it not within the ability of the Government to exclude these people and turn them out, and if that course had been taken by Your Excellency you would have had the whole colony behind you. That to my mind would have been the easiest way of handling the situation. I have got an uncompromising opposition to this bill, because I feel there is not the slightest necessity for it. It raises the whole question of sedition in the colony because half a dozen or a dozen or even two dozen people come and disturb the peace of the colony. Surely it is competent for the Government of

Mar. 19, 1920. the colony to pass a law to expel them or to prevent them from landing. Even the learned lawyers in England have not been able to give a complete definition as to what sedition is. After what I must say is the *volte face* of the Crown Law Officers here as represented in the amendment—

His Excellency: They accepted the amendments in trying to meet the wishes of the community. Why should you taunt them with a *volte face*?

The Hon. Dr. Laurence: The wishes of the community go further than this.

His Excellency: I have no doubt they do.

The Hon. Dr. Laurence: And so far from meeting the wishes of the community, they are simply leaving out some certainly unnecessary matter, but the same intention is kept as before. The people now understand what sedition is. They realize that you are not dealing with the natives of the colony.

His Excellency: We may be.

The Hon. Dr. Laurence: Yes; may be—I am coming to that presently, but seeing that the bill is intended for outsiders, the Government would have been far better-advised if they had produced a bill to deal with these people who come here and disturb our peace. But you are raising a large amount of political interest (and perhaps it will be a good thing eventually) on a question which fundamentally affects the Britisher's freedom.

His Excellency: Not at all. It does not affect it one atom.

The Hon. Dr. Laurence: We are sitting down, Sir, I hope to-day, under a Government that is strong and sympathetic and paternal—perhaps too paternal. There have been times in our history when the people have not been always so fortunate as to have such judicial officers and advisers of the Crown as we have to-day. Those times may return again, and history may repeat itself. We do not know what class of Attorney-General we may have here in the future or what type of Judge. Hon'ble Members, and those who have followed public affairs here, know quite well what kind of men we have sometimes had occupying these positions in the past; men who have left the marks of their ill-deeds on the colony to-day. This has applied to Judges, Attorneys-General, and I will not say Governors, but to at least one Governor. With the best type of men occupying these positions, I have not the slightest fear. My fear is in the interests of the colony and I am not afraid to say that in time we may have a weak Governor, Attorney-General or Judges as we have had in times past, when if this bill had been in existence, the colony might not have fared so well even as it did. I am afraid what I am saying may seem strange to Your Excellency but my Hon'ble friend the Attorney-General (who is no tyro here) knows quite well what I mean, and with this possibility of history repeating itself, I feel that it would be most dangerous to place an instrument of this kind in the hands of the Government. If as we are assured, the section under review is simply an enlargement of the definition of sedition as mentioned in the previous Ordinance, and if it is the case that the Government has had evidence of the existence in our midst of people seditiously inclined; people who come here and abuse the privilege of asylum afforded them, why have not the Government used the powers under the sedition law which exist, and in the absence of any satisfactory result then come to this Council and ask that their hands be strengthened to deal with sedition as then existing, because the present law is insufficient to meet it? I fail to see why, in the absence of any activity on the part of the Government along the lines indicated, such a bill as this should be asked for? I am not prepared in the circumstances to support the Government in asking for so drastic a bill as this, and these are my reasons. I state them here to avoid disturbing the even tenor of the Council's debate. I see no necessity for this bill as regards the inhabitants of this colony, and think that it ought to be possible, if it is necessary, for the Government to introduce a short bill to deal with people who come here to disturb the peace should the present law be unfit to meet the case.

His Excellency: I have already given the reasons why I regard it as essential that the bill should be passed, and I do not propose to repeat them. I do not think it desirable that we should put behind us all troublesome questions, and such inaction in my opinion would be disastrous to good government and to the Colony.

The Solicitor-General: I am rather afraid, judging from the criticisms of my Hon'ble friends Dr. Prada and Dr. Laurence, that my efforts to explain the meaning of sedition have not been successful.

The Hon. Dr. Prada: Hear, hear.

The Solicitor-General: As I understand the references to measures affecting East Indians, or to England, the answer of course, is that sedition does not include the legitimate criticism of Government measures. It only includes such criticism which exceeds the limit; which is very difficult to define, yet in practice is very easy to deal with. The underlying essence of the law of sedition is the intention either to excite directly to violence or criticism of such a nature that although it cannot be said to be a direct incitement to violence, nevertheless is of such a nature that if allowed to continue will ultimately put the community into such a state that they are very likely to be easily excited. That is the essence of the law of sedition, and all these questions of individual punishment have to go to the jury, and that is what they will be guided by. If criticism of the measures of the United

Mar. 19, 1920. Kingdom or of protectorates or possessions overstep the limit which I have laid down in my opinion it ought to be punished. If in the bill we are to omit reference to other colonies, it would be possible for newspapers to be printed in a neighbouring colony and brought over here and published here and we should be absolutely helpless.

The Hon. Dr. Prada: What is the nearest protectorate?

The Solicitor-General: It makes no difference. Why should we allow an active propaganda to be started here for, say, Nigeria. People go from here to Nigeria sometimes. I think it would be a great mistake if we did do so.

The Hon. Dr. Laurence: What about the Church?

The Solicitor-General: I am sure that the Government are quite willing to leave it out. What was in my mind was the sort of thing done in Russia with regard to the Church. I am, personally, quite prepared to let that go.

The Hon. Dr. Laurence: Which is the established one here?

The Solicitor-General: Every church is established in the sense that it exists here, I am thankful to say. It is not, of course, established in the technical sense in which it is established in England.

The Hon. Dr.Laurence: Oh, I see.

The Solicitor-General: I hope as regards (*a*) I have made myself clear. The real thing depends on what sedition is if properly understood. Sedition, if properly understood, ought to be stopped, whether it refers to the United Kingdom or anywhere else.

Sir Henry Alcazar: Would not such criticism be covered by (*c*)?

The Solicitor-General: I am not sure that it would. Of course the real fact is that the importance of the definition is not so much in the exact wording of it, because I have not the slightest doubt that sedition could be expressed in a very few words. But the importance of it is that people who have to deal with these matters should know what is sedition and what is not. Some of these people who engage in propaganda are extremely astute, but many of them are extremely ignorant, and I really think that there would be a danger if we omitted a definition of sedition. People who are very often entirely deceived by agitators would go about and distribute pamphlets which they would have not the slightest idea to be seditious unless they were told so. I think it better to leave it in and, to tell the truth, I think it is quite intelligible.

The Hon. Dr. Prada: I move the deletion of "*or of any British Possession or Protectorate or either House of Parliament.*" in the third and fourth lines of (*a*).

The Solicitor-General: I have no objection, though I do not see any reason for it. The bill does not prevent prosecutions for sedition under the common law. That is the existing law. I am amazed that there should be any opposition to making it seditious to attack the Houses of Parliament. Mar. 19, 1920.

Sir Henry Alcazar: The feeling is that in England the definition of seditious intention is "to bring into hatred or contempt." If the bill simply stopped there?

The Solicitor-General: I think, Sir Henry, the answer is that Lord Halsbury kept to Stephens and when Mr. Justice Stephens wrote his book in the Eighties the Colonies did not attract the attention which they do now. But there is not the slightest doubt that criticism directed against the Government of a colony which would be seditious if directed against the Government at home would be seditious.

Sir Henry Alcazar: I am inclined to agree, but I think they would only prosecute where it was thought it was intended to raise ill-will amongst His Majesty's subjects.

The Solicitor-General: All sedition is based upon that, I am quite aware. I think it ought to be left.

The Committee divided on Dr. Prada's amendment as follows:—

VOTES:

For—6.	*Against—14.*
Mr. Fitzpatrick.	Mr. Rostant
Dr. Laurence.	,, Cipriani.
,, Prada.	,, Fuller.
Sir. H. A. Alcazar.	,, Wight.
Protector of Immigrants.	,, Fraser.
Surgeon-General.	,, Kay.
	Collector of Customs.
	Receiver-General.
	Director of Public Works.
	Insp.-General of Constabulary
	Auditor-General.
	Solicitor-General.
	Attorney-General.
	Colonial Secretary.

The amendment was lost, and (1) *(a)* approved.

The Solicitor-General, with the leave of the Committee, moved that in the second line of (*b*) of the new clause 3 the word "*church or*" be deleted and the word "*the*" be inserted before the word "*in.*"

Agreed to, and also (*c*) and (*d*) without amendment.

Mar. 19, 1920. The following was the remainder of the new clauses under discussion :—

(2.) *But an act, speech or publication is not seditious by reason only that it intends to show that His Majesty has been misled or mistaken in his measures, or to point out errors or defects in the government or constitution as by law established, with a view to their reformation, or to excite His Majesty's subjects to attempt by lawful means the alteration of any matter in church or state established, or to point out, with a view to their removal by lawful means, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes or races of His Majesty's subjects.*

(3.) *In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.*

Sub-section 2 :

The Solicitor-General moved that the words "*or this or any Government*" be inserted after the words "*His Majesty's*" in the second line. Although technically acts of the Government are done in His Majesty name, this word make it clearer. I further move that the words "*or their*" be inserted after the words "*in his*" in the second line; that in the fourth line the word "*church*" be deleted and the word "*the*" be inserted after the word "*in*"; that in the fifth line the word "*or*" before the word "*state*" be deleted; that in the fifth line the words "*by law*" be inserted after the word "*state.*"

The Governor put the question that the new clause 3, as amended, stand part of the bill.

The motion was agreed to.

The Council adjourned at noon, and resumed at 2 p.m., the following members who had attended the morning sitting being absent :—

Mr. Kay.

,, Fraser.

,, Fitzpatrick.

The Solicitor-General moved that the Council resume in Committee the consideration of the bill.

Seconded by the Colonial Secretary, and agreed to.

The Council went into Committee.

Clause 4:

The Solicitor-General moved the following amendment, of which notice had been given :—

" That sub-section (3) of Clause 4 be deleted."

The Hon. Dr. Laurence: Why is £1,000 fine insisted on? How did it come to be thought of?

The Solicitor-General: By the existing law the fine is purely in the discretion of the Court, which discretion is unlimited. I think modern sentiment requires some limit.

The Hon. Dr. Laurence: What suggested £1,000?

The Solicitor-General: It is a substantial sum, and was suggested as the maximum. I remember during the war a man communicating with the enemy being fined £3,000.

The motion was agreed to.

Clause 5 **was** passed without amendment or discussion.

Clause 6 :

The Solicitor-General moved the following amendment of which notice had been given—

"That Sub-section (*1*) of Clause 6 be deleted and the following be substituted :—

'(*1*) Whenever any person is convicted of publishing a seditious libel in any newspaper, the Court may if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters, that is to say :—

(*a*) prohibiting either absolutely or except on conditions to be specified in the order, for any period not exceeding one year from the date of the order the future publication of that newspaper;

(*b*) prohibiting either absolutely or except on the conditions to be specified in the order, for the period aforesaid, the publisher, proprietor or editor of that newspaper from publishing, editing or writing for any newspaper, or from assisting, whether with money or with money's worth, material or personal service or otherwise, in the publication, editing or production of any newspaper, and

(*c*) that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order or that it be seized by the Constabulary and detained by them for the period aforesaid.'"

Mar. 19, 1920. Of course it is in the discretion of the Court, all or any of these things.

The Hon. Dr. Laurence: Why was it found necessary to make it actually a year before? I presume it is the English procedure?

The Solicitor-General: No.

The Hon. Dr. Laurence: May I ask what is the genesis of the change?

The Solicitor-General: As regards the year?

The Hon. Dr. Laurence: Yes.

The Solicitor-General: As a matter of historical detail, if the Hon'ble Member must know when the Law Officers got their instructions for this bill, it was considered a serious matter and that there should be power to put an effective stop if necessary to these newspapers, and it was stated that unless you put in a year there might be a tendency if you had a weak judge (as this would be a very unpopular thing to do) for him to only make the suspension for a nominal time. On reflection, I agreed that to fix a term without allowing discretion would not be the right thing to do, in which I think the Hon'ble Member will agree with me.

The Hon. Dr. Laurence: I suppose you thought nothing of the strong judge? (*laughter.*)

The Solicitor-General: I really do not understand. Perhaps I put it unfairly. I really thought that it would be putting a very invidious and difficult task on the judges, and that if they had a plain duty before them to order one year and nothing else it would be better. Of course when this was originally drawn there was the "habitual" clause in it.

The Hon. Dr. Laurence: To say nothing of tarring them all with the same brush of the amount of the liability.

Agreed to.

Clause 6 as amended stood part of the bill.

Clause 7:

It was agreed that each sub-section should be considered separately.

Sub-section 1:

The Solicitor-General moved the following amendment, of which notice had been given:—

"That in sub-section (1) of section 7 the words "*or races*" be inserted after the word "*classes*" in line 6.

Agreed to.

Sub-sections (2), (3) and (4) were passed without amendment.

Sub-section 5 :

The Solicitor-General moved the following amendment, of which he had given notice :—

"That Sub-section (5) of Section 7 be deleted and the following substituted :—

'(5.) *It shall be the duty of every person to whose knowledge it shall come that a prohibited publication is in his possession, power, or control, forthwith to deliver every such publication to the person in charge of the nearest Constabulary Station.*'"

Agreed to.

Sub-section 6 :

The Solicitor-General moved that in Sub-section (6) of Section 7 the words "or publication of the prohibition order in the *Royal Gazette*" be deleted.

The Hon. Dr. Prada : With the leave of the Council, I ask that the words "either before or after" be deleted and make the service of the prohibition order concurrent with the issue of the warrant. It seems rather hard that before this order is served on the person, the Constabulary should be able to go into a man's house and search or break open.

The Solicitor-General : I am not sure whether the Hon'ble Member appreciates the effect of his amendment, which does not alter the law at all because the next sub-section reads that "A copy of the prohibition order and of the search warrant shall be left in a conspicuous position at every building or place so entered." It is not required, unless the owner might not be there. If it were to be served concurrently, there might possibly be great difficulties. If the man is at the building when that is entered it is served on him at the same time. This section is intended to meet a case where the Constabulary get knowledge that a big issue of a seditious pamphlet is to be made and deem it to be sufficiently serious to go to a Judge of the High Court who rules that it is not only seditious, but if allowed to continue would be likely to lead to violence. Having got the order it is then to be served on the person responsible, and the warrant is obtained to prevent the pamphlets being distributed all over the place. The object is to seize the pamphlets first. If the gentlemen feels aggrieved he can go to the High Court and ask that they be released. It would be a mistake to accept the amendment.

Dr. Prada's amendment was not pressed, and Sub-section (6) was agreed to as amended by the motion of the Solicitor-General.

Mar. 19, 1920. Sub-section 7 was approved without amendment or discussion.

Sub-section 8:

The Hon. Dr. Laurence: May I ask the Hon'ble Member to explain this sub-section?

The Solicitor-General: The object is to enable the owner of a prohibited publication to go to the High Court and ask that his version be heard. If he convinces the Court that it is not seditious, the order will be discharged and the publication returned.

The Hon. Dr. Laurence: I do not quite follow. If it is a prohibited publication and seized, how can the Court issue a discharge? The Governor in Executive Council decides that a publication—

The Solicitor-General: No, no. As regards this part of the bill it has nothing to do with the Executive Council. It is a seizure on application of the Attorney-General and by order of the Supreme Court, and I thought by putting in these words it would prevent any busy body starting these prosecutions, and it had to be shown to the satisfaction of the Court that the publication would lead to trouble. When that is done it is for the Court and not the Executive.

Sir Henry Alcazar: And that is *ex-parte.*

The Solicitor-General: Yes, and therefore it is necessary to give this power to go to the Court.

The Hon. Dr. Laurence: I thought that the question of a prohibited publication was really decided by the Executive Council?

The Solicitor-General: No, Sir; it is the Court. See Section 7.

Clauses 8, 9 and 10 were passed without amendment.

The title and preamble were approved and the Council resumed.

The Attorney-General moved the third reading of the bill.

Seconded by the Colonial Secretary.

The Hon. Dr. Laurence: My intention is to oppose the third reading and to vote against the resolution, and I just wish in a few words to put before the House my reasons for maintaining consistent objections to the Ordinance—a consistency which may perhaps seem objectionable under the circumstances. I feel in reality, as I have said before, that there is no necessity for a bill of this kind at this time, having regard to my knowledge of the conditions of the colony, and notwithstanding Your Excellency's explanation to the Council this morning (and I say so without any reflection on Your Excellency) I have not been converted to the idea that any necessity exists for this bill. I have put forward an alternative which the Law Officers of the Crown have not thought it necessary to answer. While Your Excellency has admitted and it has been universally admitted within this House and without that the loyalty of the inhabitants of the colony was beyond question, it seems a hardship that we should have to inscribe legislation of this kind on our Statute Book in order to meet the seditious activities of persons from without. And I for one am exceedingly regretful that nothing could be done to meet the demand in some way other than the one which the Government has seen fit to adopt. It is evident that the bill has been drawn up with meshes to suit all sorts and conditions, because it is clear that the Government must realize that there are some people of substance behind the seditious propaganda in the colony when a fine of £1,000 is suggested for any one contravening the provisions of the bill. I had hoped that, after the expression of views outside this House as well as within it, I should have had some little further support from this side of the House against the bill. I say that without for one moment impugning the good faith of my colleagues on this side of the House, but I am exceedingly disappointed in that. I had hoped that the Government would have been able, after the expressions of opinion with respect to the bill, to have seen its way to stay its hands and of finding a *via media* in some other way for achieving the object in view without having recourse to this legislation. In that hope I have been disappointed. I had hoped that Your Excellency would have been able to give a further opportunity in the consideration of a matter of this kind, which goes to the root of all political sentiment, and that it would not eventually have been found necessary to introduce such drastic legislation as this, admittedly by all shades of opinion, is. Outside this House, I have found unanimity of sentiment about the bill, such as I have never discovered before while a member of this House. Not only has there been much public interest in it, but an intelligent interest has been taken in it, and that interest I feel has deserved something more than the rapid passing of the bill which is taking place. In that hope also I have been disappointed. But there is one hope which I venture to express now and I have no doubt that Your Excellency will do all in your Government's power to justify, and that is that those who are responsible—the undesirable aliens in our midst—those who lurking in dark places have given occasion to Government to bring in such a measure as this and given the Council the opportunity to place such a measure on our Statute Book—I hope the Government will justify the sentiments or views which His Excellency has expressed this morning by giving the colony the melancholy satisfaction after this bill is passed of seeing them at no distant date brought to justice, and so justify the action of the Government and the Legislature in passing this bill. (*applause*).

Mar. 19, 1920.

Mar. 19, 1920. The Council divided on the motion as follows:—

VOTES:

For—15.	*Against—2.*
Mr. Rostant.	Dr. Laurence.
" Cipriani.	" Prada.
" Fuller.	
Sir H. A. Alcazar.	
The Collector of Customs.	
" Receiver-General.	
" Protector of Immigrants.	
" Surgeon-General.	
" Director of Public Works.	
" Insp.-General of Cons'bulary.	
" Auditor-General.	
" Solicitor-General.	
" Attorney-General.	
" Colonial Secretary.	

The motion was carried and the bill was read a third time and passed.

FIREARMS ORDINANCE —BILL TO AMEND.

The Attorney-General moved that the Council resume in Committee the consideration of a Bill to amend the Firearms Ordinance.

Seconded by the Colonial Secretary and agreed to.

Clause 3 (renumbered) 2 :

The Attorney-General : I now move the following amendment of which I have given notice :—

"That in Clause 3 (re-numbered Clause 2) the following new sub-section to be numbered sub-section (4) be inserted after sub-section (3) :"

"(4.) *Upon the cancellation of any such certificate the licence to keep firearms, or to sell or deal in firearms or to carry on the trade of a gunsmith granted to the person to whom such certificate relates shall become void and of no effect.*"

It would be absurd that any one whose certificate is cancelled should be allowed to hold his licence to the end of the year. That is the reason for the amendment. I am anxious that the Bill should be passed before the 31st March, which is the date when the licences expire.

Agreed to and the sub-section was re-numbered accordingly.

The title and preamble were read and passed and the Council resumed.

The Attorney-General moved the third reading of the Bill.

Seconded by the Colonial Secretary and agreed to.

The Bill was read a third time and passed.

Appendix 2: Meetings of the Joint Select Committee of both Houses of Parliament appointed to consider "The Draft Constitution of Trinidad and Tobago"

Meeting of Joint Select Committee of both Houses of Parliament appointed to consider "The Draft Constitution of Trinidad and Tobago held in the Parliament Chamber, Red House, Port of Spain on Thursday 17th July, 1975 at 2.25 p.m.

PRESENT

Honourable C.A. Thomasos (Chairman)
" K. Mohammed
" B.L.B. Pitt
" F.C. Prevatt
" O. Padmore
Mr. J.A.F. Richardson
Mr. D. McG. Sullivan
Senator M.T.I. Julien
" T.A. Gatcliffe
" V. Glean
" D. Solomon
" H. Harris

So that in a sense we ready ourselves for a more intelligent consideration of the viewpoints later to be presented. If we did that it would mean then we would be going through the document pretty fast in certain places perhaps taking up a point or two on nomenclature but not paying too serious regard to that; discussing some of the major issues amongst ourselves with the understanding that later on we will consider other views and then we will go through the document again finally. This is what I understood Senator Julien meant when he said let us go through the document. Is this the understanding of all here present?

Chairman: It is my understanding as Chairman. I would like the expressed views of the other Members so that we have it clarified. Any views on that?

Mr. Padmore: No problem.

Chairman: I think it is the best way. Gentlemen, you had enough for the afternoon?

Senator Julien: Well, at least let us continue the preamble to say we have done something. I had a suggestion to the preamble - It is a small sentence to add.

Chairman: You may give your views on it for another half an hour.

Senator Julien: The last sentence, there, "Now therefore the following provisions" I would like to put these words after the word 'provisions' "which make provision for the Government of Trinidad and Tobago as such a democratic society." I would like to add those words, Sir.

Mr. Padmore: How would it read?

Senator Julien: 'Which make provision' after the word "provisions" - you have it in the thing I gave you.

Chairman: I think there is a document submitted on this particular thing.

Senator Solomon: On a point of information, I do not want to interrupt Senator Julien but he said "Continue with the preamble". Am I to take this to mean that at the previous meeting there was a substantive discussion on the content of the preamble?

Senator Julien: No, there was no discussion at all.

Chairman: No, no. He started a discussion of the preamble here. Well in as much as we are going to stay a little longer he would want to continue on what he was saying on the preamble.

Senator Solomon: To continue the meeting by considering the preamble.

Chairman: Yes.

Senator Solomon: Ah well, in that case, fine.

Senator Julien: I said at least let us do that. That is the only suggestion I wish to make to the preamble; the rest seems all right to me.

Senator Solomon: Am I to take it that if there are no further comments on the preamble that the Committee will have accepted the preamble?

Chairman: No, no, no. We have to go through every document, every memorandum that comes in before us. But Senator Gatcliffe had made an observation on the problem as presented to us that we should go through this not making decisions but actually making observations; for example if we think we should have this considered, this should be changed; or a comma should be put here; no firm decisions at all.

Senator Solomon: Yes, Mr. Chairman, I understood that but -

Chairman: That is what he was saying and I think it is in that light that Senator Julien is making his observations.

Senator Solomon: Does this mean that we as a Committee are now in the phase of making observations on the preamble and that if we close without any further comments then we will move to the phase of making observations on another part of the document?

Chairman: Not necessarily now; but if we have the time, but I think some Members are anxious to go home especially Senator Julien. And that is why I pointed out to him that if he thought that he could remain for some time, say half an hour we could go through parts of this.

Senator Julien: There is another suggestion I would like to make. I wanted to put a new Chapter One "Trinidad and Tobago shall be a sovereign democratic State and two, "This Constitution is the supreme law of Trinidad and Tobago".

To substitute for the one they have as Chapter I I would like to insert that /Interruption/

Chairman: . . . the document; you submit it to us.

Senator Julien: Yes, but for the minutes I would like this to be . . . Now when we come to the next chapter which is chapter II, I think, subject to the memoranda we are going to get, the Committee will have to take . . .

Chairman: You are going through the whole thing.

Senator Julien: No, no, no. I am dealing -

Chairman: I thought you wished to be going in half an hour.

Senator Julien: Nevertheless, I wanted to make a comment. Under the next Chapter, I don't know if you remember McKell.

Senator Prevatt: Senator Julien, one second please. I thought that what we decided - perhaps I have got it all wrong - was that we deal with the preamble. We might wish to make observations but not necessarily anything final yet, and then we would go on and if you wanted for instance to introduce something between the preamble and the present Chapter I we will introduce that and talk about that a little bit and then we move to chapter I and so on, because if this is so, could we not take up the point which you have now made on the preamble and see whether there is any view to be expressed on that before we proceed?

Senator Julien: I do not know if the others are yet ready to discuss it. Perhaps they may want to study it; I don't know.

Senator Prevatt: If it is not, I would suggest -

Senator Julien: There was something more fundamental I wanted to raise on the other chapter because I see a lot of discussions in the press. You will notice under Human Rights, we have copied verbatim the Wooding Draft. In the present Constitution, we had what is called the Canadian Bill of Rights and there is a big disucssion whether we should reintroduce the Canadian Bill of Rights or this one. I see big letters there saying we are legalizing murder and all that sort of nonsense. So I think this Committee will have to decide whether they prefer the Canadian Bill of Rights or whether they prefer these rights. That might be something for them to take home to study, I think. It is very important; you will find it in the McKell report at page 4. He says on page 4, Chapter 16:

> "By discarding the model of the Canadian Bill of Rights and adopting the pattern of the European Convention on Human Rights, the Constitution Commission sought:-
>
> (1) to remove the delusion of absoluteness created by the manner in which the rights are presented in the existing Constitution;
>
> (2) to make the limitations on the exercise of the rights more easily discerned and understood by the ordinary citizen;
>
> (3) to lay down a basis by which Parliament and the courts could judge the validity of any law which purports to abridge any of the rights and freedoms of the people."

And he says that the majority were in favour of the change. So I think this is something very fundamental and vital for the Committee to study, maybe for the next occasion, which they want to adopt.

Mr. Pitt: Are we on the preamble or we have gone on to Chapter I?

Chairman. Chapter I. He just wanted to make observations on Chapter I. what McKell said.

Senator Julien: I am saying under the present Constitution we have adopted the Canadian Bill of Rights and under the draft we have adopted Wooding's, which is a different method of approach. And this Committee will have to decide which they prefer; Wooding's or the other. I see a lot of controversy in the press that the present draft legalizes murder and all that sort of nonsense. But I think it is a matter that needs study. I do not think the Committee should just say yes we will take this or that. I think they should study it before deciding one way or the other.

Mr. Pitt: These are pointers to our consideration of Chapter I?

Senator Julien: Yes.

Mr. Pitt: Oh, I see.

Senator Julien: . . . McKell report so that they can read it, you see.

Senator Harris: One observation on Senator Julien's observation with respect to paragraph 16 sub paragraph 3 of the McKell Report. We are already a very legalistic community. Will this produce more legalism with everybody challenging the Constitution in the courts? This has not happened under the Canadian Bill or Rights.

Mr. Pitt: It has not happened under the Canadian Bill of Rights -

Senator Julien: I prefer the other one, but the majority have said -

Senator Harris: You prefer the other one.

Senator Julien: Oh yes. As a matter of fact I helped to draft the first one, but the consensus now after a lapse of so many years is that this is the better one and it is being used by all the Commonwealth countries. But why I find this one difficult is that I cannot think of every exception in the world, because there might be as the world progresses many exceptions that we can think of at the moment and things that in the future may never - and you do not know where you are. But I did not draft this and it is for the Committee to draft because it is a very very fundamental matter. Wooding drafted this, De Labastide and all the big boys and they said this is the correct way. I am prepared to go along with the majority view; whatever you say.

Senator Prevatt: The point having been made could we not be allowed to think about it until the next meeting perhaps when we reach Chapter I.

Chairman: That is what we are doing; just making observations on the various aspects.

Senator Julien: Because it is too serious a matter to go through just like that.

Senator Prevatt: You don't want to go any further?

17.7.75 YA/vb
3.35 - 3.45 p.m

3.35 p.m.

Senator M.T.I. Julien: Wooding drafted this; De La Bastide and all the big boys and they said this is the correct way. I am prepared to go along with the majority view. So whatever you say.

Hon. O. Padmore: Could we not be allowed to think about it until the next meeting perhaps?

Senator Julien: These are just pointers.

Hon. F. Prevatt: You are not going further into it?

Chairman: No.

Hon. F. C. Prevatt: And the Preamble - you do not want to go any further into it. You want to raise the points and leave them there? I thought perhaps we would have some discussion on the points you raised on the Preamble. I think I would like to say something on that to start with. For instance, you make certain proposals. You add certain words:

"Now therefore the following provisions...."

and then you say you make certain provisions and so forth. Now it seems to me that "Now therefore" is the way of expressing what you then wish to express, which says what you make provision for. That to me is the meaning of "Now therefore". Which makes provision for the Government of Trinidad and Tobago as a democratic society. I do not think that in my view that you have to say you have to make provision for a democratic society. I think it is the provisions which you make would make it a democratic society.

Senator Julien: This says:

"Which makes provision for the Government of Guyana and such a democratic society... shall have effect as the constitution of Guyana.

Hon. Prevatt: What I am saying is that this is not what should be done. What I am saying is a democratic society comes out of a constitution. That comes after. In your 'd' you say:

Whereas the people reconfirm their belief in a democratic society.

and you end by saying:

"Now therefore..."

To me that means - having confirmed your belief in a democratic society, we now proceed with the provisions of the constitution. I do not think you need to put in again, having already confirmed your befief that you want to make provisions for the democratic society. I thought I should say that so that you could consider it in the light of the comments which Senator Julien has made.

Senator Julien: In view of what was said before, these are the provisions that shall have effect in the new constitution.

Hon. F. C. Prevatt: Then, obviously the provisions are obviously going to be those of a democratic society.

Senator Harris: In my view it is a matter of style perhaps. But certainly I would urge...

Senator Julien: You will find it in the other constitution.

Senator Harris: ... in supporting Senator Prevatt, may I just quote the words of the present constitution:

"Whereas the people have asserted their belief in a democratic society..."

And they go on:

"Now therefore the following provision shall have effect."

That is the present Constitution, the Wooding constitution. At 'd):

Senator Harris (cont'd)

"Whereas the people of Trinidad and Tobago reconfirm their belief ...... Now therefore the following provisions shall have effect.

In each case both the drafting of necessity saw the need to include the clause which makes provision for a democratic society because it follows from the Preamble above. I am not saying it is better. What I am saying is, there is a difference in drafting between the Guyana and Trinidad.

Hon. F. Prevatt: I mentioned these things because we are not making decisions now. I just thought that as we are to discuss them I might say this. I will have to say something on the proposed new Chapter 1. Again there you introduce 'democratic'. Then you introduce 'sovereign'. I do not know of any state with a constitution that is not sovereign. So it is not necessary. What I am saying is that I do not think it is necessary. I do not think it adds anything to the constitution.

Attorney General: Except that it is decorative.

Hon. F. Prevatt: I make these points because I hope they will be useful when members are considering the points raised. I also make the points on Chapter 1 as to whether we will take the Canadian one or the other one. I hope to study that a little more.

Senator Solomon: Mr. Chairman, perhaps before we adjourn could you recapitulate for my benefit the procedure that we have adopted for consideration of the documents.

Chairman: We go through every chapter after chapter making observations on certain points that we will consider in depth on another occasion; that is, in the future.

Senator Solomon: It seems to me that in the very last part of this session we have been making observations on two parts of the it - Chapter 1 and the Preamble.

Chairman: That was only one little observation.

Senator Solomon: I have an observation to make. This is the reason why I ask the question whether I should be precluded from, making such an observation if I decided to make it at the next meeting; whether in fact in the meeting it will be said that we have already considered the preamble.

Chairman: Oh, no, no, no. We are just making what you might call a casual study of the draft as it is; making observations on certain - not even fundamentals.

Senator Solomon: At the same time, in our overall general consideration for the purpose of making general points, I think we ought to state the operation. In other words we ought to know at the end of each session on which chapter we will be expected to make observations the next time.

Chairman: That is what we are doing.

Senator Solomon: May I ask that the Preamble be included?

Chairman: Yes. Yes, the Preamble and Chapter 1. We would study that at home and come here with our observations.

Senator Harris: The only difficulty here is why Senator Julien insisted on moving on to Chapter 1 is because he is suggesting the inclusion of another chapter 1 and the draft chapter one will become chapter 2, so that is the only reason why chapter 1 came up at all. We are considering the Preamble today so Senator Solomon should be able to make his observations on the Preamble now.

Third Meeting of the Joint Select Committee of both Houses of Parliament appointed to consider "The Draft Constitution of Trinidad and Tobago" held in the Parliament Chamber, Red House, Port of Spain on Wednesday 30th July, 1975 at 2.22 p.m.

PRESENT

Honourable	C.A. Thomasos	(Chairman)
"	K. Mohammed	
"	B.L.B. Pitt	
"	F.C. Prevatt	
"	O. Padmore	
Mr.	J.R.F. Richardson	
Mr.	D McG. Sullivan	
Senator	M.T.I. Julien	
"	T.A. Gatcliffe	
"	D. Solomon	
"	H. Harris	

ABSENT

Senator V. Glean

Mr. Mohammed: We can decide that now.

Mr. Prevatt: We have already agreed that we are not going to decide on anything until the memoranda are in on August 15. We said that already.

Chairman: Any other thing on the Preamble? It is a very interesting point.

Mr. Richardson: I will say, let us pass on.

Chairman: Mr. Julien, on your Preamble. I thought you had more thoughts on the Preamble.

Mr. Julien: I haven't any more than what I have said. I tried to emphasize that it was a democratic society.

Mr. Solomon: Not a benevolent dictatorship?

Chairman: Chapter 1. You have read that. Is there any little observation on it? Do you wish to draw my attention to any particular point?

Mr. Julien: Last time I suggested a new Chapter 1.

Chairman: Do not suggest any new chapter. Let us have Chapter 1.

Mr. Julien: I am saying that in view of the present Chapter 1, I had suggested a new chapter which you have before you.

> "Trinidad and Tobago should be a sovereign, democratic State and this Constitution the supreme law of Trinidad and Tobago."

I think Mr. Prevatt had also answered that. So I must put it forward.

Mr. Prevatt: It is something to be decided.

Mr. Julien: The Chairman asked me so I must repeat it. I am not going back on it.

Sixteenth meeting of the Joint Select Committee of both Houses of Parliament appointed to consider "The Draft Constitution of Trinidad and Tobago" held in the Parliament Chamber, Red House, Port of Spain on Wednesday, 12th November, 1975 at 2.50 p.m.

PRESENT

Honourable C.A. Thomasos (Chairman)

" F.C. Prevatt

" K. Mohammed

" B.L.B. Pitt

Mr. D.McG. Sullivan

Senator V. Glean

" H. Harris

" M.T.I. Julien

Mr. R. Griffith
Mrs. E. Williams (Joint Secretaries)

ABSENT

Honourable C. Padmore

Mr. J.R.F. Richardson

Senator T.A. Gatcliffe

" D. Solomon

12.11.75 YA/pj

3.00 - 3.10 p.m.

Mr. Mohammed: You are advocating that they be appointed by the Prime Minister after consulting the Leader of the Opposition?

Mr. Singh: Sorry, they should be appointed by the Prime Minister.

Senator Harris: And the additional ministers?

Mr. Singh: With the additional ministers, we are going to get a fair measure of work done for the community. This is my reason for mentioning more ministers in the Government.

Mr. Pitt: They would not be elected? You do not propose that they should be elected? They should be appointed in the same manner - these additional ministers you talked about?

Mr. Singh: Yes, in the same manner, in the same parliamentary system as we have at present.

Mr. Chairman: Any other question?

Mr. Sullivan: No, Sir.

Mr. Chairman: Thank you, Mr. Bhola Singh for coming to us.

Mr. Singh: Mr. Chairman if you will permit me please, Sir, I wanted to make a few comments before closing.

Mr. Chairman: Very well.

Mr. Singh: The Constitution of a country is the means by which the people of that country govern their affairs. It regulates the relationships between the various groups of people engaged in public service and assures their r representation of peoples. In deciding what sort of Constitution we want for our country, whatever we do, we must provide the people with the means of governing themselves on the basis that they are all citizens and none entitled more than the others to a special representation on ground of wealth, class, colour or creed.

We are of the opinion that the time is now ripe for the Colony of Trinidad and Tobago to enjoy the privilege...

Senator Julien: Colony!

Mr. Singh: Sorry, the country. ... to enjoy the privilege of having a fully Democratic Republic form of Government to assume the responsibility of carrying on the new government of Trinidad and Tobago.