

*Appt  
Chiron*

TRINIDAD AND TOBAGO.

**CIV**

Civil Appeal  
No.2 of 1975.

IN THE COURT OF APPEAL

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

Between

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO  
Respondent/Appellant

And

RAMESH DIPRAJ KUMAR MOOTOO  
Applicant/Respondent

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

March 26, 1976.

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

J U D G M E N T

Delivered by Sir Isaac Hyatali, C.J.:

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

/In his application

*Cu App 2/75 ATTORNEY GENERAL T-T v MOOTOO, RAMESH by. Hyatali C.J.*

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

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

In opposition to the application, the Attorney General filed four affidavits - the first, sworn to by V. Dean-Maharaj, Comptroller of Accounts, exhibited the books of accounts kept in reference to the unemployment fund established under the Act and the expenditure from the fund in relation to the years 1970-72 inclusive; the second, sworn to by the Clerk of the House of Representatives, showed that the Act was passed in that House without any division; the third, sworn to by the Clerk of the Senate, showed that the Act was passed in the Senate without any division and that the applicant who was then a member thereof, voted for the passage of the Act; and the fourth, sworn to by Lancelot Busby, acting Director of Statistics, exhibited a booklet published by the Central Statistics Office containing, inter alia, data on the state of unemployment in the Country in 1969 and 1970. At the hearing of the motion, objection was taken to the reception of the affidavits filed by the Attorney General, on the /ground that they

ground that they were irrelevant to the issues before the Court. The learned judge upheld the objection and expunged them from the record. In his notice of appeal, the Attorney General complained that the learned judge's decision to expunge all these affidavits from the record was wrong in law but at the hearing of the appeal counsel for the Attorney General confined his complaint to the exclusion of Busby's affidavit and did not pursue his complaint in relation to the others.

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

Busby's affidavit exhibited a booklet published in June 1972 under the authority of the Statistics Ordinance Ch.42 No.11.

/It accordingly came

It accordingly came into existence after the Act was passed. It was not published however for any purpose connected with the applicant's motion which, it is to be observed, was filed more than two years later, viz. 22 October, 1974. The value of the booklet lay in the fact that it gave the unemployment figures in the Country for 1969 and 1970. The authenticity of those figures was never challenged. They established that there was massive unemployment in the Country when the Act was passed on 4 June, 1970. Moreover, it was a matter of common knowledge that it was enacted in the wake of a period of social unrest in the society of such gravity that in order to contain it, a State of Emergency was declared on 20 April, 1970 and that Parliament continued it for a period of six months thereafter. Mr. Hosein for the Attorney General submitted that Busby's affidavit and the matter of common knowledge were relevant to the four issues referred to; and further that judicial notice could properly be taken of the latter. Both these submissions are well-founded in my opinion, and I accept them as sound.

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

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

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

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

/And finally,

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

The scheme of the Act is quite straightforward. After declaring in the long title that it is "An Act to provide for the imposition of an unemployment levy on the chargeable income or profits of persons" and defining in s.2 that the levy referred to means "the levy imposed . . . for the purpose of the relief of unemployment and the training of unemployed persons", the Act imposes a levy at the rate of 5% on the chargeable profits of companies and on the chargeable income of individuals in excess of \$10,000 (ss. 5, 6, 7). It then proceeds to invest the Board of Inland Revenue with authority to administer the Act, to compute, collect and recover the levy (s.3) and to pay it in to a fund expressly created for the purposes of the Act and designated the Unemployment Fund (ss. 14, 17).

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

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

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

/(b)

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

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

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

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

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

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

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

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

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

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

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

Legislators, as well as judges, are bound to obey and support the Constitution and it is to be understood that they have weighed the constitutional validity of every Act they pass. Hence the presumption is always in favour of the constitutionality of a statute, not against it; and the courts will not adjudge it invalid unless its violation of the Constitution is, in their judgment, clear, complete and unmistakable."

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

"It is the first canon of judicial review of legislation in the United States, that 'the legislature must be considered innocent till it is guilty beyond all reasonable doubt'. Hence all reasonable doubt of a statute's validity must be resolved in favour of a statute and it should not be pronounced to be unconstitutional unless it is clearly proved to be so."

. . . . .

What the presumption means is that there should be such an opposition between the Constitution and the law that the Judge should feel a clear and strong conviction of their incompatibility.

. . . . .

It must be presumed that a Legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience . . . and that its discriminations are based on adequate grounds."

/In reference to

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

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

"At the same time", he continues,

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

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

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

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

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

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

/In some cases

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

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

"The introductory words of s.13(1) of the Gun Court Act, 1974, amount to a declaration by the Parliament that the hearing in camera of the kinds of cases which fall within the jurisdiction of the Gun Court is reasonably required for the protection of the interests referred to, which include the public safety and public order. By s.48(1) of the Constitution the power to make laws for the peace, order and good government of Jamaica is vested in the Parliament; and prima facie it is for the Parliament to decide what is or is not reasonably required in the interests of public safety or public order. Such a decision involves considerations of public policy which lie outside the field of the judicial power and may have to be made in the light of information available to Government of a kind that cannot effectively be adduced in evidence by means of the judicial process.

In considering the constitutionality of the provisions of s.13(1) of the Act, a court should start with the presumption that the circumstances existing in Jamaica are such that hearings in camera are reasonably required in the interests of 'public safety, public order or the protection of the private lives of persons concerned in the proceedings'. The presumption is rebuttable. Parliament cannot evade a constitutional restriction by a colourable device . . . But in order to rebut the presumption their Lordships would have to be satisfied that no reasonable member of the Parliament who understood correctly the meaning of the relevant provisions of the Constitution could

/have supposed

"have supposed that hearings in camera were reasonably required for the protection of any of the interests referred to; or, in other words, that Parliament in so declaring was either acting in bad faith or had misinterpreted the provisions of s.20(4) of the Constitution under which it purported to act."

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

The findings on which the learned judge based his declarations are not as coherent as they might have been but they may fairly be summarised as follows: (1) If a law "deprives the citizen of the right to the enjoyment of his property, it must be passed in accordance with the provisions of [s.5 of] the Constitution whether or not that law seeks to impose taxation or any other type of deprivation of property". (2) The levy imposed by the Act seeks "to deprive citizens who fall within a category ascertained by the Act of the enjoyment of that part of their property which has survived the inroads of normally accepted taxation by way of income tax without the sanction and authority of s.5 of the Constitution . . . . [It is consequently] arbitrary and oppressive and . . . offends the concept of due process of law". (3) "Relief of unemployment" is a public purpose provided "the nature and quality of the relief is such that benefits are paid directly to ascertained unemployed individuals". (4) The mere use of the terms "the relief of unemployment and the training of unemployed persons" in s.2 of the Act is not enough to connote a public purpose; the nature and quality of the relief must be spelt out to ensure that the public alone will benefit from the levy imposed. (5) It is most undesirable for a draftsman to legislate under the guise of a definition but it is not absolutely fatal to the Act because of the necessity to  
/give effect to

give effect to the maxim "ut res magis valeat quam pereat". (6) By s.19(c) of the Act, Parliament delegated its authority to the Governor General contrary to s.85(3) of the Constitution, to direct the issue of money from the Unemployment Fund. (7) However liberally the Act is construed, it fails to show that "its purport and intent is to benefit the public weal" since the purposes of the levy "are neither defined nor definable". Save for the statement of the principle in reference to legislating under the guise of a definition, the Attorney General has challenged all the findings of the learned judge as wrong in law.

The first two conclusions of the learned judge were based on points he took ex proprio motu and were sufficient to found the declarations made. But by them he appeared to hold that in order to be intra vires the Constitution a statute which imposes a tax on income or an additional tax on income which has 'survived the inroads of normally accepted taxation' has to be passed under s.5 thereof. These propositions however are inconsistent with well-settled principles and are in direct conflict with authority. The power to tax for the purposes of Government or for public purposes rests upon necessity and is inherent in every Sovereignty. See Cooley on Constitutional Limitations (1972) Reprint 479-481 for a learned and concise dissertation on the principles, and Newcastle Breweries Ltd v The King (1920) 1 K.B. 854; R v Barger (1908) 6 C.L.R. 41, 46. Consequently, the imposition of a tax for such purposes does not violate the right to property unless it can be established that the statute imposing it is "so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect the direct exertion of a different and forbidden power, as for example, 'the confiscation of property'". See A. Magnano Co. v Hamilton, Attorney General of Washington et al. 292 U.S. 40, 44 quoted with approval in Attorney General v Antigua Times Ltd. (supra). Counsel for the respondent who recognised the validity of that principle intimated at the outset and quite properly that he did not intend to support the judgment of the learned judge insofar as it decides that an Act which imposes a tax is not valid unless it is passed under s.5 of the Constitution.

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

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

The practice of enacting under the guise of definition infringes a valuable rule of drafting and has repeatedly attracted severe judicial criticism. The failure to observe this salutary and valuable rule has no doubt been very costly in the instant case and is deserving of the severest censure; but as the learned judge himself correctly pointed out, this practice is not necessarily fatal to that which has been so enacted. Consequently, if the purpose of the levy imposed by the Act in this case can fairly and reasonably be implied or inferred from the definition of "levy" in s.2 then it seems to me

/that it is the

that it is the bounden duty of the Court in the light of the principles previously discussed to infer and give effect to it. A case of some assistance on this question though not directly in point is Cother v The Midland Ry Co. (1848) 2 Phill. 469, quoted in Craies on Statute Law 7th Edn. 212 where it is stated that -

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

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

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

The learned judge stated that relief of unemployment is a public purpose provided that benefits are paid directly to ascertained unemployed individuals. This proviso however is relevant to the

/administration of the

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

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

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

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

As it cannot possibly be said that there is an absence of all public interest in the purposes of the Act, I reject the findings of the learned

/judge that the

judge that the Act fails to show that "its purport and intent is to benefit the public weal" or that its purposes are neither defined nor definable.

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

Section 85 of the Constitution provides as follows:

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

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

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

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

It is beyond question that the Unemployment Fund created by s.14(2) of the Act is a "public fund other than the Consolidated Fund". Consequently, the issue of moneys from that public fund is required to be authorised by an Act of Parliament in accordance with the stipulation contained in s.85(3) of the Constitution. There is nothing however in s.85(3) which prohibits or otherwise disables Parliament from providing <sup>in</sup> the statute itself which creates the public fund aforesaid, the necessary authority to issue moneys therefrom. It thus seems perfectly permissible for a statute to create such a

/fund in one

fund in one section and to authorise the issue of moneys therefrom in the same or another section. The question therefore is whether the Act has done so.

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

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

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

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

I do not and cannot agree that this provision means, or implies, or is reasonably capable of the interpretation, that the Governor General is empowered thereby to authorise the issue of moneys from the Unemployment Fund. It would be doing violence to language, in my opinion, so to hold. Nor can I accept that Parliament delegated to the Governor General by this provision the sole, or indeed any authority, to declare the purposes of the levy. On the contrary, Parliament declared these purposes inferentially, as I have held, in s.2 of the Act; and to interpret s.19(c) in the manner suggested would not only introduce an unwarranted conflict between two sections of the Act but violate a venerated canon of interpretation enunciated by the House of Lords in Warburton v Loveland (1832) 2 Dow & Cl. 480, 500; 5 E.R. 499, 510 that -

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

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

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

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

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

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

In my opinion, the expression "any of the purposes thereby provided" in section 14(2) is capable of more than one meaning. "Any" in that context, it was said arguendo, meant one of two purposes, but "any" also means "some" i.e. "more than one". (See the Shorter Oxford Dictionary 3rd Edn.). Section 2 refers to two main purposes of the levy but this does not preclude the application of the levy to several sub-purposes within the ambit and scope of the main purpose. It is possible therefore on reading ss.2,14 and 19 together to arrive at several meanings of the expression "any of the purposes thereby provided". It could mean "any or some of the purposes provided by the Act and the regulations" or "any or some of the projects and other matters" referred to in s.19(c). Other permutations are possible but it is not necessary to set them out here. The point I wish to emphasize

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is that in s.14(2), "thereby" is referable both to "the Act and to any regulations made under the Act" or to the "regulations" alone; and "purposes" in the expression "any of the purposes" is referable to the purposes stipulated in s.2 and such sub-purposes as may be specified in the regulations; or it is referable to the "projects and other matters" referred to in s.19(c).

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

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

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

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

An alternative contention which he directed to the validity of the Act was that the financial provisions of the Act relating to the expenditure of the Unemployment Fund are unconstitutional and inseparable from the Act. In particular, he argued, s.19(c) of the Act purports to constitute the Governor General acting on advice as a separate legislature to exercise an essential legislative function, i.e. to say, to authorise the issue of moneys from the Unemployment Fund. Moreover, he submitted, the combined effect of s.14(3) and s.19(c) is to make provisions which collide with s.85(3) of the Constitution and to render the Act invalid. In support of the latter proposition he argued that nothing short of an Appropriation Act, as was provided for in the case of the Consolidated Fund, was valid to authorise the issue of moneys from the Unemployment Fund. I have dealt with and rejected all these propositions in the course of my judgment

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and it only remains for me to say now that for the reasons I have sought to give I would allow the appeal with costs here and in the court below and set aside the declarations and orders made by the trial judge.

Isaac E. Hyatali  
Chief Justice