

2/84

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER of the Constitution of the Republic of Trinidad and Tobago (being the Schedule to the Constitution of the Republic of Trinidad and Tobago Act 1976)

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- and -

IN THE MATTER of the application of Errol McLeod (a person alleging that certain provisions of Chapter 1 of the said constitution have been, are being or are likely to be contravened in relation to him) for redress in accordance with Section 14 of the said constitution

B E T W E E N :-

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THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Appellant

- AND -

ARNOLD THOMASOS (SPEAKER OF THE HOUSE OF REPRESENTATIVES)

Second Appellant

- AND -

ERROL MCLEOD

Respondent

CASE FOR THE APPELLANTS

RECORD

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1. This is an appeal by final leave to appeal granted to the above-named First and Second Appellants by the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J., Cross and Hassanali JJ.A.) granted on 5th April 1982 from a decision of that Court of 29th July 1981 allowing the Respondent's appeal from the

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judgment of Bernard J., of 19th December 1978 and ordering that the Respondent is entitled to a declaration that the Constitution of the Republic of Trinidad and Tobago (Amendment) Act 1978 is null and void and of no effect.

2. The facts are as follows:-

The Respondent was at all material times a member of the House of Representatives ("the House") of the first Parliament of the Republic of Trinidad and Tobago. He was elected to the House following the General Election held on 13th September 1976 as the successful candidate for the electoral district of Oropouche. He had contested the Election as a candidate of a political party called the United Labour Front. On 24th October 1976, he duly attended, in his capacity as a member of the House, the first sitting of Parliament. He made and subscribed before the House the oath of allegiance prescribed by Section 57 of the Constitution (contained in the Schedule of Trinidad and Tobago Act 1976) ("the Constitution"), took his seat, and thereafter participated in the business of the House. Section 49(1) of the Constitution requires every member of the House to vacate his seat in the House at the next dissolution of Parliament after his election. Section 49(2) prescribes various other circumstances in which a member of the House must also vacate his seat in the House. In April 1978 Parliament purported to enact Act No.15 of 1978 the short title of which is the Constitution of the Republic of Trinidad and Tobago (Amendment) Act 1978 ("the Amendment Act"). The Amendment Act was passed in the House on 15th April 1978 and in the Senate on 19th April 1978. In both cases it was passed by the votes of more than two-thirds but less than three-quarters of the members of each of those Houses; i.e., twenty-seven and twenty-five votes respectively. The Act was so certified. It was assented to by the President on 19th April 1978 and was published in the Trinidad and Tobago Gazette Extraordinary (Volume 17, No.119) on 20th April 1978. The material provisions of the Amendment Act for the purposes of this appeal are as follows:-

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"(3) Section 49(2) of the Constitution is amended by adding immediately after paragraph (d) the following new paragraph:-

'(e) having been a candidate of a party and elected to the House, he resigns from or is expelled by that party.'

"(4) The Constitution is amended by inserting immediately after Section 49 the following new Section:-

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'49A. (1) Where circumstances such as are referred to in Section 49(2)(e) arise, the Leader in the House of Representatives of the party as a candidate of which the member was elected, shall so inform the Speaker in writing of those circumstances and the Speaker shall at the sitting of the House of Representatives next after he is so informed, make a declaration that the member has resigned from or has been expelled by the party, as the case may be.'

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If and insofar as the Amendment Act altered section 49(1) of the Constitution, section 54(3) of the Constitution required the Bill for the Act to be supported at the final vote thereon in the House by the votes of not less than three-fourths of all the members of the House. During the same sitting, Parliament also passed the Constitution of the Republic of Trinidad and Tobago (Amendment No.2) Act 1978 /Act No.16 of 1978/ which amended section 69(3) of the Constitution so as to require that, where a vacancy occurs in the House within the first four years of the life of the Parliament a bye-election shall be held to fill such vacancy

page 30

"not later than ninety days from the date of the announcement by the Speaker of the vacancy."

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The words quoted were added by the second amending Act so as to ensure that there would be no undue delay in holding a bye-election for the free expression of the opinion of the electors in the choice of a new member, where a vacancy occurred in the House, whether by reason of the circumstances specified in section 49(2) as amended or by reason of the death of a member. The constitutional validity of this second amending Act has not been challenged in these proceedings or at all.

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3. By his Notice of Motion seeking redress in accordance with section 14 of the Constitution the Respondent claimed:-

- (1) a declaration that the Amendment Act was ultra vires the Constitution, null and void and of no effect;
- (2) an order restraining the above-named second Appellant, in his capacity as Speaker of the House, from making in relation to the Respondent any declaration in pursuance of section 4 of the Amendment Act; 10
- (3) such further or other ancillary relief in accordance with section 14 of the Constitution as might in the premises be appropriate.

page 3

4. The Respondent contended that the said purported amendments constitute an alteration of the provisions of section 49(1) of the Constitution and that the said alteration had not been effected in accordance with the provisions of section 54(3) of the Constitution in that the Bill for the Amendment Act had not been supported at the final vote thereon in the House by the votes of three-fourths of all the members of the House. Accordingly, it was contended that the Respondent, as a citizen of the Republic and as a member of the House elected by his constituents, was entitled to "the protection of the law" guaranteed by Sections 4(b) and 5(1) of the Constitution and that the term "law" as so employed covered the provisions of the Constitution including section 54(3) thereof. 20 30

pages 3-4

5. The relevant provisions of the Constitution are as follows:-

PRELIMINARY

Section

1. (1) The Republic of Trinidad and Tobago shall be a sovereign democratic State.

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2. 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.

3. (1) In this Constitution - "law" includes any enactment....

CHAPTER 1

THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

PART 1

Rights Enshrined

- 10 4. It is hereby recognised and declared that in Trinidad there have existed and shall continue to exist without discrimination by reason of race, origin, religion or sex, the following fundamental human rights and freedoms, namely:-

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- (b) the right of the individual to equality before the law and the protection of the law;

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- 20 (e) the right to join political parties and to express political views;

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- (h) freedom of conscience

- (i) freedom of thought and expression;

- (j) freedom of association and assembly;

.....

- 30 5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared.

- (2) Without prejudice to subsection (1) but subject to this Chapter and to section 54, Parliament may not:-

.....

- (h) deprive a person of the rights to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

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PART 4

Exceptions for Certain Legislation

- 13. (1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual. 10
- (2) An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House. 20

PART 5

GENERAL

- 14. (1) 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. 30

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CHAPTER 4

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PARLIAMENT

PART 1

Composition of Parliament

Establishment

39. There shall be a Parliament of Trinidad and Tobago which shall consist of the President, the Senate and the House of Representatives.

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The House of Representatives

- 10 46. (1) Subject to the provisions of this section, the House of Representatives shall consist of members who shall be elected in the manner provided by Parliament.
- (2) There shall be thirty-six members of the House of Representatives or such other number of members as corresponds with the number of constituences as provided for by an Order made by the President under section 72.
- 20 (3) Where any person who is not a member of the House of Representatives is elected to be Speaker of the House he shall, by virtue of holding the office of Speaker, be a member of the House in addition to the thirty-six or other number of members aforesaid.
- 30 47. Subject to the provisions of section 48, a person shall be qualified to be elected as a member of the House of Representatives if, and shall not be qualified to be so elected unless, he:-
- (a) is a citizen of Trinidad and Tobago of the age of eighteen years or upwards, and
- (b) has resided in Trinidad and Tobago for a period of two years immediately before the date of his nomination for election or is domiciled and resident in Trinidad and Tobago at that date.
- 40 48. (1) No person shall be qualified to be elected as a member of the House of Representatives who:-
- (a) is a citizen of a country other than Trinidad and Tobago having become

- such a citizen voluntarily, or is under a declaration of allegiance to such a country;
- (b) is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in Trinidad and Tobago;
- (c) is mentally ill, within the meaning of the Mental Health Act 1975; 10
- (d) is under sentence of death imposed on him by a court or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by a court or substituted by competent authority for some other sentences imposed on him by a court, or is under such a sentence of imprisonment the execution of which has been suspended; 20
- (e) is disqualified for membership of the House of Representatives by any law in force in Trinidad and Tobago by reason of his holding, or acting in, any office the functions of which involve:-
- (i) any responsibility for, or in connection with, the conduct of any election, or 30
- (ii) any responsibility for the compilation or revision of any electoral register;
- (f) is disqualified for membership of the House of Representatives by virtue of any law in force in Trinidad and Tobago by reason of his having been convicted of any offence relating to elections; or
- (g) is not qualified to be registered as an elector at a Parliamentary election under any law in force in Trinidad and Tobago. 40
- (2) Parliament may provide that, subject to such exceptions and limitations, if any,

as may be prescribed, a person may be disqualified for membership of the House of Representatives by virtue of:-

- (a) his holding or acting in any office or appointment (either individually or by reference to a class of office or appointment);
- 10 (b) his belonging to any of the armed forces of the State or to any class of person that is comprised in any such force; or
- (c) his belonging to any police force or to any class of person that is comprised in any such force.

(3) For the purposes of paragraph (d) of subsection (1):-

- 20 (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

30 49. (1) Every member of the House of Representatives shall vacate his seat in the House at the next dissolution of Parliament after his election.

(2) A member of the House of Representatives shall also vacate his seat in the House where:-

- 40 (a) he resigns it by writing under his hand addressed to the Speaker, or where the office of the Speaker is vacant or the Speaker is absent from Trinidad and Tobago, to the Deputy Speaker;
- (b) he is absent from the sittings of the House for such a period and in such circumstances as may be

prescribed in the rules of procedure of the House;

- (c) he ceases to be a citizen of Trinidad and Tobago;
- (d) subject to the provisions of subsection (3), any circumstances arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto by virtue of subsection (1) of section 48 or any law enacted in pursuance of subsection (2) of that section. 10

- (3) Where circumstances such as are referred to in paragraph (d) of subsection (2) arise because any member of the House of Representatives is under sentence of death or imprisonment, is mentally ill, declared bankrupt or convicted of an offence relating to elections, and where it is open to the member to appeal against the decision, either with the leave of a court or other authority or without such leave, he shall forthwith cease to perform his functions as a member of the House so however, that subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter. 20 30

- (4) The Speaker may, from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House. 40

- (5) Where on the determination of any appeal is open to the member or where, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal to leave to appeal or, for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(6) Where at any time before the member of the House vacates his seat such circumstances as are mentioned in this section cease to exist his seat shall not become vacant on the expiration of the period referred to in subsection (3) and he may resume the performance of his functions as a member of the House.

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52. (1) Any question whether:-

(a) any person had been validly appointed as a Senator or validly elected as a member of the House of Representatives;

(b) any Senator or member of House of Representatives has vacated his seat or is required, under the provisions of section 49 (3) to cease to exercise any of his functions as a Senator or as a member of the House of Representatives;

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shall be determined by the High Court.

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PART 2

Powers, Privileges and Procedure of Parliament

53. Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so however that the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54.

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54. (1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.

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(2) In so far as it alters:-

(a) sections 4 to 14, 20(b), 21, 41(1), 53, 58, 67(2), 70, 83, 101 to 108, 110 113, 116 to 125 and 133 to 137; or

(b) section 3 in its application to any of the provisions of this Constitution specified in paragraph (a),

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a Bill for an Act under this section shall not be passed by Parliament unless at the final vote therein in each House it is supported by the votes of not less than two-thirds of all the members of each House.

(3) In so far as it alters:-

(a) this section;

(b) sections 22, 23, 24, 26, 28 to 34, 38 to 40, 46, 49(1), 51, 55, 61, 63, 64, 68, 69, 71, 72, 87 to 91, 93, 94(4) and (5), 97, 109, 115, 138 or the Second and Third Schedules;

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(c) section 3 in its application to any of the provisions specified in paragraph (a) or (b); or

(d) any of the provisions of the Trinidad and Tobago Independence Act 1962,

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a Bill for an Act under this section shall not be passed by Parliament unless it is supported at the final vote thereon;

(i) in the House of Representatives by the votes of not less than three-fourths of all the members of the House; and

(ii) in the Senate by the votes of not less than two-thirds of all the members of the Senate.

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....

10 (5) No Act other than an Act making provision for any particular case or class of case, inconsistent with provisions of this Constitution, not being those referred to in subsections (2) and (3), shall be construed as altering any of the provisions of this Constitution, or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962, unless it is stated in the Act that it is an Act for that purpose.

20 (6) In this section references to the alteration of any of the provisions of this Constitution or the Trinidad and Tobago Independence Act 1962, include references to repealing it, with or without re-enactment thereof or the making of different provisions in place thereof or the making of provision for any particular case or class of case inconsistent therewith, to modifying it and to suspending its operation for any period.

30 55. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Senate and House of Representatives, there shall be freedom of speech in the Senate and House of Representatives.

40 (2) No civil or criminal proceedings may be instituted against any member of either House for words spoken before, or written in a report to, the House of which he is a member or in which he has a right of audience under section 62 or a committee thereof or any joint committee meeting of the Senate and House of Representatives or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise; or for the publication by or under the authority of either House of any report, paper, votes or proceedings.

50 (3) In other respects, the powers, privileges and immunities of each House

- and of the members and the committees of each House, shall be such as may from time to time be prescribed by Parliament after the commencement of this Constitution and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution. 10
- (4) A person called to give any evidence before either House or any committee shall enjoy the same privileges and immunities as a member of either House.
56. (1) Subject to the provisions of this Constitution, each House may regulate its own procedure.
- (2) Each House may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after the commencement of this Constitution or after any dissolution of Parliament), and the presence or participation of any person not entitled to be present at or participate in the proceedings of the House shall not invalidate those proceedings. 20
57. No member of either House shall take part in the proceedings of that House (other than proceedings necessary for the purposes of this section) until he has made and subscribed before that House the oath of allegiance, so however, that the election of a Speaker and Deputy Speaker of the House of Representatives and the election of a President of the Senate and Vice-President of the Senate may take place before the members of the House of Representatives, or the members of the Senate as the case may be, have made and subscribed such oath. 30 40
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61. (1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall, except where otherwise authorised by statute, be exercised by Bills passed by the House of Representatives and the Senate and

assented to by the President.

- (2) When a Bill is presented to the President for assent, he shall signify that he assents or that he withholds assent.
- (3) A Bill shall not become law unless it has been duly passed and assented to in accordance with this Constitution.

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PART 3

Summoning, Prorogation and Dissolution

67. (1) Each session of Parliament, shall be held at such place within Trinidad and Tobago and shall commence at such time as the President may by Proclamation appoint.

20 (2) There shall be a session of each House once at least in every year, so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.

68. (1) The President, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament.

30 (2) Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution, and shall then stand dissolved.

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69. (1) A general election of members of the House of Representatives shall be held at such time within three months after every dissolution of Parliament as the President, acting in accordance with the advice of the Prime Minister, shall appoint.

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(3) Where a vacancy occurs in the House of Representatives within the first four

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years of the life of the Parliament a bye-election shall be held to fill such vacancy /not later than ninety days from the date of the announcement by the Speaker of the vacancy/ /added by Act No.16 of 1978/.

6. The motion was heard by Bernard J. and on 19th December 1978 he delivered his judgment in which he decided as follows:-

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page 46

(i) there is a presumption of the constitutional validity of legislation;

page 55

(ii) nothing in the Constitution entitled him to hold that Parliament was legally precluded from passing the Amendment Act;

page 55

(iii) there had been no attempted usurpation of power by Parliament under the guise of the powers of Parliament to make laws for the peace, order and good government of Trinidad and Tobago;

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page 56

(iv) the Amendment Act had altered section 49(2) but had not altered section 49(1) of the Constitution, and section 49(2) is independent of rather than a proviso to section 49(1);

page 56

(v) accordingly, the Amendment Act did not fall within the scope of section 54(3) so as to require to be supported by the votes of three-quarters of all members of the House;

pages 56-57

(vi) to the extent that the Amendment Act infringed or could be said to infringe any of the Respondent's fundamental human rights and freedoms guaranteed by Chapter 1 of the Constitution, it had received the votes of not less than two-thirds of all members of the House required by section 54(2) and was made in accordance with Sections 2, 5, 53 and 54(1) and (2);

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pages 56-57

(vii) the Respondent's application should have been made in respect of an alleged infringement of Section 2 rather than of Chapter 1 of the Constitution, and was therefore misconceived in being brought under section 14;

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pages 57-58

(viii) the Respondent had failed to discharge the burden of proving that the Amendment Act was ultra vires the Constitution and the motion would therefore be dismissed.

7. The judgment of the Court of Appeal of Trinidad and Tobago was delivered on 29th July 1981. The Court of Appeal allowed the appeal and granted a declaration that the Amendment Act is null and void and of no effect. Sir Isaac Hyatali C.J., who agreed both with the leading judgment delivered by Cross, J.A., and with the judgment of Kelsick J.A., held that:- page 61

10 (i) the whole of Section 49 deals with the tenure of office of all the members of the House; whereas Section 49(1) provides for the tenure of each member to endure until the occurrence of a single event, namely, the dissolution of Parliament, Section 49(2) provides for the tenure of each member to endure until the occurrence of any one of four events at any time prior to the dissolution of Parliament; page 62

20 (ii) Section 49(2) therefore impinges upon Section 49(1) and is inconsistent therewith; page 62

(iii) it follows that any addition of a new event or disqualification in Section 49(2) to terminate the tenure of office of a member of the House prior to its dissolution must also be held to impinge upon the tenure prescribed by Section 49(1) and to render such addition inconsistent therewith; page 62

30 (iv) Section 49(2) may be validly altered by a simple majority only if the proposed alteration is not inconsistent with Section 49(1) to a greater extent than each of the four disqualifications specified in Section 49(2) is already inconsistent with Section 49(1); page 63

(v) the Respondent was entitled to move the Court under Section 14 since, if the Amendment Act was invalid, he would otherwise be deprived of his fundamental right to "the protection of law" guaranteed by Section 4. pages 63-64

40 Kelsick, J.A., held that:-

(i) the crucial question is whether a member has a vested right to serve his constituency for the full term of five years for which he was elected and which is entrenched in Section 49(1) and whether such right can be prematurely terminated in any newly specified circumstances by an Act of Parliament passed by a simple majority; page 67

- page 67 (ii) such an amendment is the making of provision for a particular case or class of case inconsistent with Section 49(1) as well as a modification of that section, and therefore it is an alteration within the definition thereof in Section 54(6);
- page 68 (iii) section 49(2) is in substance a proviso to section 49(1); an unlimited right is given to the member by Section 49(1) and Section 49(2) limits that right only in certain specified cases (citing In re Barker (1890) 25 Q.B.D. 285 at p.292, per Lord Esher, M.R.); 10
- page 68 (iv) Section 3 of the Amendment Act is therefore unlawful and, since it cannot be severed from the other provisions of the Amendment Act, the whole Act shares the taint of illegality;
- page 73 (v) the failure of the legislature to comply with Section 54(3) entailed a contravention of the Respondent's right to the protection of that law and therefore gave him standing to institute proceedings under Section 14; 20
- pages 73-74 (vi) even if the wrong originating process had been adopted, the Court of Appeal would not set aside the motion or the proceedings because of the irregularity.

Cross, J.A. held that:-

- page 79 (i) although the Amendment Act expressly purports to alter the provisions of Section 49(2) and not Section 49(1), this is not conclusive; nor is there any room for the application of the presumption of constitutionality in so far as entrenched provisions are concerned; 30
- page 80 (ii) the effect of section 49(1) is to establish that the tenure of a member who has been elected to the House shall be until the next dissolution of Parliament subsequent to his election; 40
- page 80 (iii) any provision which seeks to reduce that tenure or to bring it to a premature end therefore directly affects that tenure and is in essence an alteration of section 49(1);
- (iv) it is inconceivable that, if Section 49(2) had not been enacted at the same time and by

the same instrument as section 49(1), its later enactment would not have been held to be an abridgement or alteration of section 49(1);

page 81

10 (v) the failure of the drafters of the Constitution to make specific provision in Section 54 for the alteration of Section 49 (2) is logically explicable on the basis that any addition to the cases in Section 49(2) must inevitably result in an alteration of Section 49(1);

page 81

(vi) the pith and substance of the Amendment Act is to add to the list of cases in which a member of the House would be deprived of his seat and forced to give up possession thereof before the dissolution of Parliament; consequently it is an alteration of section 49(1);

page 81

20 (vii) Section 49(2) makes provision for the vacation of his seat by a member other than by the dissolution of Parliament next after his election; it does so "for a particular case" inconsistent with the terms of Section 49(1) and therefore alters Section 49(1) within the meaning of Section 54(6);

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8. Two main questions are raised by this appeal:-

30 (i) whether the Amendment Act "alters" section 49(1) of the Constitution, within the meaning of Section 54(3) and (6) thereof so as to require the Bill for the Amendment Act to be passed by not less than three-quarters of the votes of all members of the House; and

40 (2) if so, whether the failure by Parliament duly to pass a Bill in accordance with the Constitution, and the application or apprehended application of an invalid "law" to the Respondent, contravened or was likely to contravene his right to the protection of the law, recognised and declared in section 4(b), so as to have entitled him to be granted a declaration by the Court under Section 14.

THE FIRST QUESTION

9. The Appellants respectfully submit in answer to the first question as follows:-

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- (i) the purpose of Section 49 as a whole is to define circumstances in which a member of the House is obliged to vacate his seat in the House;
- (ii) Section 49(1) obliges every member of the House to vacate his seat in the House at the next dissolution of Parliament after his election; by Section 68(1), the President, acting in accordance with the advice of the Prime Minister, may at any time dissolve Parliament; by Section 68(2), Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution, and shall then stand dissolved; and by Section 69(1) a general election of members of the House shall be held at such time within three months after every dissolution of Parliament as the President, acting in accordance with the advice of the Prime Minister, shall appoint;
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 - 20
- (iii) Section 49(1), and Sections 68 and 69 together ensure that:-
 - (a) there is a Parliament of Trinidad and Tobago consisting, inter alia, of the House;
 - (b) the House consists of members elected in the manner provided by Parliament;
 - (c) Parliament is not a permanent body; 30
 - (d) Parliament may be dissolved at any time and must be dissolved after it has existed for five years;
 - (e) upon its dissolution Parliament ceases to exist and there is no Parliament until the President by Proclamation summons a new Parliament in accordance with Section 67(1);
 - (f) a general election of members of the House takes place within three months of its dissolution. 40
- (iv) If Parliament seeks to alter the general constitutional scheme referred to in subparagraph (iii) above, it can do so only by means of the special majorities required by

Section 54(3) (in relation, inter alia, to Sections 39, 46, 49(1), 68 and 69) and by Section 54(2) (in relation, inter alia, to section 67(2));

- 10 (v) Section 49(1) is an essential element in this general scheme; its purpose is to ensure that the tenure of a member of the House terminates simultaneously with the termination of the life of Parliament, namely, upon dissolution;
- (vi) Section 49(2) has a separate and distinct purpose, namely to define the circumstances in which a particular member is obliged to vacate his seat during the lifetime of Parliament, that is, before its dissolution;
- 20 (vii) Section 49(2)(d) provides that, subject to the provisions of Section 49(3) a member must vacate his seat in the House where any circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election thereto by virtue of Section 48(1) or any law enacted in pursuance of section 48(2);
- (viii) the provisions of Section 49(2) (3) (4) (5) and (6) and of Sections 48(1) and (2) are not entrenched by Section 54 (2) or (3); Parliament may therefore alter any of them under Section 54(1) by the simple majority required for an ordinary law, just as Parliament may enact by a simple majority a law pursuant to Section 48(2), provided always that Parliament does not thereby deprive the individual of the substance of any right which prima facie is conferred upon him by the Constitution under the guise of altering any of the said provisions or enacting such a law; cf., Attorney-General v. Ryan /1980/ A.C. 718 (P.C.) at p. 728 D-F per Lord Diplock;
- 30 (ix) contrary to the decision of the Court of Appeal herein, Section 49(1) does not confer a right upon each member to remain a member until the dissolution of Parliament; its purpose and effect are to oblige every member to vacate his seat at the next dissolution of Parliament;
- 40 (x) the right of each member to remain a member is derived from the fact that:-
- (a) he was qualified to be elected as a member in accordance with Section 47;

- (b) he was not disqualified to be elected by virtue of Section 48;
 - (c) he was elected in the manner provided by Parliament in accordance with Section 46(1);
 - (d) after being elected as a member, none of the circumstances specified in Section 49(2) (including circumstances which would have disqualified him for election under Section 48) has arisen requiring him to vacate his seat in the House; 10
 - (e) he has not been expelled from the House, pursuant to Section 55(1) and (3) and to the rules and standing orders regulating the procedure of the House;
 - (f) Parliament has not been dissolved pursuant to section 68 so as to oblige him, together with every member of the House, to vacate his seat in the House in accordance with section 49(1); 20
- (xi) neither Section 49(1) nor any other provision of the Constitution confers an unqualified right upon a member to be and to remain a member of the House until Parliament is dissolved; on the contrary, Section 48 and Section 49(2) expressly provide for circumstances in which he may become disqualified and therefore obliged to vacate his seat, whereupon if the vacancy occurs during the first four years of the life of a Parliament, a bye-election must be held to fill such vacancy in accordance with Section 69(3); furthermore, the House has the power, pursuant to Section 55(1) and (3), and to the rules and standing orders regulating the procedure of the House, to expel a member if in the opinion of the House he has conducted himself in a manner which renders him unfit to serve as a member of Parliament: Halsbury's Laws of England, Fourth Edition, Vol. 34, paragraph 1494; 30 40
- (xii) Section 49(2) is not a proviso to Section 49(1), whether in form or in substance; as a matter of language, the use of the word "also" in Section 49(2) makes it clear that it is specifying additional circumstances in which

10 a member is obliged to vacate his seat rather than limiting or qualifying a general enactment (as was the case in In re Barker (1890) 25 Q. B.D. 285 at p.292, per Lord Esher, M.R.); as a matter of substance, Section 49(2) is separate and distinct from Section 49(1) in prescribing the circumstances in which an individual member (as distinct from all members) must vacate his seat before dissolution (as distinct from upon dissolution);

20 (xiii) Where the drafters of the Constitution intended to entrench a provision in Section 54(2) and (3) they did so in clear and specific terms by reference to a particular section, subsection, or paragraph; for example, Section 54(3)(b) refers mainly to other entire Sections of the Constitution, but, in the case of Section 49 and Section 96, it refers only to subsections of those sections (section 49(1) and Section 96(4) and (5)); the specific and precise terms in which Section 54(3) (b) (and Section 54(2) (a)) are drafted and the distinctions made between reference to particular sections or subsections of the Constitution clearly indicate an intention by the drafters of the Constitution to entrench only those provisions to which express reference is made in Section 54(2) and (3);

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(xiv) it is respectfully submitted that the Courts should interpret the clear and unequivocal language of Section 54(3)(b) so as to confine its effect only to Section 49(1); such an interpretation does not involve adopting "the austerity of tabulated legalism" (Ministry of Home Affairs v. Fisher) /1980/ A.C. 319 (P.C.) at p. 328 per Lord Wilberforce); it involves:-

- 40 (a) giving to the language of Section 54(3) (b) its natural and ordinary meaning;
- (b) promoting one important object of a written Constitution on the Westminster model, namely, "to make it easy to discern in advance whether or not a particular legislative proposal conflicts with the Constitution" (Hinds v. The Queen /1977/ A.C. 195 (P.C.) at p. 234C per Viscount Dilhorne and Lord Fraser of Tullybelton (dissenting)); and
- 50

(c) imposing only such restraints upon the exercise by Parliament of its legislative powers as were embodied in the language of the Constitution by its framers as the expression of their common accord: cf. James v. Commonwealth of Australia /1936/ A.C. 578 (P.C.) at pp.613-15 per Lord Wright;

(xv) Section 53 empowers Parliament to make laws for the peace, order and good government of Trinidad and Tobago so however that the provisions of the Constitution may not be altered except in accordance with Section 54; and Section 54(1) empowers Parliament, subject to the provisions of that section, to alter any of the provisions of the Constitution; 10

(xvi) it is not disputed that Parliament sought to make the Amendment Act for the peace, order and good government of Trinidad and Tobago within the meaning of Section 53; furthermore there is a presumption that the Amendment Act was duly passed within the meaning of Section 54(1)(3) and (6) and Section 61(3) of the Constitution: Mootoo v. Attorney-General of Trinidad and Tobago /1979/ 1 WLR 1334 (P.C.) at pp. 1338H and 1339H, per Sir William Douglas; contrary to the judgment of Cross, J.A., the presumption of constitutionality is applicable to the entrenched provisions of Section 54(3) where, as in the present case, the impugned legislation obtained the necessary special majority required in order to alter a provision specifically referred to in Section 54(3); 20 30

(xvii) by virtue of Section 54(6), references in Section 54 to the alteration of any provision of the Constitution include references to repealing it, with or without re-enactment thereof or the making of different provisions in place thereof or the making of provision for any particular case or class of case inconsistent therewith, to modifying it and to suspending its operation; 40

(xviii) the Amendment Act did not repeal or make different provisions in place of Section 49(1); it did make provision for a particular case or class of case, namely, the case in which a member, having been a candidate of a party and elected to the House, 50

resigns from or is expelled by that party; the Amendment Act thereby altered Section 49(2) but it did not alter Section 49(1) since there was nothing in the Amendment Act which was inconsistent with Section 49(1) or which modified or suspended the operation of Section 49(1);

10 (xix) notwithstanding the provisions of the Amendment Act, Section 49(1) continues to apply without modification so as to oblige every member of the House to vacate his seat in the House at the next dissolution of Parliament after his election;

(xx) the powers of Parliament to affect the right of each member to remain a member of the House are not fettered by the entrenching provisions of Section 54(2) and (3) as regards:-

20 (a) altering the qualifications for election as a member under section 47;

(b) altering the disqualifications for election as a member under Section 48;

(c) altering the circumstances in which he must vacate his seat under Section 49(2);

30 (d) prescribing in the rules of procedure of the House the period of absence and circumstances obliging a member to vacate his seat under Section 49(2) (b);

40 but, if the decision of the Court of Appeal were correct, it would follow that Parliament would be prevented from exercising any of these powers in a manner affecting the right of a member to remain a member of the House, in the absence of the special three-quarters majority provided for by Section 54(3), since Parliament would thereby "impinge upon the tenure prescribed by Section 49(1)" (per Sir Isaac Hyatali, C.J.); or alter a member's "vested right to serve his constituency for the full term of five years for which he was elected and which is entrenched in Section 49(1)" (per Kelsick, J.A.); or seek to reduce the member's tenure or to bring it to a premature end therefore directly affect that tenure (per Cross, J.A.); it is respectfully submitted

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that such an interpretation would be manifestly contrary to the natural and ordinary meaning and the objects and purposes of the relevant provisions of the Constitution;

(xxi) such a restrictive interpretation of the legislative powers of Parliament would also be irrational having regard to the existence and operation of the powers of Parliament to expel a member of the House in accordance with the rules and standing orders regulating the procedure of the House, referred to in Section 55(1), and in accordance with the powers, privileges and immunities of the House, referred to in Section 55(3) of the Constitution; 10

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(xxii) Bernard J. correctly held that there had been no attempted usurpation of power by Parliament under the guise of the powers of Parliament to make laws for the peace, order and good government of Trinidad and Tobago; the Court of Appeal made no finding to the contrary; nor was it contended by the Respondent or held by the Court of Appeal (nor is it the case) that Parliament had thereby abrogated, abridged or infringed any of the fundamental human rights and freedoms of the Respondent, recognised and declared in Chapter 1 of the Constitution, other than the right to the protection of the law under Section 4(b). 20 30

THE SECOND QUESTION

10. The Appellants respectfully submit in answer to the second question as follows:-

- (i) if (contrary to the Appellants' submissions) the Bill for the Amendment Act was required by Section 54(3) to be supported in the House by the votes of not less than three-fourths of all members of the House, then it was not "duly passed" within the meaning of Section 61(3); by virtue of that provision, it did not become law; and, by virtue of Section 2, it is void by reason of its inconsistency with the Constitution; 40
- (ii) in those events, the Respondent was entitled to seek and the Court of Appeal had jurisdiction to grant a declaration that the Amendment Act is null and void and of no effect;

- 10 (iii) in the circumstances of this case, the jurisdiction of the Court to grant such a declaration is not (as the Court of Appeal wrongly held) conferred by Section 14 of the Constitution; such jurisdiction is conferred by Section 35 and 37(1) of the Supreme Court of Judicature Act 1962, and Order 15 Rule 16 of the Rules of the Supreme Court of Judicature of Trinidad and Tobago;
- (iv) neither the High Court nor the Court of Appeal had jurisdiction to grant a declaration under Section 14 of the Constitution;
- (v) Section 14 confers jurisdiction upon the High Court to grant redress for contraventions of Chapter 1 of the Constitution;
- 20 (vi) the only contravention of Chapter 1 alleged by the Respondent is a contravention of the right to the protection of the law, recognised and declared by Section 4(b) thereof;
- (vii) it is conceded that the right of the individual to "the protection of the law" is a separate and distinct right from the right to "equality before the law" which is also recognised and declared by Section 4(b): Thornhill v. Attorney-General of Trinidad and Tobago /1981/ A.C. 61 (P.C. at p.70G per Lord Diplock: Chokolingo v. Attorney-General of Trinidad and Tobago /1981/ 1 WLR 106 (P.C.) at p.111C-D per Lord Diplock;
- 30 (viii) Section 4 (like Section 2 of the Constitution of 1962) proceeds on the presumption that the human rights and freedoms there referred to were already enjoyed by the people of Trinidad and Tobago /1981/ A.C. 61 (P.C.) at p.69G per Lord Diplock;
- 40 (ix) The lack of specificity in the description of the right to the protection of the law in section 4(b) makes it necessary to examine the law as it was at the commencement of the Constitution and (since there was no difference in the language of section 1(b) of the 1962 Constitution) so as to ascertain the legal nature of the right: Maharaj v. Attorney-General of Trinidad and Tobago (No. 2) /1979/

A.C. 385 (P.C.) at p.395 F-G per Lord Diplock; Thornhill v. Attorney General of Trinidad and Tobago [1981] A.C. 61 (P.C.) at p.70C, per Lord Diplock;

- (x) the legal nature of the right to the protection of the law as it was at the commencement of the Constitution (and of the 1962 Constitution) is conveniently summarised as follows (Halsbury's Laws of England, 4th edition, Volume 8, paragraph 838:- 10

"The right to the protection of the law involves a presumption that a person shall not be punished for an act or omission which did not constitute a criminal offence at the time it was committed. Although prosecutors, including the police and the Director of Public Prosecutions, have a discretion not to proceed against persons, or all of the persons, against whom a case has been or could be made out, there are limits to that discretion, and abuse of it may be a ground for control by judicial process. Moreover, since it has been the constitutional practice of Parliament to enact who shall be guilty of the offences which it creates, it would be at variance with the constitution to interpret a statute, in the absence of express words, as giving a minister or anyone else the power to choose, as a matter of substantive law, a single person to the exclusion of others, as the person to be charged with an offence. 20 30

"The right to the protection of the law involves a presumption that a person is innocent of any crime with which he is charged until it is proved otherwise and that the burden of proof is in general on the accusing party. It also involves the right to a fair trial which is enforced by statutory rights of appeal. In the case of serious charges an accused person is entitled to trial by jury. In the event of conviction, the convicted prisoner is entitled to humane treatment. 40

"For the enforcement of his civil rights a person is entitled to unimpeded access to the courts, subject to certain safeguards, and may look to judicial supervision over 50

any court exercising authority over interests which affect him.

"In the interest of justice he is entitled to legal representation, including confidential legal advice."

- 10 (xi) the legal nature of the right to the protection of the law, recognised and declared by Section 4(b) is set forth in sub-paragraph (x) above;
- 20 (xii) it was not intended by the framers of the Constitution that the right to the protection of the law would include the right to be protected against any unlawful conduct by public authorities; the value of the right to apply to the High Court under Section 14 would be diminished if it were allowed to be misused as a general substitute for the normal procedures for involving judicial control of administrative action: Harrikissoon v. Attorney-General of Trinidad and Tobago /1980/ A.C. 265 (P.C.) at p. 268 C-E per Lord Diplock;
- 30 (xiii) if (contrary to the Appellants' submissions) the Bill for the Amendment Act was not duly passed and therefore did not become law, neither the purported passing of an invalid law not any subsequent threat or attempt to apply that invalid law to the Respondent to his detriment contravened or was likely to contravene his right to the protection of the law contrary to Section 4(b); for in such circumstances the Respondent's right to the protection of the law was and is amply safeguarded by his unimpeded right of access to the High Court, in the determination of his civil rights, to obtain a declaration under its general jurisdiction under Section 99 of the Constitution that the Amendment Act is null and void and of no effect.
- 40
- 50 11. The Appellants accordingly respectfully submit that the judgment of the Court of Appeal of the Supreme Court of Trinidad and Tobago was wrong and should be reversed and set aside and that the judgment of Bernard J., dated and entered on 19th December 1978 should be restored dismissing the motion herein /and that the Appellants should be awarded the costs of this appeal/ for the following amongst other

R E A S O N S

- (1) BECAUSE the Constitution of the Republic of Trinidad and Tobago (Amendment) Act 1978 (Act No.15 of 1978) did not alter section 49(1) of the Constitution, within the meaning of Section 54(3) and (6) thereof so as to require the Bill for the said Act to be passed by not less than three-quarters of the votes of all members of the House; 10
- (2) BECAUSE neither the said Act nor its apprehended application to the Respondent to his detriment contravened or was likely to contravene the provisions of Section 4(b) of the Constitution;
- (3) BECAUSE accordingly the Court of Appeal had no jurisdiction under Section 14 of the Constitution to grant the declaration sought by the Respondent herein.

ANTHONY LESTER Q.C. 20

No.24 of 1982

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD
AND TOBAGO

IN THE MATTER of the Constitution of
the Republic of Trinidad
and Tobago

B E T W E E N :-

THE ATTORNEY GENERAL First Appellant

- AND -

ARNOLD THOMASOS
(Speaker of the House
of Representatives) Second Appellant

- AND -

ERROL McLEOD Respondent

CASE FOR THE APPELLANT

CHARLES RUSSELL & CO.,
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