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88, 1948

Appeal No. 39 of 1947.

UNIVERSITY OF LONDON
W.C.1.
-9 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF SEYCHELLES.

44440

BETWEEN

1. CHENARD AND COMPANY,
2. JIVAN JETHA AND COMPANY,
3. LOW WAYE AND COMPANY,
4. ADAM MOOSA AND COMPANY,
- 10 5. JIVAN JETHA AND SONS,
6. LEONG THIONG AND COMPANY,
7. RICHARD MAN CHAM,
8. A. S. A. CHETTY,
9. KIM-KOON,
10. R. S. PILLAY,
11. TN. CHETTY,
12. R. LAFONTAINE,
13. T. M. R. NAIDOO,
14. G. K. CHETTY,
- 20 15. C. P. RAMSAMY CHETTY,
16. Z. KHAN MOHAMED,
17. D. S. NAIDOO,
18. K. N. PILLAY,
19. S. N. PILLAY,
20. A. RATNA CHETTY,
21. A. S. A. CHETTY,
22. SULEMAN ADAM,
23. G. KALIAPERUMAL CHETTY,
24. V. C. CHETTY,
- 30 25. A. K. S. PADAYACHY,
26. IBRAHIM ALLIBHOY,
27. P. S. PILLAY,
28. N. K. CHETTY,
29. M. V. R. PILLAY,
30. A. V. PILLAY,
31. L. S. S. PILLAY,
32. G. K. CHETTY,
33. G. R. NAIKEN,
34. HEIRS K. S. K. NAIKEN,
- 40 35. JULIAN PARCOU,
36. C. LEBON,
37. A. K. PILLAY,

38. SERGE D'UNIENVILLE,
 39. JAMES PATRICK BARBE,
 40. K. S. PILLAY,
 41. MISS EMILY HOUAREAU,
 42. K. R. NAIKEN,
 43. S. S. PILLAY,
 44. V. VAD PILLAY,
 45. N. P. CHETTY,
 46. S. K. K. NAIKEN,
 47. J. G. NAIKEN, 10
 48. J. F. LAFORTUNE,
 49. K. R. PILLAY,
 50. C. ANDRE,
 51. P. R. NAIDOO,
 52. A. RAMSAMY PILLAY,
 53. V. VIRANA CHETTY,
 54. S. K. RETHINAMSABABADY,
 55. T. S. CHOOKALINGHAM,
 56. T. M. R. PILLAY,
 57. M. AZEMIA, 20
 58. ANTOINE VICTORIN,
 59. ANTONIO HOUAREAU,
 60. S. R. S. CHETTY,
 61. FELIX BAKER,
 62. M. PARCOU,
 63. P. GREEN,
 64. AUGUSTE AHKON,
 65. JAMES SOUYANA,
 66. LEWIS AH TAVE,
 67. M. HOUAREAU, 30
 68. WIDOW A. FAYON,
 69. LOW-HUNE,
 70. CHANG-TAK,
 71. CHANG-THO,
 72. AH-MOYE,
 73. HISSEN,
 74. AH THOIN,
 75. LOW NANG,
 76. LOW NAM,
 77. LOW MANG, 40
 78. LEONG WEN YANG,
 79. DANG TOO,
 80. DANG WENG,
 81. LEONG TAVE,
 82. DANG KHANN,
 83. LOW MENG,
 84. LOW TOE,

85. AH TIVE,
 86. FOCK HENG,
 87. LOW WAR,
 88. HEIRS AH-SOOYE,
 89. CHANG YOUN,
 90. MISS AUGUSTA AH-KONG.
 91. AH-WENG,
 92. LEONG PON,
 93. LO-LAW,
 10 94. HO-YAN,
 95. FOCK-KANN,
 96. LOW KIT,
 97. LOW TIVE,
 98. LEONG KEE,
 99. WONG TSEE,
 100. FONG YEN,
 101. LEONG LAM,
 102. CHUNG-FAYE,
 103. MA LOW,
 20 104. MA KEN,
 105. SHAM LAYE,
 106. SHAM PEN TONG,
 107. AH HONE,
 108. LOW TACK,
 109. N. WONG,
 110. J. AHSANG,
 111. CHANG SENG,
 112. LEONG-TOO,
 113. AH-SANG,
 30 114. LOW HENG,
 115. HO KAM,
 116. LAI LAM, and
 117. CHANG KO
- - - - -
- Plaintiffs-
Appellants,*

AND

HONOURABLE JOACHIM ARISSOL

*Defendant-
Respondent.*

CASE FOR THE APPELLANTS.

1. This is an appeal from a judgment of the Supreme Court of
 40 Seychelles, dated the 20th March, 1947, in which judgment the Acting
 Chief Justice adjudged on a preliminary submission on a point of law
 that Section 192 (1) of the Seychelles Penal Code of 1904 confers upon

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pp. 13—19.

RECORD. a member of the Legislative Council, immunity from prosecution or action for defamation for anything said or written by him in such capacity in the Council, and dismissed the Appellants' action against the Respondent for defamation.

2. The questions raised by this appeal are:—

- (a) Whether or not the provisions of the said Section 192 (1) of the Seychelles Penal Code of 1904 (Ordinance No. 10 of 1904) are ultra vires and repugnant to section 5 of the Colonial Laws Validity Act 1865, or any other Act of the British Parliament or any Order or Regulation made thereunder applicable to the Colony of Seychelles; 10
- (b) in particular, whether or not the said Section is legislation respecting the "constitution, powers and procedure" of the Legislative Council of the Colony of Seychelles within the meaning of Section 5 of the Colonial Laws Validity Act of 1865; and
- (c) whether or not the said Section has the force of law in the Colony of Seychelles.

3. By Letters Patent passed under the Great Seal of the United Kingdom, dated the 31st August 1903, the Seychelles Islands were erected into a separate Colony to be known and designated as the Colony of Seychelles, and a Legislative Council in and for the said Islands was instituted. 20

4. Clause 8 of the said Letters Patent runs:—

"The Governor, by and with the advice and consent of the said Legislative Council may make Ordinances for the peace, order and good government of the Colony, subject nevertheless to such rules as we have already made or may hereafter make for their guidance by any Instructions under Our Sign Manual and Signet."

5. The Legislative Council of Seychelles consists of seven official members and six unofficial members appointed by the Governor (Clause X of the Additional Instructions passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Seychelles dated the 1st May, 1944). 30

6. Section 192 (1) of the said Seychelles Penal Code of 1904 provides as follows:—

"No prosecution or action for defamation shall be competent against—

- (a) the President or a member of the Legislative Council for anything said or written by him in such capacity from his place in such Council or in any Committee thereof; 40
or
- (b) a Judge or Magistrate for any thing said or written by him when acting in such capacity in any cause, suit,

or other proceeding brought before him as a Judge or Magistrate; or RECORD.

- (c) the Crown Prosecutor for anything said or written by him in his official capacity; or
- (d) a barrister or advocate for anything said by him as counsel for a party to any judicial proceeding; or
- (e) a witness for anything said by him in giving evidence; or
- (f) any person being a party to proceedings before a Court of Justice or any attorney or agent of such party for words spoken or writings produced in the course of such proceedings before such Court.

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(2) Provided that defamatory allegations foreign to the cause at issue may give rise to a civil action by any party to the suit whenever the right to such action shall have been reserved to the parties by the Court and may in any case give rise to civil action by a third party.

(3) Provided further that the Court of Seychelles may inflict disciplinary penalties against any barrister, advocate or attorney making such allegations."

20 7. The present proceedings were instituted on the 17th January, 1947, by the Plaintiffs, claiming from the Respondent Rs. 25,000 damages for defamation. p. 4.

8. The Appellants are wholesale and retail dealers in goods, including foodstuffs, carrying on their business in the island of Mahe in the Colony of Seychelles. On the 5th and 6th December, 1946, the Plaintiffs closed their shops.

9. The Respondent is a member of the Legislative Council of the Colony of Seychelles and on the 28th December, 1946, he made a speech in his capacity as a member, at the place set down for the meeting of the Legislative Council. It is alleged in the statement of claim that there were present in the Council Chamber at the time, His Excellency the Governor, the other members of the Legislative Council, the Clerk of the Council and several members of the public. p. 4.
p. 4,
ll. 36—39.

10. In the course of the said speech, the Respondent made the following statements:— pp. 2—3.

40 " I wonder whether the shops which closed down and refused to supply their clients with the daily necessities of life should not have been broken into. Perhaps our upbringing prevented such action on our part. But it is distressing to recall that the merchants had our food with them, and that they shut up their shops and then dared to call themselves the protectors of the poor. It was not protection but slow agony that they imposed upon the poor, especially poor children. During two whole days they could not get anything."

" Another point which I should like to mention is the importation p. 2,
ll. 36—43.

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of goods by retailers. It was customary for some of our retailers before the war to import some of their goods themselves, but it appears that for some time past they have not been in a position to do that because import licences have only been issued to wholesalers proper and to those retailers who take out a wholesale licence as well. This system has placed all retailers at the mercy of wholesalers and tends to restrict importations."

p. 2,
ll. 16—19.

The said speech and the said allegations were published in the *Seychelles Government Bulletin* of December 31st, 1946.

11. On the 4th January, 1947, the Respondent wrote and published to the Honourable the Secretary to Government a letter in which he reiterated the allegations made in his said speech of the 28th December, 1946, in the words:—

p. 4,
ll. 16—19.

"The statement that I made in my speech to Council to the effect that the shop strike early in December had 'imposed slow agony' on the poor, especially on children, because food became unobtainable. On reflection I recognise that this statement was an exaggerated one. I would wish to substitute the word 'privation' for the phrase 'slow agony' and I regret if the use of an exaggerated phrase in a moment of strong feeling caused annoyance to anyone concerned. I should be grateful if this letter could be published at once in the Bulletin."

p. 4, ll. 2—4.

It was so published on the same day.

pp. 4—6.

12. The Appellants by their statement of claim alleged that they had suffered by reason of the said allegations made by the Respondent great moral damage to their reputation and character and that they had been exposed to hatred and contempt, and further that the public had been incited to break into their properties. They contended, in addition, "that they went in fear and anxiety that if at any time they felt it proper to close their shops, which is their right to do, the Defendant's words would be acted on by the public and their shops broken into."

p. 5,
ll. 26—34.

p. 5,
ll. 34—38.

The Appellants further pleaded that the Respondent had abused his position as a member of the Legislative Council for the purpose of making these "false, malicious, wicked, injurious, defamatory and tortious statements and allegations against them."

p. 6,
ll. 23—25.

12. The Respondent by his statement of defence pleaded *in limine litis* that no action lay in law against him as a member of the Legislative Council, on the averments of the statement of claim. He admitted having made the speech complained of, but denied that any members of the public were present at the said meeting of the Legislative Council.

p. 6,
ll. 30—32.

p. 6,
ll. 33—34.

13. The Respondent further denied that he made any allegations against the Plaintiffs jointly or separately and traversed the other material allegations in the statement of claim *seriatim*. He further pleaded that he had not committed any "faute" in law rendering him liable in damages in the sum of Rs. 25,000 or in any amount whatsoever.

p. 8,
ll. 14—15.

14. The Supreme Court of Seychelles, after hearing arguments ^{RECORD.}
in limine litis regarding the constitutional powers of the Legislative ^{pp. 13—19.}
Council of Seychelles, dismissed the Plaintiffs' action on the 20th March,
1947.

In delivering judgment, the Acting Chief Justice (His Honour
F. Touris) held that:—

- (1) The Governor of Seychelles by and with the advice of the ^{p. 19,}
Legislative Council was entitled to enact Section 192 (1) (a) ^{ll. 2—4.}
of the Seychelles Penal Code;
- 10 (2) That this Section is not legislation respecting the constitution, ^{ll. 5—6.}
powers and privileges of such Legislative Council;
- (3) That this Section is not repugnant to the provisions of any Act ^{ll. 7—9.}
of the British Parliament or any order or regulation made
thereunder applicable to this Colony;
- (4) That this Section has the force of law in this Colony. ^{l. 10.}

15. The Appellants humbly submit that the said judgment of the
Supreme Court of Seychelles is wrong and ought to be reversed, and that
the case should be remitted to that Court for trial, for the following,
among other,

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REASONS:—

1. Because the words spoken and written by the Respondent
are defamatory of the Appellants.
2. Because the said words are not privileged.
3. Because Section 192 (1) of the Seychelles Penal Code is
repugnant to Section 5 of the Colonial Laws Validity
Act, 1865, which limits the powers of Colonial Legislatures
to make laws respecting their "constitution, powers and
procedure" to such Legislatures as are within the
definition of a Representative Legislature.
- 30 4. Because by Section 1 of the Colonial Laws Validity Act,
1865, a Representative Legislature is defined as "a
Legislative body of which one half are elected by
inhabitants of the Colony."
5. Because the Seychelles Legislative Council is not such a
Representative Legislature as it is entirely nominated.
6. Because Section 192 (1) of the Seychelles Penal Code
purporting to confer immunity from prosecution or
action for defamation to members of the Seychelles
Legislative Council is legislation respecting the "con-
stitution, powers and procedure" of the said Legislative
Council within the meaning of Section 5 of the Colonial
Laws Validity Act, 1865.

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7. Because the said Section of the Seychelles Penal Code is ultra vires of the Seychelles Legislative Council and is therefore null and inoperative in so far as it concerns the privileges and immunities of the President and members of the said Legislative Council.

D. N. PRITT.

C. J. COLOMBOS.

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Solicitors for the Appellants.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF SEYCHELLES.

BETWEEN

CHENARD AND COMPANY
AND OTHERS

*Plaintiffs-
Appellants.*

AND

HONOURABLE JOACHIM
ARISSOL - -

*Defendant-
Respondent.*

CASE FOR THE APPELLANTS.

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