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No. 39 of 1947. W.C. 1.
 UNIVERSITY OF LONDON.
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 INSTITUTE OF ADVANCED
 LEGAL STUDIES

In the Privy Council.

ON APPEAL
 FROM THE SUPREME COURT OF SEYCHELLES.

44441

BETWEEN

CHENARD AND COMPANY and Others (Plaintiffs) - *Appellants*

AND

HONOURABLE JOACHIM ARISSOL (Defendant) - *Respondent.*

Case for the Respondent.

RECORD.

10 1. This is an appeal from a Judgment dated 20th March 1947 of the Supreme Court of Seychelles whereby His Honour F. Touris, LL.B., Acting Chief Justice, ordered that Judgment be entered in favour of the Respondent with costs. pp. 13-19.

20 2. The said Judgment was given in an action by the Appellants against the Respondent for damages for defamation upon a point of law argued as a preliminary point of law upon the ground that the words complained of were alleged by the Appellant to have been spoken by the Respondent in the Legislative Council of the Colony of Seychelles in his capacity as a Member of that Council and that the Respondent was entitled accordingly to rely on the provisions of Section 192 (1) of the Seychelles Penal Code 1904 and that accordingly the action was not competent.

30 3. The substantial questions raised in this appeal are (A) whether or not Section 192 (1) of the Seychelles Penal Code 1904 is " ultra vires " void and inoperative in so far as it provides that no action for defamation is competent against a member of the Legislative Council of the Colony of Seychelles for anything said by that member in the Council in his capacity as such member and (B) whether or not, apart from the provisions of Section 192 (1) of the Seychelles Penal Code 1904, members of the Legislative Council of the Colony of Seychelles are entitled to the privilege of immunity from actions for defamation in respect of words spoken by them in the Council in their capacity as such members.

pp. 4-6.

4. The Appellants by their Statement of Claim dated 17th January 1947 alleged that upon the 28th September 1946 in the course of a meeting of the Legislative Council of the Colony of Seychelles at the place set down for the meeting of the Council the Respondent who is a member of the said Legislative Council made a speech in his capacity as such member ; that there were present in the Council Chamber at that time His Excellency the Governor, the other members of the Legislative Council, the Clerk of the Council, and several members of the public ; that the speech contained the following words, that is to say "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 the two whole days they could not get anything" . . . "import licences have only been issued to wholesalers proper and to those retailers who take a wholesale licence as well. This system has placed all retailers at the mercy of wholesalers and tends to restrict importations."

pp. 2-3.

p. 3, l. 30.

p. 3, l. 40.

5. The Appellants further alleged that the words above set out were spoken concerning them and contained the implication that those of the Appellants who were wholesalers and wholesale-retail merchants oppress and take advantage of those retailers who are not also wholesalers and that they restrict importation with the intention of injuring the retailers and the public ; and that the said words were defamatory of the Appellants and were spoken falsely, maliciously and tortiously ; that by reason of the said words the Appellants had suffered damage and that their reputation and character as business men had been damaged and they had been exposed to hatred and contempt.

6. The Appellants accordingly claimed various forms of relief including damages to the amount of Rs.25,000.

p. 8, l. 27.

7. At the sitting of the Supreme Court of Seychelles on Tuesday the 21st day of January 1947 before His Honour F. Touris, LL.B., Acting Chief Justice, the Court adjourned the case until the 11th day of February 1947 to enable the Respondent to file a Defence.

pp. 6-8.

8. The Respondent by his Statement of Defence dated 11th February 1947 raised inter alia the defence that no action lies in law against him as a member of the Legislative Council on the averments of the Statement of Claim and prayed that the action should be dismissed with costs. He also raised other defences which are not relevant to this appeal.

p. 8, l. 35.

9. At the sitting of the said Court on the 11th day of February 1947 His Honour F. Touris, LL.B., Acting Chief Justice after hearing Counsel for both the Appellants and the Respondent, adjourned the case for argument on preliminary points of law until the 26th day of February 1947.

p. 9, l. 5.

10. At the sitting of the said Court on the 26th day of February 1947 before His Honour F. Touris, LL.B., Acting Chief Justice, the Court by consent of the parties proceeded to hear argument for the purpose

inter alia of determining a preliminary point of law, that is to say, whether or not the cause of action as disclosed by the Appellants' Statement of Claim was competent having regard to the provisions of Section 192 (1) of the Seychelles Penal Code 1904, and to the fact that the words complained of were alleged to have been spoken by the Respondent in the Legislative Council of Seychelles in his capacity as a member of the said Legislative Council.

11. At the said hearing it was contended on behalf of the Respondent p. 9, l. 36.
 10 that the Appellants' action was not competent and that Judgment should be entered for the Respondent with costs on the ground that it appeared from the Statement of Claim that the words in respect of which relief was claimed were spoken by the Respondent in the Legislative Council of which he was a member in his capacity as such member and that accordingly Section 192 (1) of the Seychelles Penal Code applied, and that Section 192 (1) of the Seychelles Penal Code had been regularly enacted and had the force of law in the Colony of Seychelles.

12. At the said hearing it was contended on behalf of the Appellants pp. 10-12.
 20 that Section 192 (1) of the Seychelles Penal Code in so far as it provides that no action for defamation shall be competent against a member of the Legislative Council for anything said or written by him in such capacity in the Council, is ultra vires, void and inoperative for the following reasons :—

(A) the Legislative Council had no express power given it either by the Letters Patent dated the 31st August 1903 or by any Order in Council or by any instructions under the Sign Manual or by any Statute of the Imperial Parliament to enact such a provision by ordinance or otherwise ;

(B) because the Legislative Council had no inherent power to enact such a provision by ordinance or otherwise ;

30 (C) that by the provisions of Section 5 of the Colonial Laws Validity Act 1865 a representative Colonial Legislature is given power to make laws respecting the constitution, powers and procedure of such legislature and accordingly, the Seychelles Legislative Council not being a representative Legislature, such a provision, being a law respecting the constitution powers and procedure of the Legislative Council, is repugnant to Section 5 of the Act and therefore under the terms of Section 2 of the aforesaid Act is void and inoperative. And that the Appellants' action against the Respondent was competent and should be
 40 allowed to proceed.

13. Section 2 of the Colonial Laws Validity Act 1865 provides as follows :—

“ . . . Any Colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or

having in the Colony the force and effect of such Act shall be read subject to such Act, order or regulation and shall, to the extent of such repugnancy, but not otherwise be and remain absolutely void and inoperative.”

Section 5 of the said Act provides as follows :—

“ . . . and every representative legislature shall, in respect to the Colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from 10
to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.”

By Section 1 of the said Act the term “ representative legislature ” shall signify any colonial legislature which shall comprise a legislative body of which one half are elected by the inhabitants of the Colony.

14. At the conclusion of the arguments on behalf of the Appellants and the Respondent the Court adjourned to give its decision at a later date.

15. By Letters Patent dated 31st August 1903 the Seychelles Islands 20
were erected into a separate Colony and a Legislative Council was instituted by Clause 8 which provides as follows :—

“ that the Governor, by and with consent of the Legislative Council, may make Ordinances for the peace, order and good Government of the Colony . . . subject to such rules as We (His Majesty and Successors) have made or may hereafter make for their guidance by any Instructions under Our Sign and Signet . . . ”

p. 9, l. 16.

16. At the sitting of the said Court on the 20th day of March 1947 before His Honour F. Touris, LL.B., Acting Chief Justice, the Court delivered a written Judgment and found— 30

pp. 13-19.

(A) That the Governor of Seychelles by and with the advice of the Legislative Council was entitled to enact Section 192 (1) of the Seychelles Penal Code.

(B) That this section is not legislation respecting the constitution powers and procedure of such Legislative Council.

(C) That this section is not repugnant to the provisions of any Act of the British Parliament or any order or regulation made thereunder applicable to this Colony.

(D) That this section has the force of law in this Colony.

The Court then ordered that Judgment should be entered in favour 40
of the Respondent with costs.

17. The Respondent humbly submits that the Judgment given by the Supreme Court of Seychelles was right and should be affirmed for the following among other

REASONS.

- 10 (1) BECAUSE the Legislative Council had power to enact Section 192 (1) of the Seychelles Penal Code by Ordinance by reason of Clause 8 of Letters Patent dated 31st August 1903 as being for the peace, order and good government of the Colony.
- (2) BECAUSE Section 192 (1) of the Seychelles Penal Code 1904 was duly enacted by Ordinance No. 10 of 1904 made in conformity with the provisions of Letters Patent dated 31st August 1903.
- (3) THAT the Legislative Council of Seychelles had inherent power to enact Section 192 (1) of the Seychelles Penal Code and such power was implicit in the creation of the Legislative Council by the Letters Patent dated 31st August 1903.
- 20 (4) BECAUSE Section 192 (1) is not repugnant to the provisions of Section 5 of the Colonial Laws Validity Act 1865 or to the provisions of any other section of that Act or to the provisions of any other Act of the Imperial Parliament extending to the Colony of Seychelles or to any order or regulation made under authority of such Act and accordingly is not rendered void or inoperative by Section 2 of the said Act, but is a valid and effective law of the Colony of Seychelles.
- 30 (5) BECAUSE any Colonial Legislative body created under the prerogative of the British Crown and thereby empowered to make laws for the peace, order and good government of a Colony has, without any law being made by the Colonial Legislative body in that behalf, the privilege, inherent in its creation, of immunity for its members from proceedings in the local courts in respect of words spoken in that body in their capacity as such members.
- (6) BECAUSE the Judgment delivered in the Supreme Court of Seychelles was right for the reasons therein given.

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MELFORD STEVENSON.

HAROLD PATON.

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AND

**Honourable JOACHIM ARISSOL
(Defendant) - Respondent.**

Case for the Respondent

MESSRS. H. B. NISBET & CO.,
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