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88, 1948

No. 39 of 1947.

# In the Privy Council.

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## ON APPEAL FROM THE SUPREME COURT OF SEYCHELLES.

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BETWEEN

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

AND

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

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# RECORD OF PROCEEDINGS

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HY. S. L. POLAK & CO.,  
DANES INN HOUSE,  
265 STRAND, W.C.2,  
*Solicitors for the Appellants.*

H. B. NISBET & CO.,  
45 DOUGHTY STREET, W.C.1,  
*Solicitors for the Respondent.*

GM 3. 1

88, 1948

UNIVERSITY OF LONDON  
No. 39 of 1947.  
-9 OCT 1956

# In the Privy Council.

## ON APPEAL FROM THE SUPREME COURT OF SEYCHELLES.

44439

BETWEEN

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

AND

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

# RECORD OF PROCEEDINGS

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# In the Privy Council.

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## ON APPEAL

*FROM THE SUPREME COURT OF SEYCHELLES.*

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### BETWEEN

1. CHENARD AND COMPANY represented by J. B. Khambatta, 2. JIVAN JETHA AND COMPANY, 3. LOW WAYE AND COMPANY, 4. ADAM MOOSA AND COMPANY represented by Umarji Ibrahim
- 10 (discontinued), 5. JIVAN JETHA AND SONS, 6. LEONG THIONG AND COMPANY, 7. RICHARD MAN CHAM, 8. A. S. A. CHETTY, 9. KIM-KOON, Wholesaler-Retailers, 10. R. S. PILLAY deceased, represented by R. S. Ramasamy Pillay and R. S. Kunjithapatham Pillay, 11. T. N. CHETTY, 12. R. LAFONTAINE, 13. T. M. R. NAIDOO, 14. G. K. CHETTY, 15. C. P. RAMSAMY CHETTY, 16. Z. KHANMOHAMED, 17. D. S. NAIDOO, 18. K. N. PILLAY, 19. S. N. PILLAY, 20. A. RATNA CHETTY, 21. A. S. A. CHETTY, 22. SULEMAN ADAM,
- 20 23. G. KALIAPERUMAL CHETTY, 24. V. C. CHETTY, 25. A. K. S. PADAYACHY, 26. IBRAHIM ALLIBHOY, 27. P. S. PILLAY, 28. N. K. CHETTY, 29. N. 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, 35. JULIEN PARCOU, 36. C. LEBON, 37. A. K. PILLAY, 38. SERGE D'UNIENVILLE, 39. JAMES PATRICK BARBE, 40. K. S. PILLAY, 41. Miss EMILIE HOUAREAU, 42. K. R. NAIKEN, 43. S. S. PILLAY, 44. V. VAD. PILLAY, 45. N. T.
- 30 CHETTY, 46. S. K. K. NAIKEN, 47. J. G. NAIKEN, 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, 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,
- 40 68. WIDOW A. FAYON, 69. LOW-HUNE, 70. CHANG-TAK, 71. CHANG-THO, 72. AH-MOYE, 73. HISSEN, 74. AH-THION, 75. LOW NANG, of Cascade, 76. LOW NAM, 77. LOW NANG of 4 Bornes, 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. HO-LAW, 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, 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, 114. LOW HENG, 115. HO KAM, 116. LAI LAM, 117. CHANG KO (Plaintiffs)

*Appellants*

10

AND

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

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## RECORD OF PROCEEDINGS

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*In the  
Supreme  
Court.*

No. 1.  
Speech of  
Respondent  
published  
in Govern-  
ment  
Bulletin,  
31st  
December  
1946.

No. 1.

**SPEECH of Respondent published in Government Bulletin.**

SPEECH OF HONOURABLE MR. ARISSOL TO THE LEGISLATIVE COUNCIL.  
PUBLISHED IN GOVERNMENT BULLETIN OF TUESDAY, 31ST DECEMBER, 1946.

As I took a prominent part in the recruitment of the Seychelles Pioneer Corps raised for service overseas I wish to make a special appeal 20 on behalf of those who made the supreme sacrifice for King and Country. On the 20th October, 1940, I was summoned to Government House and there I assured His Excellency Sir Arthur Grimble that I would do everything in my power to encourage my fellow countrymen to obey the call for pioneers which was about to be made. They did so and saw active service far away from their homes and those dear to them. In 1945 the war ended and the bulk of them came back. I am proud to say that none of my countrymen disgraced his country. They did their work well and earned the esteem of their superior officers. Not one of them committed treason. When I remember all these things, it grieves 30 me to see that this Government has done nothing to provide a remembrance place for those who left their bones far away from their homes. I believe I am interpreting their wish when I ask that a suitable monument containing the names of those who died on active service should be erected by Government. In the 1914 war the Seychelles Contingent of the East African Military Labour Corps had a very bad time indeed while serving in East Africa. Some of them came back and some of these answered the call again in 1940 and went to face further sacrifices. Taking all these facts into consideration, it seems to me that I am voicing a widespread 40 public sentiment when I urge that funds should be provided either from General Revenue or by public subscription for the erection of a monument commemorating our dead Pioneers. The Budget contains provision for a host of improvements and I urge that the desirability of providing a

place of remembrance in Seychelles should be considered as one of the improvements in view. They gave not only their sweat but their blood and this country should remember them. The men played their part in the struggle for freedom and assumed all their responsibilities unhesitatingly. This year they had the honour of taking part in the London Victory Parade and they brought back unbesmirched the Flag which had been given to them on their departure for London. For all these reasons I urge the creation of a Fund from public revenue for the purpose of financing the cost of a Memorial Tablet for our dead Pioneers, a monument which later generations of Seychellois would revere and which would provide tangible evidence of our men's sacrifices and serve as an object lesson for future generations, for service in the cause of Britain is the only way in which the coloured community of this Colony could show its gratitude to the British Flag, the Flag which rescued persons of black descent from slavery. I now turn to the remarks made by my colleague the First Unofficial Member on the subject of the recent shop closing action. I wish first of all to represent the case of the poor wage-earner whose only source of supply of essential foodstuffs is the retailer's shop. It seems to me that the fact that a retailer accepts the surrender by a consumer of his monthly wages under the well-known credit system in payment for goods already supplied constitutes some sort of contract on the part of the retailer to provision his client until the next pay-day comes along. The system of registration of a consumer with a single retailer prevents the former from going elsewhere for his requirements of foodstuffs and the fact that he may already have surrendered all his earnings to his retailer makes his position a most unenviable one when he is confronted by a sudden shop-shutting action. 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. I ask that Government should make the closest scrutiny of this state of affairs in order to prevent a similar recurrence in future. Another point which I should like to mention is the importation 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. Government should review the position and let everybody import as hitherto. It would revive competition, which would be to the good of the community in general. That could be achieved either by the introduction of a special licence at a nominal fee or by permitting retailers to import themselves as in the past. The present system is unfair and should be done away with. Registered at Seychelles, this eighteenth day of January 1947 in Register A 30 No. 2957 (Sd.) R. S. RASSOOL Registrar of Deeds.

*In the  
Supreme  
Court.*

No. 1.

Speech of  
Respondent  
published  
in Govern-  
ment  
Bulletin,  
31st  
December  
1946.  
*continued.*

*In the  
Supreme  
Court.*

## No. 2.

LETTER of Respondent published in Government Bulletin.

No. 2.  
Letter of  
Respondent  
published  
in Govern-  
ment  
Bulletin,  
4th  
January  
1947.

NOTICE PUBLISHED IN GOVERNMENT BULLETIN OF SATURDAY  
4TH JANUARY 1947. NOTICE. LEGISLATIVE COUNCIL.

In connection with the Legislative Council speeches reported in the Bulletin of 31st December the following letter from the Honourable J. Arissel is published for general information :—BEL AIR, 4th January, 1947.

HON. SECRETARY TO GOVERNMENT. Sir, It has been reported to me that objection is felt at the statement that I made in my speech to Council on the 28th December 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. I have the honour to be, sir, Your obedient servant, (Sd.) J. ARISSOL. 10

Registered at Seychelles this eighteenth day of January 1946 in 20 Register A 30 No. 2956.

(Sd.) R. S. RASSOOL,

Registrar of Deeds.

No. 3.  
Statement  
of Claim,  
17th  
January  
1947.

## No. 3.

STATEMENT OF CLAIM.

EXTRACT FROM THE RECORD OF THE SUPREME COURT OF SEYCHELLES.  
CIVIL SIDE NO. 3 OF 1947. CHENARD & Co. AND 114 OTHERS,  
PLAINTIFFS ; versus HONOURABLE JOACHIM ARISSOL, A MEMBER  
OF THE LEGISLATIVE COUNCIL OF SEYCHELLES, OF BEL AIR, MAHE,  
DEFENDANT. NATURE OF ACTION ; DAMAGES Rs.25,000. 30

STATEMENT OF CLAIM. 1. On December 5th and 6th 1946, the plaintiffs wholesalers and retailers of goods including foodstuffs in the island of Mahe closed their shops. 2. On the 28th December 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 Defendant who is a member of the said Legislative Council and in his capacity as such, made a speech. 3. 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. 4. The speech contained the following statement : " 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." 40  
5. The speech also contained the following allegations : " 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.” 6. The said speech further contained the following allegations : “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.” 7. Defendant caused the said speech including the said statement and the said allegations to be published, or consented that

10 they should be published, and the said speech and the said allegations and the said statement were published, in the Seychelles Government Bulletin of the 31st December 1946. 8. On the 4th January 1947 Defendant wrote and published to the Honourable The Secretary to Government a letter in which Defendant reiterated the allegations made in his speech of the 28th December 1946 in the Legislative Council and published in the Seychelles Government Bulletin of the 31st, and complained of in par. 5 above, as follows : “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.”

20 9. Defendant in the said letter further added “because food was unobtainable.” 10. Defendant in the said letter admitted that the said statement was an exaggerated one. 11. Defendant instead of properly withdrawing his allegations further added “I would wish to substitute the word ‘privation’ for the phrase ‘slow agony’.” 12. Defendant asked that the said letter be published in the said Government Bulletin and it was so published on the 4th January. 13. Plaintiffs have suffered great moral damage and their reputation and character as honest men and fair business men have been very greatly damaged by these expressions statements and allegations used by the Defendant against them.

30 Plaintiffs have been exposed to hatred and contempt. The public has been incited to break into Plaintiffs’ property. 14. In addition Plaintiffs go in fear and anxiety that if at any time they feel it proper to close their shops which it is their right to do the Defendant’s words would be acted upon by the public and their shops broken into. 15. Defendant has abused his position as an Honourable member of the Legislative Council of this Colony for the purpose of making and publishing these false, malicious, wicked, injurious, defamatory and tortious statements and allegations against them. 16. Plaintiffs who are wholesale and wholesale-retail merchants further aver that the allegation contained in paragraph 6

40 imply that those of the merchants who are wholesale and wholesale-retail merchants oppress and take advantage of these retailers who are not wholesalers and that these wholesale merchants restrict importation with the intention of injuring the retailers and the public. 17. Defendant has been given amicable warnings of the action and the Plaintiffs have done everything possible to arrive at an amicable settlement and arrangements for the withdrawal of the expressions complained of in such terms as would have been agreed upon between the Plaintiffs and the Defendant, even intimating that they would be satisfied with an apology, but Defendant has stubbornly refused to come to an agreement. 18. Plaintiffs pray

50 this Honourable Court for a Judgment against the Defendant :—1. Ordering the Defendant to publish or cause to be published any corrections or replies which the Plaintiffs may think proper. 2. Ordering the Defendant

*In the  
Supreme  
Court.*

No. 3.  
Statement  
of Claim,  
17th  
January  
1947,  
*continued.*

*In the  
Supreme  
Court.*

No. 3.  
Statement  
of Claim,  
17th  
January  
1947,  
*continued.*

to withdraw such parts of his speech as are hereby complained of at the next meeting of the Legislative Council. 3. Ordering the Defendant to pay damages to the amount of Rs.25,000. And Plaintiffs pray that the judgment of the Court be enforced by caption of the body. Victoria, Mahe, this 17th January 1947. (Sd.) Charles Collet, Counsel for the Plaintiffs, (Sd.) M. C. Collet, Attorney for the Plaintiffs. Evidence: 1. Seychelles Government Bulletin of December 31st 1946. 2. Seychelles Government Bulletin of January 4th 1947. 3. Minutes of the Legislative Council of December 28th to be inspected on the permission of the President of the Council, at the Secretariat. 4. Oral evidence.

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No. 4.  
Statement  
of Defence,  
11th  
February  
1947.

No. 4.

## STATEMENT OF DEFENCE.

IN THE SUPREME COURT OF SEYCHELLES—In Re CHENARD & Co.  
and other Plaintiffs versus JOACHIM ARISSOL Defendant.

STATEMENT OF DEFENCE. *In Limine Litis.* 1. The names of each of the Heirs S. R. Pillay—Plaintiffs No. 10 should be given. 2. This Action now comprising 116 Plaintiffs,—after the withdrawal of the Firm Adam Moosa & Co.—as one of the Plaintiffs therefrom cannot be sustained by This Honourable Court. A separate suit (Action) must be entered by each and every Plaintiff against the Defendant, if they think 20 that they have any right of Action against the Defendant. Were the above Pleas to be overruled by This Honourable Court, the Defendant pleads:—3. That no Action lies in Law against him as a Member of the Legislative Council, on the averments of the Statement of Claim:—Wherefore Defendant prays that this Action be dismissed—with Costs. ON THE MERITS:—4. Paragraph 1 of the Statement of Claim is admitted. 5. Paragraph 2 of the Statement of Claim is admitted. 6. Paragraph 3 of the Statement of Claim is admitted, in so far as the presence of His Excellency The Governor, the Members of the Legislative Council and the Clerk to the Council are concerned. Defendant denies 30 that there were any members of the public at that meeting of the Legislative Council. 7. Paragraph four of the Statement of Claim is admitted. 8. Defendant denies that he made any allegations against the Plaintiffs either jointly or separately. Averred that the speech contained the following statement: “But it is distressing to recall that the Merchants had our food with them and that they shut up their shops and dared to call themselves, the protector 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. I ask that Government should make the closest scrutiny of this state of affairs in 40 order to prevent a similar recurrence in future.” 9. Defendant denies that he made any allegations against the Plaintiffs either jointly or separately. He admits having used the statement “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.” 10. Defendant



denies that he caused his speech of the 28th December 1946 to be published; but he avers that he raised no objection to its publication. He denies that he made any allegations in that speech. It is admitted that the speech was published in the Bulletin of the 31st December 1946.

11. Admitted that the defendant wrote a letter to the Secretary to Government, which was published in the Bulletin of the 4th January 1947. Defendant denies that he made any allegations in his speech of the 28th December 1946—and reiterated them in that letter. Defendant avers that his object in writing this letter was to substitute for the words “slow agony” the word “privation.”
- 10 12. Defendant admits paragraph 9 of the Statement of Claim. 13. Defendant denies that he admitted that the statement was an exaggerated one. Defendant avers that having recognised after reflection that the words “Imposed slow agony” were exaggerated he substituted for these words, the word “privation.” 14. Defendant denies that he made any allegations in his speech of the 28th December 1946—or at any other date. Defendant denies that he had any statement to withdraw. He admits that he used the words “I would wish to substitute the word ‘privation’ for the phrase ‘slow agony.’”
- 20 15. Paragraph twelve of the Plaintiff is admitted. 16. Defendant denies that the Plaintiffs either jointly or separately have suffered any moral damage whatsoever. He denies that their reputation and/or character either as honest men and/or as business men, either jointly or separately have been damaged by the expressions and/or statements made by him. He denies that he made any allegations either in his speech of the 28th December 1946—or at any other time. He denies that the Plaintiffs either jointly or separately have been exposed to hatred and/or contempt. He denies that the public have been incited to break into the Plaintiffs’ property.
- 30 17. Defendant denies that the Plaintiffs either jointly or separately go either in fear and/or anxiety. He denies that if any time, that they (the Plaintiffs) feel it proper to close their shops, which is their right to do, the Defendant’s speech would be acted upon by the public. He denies that the public would upon his speech break open the Plaintiffs’ shops.
- 40 18. Defendant denies that he has abused his position as a member of the Legislative Council of this Colony. He denies that he did so for the purpose of either making and/or publishing any false and/or malicious and/or wicked and/or injurious and/or defamatory and/or tortious statements against the Plaintiffs either jointly or separately. Defendant denies that he made any allegations against the Plaintiffs either jointly or separately. Defendant further pleads that assuming that he made use of
- 50 any statements, the said statements are neither false, nor malicious, nor wicked, nor injurious, nor defamatory, nor tortious. He further avers that the words spoken by him are in the nature of a “bona fide” comment and made for the public good. 19. Defendant denies that the statement contained in Paragraph six of the Statement of Claim, implies that the wholesale and wholesale-retail merchants oppress and/or take advantage of these retailers who are not wholesalers. Defendant further denies that the statement of paragraph six of the Plaintiff implies that these wholesale merchants restrict importation with the intention of injuring the retailers and/or the public. Defendant avers that the statement made by him was intended to mean that all merchants whether wholesalers or retailers should all have the right to obtain import licences to order their own goods and not go through the channel of the wholesalers. 20. Defendant denies that

*In the  
Supreme  
Court.*

No. 4.  
Statement  
of Defence,  
11th  
February  
1947,  
*continued.*

*In the  
Supreme  
Court.*

No. 4.  
Statement  
of Defence,  
11th  
February  
1947,  
*continued.*

he has been given amicable warnings of this action. He denies that the Plaintiffs have done everything possible to arrive at an amicable settlement and/or arrangement for the withdrawal of the statements complained of. He denies that any terms were suggested to him for an amicable settlement and/or arrangement for the withdrawal of the statements complained of, as would have been agreed upon between him and the Plaintiffs. He denies that the Plaintiffs intimated to him that they would be satisfied with an apology. Defendant admits that he stubbornly refused to come to an agreement. 21. Defendant further pleads that he cannot be called upon in Law :—(A) Either to publish and/or caused to be published any 10 corrections and/or replies which the Plaintiffs may think proper. (B) That he cannot be ordered to withdraw any part of his speech, either at the next meeting of the Legislative Council or at any other meeting of that Council. (C) That he has not committed any “faute” in Law rendering him liable in damages in the sum of Rs.25,000.— or in any other amount whatsoever. (D) That even assuming that the Plaintiffs either jointly or separately have suffered any damages—and which has been denied by the Defendant—the amount claimed is excessive and ought to be reduced by This Honourable Court. 22. That This Honourable Court—with due deference and respect —cannot enforce any judgment which might be given against the 20 Defendant by caption of the Defendant’s body. 23. Wherefore Defendant prays that Plaintiffs’ action be dismissed—with Costs. Dated this eleventh February 1947. (Signed) G. LOIZEAU, Defendant’s Attorney— Oral Evidence :—(Sd.) G. LOIZEAU, Defendant’s Attorney.

No. 5.  
Proceedings  
21st  
January  
to 20th  
March  
1947.

No. 5.  
**PROCEEDINGS.**

**PROCEEDINGS IN THE SUPREME COURT OF SEYCHELLES.**

At the Court House Victoria, Mahe, Colony of Seychelles, on Tuesday the 21st day of January in the year one thousand nine hundred and forty-seven. Before His Honour F. Touris, LL.B., Acting Chief Justice, duly assisted by the undersigned Registrar. Case called. Mr. Collet 30 for Plaintiffs. Messrs. Bonnetard and Loizeau for Defendant, ask for one month’s delay to file defence. Mr. Collet objects—on ground that it is too long delay. Court adjourns the case to the 11th February 1947 for defence. (sd.) P. Camille, Registrar

Sitting of Tuesday 11th February 1947 before His Honour F. Touris, LL.B., Acting Chief Justice, duly assisted by the Registrar. Case called. Mr. Collet for Plaintiffs. Messrs. Bonnetard and Loizeau for Defendant. *Re : Plea 1 :* Mr. Collet states he will give particulars as to Heirs S. R. Pillay asked for by Mr. Loizeau. *Re : Plea No. 3 :* Mr. Collet states that the plea is one of privilege—asks for particulars. Mr. Loizeau states 40 it is a point of law on which no particulars need be given. *Re : Plea 18 :* Mr. Collet states that the last sentence amounts to a plea of qualified privilege which he alleges does not obtain under the Seychelles Civil law. He therefore requests that it be transported and argued under the heading “in limine litis.” Mr. Loizeau does not agree. *Re : Plea No. 2 :*

Mr. Loizeau argues that the plea No. 2 should be decided first before getting at the point raised by Mr. Collet. Court adjourns the case to the 26th February 1947 at 10 a.m. for argument on the above matter. (Sd.) P. Camille, Registrar.

*In the  
Supreme  
Court.*

No. 5.  
Proceedings  
21st  
January  
to 20th  
March  
1947,  
*continued.*

Sitting of Wednesday 26th February 1947 before His Honour F. Touris, LL.B., Acting Chief Justice, duly assisted by the undersigned Registrar. Case called. Mr. Collet for Plaintiffs. Messrs. Bonnetard and Loizeau for Defendant. After discussion parties agree to argue pleas 2 and 3. Mr. Collet moves for a short adjournment as he was not aware that both  
10 pleas were to be heard this day. At 9.40 Court adjourns. At 10.30 Court resumes. Mr. Bonnetard argues and cites authorities typed on this page. Mr. Collet replies as per his argument attached. Mr. Loizeau replies and cites Order in Council, 1903—no power to repeal Ordinances: 14 of 1898 and 36 of 1900. Court adjourns the case to give a ruling—No date fixed. (Sd.) P. Camille, Registrar.

Sitting of Thursday 20th March 1947 before His Honour F. Touris, LL.B., Acting Chief Justice, duly assisted by the undersigned Registrar. Case called. Mr. Collet for Plaintiffs. Messrs. Bonnetard and Loizeau for Defendant. Court delivers written judgment, filed of record,  
20 decreeing:—1. That the Governor of Seychelles by and with the advice of the Legislative Council was entitled to enact section 192 (1) (a) of the Seychelles Penal Code. 2. That this section is not legislation respecting the constitution powers and privileges of such Legislative Council. 3. That this section is not repugnant to the provision of any Act 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. Mr. Bonnetard states that Counsel for Plaintiffs agreed with him that  
30 Defendant) was entitled to a dismissal of Plaintiffs' case on the point of privilege. Mr. Collet states that he withdraws the plaint, with leave of the Court, as regards the point of publication of the speech. Court orders that judgment be entered in favour of the Defendant with costs. Mr. Collet states he intends to move for leave to appeal to Privy Council. (sd.) P. Camille, Registr.

Mr. Bonnetard argues: plea 3 *Privilege* and cites Mauritius Penal Code Ordinance 6 of 1838 s. 299; this section 299 was amended by Ordinance 22 of 1901 section 2. Section 290 (no prosecution for defamation shall lie against Legislative Council or Executive Council members of  
40 Mauritius). Mauritius Law Records 1909 p. 162 (Loumeau v/s d'Unienville); Hugues Digest pp. 261/2 ss. 10 to 17; Fabregette Vol. 1 p. 79 art. 41; Dalloz Jurisprudence General Supplement Vol. 13 verbo "presse outrage" paras. 1341/47; Dalloz Jurisprudence Generale 1881 4eme partie para. 82 note 1; Plea 2. *Joinder of Plaintiffs*; Code Civil Procedure section 112; Order 16 rule 1; Mauritius Law Reports 1930 p. 315 (Sugar v/s Gvonjadar); A.C. 1894 p. 494; Q.B. 1896 p. 113 (Carter v. Rigly); Didon v. Larue (Seychelles Court judgment delivered on 13/9/1937); Kalidi v. Bradley (Seychelles Court Record of 1938).

*In the  
Supreme  
Court.*

*Argument of Mr. COLLET : Case brought in public interest. Main point being supposed privilege of Legislative Council.*

No. 5.  
Proceedings  
21st  
January  
to 20th  
March  
1947,  
*continued.*

1. *As regards privilege of freedom of speech :* Move that section 192 (1) (a) of the Penal Code conferring on Members of Legislative Council the privilege of freedom of speech and writing is void, ineffective, and ultra vires. Move that Mauritius Penal Code does not apply here. As a matter of academic interest, history and effects of s. 290 and old s. 299 of the Mauritius Penal Code is found in M.R. 1936, *Decotter and Ors. v. Winson and Anor.*, in the admirable judgments given there. My friend has given a most interesting lecture on comparative law but we are not in a lecture room and comparative law must give way to actual municipal and imperial law. Above Mauritius Court of Appeal is Privy Council and where Privy Council has ruled it governs the Court of Appeal. NOTE THAT PENAL CODE SEYCHELLES *dates from 1904. First Point : ON CASES BEFORE PRIVY COUNCIL.*

*Argument. Privilege of Freedom of Speech.*

FREEDOM OF SPEECH, forms part of *Lex Consuetudo Parliamenti* obtained and won by Parliament of Great Britain after centuries of struggle (Keith p. 69), through the Courts and Bill of Rights. Belongs only to Parliament, not to minor nominated Legislative Councils or other inferior bodies. May belong to French Parliament, Deputies, Senators, etc. . . . but that is not our business here ; Leg. Co. is neither Imperial Parliament nor French Chambers. Such minor bodies as Leg. Co. can take certain powers, but only those which are necessary for their existence and for the proper carrying out of their functions :—Ex :—Power to make standing orders. Leg. Co. derives its powers from Letters Patent and Legislative order in Council 1903. Under these the Seychelles Leg. Co. cannot even suspend a member. This power belongs to Governor alone under Letters Patent and Order in Council (See L.P. and O.I.C.). If there is not even power given to suspend a member, how much less can Council assume power to restrain the fundamental constitutional rights of the citizens of bringing action to vindicate character, reputation, or other tort. Sole power Council is given is to make standing orders, etc. . . . (See O. in Council). They have not either the power to punish for contempt, even contempt in their very face—such contempt of course, if it amounts to insult is reserved for punishment by Court under Penal Code. What a difference from Imperial Parliament : (Keith p. 75). It was therefore of the utmost irregularity to say the least for the Leg. Co. of Seychelles, in 1903 to assume the power to pass a law exempting its president, its members, from process of Law for defamation and tortious words, etc. . . . I'll cite in this matter—1. *Erskine May*—Parliamentary Practice p. 42—and notes (d) and (e). Also *Kielly v. Carson* 4 Moore P.C. 63 (in Mews Digest . . .). 2. *Doyle v. Falconer* 4 Moore P.C. 1866 (in Mews Digest . . .). And again 3. *Barton v. Taylor* 11 App. C. 197 . . . I'll quote a long extract from this case :—p. 202–203. Paragraph beginning bottom of p. 202 ending bottom p. 203. It is to be observed that the Legislature of New South Wales was at that time a representative

Legislature, which ours is not. I'll quote again from *Fielding v. Thomas* (Appeal Cases 1896) at p. 613. "No such question arose . . . etc. . . ." down to "made such Laws."

*In the  
Supreme  
Court.*

In other words the making of such laws as this Section of P. Code can take place only if the power to make them is *explicitly* given :

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*continued.*

I'll cite a few examples where this power has been explicitly given :—Cases :—*Dill v. Murphy* 1864, Moore P.C. 511, 512 (See Mews Digest p. . . for the State of Victoria in Australia, before Colonial Laws Validity Act was passed) *Hamitt v. Crick* L. Reports A.C. 1908 p. 470–477, and these cases refer only to expulsion arrest or suspension of members—minor privileges : Privilege granted by Statute :—in the case of *Victoria* (Australia) 18 and 19 *Victoria c. 55*. It is to be noted that the Colonial Act which granted these powers and privileges had to be ratified by an Imperial Act, the Act 18 and 19 *Victoria c. 55*, which gave the Colonial Legislature power to define its own powers and immunities provided they did not exceed those of the H. of Commons.—38 and 39 *Victoria c. 38* p. 1 which gave these powers and privileges to the Canadian Legislature—53 and 54 *Victoria c. 26 s. 36*, which gave these powers and privileges to the State of Western Australia.—*The Commonwealth of Australia Constitution Act* 1900 (s. 49) conferring the same power on the Commonwealth of Australia.

*The South Africa Act*, 1909 s. 57 with regard to Union of S. Africa. (All these in Chitty's or Law Reports Statutes.) It may be that the Defendant can produce an Act of the Imperial Parliament granting such powers to our local Legislature, in which case my point fails. Therefore I submit that the Seychelles Legislative Council had no power to take these privileges and immunities, they are a nominated body, they are not a representative body—their debates and deliberations are not the debates and deliberations of the representatives of the people. And it is only the representatives of the people, duly elected by the people in order to be able to carry out their work of government of the people by the people, for the people, who can take these immunities and privileges, not our Leg. Co. unless, of course, a special Act of Parliament grants this right. Other examples where the right has been given by Parliament to subordinate Legislative bodies are : MALTA—*Malta Constitution Act*, 1932 (22 and 23 *Geo. V*, c. 43). SOUTHERN RHODESIA and CEYLON have a limited number of privileges (Keith pp. 538, 539). *Second Point : ON PRIVILEGE OF FREEDOM OF SPEECH*. The second leg of argument is based on Statute, the first having been based on Privy Council Cases only. We have to consider, from the point of view of Imperial Statute, the Legislative Powers of Colonial Legislatures. The Statute in question is the *Colonial Laws Validity Act*, 1865, 28 & 29 *Victoria c. 63* (Keith p. 540. Colonial Legislative powers.) (Chitty's Statutes), which applies to all Colonial possession except where repealed by Statute of Westminster 1931 (22 & 23 *Geo. V*, c. 4) s. 2 as regards repugnancy. "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, etc . . . shall be read subject to such act, order, regulation, and shall to the extent of such repugnancy . . . be and remain absolutely void and inoperative." By the same Act, s. 5, every representative Legislature shall have . . . power to make Laws respecting the constitution

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—  
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powers and procedure of such Legislature, provided, etc. . . . The only "Colonies" with representative Legislatures are at present the Australian States, New Zealand, Southern Rhodesia, Bahamas, Barbados, Bermudas, and Ceylon, and recently Jamaica. The definition of "Representative Legislature" is given in s. 1 of the Act: It means "all Colonial Legislatures which shall comprise a Legislative body of which one half are elected by inhabitants of the Colony . . ." In other Colonies no power exists unless (1) through express grant . . . etc. . . . (Keith pp. 540-541) (Colonial Constituent Powers). The Seychelles Leg. Co. has no such right or power, as it is not a Representative Legislature and the Act gives such power only to representative legislatures. Its assumption of such power i.e. of power to legislate concerning the constitution powers and procedure of the legislature is ultra vires, and, in the words of the Colonial Laws Validity Act itself, void and inoperative. And I submit this article of the Penal Code is void and inoperative in so far as it concerns the immunities of the Legislative Council or of its president or of its members. On this again—*Ex abundanti cautela*. I'll cite *Fielding v. Thomas* A.C. 1896 a case in which the Legislature of Nova Scotia had representative Government and therefore could legislate. 10

1. On the point that legislation concerning privileges and immunities is constitutional legislation: *Fielding v. Thomas* at p. 610 bottom of page. "It surely *cannot be contended* that the independence of provincial legislature from outside interference, its protection, and the protection of its members from insult while in the discharge of their duties, are not matters which may be classed as part of the constitution of the province, or that legislation in such matters would not be aptly and properly described as part of the constitutional Law of the province." The case was in fact on the enforcement of privileges and immunities legislated for by the provisional Legislature. And again in same case at page 613 bottom of page: "All these matters—the express enactment of the privileges of the H. of C. of the United Kingdom—the express power to deal with such Acts by the provincial assembly the express indemnity against any action at law for things done in the Provincial Parliament, are all explicitly given . . ." Again I recall that the provincial assembly was a representative assembly and it is because of this that to cite the same case, p. 610: "By s. 5 of the Colonial Laws Validity Act (28 and 29 Vic. c. 63) it had at that time full power to make laws respecting its constitution powers and procedure . . ." And finally at p. 609 same case—last paragraph—"According to the decisions which have been given by this Board there is no doubt that the provincial Legislature could not confer on itself the privileges of the House of Commons of the United Kingdom"—(And what greater privilege is there than that of Freedom of Speech in the House of Commons)—"or the power to punish the breach of those privileges . . . Without authority from the Imperial Legislature . . ." (not from the Crown). In that case the authority, express both under the *British North America Act* and under the *Colonial Laws Validity Act* was there and the Board acted on it in giving its advise to Her Majesty. There is no "Seychelles Act" giving such authority to take privileges and to enforce them, and there is no special amendment to the Colonial Laws Validity Act granting the right to legislate on constitutional matters to Colonies not having representative government. I submit therefore that this article of the Penal Code "is and remains absolutely void and inoperative" in the very words of the Colonial Laws Validity Act. 40

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**JUDGMENT.**

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Court.*

The British Parliament, as sovereign legal authority, has power to legislate for the Seychelles Islands. It passed the Colonial Laws Validity Act 1865 which is applicable to Seychelles.

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By virtue of its privilege, the Crown has (subject to Parliament's sovereign authority) a similar right with plenary powers within its sphere which it exercises by Orders-in-Council, Proclamations, Letters Patent, Instructions under the Sign Manual and Signet etc. these islands being  
10 ceded territory, by Treaty after the conquest of Mauritius of which they were then dependencies.

Colonial  
Laws  
Validity Act  
1865.

By Letters Patent dated 31st August 1903 these islands were erected into a separate Colony and a Legislative Council was instituted.

Letters  
Patent 1903.

Clause 8 enacts that the Governor, by and with the 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 Manual and Signet . . .

Clause 9 : We reserve our right to disallow any such ordinance . . .  
20 which shall take effect on being promulgated by the Governor in the Colony.

Instructions under the Sign Manual, dated 31st August, 1903, provide :

Instructions  
1903.

Clause 19 : The Governor may with the advice of the Legislative Council make Standing Rules and Orders as may be necessary to . . . secure due deliberation in the passing of laws.

Clause 22 : The Governor shall not assent in His Majesty's name to Ordinances of a certain nature, for example : divorce, grants to the Governor, banking and currency, the Armed Forces, racial legislation . . . unless in special circumstances set forth therein.

30 The Governor, by and with the consent of the Legislative Council, enacted the Seychelles Penal Code (Ordinance No. 10 of 1904). This received Royal Assent on first December 1904, notice thereof published under Notice Number 107 of 1904 in Government Gazette No. 54 of 1904.

Seychelles  
Penal Code.

A reprint of the Penal Code, incorporating amendments, was authorized by Ordinance 4 of 1923, and this again duly received Royal Assent.

The preamble of the Seychelles Penal Code recites : Whereas Mauritius Ordinance 6 of 1838 is the fundamental criminal law in Seychelles.

Section 192 (1) of the Seychelles Penal Code provides as follows :  
40 " 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 . . . in the Council."

(b) to (f) inclusive : with reference to the Courts.

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*continued.*  
Provisos  
(b to f).

Various provisos are attached. These are in subsections (2) and (3). They embody the same principles as the provisos in the old article 299 of the Mauritius Penal Code of 1838 and in French law reproduced, amongst others, in the loi of juillet 1881. These provisos were with regard to the power of the Court.

1. To suppress defamatory writings and award damages.
2. To take measures against Counsel and Attornies.
3. To deal with allegations foreign to the cause at issue.

Mauritius  
Penal Code  
section 299  
(old text).

The original section 299 of the Mauritius Penal Code dealing with the present subject read as follows: "No action for defamation or slander shall lie for words spoken . . . before any Court . . ."

There was no reference to the Council of Government.

There were provisos as set forth above.

Mauritius  
Penal Code  
section 290  
(1901).

By Mauritius Ordinance 22 of 1901 this section was renumbered 290 and was amended to read as follows: "No prosecution for defamation shall lie against . . ."

(a) The President or any Member of the Council of Government for anything said or written by him in such capacity.

(b) With reference to the Courts . . ."

The provisos referred to above were done away with.

20

Mauritius  
Penal Code  
section 290  
(1909)

By Mauritius Ordinance 29 of 1909 section 290 was again amended to read as follows:

"No civil or criminal action, suit or other proceedings for defamation . . . shall lie against

(a) with regards to the Council of Government

(b) with regards to the Courts."

The provisos to the old section 299 were reintroduced.

Seychelles  
Penal Code

So that when the Seychelles Penal Code was enacted in 1904, it adopted not only the new article 290 (1901) Mauritius Penal Code, but revived the old article 299 (1838) Mauritius Penal Code and made both immunities (civil and criminal) applicable to both the members of the Legislative Council and the Courts: principle which the Mauritius Legislature made its own and adopted in 1909.

Historical  
sources

It is clear by an examination of these various texts that section 290, Mauritius Penal Code and section 192, Seychelles Penal Code were inspired by the French law of the Press 1881 and that this French loi and the old article 299 Mauritius Penal Code were inspired by former French legislation, a valuable résumé of which is given in Dalloz Jurisprudence Générale, Verbo: Presse—outrage publication, No. 1340, of which an extract:

"D'après l'art. 43 de la constitution de 24 juin 1793 et l'art 110 de la constitution de 5 fructidor an 111 les membres des assemblées parlementaires ne pouvaient être recherchés, accusés ni jugés en aucun temps pour les opinions énoncées dans le sein de ces

40



assemblées. L'art 21 de la loi du 17 Mai 1819 reproduit la même immunité"—consacré de nouveau par la loi constitutionnelle sur les rapports des pouvoirs publiés du 16 juillet 1875, principes adoptés en 1881.

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The Colonial Laws Validity Act 1865 provides as follows :

Section 2 : Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony . . . shall to the extent of such repugnancy . . . be void and inoperative.

Colonial  
Laws  
Validity  
Act 1865.

10

Section 3 : No colonial law shall be deemed to have been void and inoperative on the ground of repugnancy to the law of England unless repugnant to some Act of Parliament . . .

Section 2.  
Section 3.

Section 5 : Every Colonial Legislature shall have and be deemed at all times to have had full powers within its jurisdiction to make laws (with regards to Courts of Judicature) . . .

Section 5.

Every representative Legislature shall have and be deemed at all times to have had power to make laws respecting the constitution, powers and procedure of such legislature . . . provided such laws shall have been passed according to the Acts of Parliament, letters patent, Orders in Council or colonial law for the time being in force in the Colony.

20

The argument for the Plaintiffs is that as the Seychelles Legislative Council is not a representative legislature (i.e. half its members not being elected) "it cannot," to use Mr. Collet's own words, "assume power to restrain the fundamental constitutional rights of the subject of bringing action to vindicate character, reputation or for other tort . . . it cannot assume power to pass a law exempting its president and members from process of law for defamation and tortious words." "Therefore," runs the argument, "as section 192 (1) (a) of the Seychelles Penal Code assumes the power to legislate concerning the constitution powers and procedure of the legislature, it is ultra vires, void and inoperative in so far as it concerns the immunities of the Legislative Council or of its president or its members."

Plaintiffs'  
argument.

30

On the point of Constitutional Law I shall quote : *Anson*, Volume 1, page 23 : Scope of Constitutional Law :

Constitu-  
tional law.

"How the forces of the community are disposed here and now ; what are the legal rights and duties of the various parts of the sovereign body against one another and against the community at large ; and how the whole works together."

*Anson* 1  
page 23.

40

*Keith*, page 1 : "It is the function of the Legislature to alter from time to time the existing law . . . it is the part of constitutional law to examine the organs by which these functions are carried out . . . the position of the members of the community in relation to these organs . . . it may be said to include all rules which directly or indirectly affect the distribution of the exercise of the sovereign power in the State."

*Keith* page 1.

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Supreme  
Court.*

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1947,  
*continued.*  
Fielding v.  
Thomas,  
1896,  
A.C. 600.  
May  
Parlia-  
mentary  
Practice.  
Edition 1946.

*Fielding v. Thomas* at page 610 :

“It surely cannot be contended that the independence of provincial legislatures from outside interference, its protection, and the protection of its members from insult while in the discharge of their duties, are not matters which may be classed as part of the constitution of the province, or that legislation in such matters would not be aptly and properly described as part of the constitutional law of the province.”

Per the Lord Chancellor.

*Erskine May*, page 42.

10

(citing Cushing Leg. Ass. para. 532-3)

“Certain rights and immunities, such as freedom from arrest or freedom of speech, belong primarily to the individual members of each House, and only secondarily and indirectly to the House itself. . . . Fundamentally it is only as a means to the effective discharge of the functions of the House that individual privileges are enjoyed by its Members.”

*idem* page 47.

“Freedom of speech is a privilege essential to every free Council or Legislature.”

20

Bill of  
Rights.

*idem* page 50.

9th article Bill of Rights : “That the freedom of speech and debates and proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament.”

Peculiar  
privileges of  
the House  
of Commons.

*idem* at page 173.

“The House of Commons is not subject to the control of the Courts in the administration of that part of the law which relates to its own internal procedure only, and even if its interpretation of a statute prescribing rights exercisable within its walls is erroneous, the Courts have no power to interfere.”

30

Bradlaugh  
v. Gosset,  
12 Q.B.D.  
271  
(referred to).

There is, however, one respect in which the Courts recognise the jurisdiction of the House over persons outside Parliament, and that is its power to commit for contempt—subject to the proviso, however, that if the cause of commitment is stated and appears to be in respect of no established privilege, the Court claims the right to establish its sufficiency . . .

(Apart from this there is a conflict between the claims of the House of Commons and those of the Courts.)

This extract is quoted in order to show that, while Colonial Legislatures do not as of right enjoy all the privileges of the House of Commons, all the claims of the House are not acknowledged by the Courts.

40

Barton v.  
Taylor,  
11 A.C. 197  
(P.C.).

The inherent power of every Colonial Legislative Assembly to protect itself against obstruction, interruption or disturbance of its proceedings ; by the misconduct of any of its members in the course of the proceedings, The nature . . . limits of that power (which undoubtedly exists) have several times been considered by this Board.

Reference to *Kielly v. Carson, Doyle v. Falconer.*

It results from these authorities that no powers of that kind are incidental to or inherent in a Colonial Legislative Assembly (without express grant) except such as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute.

Whatever, in a reasonable sense, is necessary for these purposes is impliedly granted whenever any such Legislative body is established by competent authority. For these purposes protective and self-defensive  
10 powers only and not punitive are necessary.

Does section 192 (1) (a) of the Seychelles Penal Code legislate respecting the "constitution powers and procedure" of the Legislative Council? Granting it is a point of constitutional law, agreeably with the opinion of the text-writers quoted above—in this sense "Constitutional law" is a name, a designation used to distinguish a branch of the law from other branches, e.g. "common law" or "criminal law."

Is the incriminated section legislating respecting the "constitution" of the Council? This constitution being provided for, inter alia, in the Instructions under the Royal Sign Manual and Signet of 1903, Additional  
20 Instructions of 1939 and 1944. I consider that it does not.

Is it respecting the "procedure" of the Council? This procedure is provided for by the Letters Patent 1903 and the Standing Rules of the Seychelles Legislative Council of 26 May 1900. Clearly not.

Is it respecting the "powers" of the Council? I consider it does not affect the powers of the Council as a body—particularly as a legislative body, which is its function. An apt way of designating this immunity would be to say that it grants an individual privilege to the President and Members of the Council, rather than a "power." In usual parlance, it would appear to me that this provision of the section rather restricts  
30 a right of the subject than confers a "power" on the Council, or even on its individual members.

To refer again to the words from May's Parliamentary Practice quoted above: "The immunity of freedom of speech belongs primarily to the individual members . . . and only secondarily and indirectly to the House."

May I allude to an analogous (though not quite similar) case, taken from the Prisons Ordinance No. 8 of 1940. By virtue of the definitions clause and of clause 19 any Member of the Executive Council and of the Legislative Council may at any time visit and inspect the prisons, etc.  
40 Here is an example of individual privileges given to all members individually of the Legislature. Could it be argued that this legislation is in respect of the "powers" of the Councils?

As to the first part of Plaintiffs' argument, to wit: Can the Council assume power to exempt one of its Members (the Defendant) from the fundamental constitutional right of the subject to sue for defamation and tort?

Is this right so absolute and fundamental?

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Supreme  
Court.*

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Inherent  
defensive  
powers of  
Legislatures  
for the  
proper  
exercise of  
their  
functions.

Instructions  
1903, 1939,  
1944.

Standing  
Rules:  
Seychelles  
Legislative  
Council  
26 May 1900.

Prisons  
Ordinance  
8 of 1940.

*In the  
Supreme  
Court.*

With regard to defamation in proceedings before Courts of Justice, such pretended right is not absolute: as is foreseen by section 192 (1), (b) to (f) the validity of which, I take it, cannot be contested.

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Judgment,  
20th March  
1947,  
*continued.*  
Protection  
of Public  
Officers.

Several ordinances have been passed encroaching on the right of the subject for the protection of public officers and public functionaries. I shall refer only to the general one, Ordinance 36 of 1903, section 42 (1) whereof encroaches on the common law rights of the subject, e.g. action must be taken within a limited delay; previous notice must have been given; if the Court certifies on the record that the Public Officer acted on reasonable and probable cause only nominal damages and no costs are 10 awarded.

Protection  
of Members  
of  
Legislative  
Council and  
of the  
public.

Having proper constitutional power to make laws for the peace, order and good government of the Colony, the Governor in Legislative Council passed section 192 (1) of the Penal Code which provides for the absolute freedom of speech of Members in their office. The rights of the public are safeguarded: The Governor, as President, by virtue of his Instructions and other Authority is sole judge of order; he may at any time adjourn the debate; he may take such action as he will consider appropriate should any Member at any time during the sitting so far forget himself as to be guilty of reprehensible conduct. Such freedom of 20 speech is essential to a Legislative Assembly. The Royal Assent has been signified to this provision of the Code.

That such a protection for the Members of the Legislative Council is necessary, nay indispensable, for the peace order and good government of the Colony is shown by the following résumé of the considerations above set forth:

1. This principle existed in French legislation before the cession of these islands, and His Majesty has been pleased to let it stand on our Statute Book. Capitulation of Mauritius 3 December 1810 Art. 8: Les habitants conserverent leurs religion, lois et coùtumes. Proclamation of 30 5.12.1815: Les mêmes lois et les mêmes usages en vigueur jusqu'à ce jour seront aussi observés.

2. It is the undoubted right of the British House of Commons. There is the highest judicial authority in support of the proposition that it is indispensable to Colonial Legislatures.

3. It is in conformity with the provisions of an English Statute; the Bill of Rights.

4. Sections 299 of the Mauritius Penal Code and its replacing amended sections 290 were recently considered legislatively and also judicially before the Supreme Court of Mauritius in the two cases: 40

Loumeau v/s d'Unionville (M.R. 1909 page 162),

Decotter v/s Winson (M.R. 1936 page 74),

though only its aspect as regards the Courts was discussed and not as regards the Council of Government.

To these two cases the Court is much indebted for much material useful in the consideration of the present case. Similarly, the Court has much pleasure in acknowledging its indebtedness to learned Counsel on both sides for their assistance in this case.

In conclusion I find :—

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

2. That this section is not legislation respecting the constitution powers and privileges of such Legislative Council.

3. 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.

10 4. That this section has the force of law in this Colony.

(Sd.) F. TOURIS,

Ag. Chief Justice.

20th March 1947.

*In the  
Supreme  
Court.*

No. 6.  
Judgment,  
20th March  
1947,  
*continued.*

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No. 7.

**APPLICATION for leave to appeal to His Majesty in Council.**

**EXTRACT FROM THE RECORD OF THE SUPREME COURT OF SEYCHELLES. CIVIL SIDE No. 38 OF 1947. EXPARTE : CHENARD & Co. & OTHERS, APPELLANTS. NATURE OF ACTION : APPLICATION FOR LEAVE TO APPEAL TO PRIVY COUNCIL.**

No. 7.  
Application  
for leave to  
appeal to  
His  
Majesty  
in Council,  
20th March  
1947.

20 **IN THE SUPREME COURT OF SEYCHELLES. Civil Side No. 38 of 1947. In re Chenard & Co. and 115 others, Plaintiffs versus The Hon. J. B. Arissol, a member of the Legislative Council, Defendant. To His Honour the Chief Justice. The petition of the plaintiffs in the above case respectfully sheweth. 1. That judgment against the plaintiffs dismissing their action on a point of law argued in Limine Litis was given by the Honourable the Learned Ag. Chief Justice on the 20th of March 1947. 2. That the plaintiffs intend to apply to Your Honour for leave to appeal to His Majesty the King in Council that the above judgment be reversed, on the grounds : I. That the Honourable the Learned Ag. Chief Justice**

30 **was mistaken in law. II. The matter in question is one of gravity. III. The matter in question is of great public interest. IV. The matter in question is of constitutional importance. V. The claim is of more than Rs.10,000.— WHEREFORE the petitioners pray that Your Honour should grant them leave to appeal to His Majesty in Council to have the said judgment reversed on the grounds above stated. Made at Victoria, Mahe, Seychelles this 20th day of March 1947. (Sd.) CHARLES COLLET, Counsel for the petitioners. (Sd.) M. C. COLLET, Attorney for the Petitioners.**

40 **IN THE SUPREME COURT OF SEYCHELLES. Upon reading the foregoing petition I hereby fix Thursday 3rd April 1947 at 9 a.m. to hear the motion in Court. Chambers Court House, Victoria, Mahe, Seychelles this 25th March, 1947. (Sd.) J. WOODMAN, Chief Justice.**

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*In the  
Supreme  
Court.*

No. 8.

No. 8.

NOTICE to Respondent, 20th March 1947.

[*Not printed.*]

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No. 9.

No. 9.

PROCEEDINGS, 25th March to 30th April 1947.

[*Not printed.*]

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No. 10.  
Judgment  
granting  
leave to  
appeal to  
His  
Majesty in  
Council,  
7th May  
1947.

No. 10.

**JUDGMENT** granting leave to appeal to His Majesty in Council.

Sitting of 7th May 1947, before His Honour J. Woodman, O.B.E., Chief Justice, duly assisted by the undersigned Registrar. Case called. 10  
Mr. Collet for Plaintiffs. Messrs. Bonnetard and Loizeau for Defendant. Court delivers written judgment, filed of record, granting leave to appeal to the Privy Council. (Sd.) P. CAMILLE, Registrar.

**JUDGMENT.** This is an application for leave to appeal to the Privy Council against the judgment of the Acting Chief Justice delivered on the 20th March 1947 in which he dismissed the Plaintiffs' action for damages for defamation on a point of law argued in limine litis. The petition does not state what the point of law was and, had this been an application to the Privy Council for special leave to appeal, the Privy Council would have ordered the petition to be amended. It is true that the record of the 20 case is available to me and for that reason I have not ordered the petition to be amended, but it is nevertheless convenient and desirable that a petition of this sort should state concisely the point of law in issue, without anything in the nature of argument. It appears from the record that the point in issue in the case was whether or not section 192 (1) of the Seychelles Penal Code is ultra vires in so far as it confers upon the President or 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. The ground on which it was contended that those provisions of section 192 (1) of the Seychelles Penal Code were 30 ultra vires was that they were repugnant to section 5 of the Colonial Laws Validity Act 1865. The Plaintiffs contended that these provisions were ultra vires, the acting Chief Justice held that they were not. The Seychelles Judicature Order in Council 1933 substitutes for clause 14 of the Seychelles Judicature Order in Council 1903 a new clause which provides (inter alia) that where the matter in dispute is of the value of Rs.10,000 or upwards "an appeal may lie in the first instance to His Majesty in Council, in the form and manner and subject to the rules, regulations and limitations contained in the Seychelles Appeal Rules Order in Council 1909." Clause 4 of the latter Order in Council states: 40  
"Applications to the Court for leave to appeal shall be made by motion or petition within 21 days from the date of the judgment to be appealed from, and the applicant shall give to the opposite

party notice of his intended application." Clause 5 is as follows :  
 "5. Leave to appeal shall only be granted by the Court in the  
 first instance : (A) upon condition of the Appellant, within a period to  
 be fixed by the Court, but not exceeding three months from the date of  
 the hearing of the application for leave to appeal, entering into good and  
 sufficient security, to the satisfaction of the Court, in a sum not exceeding  
 Rs.7,500 for the due prosecution of the appeal, and the payment of all  
 such costs as may become payable to the Respondent in the event of the  
 Appellant's not obtaining an order granting him final leave to appeal  
 10 or of the appeal being dismissed for non-prosecution or of His Majesty  
 in Council ordering the Appellant to pay the Respondent's costs of the  
 appeal (as the case may be) ; and (B) upon such other conditions (if any)  
 as to the time or times within which the Appellant shall take the necessary  
 steps for the purpose of procuring the preparation of the Record and the  
 dispatch thereof to England, as the Court, having regard to all the  
 circumstances of the case, may think it reasonable to impose." Now what  
 is the meaning of the words " in the event of the Appellant's not obtaining  
 an Order granting him final leave to appeal " ? An order of this Court  
 granting leave to appeal is not a final order because it might be rescinded  
 20 by the Privy Council. I consider therefore that what those words mean  
 is " in the event of the Privy Council refusing to hear the appeal, in spite  
 of the fact that leave to appeal has been granted by the Court below." The  
 provisions which I have quoted appear to me to confer upon this Court a  
 discretion to grant or refuse leave to appeal. In other words the function  
 of this Court is not limited to fixing the amount of the security and  
 deciding whether any conditions as to the time within which he should  
 proceed with his appeal should be imposed on the Appellant. But on what  
 principles should the discretion of the Court be exercised ? As the  
 principles are not laid down in the Order itself I consider that  
 30 this Court in exercising its discretion, should have regard to the  
 principles upon which the Privy Council acts in granting or refusing special  
 leave to appeal. As regards the appealable amount no question arises in  
 this case, as the amount of damages claimed in the action was Rs.25,000.  
 As regards the gravity and importance of the question in issue, it appears  
 to me that the question as to whether the President and Members of the  
 Legislative Council are or are not immune from prosecution or action for  
 defamation for anything they say or write in their official capacity in  
 the Council is a grave question of public interest and as such suitable  
 to be submitted to the Privy Council for decision. But the Privy Council  
 40 has in several reported cases refused special leave to appeal on the  
 ground that the judgment below was not clearly wrong (see the cases quoted  
 on page 587 of Volume III of Mews Digest (1926 edition)). Here I think  
 it is difficult for this Court to follow very closely in the footsteps of  
 the Privy Council. It is not the province of this Court on an application  
 for leave to appeal to go into the merits of the case. But I nevertheless  
 think that this Court should refuse leave to appeal, if it is of the opinion,  
 not merely that the Appellants' view of the law is wrong, but that, on the  
 face of it, it has no substance in it, and is not the sort of thing upon  
 which the time of the Privy Council should be wasted. In this case I am  
 not prepared  
 50 to hold that the view of the law for which the Plaintiffs contended is  
 one which has no substance in it and I therefore grant leave to appeal to  
 the Privy Council. As regards the amount of the security, no evidence

*In the  
 Supreme  
 Court.*

No. 10.  
 Judgment  
 granting  
 leave to  
 appeal to  
 His  
 Majesty  
 in Council,  
 7th May  
 1947,  
*continued.*

*In the  
Supreme  
Court.*

No. 10.  
Judgment  
granting  
leave to  
appeal to  
His  
Majesty  
in Council,  
7th May  
1947,  
*continued.*

was heard in the case and therefore the Record will not be very voluminous. At the same time the cost of an appeal to the Privy Council has presumably increased since 1909 (the date of the Order in Council). In these circumstances I fix the amount of the security at Rs.5,000. As regards the period within which the security must be given the hearing of this application was on the 3rd April 1947 and the maximum period allowable under the Order in Council is three months from that date. But I do not anticipate that the Appellants in this case will have any difficulty in furnishing adequate security and I can see no reason for allowing them a long time to do so. I therefore fix the 31st May 1947 as the date 10 by which the security must be entered into. I also consider that it is reasonable in the circumstances of this case that conditions should be imposed upon the Appellants as to the time within which they should proceed with their appeal. Unnecessary delay would be unfair to the Respondent in a case of this sort, and I also consider that once the immunity of the Members of the Legislative Council has been called in question, it is highly desirable that the question should be settled as speedily as possible. The Record is not a lengthy one and I consider that one month should be ample time for its preparation and dispatch from this Colony to England. By that I do not of course mean 20 that it should reach England within a month but that it should be dispatched from this Colony within a month from the date of this judgment. Should difficulties arise which prevent the Appellants from preparing the Record for dispatch and dispatching it within that time, I reserve to them leave to apply for an extension of the time, but they will have to satisfy the Court that they have done their best to get the Record ready for dispatch within a month. I therefore grant leave to appeal to the Privy Council: (a) upon condition of the Appellants' on or before the thirty-first May 1947 entering into good and sufficient security, to the satisfaction of the Court, in the sum of Rs.5,000 for the 30 due prosecution of the appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellants' not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellants to pay the Respondent's costs of the appeal (as the case may be) and (b) upon the condition that the Appellants shall, within one month from the date of this judgment, take the necessary steps for the purpose of procuring the preparation of the Record and the dispatch thereof to England. As the application was not opposed by the Respondent I make no order as to costs. (Sd.) J. WOODMAN, Chief Justice, 40 1947.

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No. 11.

## NOTICE OF APPEAL.

*In the  
Supreme  
Court.*No. 11.  
Notice of  
Appeal,  
12th May  
1947.

IN THE SUPREME COURT OF SEYCHELLES. Civil Side No. 38 of 1947. In Re : *Chenard & Co. and 115 others* as set out in the statement of claim, *Plaintiffs* ; versus The Honourable Joachim Arissol, a member of the Legislative Council, *Defendant*. To the Honourable Mr. Justice J. Woodman, O.B.E., Chief Justice of the Supreme Court. Your Honour, The Plaintiffs in the above matter, pursuant to the leave to appeal to His Majesty in Council against the Judgment given by the learned the

10 Ag. Chief Justice in the above matter on the 20th March, 1947, granted by Your Honour on the 7th of May 1947, hereby respectfully give notice to Your Honour that they intend to petition and hereby petition His Majesty in Council in order that the said judgment be set aside by His Majesty in Council. The point of law by the direction or determination of which the Plaintiffs, now the Petitioners feel aggrieved is : 1. Whether section 192 (1) (a) of the Seychelles Penal Code 1923, which states that : " No prosecution or action for defamation shall be competent against : (a) the President or a Member of the Legislative

20 Council for anything said or written by him in such capacity from his place in such Council or in any Committee thereof," is ultra vires the Colonial Laws Validity Act and therefore void and inoperative or not ; the learned the Ag. Chief Justice having ruled that it was not ultra vires the said Colonial Laws Validity Act and therefore not void or inoperative. And whether the Legislative Council of the Colony of Seychelles not being a Representative Assembly had the power to create and take for itself and its members the privilege embodied in the said section 192 (1) (a) of the Seychelles Penal Code. And the grounds of the petition are :—

30 1. That in holding the above said section 192 (1) (a) of the Seychelles Penal Code 1923 was not ultra vires the Colonial Laws Validity Act and was not void and inoperative and in holding that the said Legislative Council although it was not a representative assembly had the power to create and take for itself and its members the said privilege, the Learned the Ag. Chief Justice was mistaken in law. AND FURTHER GROUNDS which may properly be raised before His Majesty in Council. AND The PETITIONERS have duly fulfilled the formalities required by Your Honour as regards the Security for the costs of the Respondents in the sum of Rs.5,000/- and have given the bond of Umarji Ibrahim representing Adam Moosa & Co. in the said sum for the said security. Made at Victoria, Mahe, Seychelles, this 12th day of May 1947. Counsel for the Appellants

40 (Sd.) CHARLES COLLET, of Lincoln's Inn, Barrister-at-Law.—Attorney for the Appellants (Sd.) M. C. COLLET, of Lincoln's Inn, Barrister-at-Law and an Attorney of the Supreme Court of Seychelles. The address for service in England, and the Solicitors for the Appellants in England are : HY. S. L. POLAK & Co., Solicitors and Privy Council Agents, Commissioners for Oaths, Danes Inn House, 265 Strand, London W.C.2.

No. 12.

No. 12.

NOTICE to Respondent, 12th May 1947.

[Not printed.]

**In the Privy Council.**

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**ON APPEAL**  
*FROM THE SUPREME COURT OF SEYCHELLES.*

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**BETWEEN**

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

**AND**

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

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**RECORD OF PROCEEDINGS**

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**HY. S. L. POLAK & CO.,**  
DANES INN HOUSE,  
265 STRAND, W.C.2,  
*Solicitors for the Appellants.*

**H. B. NISBET & CO.,**  
45 DOUGHTY STREET, W.C.1,  
*Solicitors for the Respondent.*