

40/82

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF MAURITIUS

IN THE MATTER OF:-

LUTCHMEEPARSAD BADRY

Applicant

v.

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

RECORD OF PROCEEDINGS

Messrs. Donald Nelson & Co.,  
124 Wigmore Street,  
London W1

Messrs. Charles Russell & Co.,  
Hale Court,  
Lincolns Inn,  
London WC2

Solicitors for the Appellant

Solicitors for the Respondent

Approved for legal reproduction  
[Signature]

26.5.82.

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O N A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

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IN THE MATTER OF:

LUTCHMEEPARSAD BADRY

Applicant

-v-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent


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RECORD OF PROCEEDINGS

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O N A P P E A L  
FROM THE SUPREME COURT OF MAURITIUS

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IN THE MATTER OF:

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RECORD OF PROCEEDINGS

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NO. 1

MOTION

Counsel is instructed to move this Honourable Court for a Rule calling upon Lutchmeeparsad Badry, the Respondent to appear on the floor of the Court, on a day and hour to be appointed to show cause, if any, why he should not be committed to prison or otherwise punished for Contempt of Court for having at a regional congress held by the Labour Party at Mare d'Albert, on the 18th May 1980, used the words contained in the affidavit sworn in this matter by C. de Labauve d'Arifat Esq., Director of Public Prosecutions, and Jean Berky OmbRASINE, a press reporter of Le Mauricien, which words contain certain scandalous matters respecting the Supreme Court of Mauritius, and which were clearly and beyond any reasonable doubt calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius on the ground that injustice and corruption prevail, and wealthy persons receive preferential and biased treatment in the Court of Mauritius.

In the  
Supreme  
Court of  
Mauritius

No. 1  
Motion  
7th July 1980

With costs.

Under all legal reservations.

Dated this 7th day of July 1980.

(sd) G. Bisasur

of Jules Koenig Street, Port-Louis.

Senior Crown Attorney and Applicant's Attorney

(sd) K. Matadeen

of counsel for Applicant.

In the  
Supreme  
Court of  
Mauritius

No. 1  
Motion

7th July 1980  
(continued)

NO. 2

NOTICE OF MOTION

TAKE NOTICE that the Applicant in the above matter will on Monday the 7th July 1980 at 10.30 of the clock in the forenoon move this Honourable Court for a Rule calling upon you, the Respondent abovenamed, to appear on the floor of this Court to show cause, if any, why you should not be committed to prison or otherwise punished for Contempt of Court for having on the 18th May 1980 in the course of a regional congress of the Labour Party held at the Social Welfare Centre of Mare d'Albert used the words contained in the affidavits sworn in this matter by Cyrille de Labauve d'Arifat Esq., Director of Public Prosecutions and Jean Berky Ombrasine Esq., a press reporter of the newspaper 'Le Mauricien', which words contain certain scandalous matters respecting the Supreme Court of Mauritius and which were clearly and beyond any reasonable doubt calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius on the ground that injustice and corruption prevail and wealthy persons receive preferential and biased treatment in the Supreme Court of Mauritius.

No. 2  
Notice of  
Motion  
28th June 1980

AND TAKE FURTHER NOTICE that the said motion will be made on the day and hour abovementioned whether you are present or not.

In the  
Supreme  
Court of  
Mauritius

AND FURTHER TAKE NOTICE in order that you may not plead or pretend ignorance of the same, that herewith are served upon you true and certified copies of the affidavits aforesaid.

No.2  
Notice of  
Motion  
28th June 1980  
(continued)

Under all legal reservations.

Dated this 28th day of June 1980.

(sd) G. Bisasur

of Jules Koenig Street, Port-Louis.

Senior Crown Attorney and Applicant's Attorney.

To Respondent abovenamed and styled.

This Notice of Motion together with the annexed Affidavits was duly served by me, the undersigned Usher upon Lutchmeeparsad Badry by leaving true and certified copies thereof, with him, in person found at his domicile situate at No. 17 Inkerman Street, Port-Louis.

Monday the 30th day of June 1980

(sd) S. Khoyratty

S. Usher, Supreme Court

REG. DH 422 No. 3143

NO. 3

AFFIDAVIT OF CYRILLE DE LABAUVE D'ARIFAT

I, Cyrille de Labauve d'Arifat, Director of Public Prosecutions make oath and say:

It has been reported to me -

That on the 18th May 1980 the Labour Party held a regional congress at the Social Welfare Centre of Mare d'Albert.

No.3

Affidavit  
of Cyrille  
de Labauve  
d'Arifat  
2nd June 1980

That Mr. Lutchmeeparsad Badry, a Member of the Legislative Assembly was one of the persons who addressed the gathering at that congress.

In the  
Supreme  
Court of  
Mauritius

No. 3  
Affidavit of  
Cyrille de  
Labauve  
d'Arifat  
2nd June 1980  
(continued)

That in the course of his speech Mr. Lutchmeeparsad Badry who was speaking about the 'capitalistes blanc' referred to two Court cases in the following terms-

'Ainan aine dimoune fine touyer, li pas fine gagne narien parcequi li ainan galette, li fine aller-aine zenfant fine mort. Aine creole travaille F.U.E.L. fine gagne aine accident travail, i fine vine 50% infirme, zaffaire fine alle en Cour Supreme, case fine cismiss, parcequi li F.U.E.L., parcequi missie Series qui la-bas, aine sou li pas fine gagne. Alla la justice ici'.

Translation:

'There is a person who committed murder, he got away with it because he has got money, he has left - a child is dead. A 'crede' working at F.U.E.L. (Flacq United Estates Ltd.) met with an accident at work. He is now 50% incapacitated. The case was referred to the Supreme Court. The case was dismissed. Because it is F.U.E.L., because it is M. Series who is there, he did not get a penny in compensation. That is the kind of justice we have here.'

Sworn by the abovenamed deponent

at Chambers, Supreme Court House (sd). C. de L. d'Arifat.

this 2nd day of June 1980.

Before me,  
(sd) J. Forget  
Master and Registrar

REG. A 421 No. 6213.

AFFIDAVIT OF JEAN BERKY OMBRASINEIn the  
Supreme Court  
of MauritiusNo. 4  
Affidavit of  
Jean Berky  
OmbRASINE  
30th May 1980

I, Jean Berky OmbRASINE, a press reporter of 95, Hugnin  
Road, Rose-Hill

Make oath and say:-

1. That I am reporter for the newspaper 'Le Mauricien'.
2. That on the 18th May 1980 I attended a regional congress held by the Labour Party at the Social Welfare Centre of Mare d'Albert.
3. That I reached the Social Welfare Centre at about 10.15 a.m. when Mr. Lutchmeeparsad Badry, a Member of the Legislative Assembly, was addressing the assistance of about some two hundred persons.
4. That in the course of his speech Mr. Badry who was then speaking about the 'capitalistes blancs' referred to two Court cases in the following terms:
  - (1) 'Ainan aine dimoune fine touyer, li pas fine gagne narien parcequi li ainan galette-li fine aller-aine zenfant fine mort'.

Translation:

There is a person who committed murder, he got away with it because he has got money, he has left - a child is dead.

- (2) 'Aine creole travaille F.U.E.L., fine gagne aine accident travail, li fine vine 50% infirme, zaffaire fine alle en Cour Supreme, case fine dismiss, parcequi li F.U.E.L. parcequi Missie Series qui la-bas, sou li pas fine gagne. Alla la justice ici'.



Translation:

' A Creole working at F.U.E.L. met with an accident at work. He is now 50% incapacitated. The case went to the Supreme Court. The case was dismissed. Because it is FUEL, because it is M. Series who is there, he did not get a penny in compensation. This is the kind of justice we have here.'

Sworn by the abovenamed deponent at )  
Chambers, Supreme Court House ) (sd) J.B. Ombrasine  
this 30th day of May 1980 )

Before me,

(sd) J. Forget  
Master and Registrar

REG. A 421 No. 6214.

In the Supreme  
Court of  
Mauritius

No. 4  
Affidavit of  
Jean Berky  
Ombrasine  
30th May 1980  
(continued)

NO. 5

MINUTES OF 7TH JULY 1980

No.5

Minutes of  
7th July 1980

Before Hon. C.I. Moollan, Ag. Chief Justice

D.P.P. v L. Badry

D.P.P. v L. Badry

D.P.P. v L. Badry

K. Matadeen appears for applicant in all three cases, moves in terms of the motion paper which he files together with the notice of motion and two affidavits in support of each case.

E. Juggernaut appears for respondent and moves for one week's postponement to consider his position as his services have just been retained.

To 14th July 1980 Mention. (Affidavit, if any, should be exchanged in meantime).

(sd) Y.A. Beebeejaun

For Master and Registrar

AFFIDAVIT OF LUTCHMEEPARSAD BADRY

In the Supreme  
Court of  
Mauritius

No. 6  
Affidavit of  
Lutchmeeparsad  
Badry.  
11th July 1980

I, Lutchmeeparsad Badry, a Member of the Legislative Assembly  
of No. 17 Inkerman Street, Port-Louis,

Make solemn affirmation as a Hindu and say:-

1. That I am the respondent in the above matter.
2. That I have taken cognizance of the affidavit sworn by  
the Applicant on 2nd June 1980.(Reg. A 421 No. 6213).
3. That I deny paragraph 3 thereof in its form and tenor.
4. That I have taken cognizance of the affidavit sworn by  
Mr. Jean Berky Ombrasine on 30th May 1980. A 421 No. 6214.
5. That I am not aware of the averments made in paragraphs  
1, 2 and 3 thereof.
6. That I deny the averments made in paragraph 4(i) and (ii)  
thereof in their form and tenor.
7. That in the circumstances I pray that the application be  
set aside with costs.

Solemnly affirmed by the abovenamed )  
deponent at Chambers, Court House } (sd) L. Badry  
Port-Louis, the 11th day of July 1980)

Drawn up by me  
(sd) M. Mardemootoo  
Solicitor  
11.7.80  
REG. A 421 No. 6844

Before me  
(sd) J. Forget  
Ag. Master & Registrar  
Supreme Court

AFFIDAVIT OF INDARJEET RAMDAWON AND LOUIS RENE LOLIOTHE SOPHINE

In the Supreme Court of Mauritius

No. 7 Affidavit of Indarjeet Ramdawon and Louis Rene Loliothe Sophine 11th July 1980

We, (1) Indarjeet Ramdawon, a labourer and Chairman of the Mare d'Albert Social Centre, residing at Mare d'Albert,

(2) Louis Rene Loliothe Sophine, a fisherman and Secretary of the Mauritius Fisherman Co-operative Federation, of Labourdonnais Street, Mahebourg,

Make solemn affirmation and make oath and say respectively:-

1. That on the 18th day of May 1980 we attended a regional congress of the Labour Party held at the Social Welfare Centre at Mare d'Albert.

2. That we reached the Social Welfare Centre at about 9.00 a.m.

3. That we were listening when Mr. Badry was addressing the gathering and we did not hear the words contained in the affidavits of Mr. Cyrille de Labauve d'Arifat and Mr. Desire Louis Appou and Jean Berky Ombrasine.

Solemnly affirmed and sworn by the abovenamed deponents respectively at Chambers, Court House, Port-Louis this 11th day of July 1980 (sd) I. Ramdawon (sd) R. Sophine

Before me

Drawn up by me

(sd) J. Forget Ag. Master and Registrar, S.C.

(sd) M. Mardemootoo Solicitor 11.7.80

REG. A 421 No. 6845.

NO. 8

MINUTES OF 14TH JULY 1980

In the Supreme  
Court of  
Mauritius

On Monday 14th July 1980

Before Hon. C.I. Moollan, Ag. Chief Justice.

No. 8  
Minutes of 14th  
July 1980

23519 - D.P.P. v. L. Badry

23520 - D.P.P. v. L. Badry

23521 - D.P.P. v. L. Badry

K. Matadeen appears for applicant in all three cases.

E. Juggernaut (L. Seetohul with him) appears for respondent and files an affidavit in each case.

Matadeen moves for rule to issue and waiver of service.

16th and 17th September 1980 - Merits.

(sd) Y.A. Beebejaun

for Master and Registrar.

NO. 9

RULE

No. 9  
Rule  
14th July  
1980

On Monday the 14th July 1980 in the 29th year of the Reign of Elizabeth II.

In re:-

The Director of Public Prosecutions      Applicant

vs

Lutchmeeparsad Badry of Port-Louis      Respondent

Upon hearing K.P. Matadeen of Counsel for the Applicant and E. Juggernaut of Counsel for the Respondent stating that he waives service of the Rule:

IT IS ORDERED that the abovenamed Respondent do appear on the floor of the Court on the 16th and 17th September, 1980 at 10.30 of the clock in the forenoon to show cause, if any, why he should not be committed to prison or otherwise punished for contempt of court for having on the 18th May 1980 in the course of a regional congress of the Labour Party held at the Social Welfare Centre of Mare d'Albert used the words contained in the affidavits sworn in this matter by Cyrille de Labauve d'Arifat Esq., Director of Public Prosecutions and Jean Berky Ombrasine, Esq., a press reporter of the newspaper Le Mauricien which words contain certain scandalous matters respecting the Supreme Court of Mauritius and which were clearly and beyond any reasonable doubt calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius on the ground that injustice and corruption prevail and wealthy persons receive preferential and biased treatment in the Supreme Court of Mauritius.

By the Court

(sd) O.A. Khodadin

for Master and Registrar

REG. B122 No. 9106.

NO.10.

RESPONDENT'S LIST OF WITNESSES

TAKE NOTICE you the abovenamed applicant, in order that you may not plead or pretend ignorance of same, that the foregoing is a list of Witnesses whom the respondent intends to summon in order to give evidence on his behalf at the hearing of the above **matter** viz:-

In the Supreme  
Court of  
Mauritius

No.9 Rule  
14th July 1980  
(continued)

No.10

Respondent's  
List of  
Witnesses  
1st September  
1980

a) The Commissioner of Police, to depute (i) Police Constable  
1503 Dayalah (ii) Deputy Commissioner of Police A. Hyderkhan,  
(iii) Chief Inspector Mestry and (iv) Inspector Bissessur and  
(v) Police Constable Bharat.

b) Indarjeet Ramdewan, Chairman Mare d'Albert Social Centre,

c) Louis Rene Sophine, Secretary Mauritius Fisherman Co-operative  
Federation of Mahebourg.

Under all legal reservations, especially of calling other witnesses  
if need be.

Dated at Port-Louis this 1st day of September 1980

(sd) M. Mardemootoo

of George Guibert Street, Port-Louis

Attorney for the respondent.

To the Director of Public Prosecutions, having his legal domicile  
in the office of Mr. G. Bisasur, Senior Crown Attorney,  
Jules Koenig Street, Port-Louis.

Reced. copy

(sd) Choo Box Sang

2.9.80 for D.P.P.

Return:

The foregoing List of Witnesses was duly served by me, the undersigned  
Usher, upon the Director of Public Prosecutions having his legal  
domicile elected in the office of Mr. G. Bisasur, Senior Crown

Attorney - by leaving a true and certified copy thereof with Miss Choo Box Sang, a lady clerk, found at the Crown Law Office, situate in Jules Koenig Street, Port-Louis.

On Tuesday the 2nd day of September 1980.

(sd) P. Jugnarain

Usher, Supreme Court.

REG. Dh 422 No. 7997

In the Supreme  
Court of  
Mauritius

No. 10

Respondent's  
List of  
Witnesses  
1st September  
1980  
(continued)

NO. 11

LETTER FROM SENIOR CROWN ATTORNEY TO  
M. MARDEMOTOO, ATTORNEY-AT-LAW.

9th September 1980

Dear Confrere,

Re: D.P.P. v/s L. Badry

I am directed by the Director of Public Prosecutions to acknowledge receipt of your notice of the 1st September 1980 and to request that the evidence of the witnesses listed at paragraph (a) in the said notice which has not been drawn up in affidavit form and communicated, be made available as early as possible.

Yours faithfully

(sd) G. Bisasur

Senior Crown Attorney.

M. Mardemootoo Esq.,

Attorney-at-Law,

Port-Louis.

Copy to:

Master and Registrar,  
Supreme Court.

No.11

Letter from  
Senior Crown  
Attorney to  
M. Mardemootoo  
Attorney-at-  
law.  
9th September  
1980

STATEMENT OF CHIEF JUSTICEIn the Supreme  
Court of  
MauritiusNo. 12  
Statement of  
Chief Justice  
undated

I had intended to take the case of the D.P.P. v. Badry with my brother Espitalier-Noel, J., but yesterday I received a letter from Counsel for the Respondent, setting out a letter written to the newspaper 'Le Mauricien' by the President of a Club to which I belong. That letter implies that all members of the club in question condemn the conduct of the Respondent.

When that letter was written, I was in Australia, and was not consulted about its terms and purpose. In fact it was only when Counsel for the Respondent drew my attention to it that I first learned of its existence.

Nevertheless I agree with Counsel for the Respondent that the terms of the letter might create in the mind of the Respondent an impression that I had condemned him without a hearing. In order that **justice** should be seen to be done, I have decided not to hear the case myself.

MINUTES OF 16TH SEPTEMBER 1980Minutes of 16th  
September 1980

On Tuesday 16th September 1980

Before Hon. Y. Espitalier-Noel, Judge

and

Hon. A.M.G. Ahmed, Ag. Judge

23519 - The D.P.P. v L. Badry

C. d'Arifat Q.C. (S.Hattea with him) for the Applicant

A.K. Sen Q.C. (E. Juggernaut and L. Seetohul with him)

for the Respondent.

At the outset of the case, His Lordship Mr. Justice Y. Espitalier-Noel reads out a statement on behalf of the Hon. Chief Justice (filed of record).



A.K. Sen states that he would be taking a point in limine to the effect that the Commission of Enquiry is not a Court, so that there cannot be a contempt of that Court and that the proceedings should be discharged. He adds that he would be taking the point at the very outset so that evidence need not be adduced at this stage in the two cases where Mr. Justice Glover is involved. With counsel agreeing and by order of Court, the case SCR NO. 23519 is heard first.

Court directs that the proceedings be taken in shorthand notes.

Case for Applicant

d'Arifat renews the motion he made previously before the Supreme Court and he tenders the witness, who has sworn an affidavit in the matter, for cross-examination.

i) Jean Berky Ombrasine, sworn, is cross-examined by A.K. Sen Q.C. and re-examined by d'Arifat Q.C.

(Docts. A and B are put in).

Case closed for Applicant.

Case for Respondent

A.K. Sen tenders Respondent for cross-examination.

ii) Lutchmeeparsad Badry, s.a.h. is cross-examined by d'Arifat Q.C. and re-examined by A.K. Sen Q.C.

(Doc. C is put in).

(iii) Indarjeet Ramdawon., s.a.h. is cross-examined by d'Arifat Q.C. and re-examined by A.K. Sen.

iv) Louis Rene Sophine, sworn, who is cross-examined by d'Arifat Q.C.

v) Ahmedkhan Hyderkhan, s.a.m. is examined by A.K. Sen and not cross-examined by d'Arifat Q.C.

Case closed for Respondent

A.K. Sen addresses Court, in the course of which he quotes:-

D.P.P. v. Masson & Anor - 1971 MR p. 292 at p. 294

Ambard v. A/General for Trinidad and Tobago - 1936 Appeal

Cases - p.322 at p.335

Regina v. Commissioner of Police of Metropolis - 1968

Vol. 11 - Queen's Bench - p. 150 at p.154

Recess.

After recess.

Counsel as above.

A.K. Sen states that he would wish to point out to the Court the last part of the evidence of Mr. Badry in which he stated that he had plenty of time to attack the Judiciary in the Assembly but that he never did so. This is **very important**, he adds.

d'Arifat Q.C. addresses Court, in the course of which he quotes:-

D.P.P. v. Virahsawmy - 1972 MR p. 62 at p.64

D.P.P. v. Chandramun - 1965 MR p. 91

D.P.P. v. Virahsawmy - 1972 MR

Court reserves judgment.

(Vide shorthand transcript notes).

(sd) O.A. Khodadin

for Master and Registrar

NO. 14

CIRCULAR

No. 14  
Circular

Circular from Registry to Counsel and Attornies informing them of date of judgment.

(OMITTED)

MINUTES OF 23RD OCTOBER 1980

In the Supreme  
Court of  
Mauritius

No. 15  
Minutes of 23rd  
October 1980

On Thursday the 23rd October 1980

Before Hon. Y. Espitalier-Noel Judge

and

Hon. A.M.G. Ahmed, Judge

23519 - The D.P.P. v. L. Badry

S. Hattea, replacing C. d'Arifat for the Applicant

E. Juggernaut and L. Seetohul for the Respondent

His Lordship Y. Espitalier-Noel reads out the Judgment of the Court (filed of record) holding that the Respondent has been guilty of contempt of Court and sentencing him to undergo six weeks simple imprisonment, with costs.

(sd) R. Oograh

for Master and Registrar.

SITTING OF 16TH SEPTEMBER 1980

No. 16  
Sitting of  
16th September  
1980

IN THE SUPREME COURT OF MAURITIUS

On Tuesday the 16th day of September 1980

Before The Honourable P.Y. Espitalier-Noel, Judge

The Honourable A.M.G. Ahmed, Acting Judge

In the matter of:-

D.P.P. Applicant

v.

L. Badry Respondent

AND

In the matter of:-

D.P.P. Applicant

v.

L. Badry Respondent

AND

In the Supreme  
Court of  
Mauritius

In the matter of:

D.P.P.

Applicant

v.

L. Badry

Respondent

No. 16  
Sitting of 16th  
September 1980  
(cont'd)

C. d'Arifat Q.C., Director of Public Prosecutions (S. Hatteea with him) appears for the applicant in all three cases.

A.K.Ashok Sen.Q.C., (E.Juggernaut and L. Seetohul with him) appears for the respondent in all three cases.

Mr. d'Arifat: May it please Your Lordships, out of the three cases, there are two cases .....

Mr. Ashok Sen: If I may interrupt my learned friend, after my learned friend has opened on the facts I want to raise a point of demurrer, that the Commission of Enquiry was not a Court, that there cannot be a contempt of Court and that the proceedings therefore should be discharged in limine.

Court:- You consider that you would like to take that point.

Mr. Ashok Sen:- At the very outset My Lords.

Court:- Not as a final submission on the actual application.

Mr. Ashok Sen:- If that point succeeds, My Lords, that would be an end of the matter and we would need not trouble with the evidence otherwise we would have to go in the evidence and the merits because it is denied that any such statement was in fact made, therefore evidence will have to be led and rebutted.

Court:- Perhaps it would be convenient to start with the other case.

Mr. d'Arifat:- I am at the disposal of the Court.

Court:- Proceed with the case where Mr. Glover was not involved.

Mr. d'Arifat: That is convenient.

Court:- We will see in due course what stand we will take.

Mr. d'Arifat:- This case, I understand, is No. 482 (Record No. 23519). My Lords, two affidavits have been sworn in this matter and for convenient purposes, I renew the motion which was previously made before the Supreme Court and the two witnesses are tendered for cross-examination if so required in any order that the respondent may be pleased to cross-examine them.

Mr. Ashok Sen cross-examines

Mr. Jean Berky Ombrasine (sworn) Reporter of 'Le Mauricien',  
residing at 95 Hugnin Road, Rose-Hill

Q. You belong to 'Le Mauricien'?

A. Yes, I am working at 'Le Mauricien'.

Q. You claim to have been present at this meeting of the 18th  
May 1980?

A. I was present at the meeting.

Q. Did you happen to see anybody representing L'Express?

A. I did not see anybody representing L'Express.

Q. Did you happen to see any policeman there?

A. Yes.

Q. Covering the meeting?

A. I have a friend who was there.

Q. On behalf of the police?

A. I don't know if he was on behalf of the police but he was there.

Q. What was his name?

A. I think he is in the precincts, but I don't know his name.

Q. Is he a policeman?

A. He is a policeman.

Q. And you met him there?

A. Yes I met him there and I even talked to him.

Q. Did you report these offending words which are the subject matter of the proceedings here in Le Mauricien of the 19th May?

A. Can you read it to me.

WITNESS IS HANDED OVER A COPY OF THE NEWSPAPER LE MAURICIEN DATED THE 19TH MAY 1980 (Document A)

Q. Could you point out where you did mention those words?

A. The article is from me, but the title is not.

Q. Not the title, the words please. The translation is 'there is one creole working at FUEL who had an accident in his work, he became 50% invalid, the case was taken to the Supreme Court, case dismissed because Mr. Series is there, he has not got a single cent, that is how justice is done here'. Have you got those words.

A. The words do not appear on the paper, but I would like to explain.

Q. Answer first, are those words there or not there?

A. The words are not there, but I would like to explain.

Court:- You said you wrote this article?

A. Yes

Court:- In Le Mauricien of which date?

A. Of the 19th May.

Court:- The words concerning 'creole travaille FUEL' do not appear?

A. They do not appear in the article published in the paper, but I would like to add that in my original article I have written those words, but when the paper was submitted to the editor in chief he had written off those words.

Mr. Ashok Sen: Did you mention to the police when the police were enquiring into the matter that those words were put originally in your article and were deleted by the editor?

Court: Est-ce que vous aviez dit dans un statement a la police par exemple qu ces mots etaient dans l'oringal de votre article et qu'ils avaient ete written off by the editor in chief?

Translation:

Did you say, for example, say in a statement to the police that these words were in your original article and that they had been deleted by the chief editor?

A. I believe having mentioned that fact to the police in my statement of the 23rd.

Mr. Ashok Sen:- Did you mention to the police that these words were there originally in the article and they were deleted. This is the question and not what you said on the 23rd. Do you understand the implication of it?

Court:- The witness had answered that he thought that he did mention the fact that the words were in the original article and had been written off by the editor in chief.

Mr. Ashok Sen:- Is that so. I thought he said, My Lords, subject to correction, 'I did mention it on the 23rd in my statement' and not that he mentioned that those words were originally in the article when they were deleted, that is what I understood him to have said.

Court:- Vous venez de dire tout-a-l'heure que dans l'original de votre article du 19 il y avait ces mots mais que ca avait ete written off par le redacteur en chef. La question etait:

Est-ce que vous avez dit que ces mots etaient dans votre article a l'origine et avaient ete written off par le redacteur en chef.

Est-ce-que vous avez dit ca a la police?

Translation:

A while ago you said that in your original article of the 19th these words appeared but that they had been deleted by the chief editor. The question was: Did you say that these words were originally in your article and had been deleted by the chief editor. Did you say this to the police?

A. Je crois.

Translation:

I think so.

Mr. Ashok Sen: Have you got a copy of the statement, when you said that it was originally there and that it was deleted by the editor?

A. A copy

Q. Do you have a copy of the statement in your possession?

A. I do not have in my possession a copy of the statement I made to the police.

Q. But you agree that these are very important words for the purpose of the article by which you are trying to focus the attention of the public on the attacks on judges?

A. J'ai écrit mon article après les déclarations de M. Badry.

Translation: I wrote my article after M. Badry's statements.

Court:- Est-ce que vous considérez que ces mots 'ene creole ....' étaient importants dans le contexte de la publication de votre article?

Translation:

Do you consider that these words 'a creole.....' were important in the context of the publication of your article?

A. Le mot peut être important, seulement il y a des règles à suivre.

Translation:

The word can be important, but there are rules to follow.

Court: La question est: vous personnellement, est-ce que vous considérez que ce passage était important dans le contexte de la publication de cet article?

Translation:

The question is: Do you personally consider that this passage was important in the context of the publication of this article?



A. Yes, I consider the words to be important for the publication of the article.

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AN ISSUE OF L'EXPRESS IS SHOWN TO WITNESS

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Mr. Ashok Sen:- In that issue of the 19th May, there is a report which covered the same meeting, will you be good enough to tell us whether you find these words also?

A. Je ne travaille pas a L'Express.

Translation:

I do not work for the Express.

Court:- On vous demande si dans cet article de L'Express vous trouvez ces mots?

Translation:

You are asked if you find these words in this article from the Express.

A. I do not find these words in the article contained in L'Express issue of the 19th.

Mr. Ashok Sen: These were the only two papers which reported about the so-called attacks on judges?

A. Ce ne sont pas les deux seuls articles qui ont ete publies.

Translation:

They are not the only two articles that have been published.

Court: The question was whether these were the only two papers which covered the meeting with the report of the attacks on judges.

A. Non, parce qu le lendemain ou le surlendemain, suite a une conference de presse du president et du secretaire general du parti travailliste, L' Express est venu rapporter certains propos qui n'avaient pas ete rapportes dans l'edition de l'avant veille ou la veille.

Translation:

No, because on the following day or the day after, after a press conference given by the president and the general secretary of the Labour Party, the Express reported certain remarks that had not been published in the edition of the previous day or the day before that.

Court:- La question etait: Est-ce que Le Mauricien et L'Express sont les deux seuls journaux qui ont rapporte l'incident a ce meeting?

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Translation:

The question was: Are "The Mauricien" and "The Express" the only two papers which made reports on the incident at this meeting?

A. Yes, L'Express and Le Mauricien are the only two papers which made reports on the attacks on judges.

Mr. Ashok Sen: Is it true to suggest that these words were added to the original words on the 23rd May or from the 23rd May in order to buttress the campaign against the respondent and his party?

A. No.

Q. Can you suggest any reason?

A. I would like to add something. Lorsque j'avais soumis l'article au redacteur en chef, il avait pris mon carnet de note, il avait pris l'article que j'avais ecrit, il l'avait ramasse dans le coffre fort du bureau, et c'est encore en sa possession, et si la cour le desire, elle pourrait en prendre connaissance.

Translation:

I would like to add something. When I submitted the article to the chief editor, he took my notebook, he took the article I had written, he put them away in the office safe, and it is still in his possession. And if the court so wishes, it could examine it.

Court:- Do you understand what the witness is saying.

Mr. Ashok Sen:- I followed in my bad french but I could follow.

Court:- He said that on the morning of the 19th he handed over the article together with his notes to the editor in chief who kept them in his safe.

Mr. Ashok Sen: What I submit is that the contents of this document should not go as verbal evidence in the absence of the original without an explanation being given as to its non-production.

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Court:- But this is his explanation.

Mr. Ashok Sen:- But this is inadmissible as Your Lordship will appreciate that he cannot give the contents of a document in the absence of the original.

Court:- He is only saying that he gave his notes and his articles to the editor in chief.

Mr. Ashok Sen:- I thought that he was going to add to it that's why I interjected.

Court: He said that he handed over his article together with his notes to the editor in chief who kept them.

Mr. Ashok Sen:- Your paper, Mr. Ombrasine, is not very friendly to policy of the Labour Party, is it not or is it? To be quite frank in a democracy you need not be supporting everybody?

A. It is not true to say that Le Mauricien is hostile to the Labour Party.

Q. I did not say hostile. I say that your paper is not a supporter of the Labour Party, I never used the word 'hostile'.

Court: Est-ce-qu le Mauricien est un 'supporter' du parti travailliste?

Translation:

Is the Mauricien a 'supporter' of the Labour Party?

Le Mauricien does not support any political party.

Ashok Sen: Did you support the demand for nationalisation of lands and the harbour which Mr. Badry made at this meeting?

A. The political orientation of the newspaper is decided by the editor in chief, I am only a reporter.

Q. I am asking it as a fact, whether your paper support that policy or not. We know that the policy is decided by the editor and management. But is it a fact that your paper is opposed to the policy?

A. The newspaper has published many articles mentioning that lands be distributed in the context of the land bank creation.

Q. I am asking you about the labour party scheme, of Mr. Badry's demand for nationalisation of lands and the harbour?

A. I am not aware of the projects of Mr. Badry concerning the nationalisation of lands and the harbour.

Q. Didn't he make a speech on that subject at this meeting?

A. Yes.

Q. You heard it yourself?

Court:- Did 'you' mean the paper?

Mr. Ashok Sen: I mean him personally.

A. I heard Mr. Badry speaking. I have no idea whether what he intended was good or bad.

Q. But he did advocate the end of exploitation of the workers, didn't he?

A. Yes.

Q. Was that the main theme of his speech?

A. No.

Q. What was the main theme?

A. When I arrived Mr. Badry was speaking of lands, and also of the unemployment in the country. He was putting the question as to why not distribute the lands to the unemployed. Then he changed subjects. His speech on lands was of a duration of about 2 to 3 minutes.

Q. Mr. Jagatsing, according to your report, had spoken of the report of the Commissioner, Mr. Glover. Could you refresh your memory. According to your report, Mr. Jagatsing said that since there was no appeal against that report, it had to be considered by the Select Committee and Parliament, and that the decision on that Enquiry Commission would depend upon the Select Committee and Parliament. Is that in your report?

A. I don't recall that.

Q. Would you look at the issue of L'Express which I handed over to you and find out whether this was not reported there?

A. Yes, I see something.

Q. Would you look at your report of the 21st May and would you look at the report of L'Express of the 23rd May, I mark it in red?

A. Yes.

Q. Did you find this written there that he said that there was no right of appeal and that the matter had to be decided by the Select Committee and Parliament?

A. Approximately that.

Q. Have you any reasons to contradict that statement?

A. Le Mauricien never contradicts anything.

Q. Have you any reasons to contradict the report of L'Express of the 23rd May?

A. No.

Q. My submission will be that such views expressed on a Commissioner of Enquiry or even of a Court can never be contempt on the authority which I will have occasion to cite to your Lordships.

Mr. Ombrasine, at that time Mr. Badry was responsible for the scheme of pension for the retrenched dock workers numbering about 3000.

Did you recollect that. Would it have cost the interested management over Rs. 12 m.

A. I can't answer this question.

Q. You can't answer me or you don't know.

A. I don't know.

Q. Was it not a very important topic in Mauritius at this time,  
that about 3000 dockers had been retrenched and their pension?

A. I am only in charge of reports on political parties at Le  
Mauricien.

Q. As an ordinary man don't you remember that this was a very live  
topic at that time?

A. It is possible that I may have read something upon this top ici at  
that time but I do not remember.

Q. But do you remember that this was a problem which was engaging  
public attention at that time?

A. It is possible.

Q. The demand meant a very great slice on the earnings of the dock  
management and those who were connected with them. That scheme of  
pension meant a very big slice off the income of the dock management  
isn't it?

A. J'ai pu lire.

Translation:

I could read.

Court:- Do you know whether you knew that this scheme would be taking  
a big slice out of the income of the dock companies and their associates?

A. No.

Mr. Ashok Sen:- Do you support the demand of the dockers who were  
retrenched?

A. Le Mauricien has always supported the workers and has always worked  
in the interest of the dockers of the country.

Q. I asked you about this particular matter. Did Le Mauricien support the demand of the dockers for a pension?

A. I hope so.

Q. Would you be good enough to point out in which article and where, if you can, because I know you cannot offhand say, but I would be very much obliged if you can supply any article or any report supporting the demand for a pension of the retrenched dockers?

A. Yes.

Mr. Ashok Sen: That is all.

MR. D'ARIFAT RE-EXAMINES

Q. You answered to a question from respondent counsel that you wrote the article in Le Mauricien of the 19th May?

A. Yes.

Q. Is this the article you were referring to?

ISSUE OF NEWSPAPER IS SHOWN TO WITNESS

A. Yes.

Q. I read in this article: 'Il (you were referring to l'ancien ministre de la securite sociale) a publiequement conteste des jugements rendus par les tribunaux. L'orateur a remis en question le judiciaire et a fait des declarations que nous ne puivons reproduire ici contre les magistrats due pays'.

Translation:

I read in this article: He (you were referring to the former minister for Social Security) publicly contested the rulings of the courts. The speaker challenged the judiciary and made statements which we cannot reproduce here against the country's magistrates'.

A. Cette phrase n'est pas de moi. Dans mon article il y avait les propos tenus par l'ancien ministre Badry, mais cette phrase a ete mise par le redacteur en chef, qui a coupe le tout et a remis cette phrase.

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Translation:

This sentence is not mine. My article contained remarks made by the former minister Badry, but this sentence has been included by the chief editor who deleted everything and then put back this sentence.

My Lords, I undertake to have that document registered and produced in view of cross-examination.

Mr. Ashok Sen: My Lords, how can he give the contents of a document not produced. The original must have been produced since the witness is giving evidence.

Court:- He said that he gave particulars of what was said, but he has not said anything else.

Mr. d'Arifat:- If we could get this straight there should be no misunderstanding. I understood the witness to say that this part of the article was not written by himself, but he has personal knowledge that this was written by the editor in chief as a result of the report which the witness made to the editor in chief.

Court:- I understood the witness to say that in his original article he had particulars of what had been said, that the editor in chief did not allow the particulars to go but replaced them by this passage. He is not saying anything else.

Mr. d'Arifat:- In the course of the police enquiry, did you know whether the notebook which you handed over to the editor in chief was photographed by the police?

A. Yes, it was photographed in presence of the editor in chief and in my presence also.

Q. Could you say whether this is a correct reproduction of your notebook?

A. Yes

DOCUMENT PUT IN AND MARKED B.



Q. Could you say where, in this document (Document B) is there reference to the words you said Mr. Badry uttered on the 18th May at Mare d'Albert?

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A. The passages are to be found on the first page, in the middle of the third page and on the fifth page again with an asterisk.

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Q. Could you read from this a passage which you noted i.e. the original notes you made?

A. M. Glover qui pou dirige ca pays la, dechire so calecon dans ca pays. I am reading what is in the paper from the asterisk: 'ca dimoune fine touyer', and on page 5 'aina galette, li pas fine gagne narien, li fine aller, aine zenfant fine mort, creole fule 50% infirme cour supreme dismiss the case parce qui li fuel ene sou pas fine gagner ala la justice ici'.

Translation:

Is it M. Glover who is going to run this country? Teach him a lesson in this country, and expose him for what he is. I am reading what is in the paper from the asterisk: 'a person has committed murder' and on page 5 'he has got money, he got away with it, he has left. A child has died. A 'creole' from F.U.E.L. is 50% incapacitated. The Supreme Court dismissed the case. Because it is F.U.E.L. he did not get a penny in compensation. This is the kind of justice we have here'.

Mr. d'Arifat:- That will be all.

Mr. Ashok Sen:- Your notebook contained only these pages?

A. The first 5 pages.

Q. That is all that your notebook contained?

A. No, about 15 pages of the meeting.

Q. Is this notebook only concerned with that meeting report?

A. There are about 15 pages of the meeting report, but these are the first 5 pages on which the police had made the enquiry.

Q. What I am asking you is this. This notebook is concerned only with the report concerning this meeting at Mare d'Albert, and this is one of the punch papers, is that so?

A. Yes.

Q. Is there anything to suggest that this was done on the 19th or the 20th? Are there any date, any initials?

A. I had a photographer of Le Mauricien with me, he was present when I was taking the notes and I made the report as from these notes. The detective took the book note, it is in his custody until now.

Q. Is there anything here to indicate that it was made on the 19th or 20th, is it initialled by anyone, that is all that I am asking you.

A. No.

Mr. Ashok Sen: That is all.

Court: As far as this case is concerned are you tendering any witness.

Mr. Ashok Sen :- I shall tender Mr. Badry (the respondent). I have also another witness, the police officer who conducted the enquiry, but since he is not under our control we could not give an affidavit and what he has to say he will depone in Court.

MR. D'ARIFAT CROSS-EXAMINES

Mr. Lutchmeeparsad Badry, s.a.h. M.L.A. of 17 Inkerman Street, Port-Louis.

A. You were one of the orators of the Labour Party Congress on the 18th May at Mare d'Albert?

A. Yes.

Q. You were the first speaker?

A. I was.

Q. Can you remember for what purpose the meeting was called for?

A. This was the original meeting of the Labour Party, we were invited by letters, we call it a seminar.

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Q. Can you remember whether the party had arranged for posters to be affixed containing the subject matter of the congress?

A. There were not any posters.

Q. Do you know whether the authority of the Commissioner of Police had been requested for the holding of that meeting?

A. Yes.

Q. Will you please have a look at this document?

DOCUMENT IS SHOWN TO WITNESS

A. I knew it afterwards.

Q. What do you mean by knew it afterwards?

A. After the schedule of the meeting because I was called there by telephone and the meeting was held in my constituency.

Q. I beg leave to put in this document (Document C) because I might require it for the other motion.

Mr. Badry when did you receive the telephone call to attend the congress?

A. Just at the eve of the meeting.

Q. When was that?

A. On the 17th.

Q. The meeting took place on a Sunday morning?

A. Yes.

Q. Did you prepare what you had to say?

A. I never prepare my speech.

Q. Is it possible therefore that you may not now remember a few things that you may have said on the 18th?

A. I was very short in my speech.

Q. That is not my question.

A. Approximately I remember.

Q. You may have forgotten a few things?

A. But the important points I still remember.

Q. Must I understand that what is reproached to you, you consider important today?

A. Yes.

Q. Had you said this you would have remembered?

A. I have to recall my mind then I can reply to that question.

Q. My question is simple.

Mr. Ashok Sen:- I would be much obliged if you put the question in French.

Mr. d'Arifat:- I don't know whether my french would be as good as my english.

Q. M. Badry vous preferez parler le francais?

Transation:

M. Badry, would you rather speak French?

A. Je parle le francais et l'anglais.

Translation:

I speak both French and English.

Q. Vous preferez repondre a mes questions en francaisou en anglais?

Translation:

Would you rather answer my questions in French or in English?

A. Posez la question en francais.

Translation:

Ask the question in French.

Q. Vous dites que les choses importantes que vous aviez dites le 18 vous vous rappelez de ce que vous aviez dit? dit?

Translation:

Do you say that you remember the important things that you said on the 18th?

A. C'est bien ca.

Translation:

That is correct.

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Q. Ma question est celle ci: Parmi ces choses importantes est-ce-que se trouve ce qui vous est reproche aujourd'hui?

Translation:

My question is as follows: Do these important things include what you are today being blamed for?

A. Ca c'est pas vrai

Translation:

That is not true.

Q. Vous n'avez jamais mentionne FUEL?

Translation: You never mentioned F.U.E.L.?

A. Non

Translation:

No.

Q. Vous n'avez jamais mentionne des affaires qui avaient ete decidees en Cour Supreme?

Translation:

You never mentioned certain Supreme Court rulings?

A. Non

Translation:

No.

Q. Vous n'avez jamais mentionne le nom de M. Series?

Translation:

You never mentioned the name of M. Series?

A. Non

Translation:

No.

Q. Tout ceci serait donc une pure fabrication?

Translation:

All this would then be pure fabrication?

A. Sur

Translation:

Absolutely.

Q. Pouvez vous nous dire quand est ce que pour la premiere fois vous aviez su que cette fabrication avait ete dirigee contre vous?

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Translation:

Can you tell us when you knew, for the first time, that this fabrication was aimed at you?

A. Quand j'ai recu le summons.

Translation:

When I was issued with a summons.

Q. Pouvez vous nous dire quand est-ce que vous aviez pris connaissance ou si jamais vous aviez pris connaissance de l'article qu'a publie le Mauricien le lundi 19 Mai?

Translation:

Can you tell us when you acquainted yourself with, or if you ever acquainted yourself with, the article which The Mauricien published on Monday 19th May?

A. On m'a dit ca.

Translation:

I was told about it.

Q. Vous n'avez jamais lu ca?

Translation:

You never read it.

A. On a lu, on m'a fait entendre, c'est mon fils qui m'a dit ca.

Translation:

Someone read it; I was told about it; it is my son who told me about it.

Q. Quand votre fils vous a-t-il dit ca?

Translation:

When did your son tell you this?

A. Le 19 dans l'apres midi.

Translation:

On the afternoon of the 19th

Q. Est-ce que vous etes au courant que le mercredi 21 mai, M. Jagatsing dans une lettre au journal Le Mauricien tenait lespropos suivants: Whatever Mr. Badry said is his concern not what did I say.

Translation:

Are you aware that on Wednesday 21st May M. Jagatsing, in a letter addressed to The Mauricien, wrote the following "Whatever Mr. Badry said is his concern, not what I said.

A. Il faut savoir si exactement M. Jagatsing a dit ca ou si c'est le journal qui a manipule.

Translation:

One has to find out whether M. Jagatsing wrote exactly that or whether it is the paper that has manipulated it.

Q. Je vous remercie. Manipulation, attaque le 21, attaque le 19. Aviez vous pris des dispositions pour nier que vous ayez tenu des propos semblables?

Translation:

Thank you. Manipulation. Attack on the 21st, attack on the 19th. Have you taken any steps to deny that you have made such remarks. A. Ce n'est pas necessaire parce que la presse informe tout expece de choses: contre le gouvernement, contre nous autres centre le parti.

Translation:

That is not necessary because the press writes about all sorts of things: against the government, against ourselves, against the party.

Q. Vous ne croyez done pas en la justice?

Translation:

Then you do not believe in justice?

A. J'ai confiance dans la justice.

Translation:

I have confidence in justice.

Q. Vous avez confiance dans la justice pourquoi n'aviez vous pas fait appel a elle devant de tels propos tenus contre vous.

Translation:

If you have confidence in justice why did you not call upon its services in view of such remarks having been made against you?

A. Je croyais que c'etait purement une fabrication des journaux et que la justice n'aurais pas pris ca au serieux.

Translation:

I believed it was purely a fabrication of the papers and that the law would not have taken it seriously.

Mr. d'Arifat: That will be all.

Mr. Ashok Sen: You have the highest respect for all the judges of the judiciary?

A. All the time.

Q. You could never think of making any such attacks upon the judiciary?

A. Never. I have plenty opportunities in the Assembly to attack the judiciary but I never did so, even in my career as a trade unionist politician since 40 years I have never attacked the judiciary.

Q. Have you ever done so in the Assembly at any time, later or before?

A. I had the opportunity but I have never done it.

Mr. Ashok Sen: That is all.

MR. D'ARIFAT CROSS-EXAMINES

Mr. Indurjeet Ramdewon, s.a.h. labourer:-

Q. Would it be correct to say that you swore an affidavit in the English language before the Master and Registrar of the Supreme Court which was not interpreted to you?

A. That is correct.



Mr. d'Arifat:- No question.

Mr. Ashok Sen: When you swore that affidavit you knew that it was to the effect whether you have heard Mr. Badry speaking the words complained of by the two press reporters Messrs.

OmbRASINE and Appou?

A. An attorney had interpreted the affidavit to me in his office, and the affidavit was to the effect that I did not hear Mr. Badry speaking those words at the meeting.

Q. May I show the witness the affidavit affirmed on the 2nd June 1980 in support of the notice by the learned D.P.P. Can he be shown para. 3 of the affidavit and can he be asked to read it.

WITNESS READ PARA. 3 OF THE AFFIDAVIT

Q. You heard Mr. Badry speaking at the meeting?

A. Yes.

Q. From beginning to end?

A. I remained on the spot during the speech of Mr. Badry which was of about 10 minutes.

Q. Did he utter these words that you have just read?

A. No he did not utter the words I have just read.

Mr. Ashok Sen: That is all.

MR. D'ARIFAT CROSS-EXAMINES

Mr. Louis Rene Sophie, sworn fisherman of Labourdonnais, Mahebourg.

Q. Depuis quand ou conne M. Badry

Translation:

Since when have you known M. Badry?

A. I have known Mr. Badry since 1967-68.

Q. Dans tout so meeting ou aller?

Translation:

Do you attend all his meetings?

A. I have known him in 1967 when I was working for the PMSD and Mr. Badry was in the Labour Party.

Q. Comme si dirait depuis longtemps ou aine agent electoral?

Translation:

I assume you have been a party canvasser for a long time?

A. I have been an electoral agent since quite long.

Q. Astere la ou considere ou comme ene agent electoral qui parti?

Translation:

And at the present time which party do you consider yourself a canvasser for?

A. Since the electoral campaign of 1976 I was the principal agent of Mr. Goriah.

Q. Depuis 1976?

Translation:

Since 1976?

A. Since 1976 I have been working for the labour party in the company of Mr. Goriah.

Q. Ce jour le 18 mai, labour party ti fine invite la presse pour present dans ca congres?

Translation:

Did the Labour Party invite the press to this congress held on 18th May?

A. I was invited personally, I cannot say whether the press was invited at the congress held by the labour party on the 18th May.

Q. Est-ce quiou capave dire si aina bane cimoune qui ou connais qui represente la presse qui ti la ca jour la?

Translation:

Can you tell us whether there were any representatives of the press, whom you know, who were present on that day?

A. I cannot say whether there were people whom I know who were representatives of the press present at the congress.

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Q. Quand ou fine connais qui besoin ou vine ene temoin dans ca zaffaire la?

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Translation:

When were you told that you would be required as a witness in this case?

A. Apres qui mo ti joindre mo camarade Ramdewan, mo ti joindre li cote Centre Social la bas, li dire moi si mo ti vine labas, besoin ene temoin, mo dire lis si li besoin moi pour temoin mo vini.

Translation:

After I had met with my friend Ramdewan, I met him near the civic centre, he asked me if I had been there and that a witness was required. I told him that if he needed me as a witness, I would come.

Q. Qui date?

Translation:

On what date was that?

A. Le 18 mai.

Translation:

On the 18th May.

Q. Quand Ramdewan fine joindre ou, fine dire ou qui besoin ente temoin?

Translation:

When did Ramdewan meet you and tell you that a witness was required?

A. Mo pas tellement rappeller.

Translation:

I cannot really remember.

Q. A peu pres. Nou le mois septembre, combien le temps depuis ca?

Translation:

Approximately. We are now in September, how long ago is it since then?

A. Li capave ene mois et demi, deux mois, mo pas rappeler.

Translation:

It could be a month, a month and a half, I cannot remember.

Q. A peu pres deux mois?

Translation:

About two months?

A. About 2 months ago I was informed by my friend Ramdewan at the Social Centre that a witness was required in this case.

Q. Ca Ramdewan qui li ete?

Translation:

Who is Ramdewan?

A. Ramdewan is the president of Mare d'Albert Social Welfare Centre.

Q. Avant ca jour qui ou fine joindre Ramdewan est ce qui ou ti fine gagne l'occasion causer ou discuter ecque quicaine lors c'est qui M. Badry fine causer ca jour le 18?

Translation:

Before you met Ramdewan, did you happen to take over with somebody what M. Badry said on the 18th?

A. Avant ca jour la nous pas capave comme narien. M. Badry pas encore causer.

Translation:

Before that date we could not know anything. M. Badry had not yet made his speech.

Q. Ou dire moi ou fine joindre Ramdewan a peu pres deux mois de ca.

La questions est ceci: avant ca jour ou joindre Ramdewan et qui Ramdewan dire ou besoin ene temoin, est-ce qui ou fine gagne l'occasion avant ca jour qui ou joindre Ramdewan causer, discuter avec quicaine lors c'est qui M. Badry fine dire le 18 mai?

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Translation:

You told me that you met Ramdewan about 2 months ago. The question is as follows: Before that day when you met Ramdewan and when he told you a witness was required, did you happen to discuss with someone what M. Badry said on the 18th May?

A. Personne pas fine dire moi mais c'est qui mo meme fine remarquer le lendemain la messe fine faire certaines commentaires lors compte-rendu congres Mare d'Albert?

Translation:

Nobody told me about it but I myself noticed the following day that the press had published certain commentaries concerning the congress at Mare d'Albert.

Q. Ou fine lire ca?

Translation:

You read this?

A. No pas tellement intelligent, en partie mo comprend li. Before my encounter with Ramdewan two months ago when he asked me to be a witness I had not spoken nor argued with anybody on the matters spoken by Mr. Badry at the meeting. I came to know them in the press reports which I read the next day.

Translation:

No I am not that intelligent. I partly understood it .....

Q. Qui journal ou fine lire?

Translation:

Which paper did you read it in?

A. Journal l'Express mo habituer lire, mo lire aussi le Mauricien.

Translation:

I normally read the Express, but I also read the Mauricien.

Q. Ca jour la cote ou fine guetter qui M. Badry fine dire,  
est ce qui ou ti va capave dire qui journal ou fine lire?

Translation:

On the day when you read what M. Badry said, can you tell me  
now which paper you read it in?

A. Comment mo explique la cour mo lire l'Express un peu,  
mo pas abonne.

Translation:

As I have explained to the court I occasionally read the Express,  
I am not a subscriber.

Q. Est ce qui ou pas rappelle-si ou pas rappelle ce n'est  
pas bien grave-si ou capave aide la cour et dire la cour-est-ce  
qui ou fine lire Advance, Cerneen, Nation?

Translation:

Whether or not you remember is not important - are you able to help  
the court and tell us whether you read the Advance, the Cerneen or  
the Nation newspaper?

A. I saw a report on a newspaper I do not remember which one.

Q. Dans ca journal qui ou fine lire ou fine trouver qui le droite  
ou bien ti a pe faire palabre. Ou ti dans meeting, ou lire dans la  
gazette ce qui fine passer dans meeting, mo oemande ou ce qui la  
gazette fine dire li ti bon?

Translation:

Do you think that the article contained in the paper that you read  
was correct or was it mere gossip? You were present at the meeting,  
you read in the paper what went on there. I am asking you whether  
what was reported in the paper was correct?

A. The report made by the paper which I read was not an exact report of what Mr. Badry had said.

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Q. Ou fine lire ene la gazette ou plusieurs la gazette?

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Translation:

Did you read only one newspaper or more than one?

A. D'abord cotte coiffeur ou gagne tout qualite la gazette, li capave L'Express, Le Mauricien, Cernee n.

Translation:

As you know, at the barber's you can find all sorts of newspapers - The Express, the Mauricien, the Cerneen.

Q. Dans tout bane la gazette ce qui metter pas ti bon?

Translation:

Was what was written in all the newspapers correct or not?

A. Mo pas tellement rappeler qui la gazette mo ti lire.

Translation:

I cannot recall precisely which newspaper I read.

Q. Ou pas tellement rappeler qui la gazette ou ti lire.

Translation:

You cannot recall precisely which newspaper you read?

A. Motrouve ene l'article concerne congres.

Translation:

I found an article concerning the congress.

Q. Ena bane la gazette, la dans qui dire bane quique chose qui pas ti bon mais ou bien rappelle ce qui M. Badry fine dire.

Translation:

There are some newspapers which did not give a correct report, but do you remember what M. Badry said?

A. Si mo chanet mo trappe ca la gazette peut etre qui ene l'autre dimoune qui ti interesser avec ca la gazette avant moi li fine lire, li quitte ca la , alors mo gagne li mo lire.

Translation:

If I am lucky I get a newspaper. Maybe somebody else who was interested in the paper read it before me; he left it and then I picked it up and read it.

Q. Ou pas capave dire qui la gazette?

Translation:

You cannot say which paper it was?

A. I cannot say for sure which paper I read.

Mr. d'Arifat:- That's all.

Mr. Ashok Sen:- My Lords, the next witness is the gentleman who carried out the investigation.

Mr. d'Arifat: I will abide by the decision of the court but I wish to make this statement: that I have personally given instructions to any police officer who wishes in this case to swear an affidavit that he was free to do so and that it was a matter between his own conscience and himself.

Mr. Ashok Sen: The gentleman was unfortunately retired at the time, therefore he was not available for an affidavit being affirmed by him and whatever he has to say he will say in court. This is very important, My Lords, because none of the police officers who covered the meeting reported that these offending words were uttered by the respondent.

Court: We will allow the witness to be tendered on the understanding that if the other party need some time or wishes to reserve cross-examination since contrary to normal practice they are not aware of what this witness might say.

Mr. Ashok Sen: I think the learned D.P.P. knows what is the report of this gentleman.

Mr. d'Arifat: It seems that my learned friend knows what I know.

MR. ASHOK SEN EXAMINES

Mr. Ahmad han Hyderkhan, s.a.m.

Q. What were you in May 1980?

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A. I was acting Commissioner of Police, Headquarters.

Q. Did you have any occasion to conduct an enquiry relating to the speeches made at a meeting of the Labour Party congress at Mare d'Albert on the 18th May 1980?

A. No.

Court: You did not enquire?

A. No.

Mr. Ashok Sen: Was any enquiry made?

A. Yes

Q. The enquiry was made by whom?

A. By the Assistant Commissioner, C.I.D. Mr. Leve Hang.

Q. Did he submit a report to you?

A. No.

Q. To whom was the report submitted?

A. To the D.P.P.

Q. Did he take the statements of all the police officers who were present at the meeting of the 18th May 1980?

A. Yes.

Q. Where are those statements?

A. These statements are to be found in police case file now with the D.P.P.

Q. Did any of those police officers confirm that Mr. Badry had made any of the offending statements which I shall show to you.

Mr. d'Arifat: Without interrupting my learned friend, I wish to make it quite clear that it has never been the case of the applicant that any police officer who was present at Mare d'Albert heard Mr. Badry uttering the words complained of.

Mr. Ashok Sen: It is admitted that police officers covered the meeting and reported about the speech.

Mr. d'Arifat: There were officers who covered the meeting, but it was not the case of the applicant that any police officer heard Mr. Badry uttering those words.

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Mr. Ashok Sen: How many police officers covered this meeting?

A. Only one was specifically detailed to cover the meeting, the others were on duty to control traffic.

Q. The statements of all of them were taken?

A. Yes.

NO CROSS EXAMINATION

MR ASHOK SEN ARGUES:-

May it please Your Lordships.

So far as this case is concerned the onus is entirely on the learned Director of Public Prosecutions to prove beyond reasonable doubt that the offending words were uttered by the respondent and that they are capable of constituting contempt. There are one or two decisions to which I will refer Your Lordships on this point but the principle is too well established to warrant the citation of any authority, but may I only cite one case of Your Lordships' Court where the question has been very specifically dealt with. I am reading from the Mauritius Reports 1971, the case of Masson and anor. at p. 292:

Headnote: Contempt of court by scandalising the court is an offence of a criminal character. It must be proved with such strictness as is consistent with the gravity of the offence charged.

And if your Lordships turn to p. 294 for the relevant paragraph which reads:

It is to be recalled that contempt of court is an offence of a criminal character and that it must be proved with such strictness as is consistent with the gravity of the offence charged.

A person's liberty may be at stake. To use the consecrated expression, the court must be satisfied beyond reasonable doubt of his guilt before punishing him. In this case it cannot be disputed that if the true intent of the article is that urged by the applicant, there has been committed a contempt of the most reprehensible order calling for exemplary punishment.

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This was admitted in the newspaper report, admitted to have been published but nevertheless it has to be proved and this is the principle, with the strictness as in a criminal action. Now, in this case, My Lords, what is the evidence? The evidence is that of a lone witness from Le Mauricien. No other paper reported these words, L'Express which reported other words did not carry these words. This is admitted by Mr. Ombrasine that L'Express did not carry these words. He admits that only these two papers carried the report of the meeting and these two papers contemporaneously of the 19th May did not carry the same offending words. The Glover Commission report, My Lords was a topical matter, it agitated the minds of political parties, those who were opposed to the Labour Party were trying to use it for battering the Labour Party and the Labour Party was trying to defend itself by saying there is no right of appeal against that, it is only a recommendation to the cabinet, but whatever it is, such a topical matter of importance if it figure in an original congress of the labour Party addressed by ministers and other important members of the Labour Party, it would be impossible to imagine that these words should not have been reported in other papers, and it is impossible to imagine that the two papers which carried these reports would not have carried the important statement in their headline reports of the 19th. The explanation that the notes

were given to the editor and that he deleted them is too flimsy to stand the scrutiny of strict proof, the reason is, the editor has not been called, and what call an improvised notebook has been put in its place and which was put for the first time before the police officer conducting the enquiry, and even the original notebook is not put up. Normally a photographic copy would not be admissible unless the absence of the original is explained. But I am not taking only that technical plea, look at the admission made, there is nothing to indicate that it was made on the 19th May, and these sheets are the perforated loose sheets of paper which you can find in any notebook whose change could not be beyond a man's ingenuity. What is the guarantee that this notebook is not one which saw the light of day for the first time when the police officer was making an enquiry. It was known that the very first question he would ask would be: why did you not write this on the 19th? And this is the first question to be asked by anyone. Therefore this notebook finds the light of the day for the first time when the police officer was making the enquiry. That it was in existence on the 19th nobody has said so except the gentleman who has given evidence. He is a partisan witness, he is ~~not~~ <sup>out</sup> to vindicate his own statements in the press because if he does not do so he will be liable for libel action, if he admits that this is not the correct one he faces a libel action, therefore he is absolutely a partisan witness and the law relating to a partisan witness is too well known to be submitted before Your Lordships, namely it need corroboration of an independent witness, that's the law of appraisal of a partisan witness. He is an interested witness, he is highly interested. Le Mauricien is well known for its opposition to the Labour Party policies, he himself says that he does not see eye to eye with the programme of Mr. Badry. I am not saying that he is

wrong, he is entitled to say so, he is entitled to his own view, in a democracy he is entitled to oppose Mr. Badry as much as he wants, but when it comes to a finding in a criminal action against a particular person, then his evidence has to be scrutinised with the utmost strictness. What is the independent corroboration of his statement? Nothing whatsoever. His notebook does not corroborate him, this is very well known, that one's own notebook never corroborates one unless it is against interest or unless the man is dead and he did it in the course of duty, therefore, My Lords, one's own notebook is never a corroboration. Therefore, My Lords, on the test laid down by Your Lordships in the Law Report, the proof falls short of the standard required to be reached in a criminal action on the lone testimony of an interested witness, in the absence of any other report if the l'Express man has not come to corroborate it and if the police officers have not come to corroborate it. This is most important, My Lords, it is now admitted that the police officers who were present, all made statements and reports and none of them has corroborated this, and the public prosecutor - with great respect to him - cannot expect to find the finding of guilt in the absence of the most important testimony of the police officers who covered the meeting and made contemporaneous reports. My submission will be, My Lords, that the offence of which the respondent had been charged has not been proved at all, far less proved beyond reasonable doubt because the proof of a partisan witness without corroboration is no proof at all, and these are my submissions to Your Lordships on the facts.

On the law I would rely upon two decisions of the Court of Appeal and the Privy Council. The first one is the case of *Ambard -v- Attorney-General* for Trinidad and Tobago 1936 Law Reports, Appeal Cases p.330 and at p.335 we have this:

Many years ago, it used to be a rather interesting feature of one of the English publications to draw pointed attention, in parallel columns to the strangely anomalous differences between the sentences imposed by various magistrates and judges in cases which seemed, from the reports, to present a fair similarity of facts. In some quarters, the criticism of ten unexpressed in actual words was resented as taking no account of circumstances which a judge was fully entitled to give effect to, though they might not strike the ordinary reader of the press reports .....

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The Attorney-General gave notice of motion for contempt .....

And at p. 335 is the famous sentence, the celebrated passage from Lord Atkin, if I may read it to your Lordships:

But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public, the public act done in the seat of justice. The path of criticism is a public way: The wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune, Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

The next decision is the case of Regina v. Commissioner of Police of the Metropolis 1968 Law Reports, 2 Q.B. where Your Lordships will see

the offending passage is at p.154 within quotations from the judgment of Lord Denning. The judges have made the law a nonsense and on that, My Lords, the Manchester Guardian came with an article where the main heading said that Lord Denning is an ass. On that there was a lot of criticism but the judges did make a comment that if somebody calls the judge an ass he is entitled to do so, it is for the public to judge it.

My Lords, the path of criticism is a public way, therefore let us see the offending words, whether they are legitimate criticisms or not. My submission to Your Lordships is that Your Lordships should not accept the prosecution case that these words were uttered by Mr. Badry. The English translation of para. 3 is: One man was killed, a certain person got nothing, because he has money. In Ambard case, My Lords, they say: the man who really wounded the pregnant woman with a razor blade, almost killed her, got only five years whereas the other man got 8 years, but he deserved it although there was provocation. In para. 3 it is said: one child died, one creole working at FUEL had an accident in his work, he became 50% invalid person, the case was taken to Supreme Court, case dismissed, because Mr. Series is there, the worker does not get a single cent, this is how justice is done. I must say, My Lords that the powerful always get favoured in the sense that they can spend more money and this is the criticism brought in England and everywhere. The system of justice is such, that is why there must be a rational system for legal aid for the poor because the whole basis of the system of legal aid for the poor is based on this opposition, My Lords, that the rich can always get a favour, it is a plea, My Lords, that the poor litigants must get help from the State, these are cases which are even made by judges. Look at the delay, My Lords, look at the expenses,

attorneys, barristers, various other things, poor men have no chance at all, therefore the system of justice must be such that between the rich and the poor arranged against each other in a court of law the balance may be made even between them, not that because judges are acting from an improper motive, but the system is such that the rich always get away with an advantage because the poor can't really get the benefit of our legal system because of poverty. If Your Lordships read Lord Denning, he quotes various parables from famous lawyers. Charles Dickens states that when a man enters the front halls of a chancery court he has to hobble around for 20 years and by the time the barristers, the solicitors, the judges, the masters, all have gone through, the man comes out with all his feathers short, he comes in with beautiful plumage and he comes out of the chancery court almost a naked person. This has been quoted by Lord Denning in justification for legal aid for the poor. The Lord Chief Justice says that in order to make justice a popular benefit for the people we must make litigation possible for the poor and that is why the State gives counsel in a murder case. I don't know what the system is in Mauritius, but in India we don't still have the system of giving a State counsel in every criminal case so that in such a case the accused is going undefended except that nowadays judges always call upon the legal aid society or private societies to provide a counsel for the accused, but in civil litigation, My Lords, where widows come in, widows who are arranged against powerful opponents, where their fortune is at stake, and if that widow says that the poor never gets justice in this country, is it contempt or is it not a state of things which has to be attended to. Here is a man who is 50% invalid, he does not get a single cent, he uses certain words to cry out this injustice for not having obtained compensation, I myself would not employ a different language,

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I would have felt outraged myself. How is it, my Lords, that a man, who is 50% invalid, who is injured as a workman in the course of duty, gets nothing.

This comes in fact, from doctrine of common employment and various other principles which your Lordships possibly don't have under French law, but under the English law the common employment principles put out any deserving people who had suffered fatal injuries out of court because those commonly employed people would be responsible for the accident. My Lords, this is the agonising cry of the poor saying that a child died, a creole working at FUEL got injured, is nearly paralysed and he gets nothing. Is this justice? This is not an arraignment of the judges or imputing improper motives. This is a malady which affects our entire judicial system, a malady which has to be attended to and not ignored. If we ignore it then justice will become the first victim. We know that without legal aid for the poor justice will become the very first victim, therefore, my Lords, my submission to Your Lordships is that any man injured by such an event, but such a contingency, who finds that he does not get even a cent against a powerful litigant, if he cries out for justice and says that the poor has had no chance, this is not contempt, My Lords. These are my submissions, My Lords.

RECESS

AFTER RECESS

Continuation

MR. A.K. Sen: Please Your Lordships before starting, I would like to point out to Your Lordships the last bit of the evidence of Mr. Badry in which he says that he had plenty of time to attack the judiciary but that he never did so in the Assembly. He has never done it in his life. This is very important.

MR. CYRILLE DE LABAUVE D'ARIFAT,  
DIRECTOR OF PUBLIC PROSECUTIONS ARGUES

May please Your Lordships, I shall first deal with the question of fact which is raised in those proceedings namely whether Mr. Badry uttered those words:

'Ainan aine dimoune fine touyer, li pas fine gagne narien parcequi li sinen galette-li fine aller-aine zenfant fine mort'.

Translation:

There is a person who committed murder, he got away with it because he has got money, he has left - a child is dead.

'Aine creole travaille FUEL fine gagne aine accident travail, li fine vine 50% infirme, zaffaire fine alle en Cour Supreme, case fine dismiss, parcequi Missie Series qui la-bas, aine sou li pas fine gagne, Alla la justice ici.'

Translation:

'A creole working at FUEL met with an accident at work. He is now 50% incapacitated. The case was referred to the Supreme Court. The case was dismissed. Because it is M. Series who is there he did not get a penny in compensation. This is the kind of justice we have here.'

As has been assumed in evidence My Lords, the whole matter started on that Monday afternoon when in the newspaper, Le Mauricien, an article appeared which was unsigned and in which it was reported that Mr. Badry had used words which could not be reproduced.

We know from Mr. Ombrasine that he was the author of the article, that he reported the words to the editor in chief, and that the editor in chief inserted the paragraph I have just referred to, and that part of the article was not his. I shall not seek to gainsay that Mr. Ombrasine is the only witness who reports Mr. Badry as having uttered those words. It is perfectly clear that the police was in

attendance and that we have no police report that Mr. Badry had said so. The position is that the press through the Le Mauricien had thought fit to publish the article I have just referred to and that on enquiry, it was found out that the words referred to are the words today complained of. It is in this perspective, My Lords, that I wish this case to be placed before this Court so that this Court, having heard Mr. Ombrasine, having heard Mr. Badry, having heard the witnesses called by the Respondent, could decide whether it can be satisfied beyond reasonable doubt, that in fact Mr. Badry uttered those words. It may, of course, be disputed that Mr. Ombrasine made notes of the speech Mr. Badry made. Photocopies have been produced and it will be for the Court to decide whether in the circumstances these notes in the form in which they are may be regarded as supporting the evidence of Mr. Ombrasine or not. Further the Court has had the benefit of hearing Mr. Badry and of hearing the witnesses heard by Mr. Badry and it will be for the Court to appreciate whether the matter in which they depone, their behaviour in Court proves or disproves the allegations made by Mr. Ombrasine. In this respect, My Lords, I would wish to refer to the case of the Director of Public Prosecutions v. V. Virahsawmy which was a case of contempt of Court, M.R. 1972 at page 62. It is a judgment of Mr. Justice Garrioch, as he then was, who at page 64 of the report has this to say:-

' The material question at this stage is therefore, did the respondent speak those words and was the context in which they were uttered capable of altering their purport into an innocent one. Constable Beeltah did not record them in his notebook at once but did so about five minutes later. He was sure that he had made no mistake as to their sense. Mindful, however, of the criminal character of the offence of contempt of court which requires that it be proved with

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such strictness as is consistent with its gravity, we would have had some hesitation in relying entirely on constable Beeltah's powers of understanding and recollection were it not for two admissions made by the respondent which we think, supply sufficient corroboration of the police officer's evidence'.

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It is not of course, my purport to say that any omission has been made in the present case. I am merely relying on this authority for justifying that if corroboration the Court seeks the Court can find this corroboration in the attitude, in the demeanour, in the manner in which the respondent endeavour to explain that he had not used those words, so that on this question which is a question of facts, My Lords, I am leaving entirely into the hands of the Court to decide whether the Court is satisfied beyond reasonable doubt that Mr. Ombrasine in his affidavit and in his cross-examination, has been speaking the truth and whether the Court can without hesitation rely on what he said.

Now, as far as the question of whether those words amount or not to a contempt of Court, it is my submission that those words must read in the creole context in which one hears them:

'Ainan aine dimoune fine touyer, li pas fine gagne narien parcequi li ainan galette-li fine aller-aine zenfant fine mort'.

Translation:

There is a person who committed murder, he got away with it because he has money, he has left - a child is dead.

'Aine creole travaille FUEL fine gagne aine accident travail, li fine vine 50% infirme, zaffaire fine alle en Cour Supreme, case fine dismiss, parcequi Missie Series qui la-bas aine sou li pas fine gagne. Alla la justice ici.'

My learned friend submitted to the Court, if I understood him rightly that here was a case of a poor man against a rich man. I am afraid I cannot read any reference to a poor man alleged to have been uttered by Mr. Badry. I would also submit that it is my belief that the legal aid service in Mauritius would in circumstances similar to those mentioned in the words used have given to those persons who happen to be victims every opportunity of having their cases fully dealt with before the Supreme Court.

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My Lords, I would refer to a few points which I believe are of importance. The first being that what is important in a case of this nature is not so much the intention of the person who uses the words as the <sup>IMPACT</sup> ~~impace~~ which those words may have had upon those who listen to them and I may be bold to say that I find it very difficult to think otherwise than those persons who listen to those words if they were speaking that justice in Mauritius at the level of the Supreme Court was if not to say corrupt but <sup>not</sup> ~~no~~ fair and impartial. It is this, in my submission which is the most important thing because, of course, such words would scandalise judges and the Courts but as has often been referred to in judgments in England, in Muaritius to which I shall refer, what is most important is this public confidence which the people of the country are entitled to have into those who have been appointed and who discharged the duty of delivering justice. It is not. The intention is nothing, it is the impact.

It is this sacrosanct duty which they perform and which must not be in the least blemish and those unhappily who risk that those words may be interpreted in a sense that would tend to create a doubt in the mind of the people that such is not the case that in my humble submission bear the consequences.

I would wish to refer your Lordships to the case of  
The Director of Public Prosecutions v Chundramun, M.R. 1965,

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at page 91. The headnote reads as follows:

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'The respondent repeated at a public meeting words conveying that injustice and corruption prevailed in the district courts with respect to which a person had already been sentenced to one month's imprisonment for 'contempt of court' and the respondent also inferentially made outrageous imputations on the integrity of the Judges of the Supreme Court. In view of the defiant attitude of the respondent he was sentenced to undergo six months imprisonment notwithstanding his expression of regret the sincerity of which was open to doubt.

Sir Rampersad Neerunjun, Chief Judge, has this to say:

' The language used by the respondent clearly contained outrageous imputations on the integrity of the Magistrates and, inferentially, that of the Judges of the Supreme Court, and in our view was calculated and intended to bring into suspicion and contempt the administration of justice and therefore constitutes a very grave Contempt of Court'.

Again in the case of The Director of Public Prosecutions v. Virahsawmy which Your Lordships will no doubt have the opportunity of reading I will quote from the headnote:-

'Circumstances in which it was held that certain statements made at a public meeting by the respondent were calculated to bring into suspicion and contempt the administration of justice.

The Court observed that one aspect of all criticism of, or remarks on, the judiciary which many are apt to overlook is that its members are by the very nature of their office unable to enter into public controversy to vindicate their integrity'.

My learned friend has referred your Lordships to two decisions one of the Privy Council and the other one of the Court of Appeal in England and to the famous dictum of Lord Atkin in the case of *Ambard v. Attorney General for Trinidad and Tobago* 1936 A.C. Page 335. I do submit that using the very same passage if the words alleged to have been used by Mr. Badry and were in fact used by him do suggest that we are in presence of a contempt of court:

'But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith'.

Can we in presence of the words we have before us say that such criticism was a criticism made in good faith?

'The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice'.

And what about the reference to FUEL to Mr. Series and to those who with their 'galette' can see to it that justice is rendered in their favour.

'Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice. And are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice.'

Can we say in presence of such a text that if Mr. Badry used those words he was not attempting to impair the administration of justice.

In the Supreme  
Court of  
Mauritius

No. 16  
Sitting of 16th  
September 1980  
(cont'd)

I am reading, My Lords, from the Report of the Committee on Contempt of Court made in England by the Philmore Commission and I would make their remarks mine when they say this:-

Page 68

'this branch of the law of contempt is concerned with the protection of the administration of justice, and especially the preservation of public confidence in its honesty and impartiality; is only incidentally, if at all, concerned with the personal reputations of judges. Moreover, some damaging attacks, for example upon an unspecified group of judges, may not be capable of being made the subject of libel proceedings at all. Secondly, judges commonly feel constrained by their position not to take action in reply to criticism, and they have no proper forum in which to do such as other public figures may have. These considerations lead us to the conclusion that there is need for an effective remedy, both in England and Wales, and in Scotland .....

And I would add in Mauritius

'.... against imputations of improper or corrupt judicial conduct.'

My Lords, these are my two submissions. One in fact is that the Court has had the opportunity of hearing those who immediately after on the day following the meeting at Mare d'Albert complained of what was alleged to have been uttered at Mare d'Albert the Sunday before. Of course the question is there: Why is it that others did not think fit to report the same words? Far from me the idea of evading the question but at the same time if there are some who have been bold enough to report them, I submit it that what they did, unless one is satisfied that they did it out of corrupt motive, should be taken seriously and acted upon it. As far as the legal issue is concerned I have, My Lords,

In the Supreme  
Court of  
Mauritius

No. 16  
Sitting of 16th  
september 1980  
(cont'd)



I would say, no doubt in submitting to the Court that we are in presence of a clear case of contempt which requires a remedy.

This is my submission.

In the Supreme  
Court of  
Mauritius

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No 16  
Sitting of 16th  
September 1980  
(cont'd)

COURT: In paragraph 1, the first part, there are two incidents?

Mr. d'Arifat: Yes, my Lords.

Court: Is it your submission that the first one, the first part 'ainan aine dimoune fine touyer ..... li fine aller, aine zenfant fine mort' concerns a court case?

Translation:

'There is a person who committed murder ..... he has left, a child is dead'.

Mr. d'Arifat: My submission, my Lords, is that if I were asked to particularise the contents, I would say that the contempt lies in the words: 'Alla la justice ici'.

Translation:

'This is the kind of justice we have here.'

In other words what the speaker has said: 'I am referring you to two cases, this is what happened in two cases'.

Court: Not two court cases?

Mr. d'Arifat:- Not two court cases, he is referring to two cases and one of them took place before the Supreme Court. But where the first part may be regarded as being not only a claim but a judgment delivered by the Court are those words at the end: 'Alla la justice ici'.

Translation:

'This is the kind of justice we have here'.

My submission is that what the author is saying there are two cases, one he does not say where it went, the other one he says it went to the Supreme Court but he ends up by saying 'Alla la justice ici'.

I am not saying it is a Supreme Court case, it might be an industrial Court case, it may be a District Court but nevertheless it is a court case, this because of the words 'Alla la justice ici'.

JUDGMENT

In the Supreme  
Court of  
Mauritius

---

No. 17

Judgment  
23rd October 1980

This is a motion to commit to prison or otherwise punish the respondent for contempt of court for having used words scandalising the Supreme Court of Mauritius and calculated and intended to bring into suspicion and contempt the administration of justice.

On the 18th May the Labour Party held a regional congress at the Social Welfare Centre of Mare d'Albert and the respondent was one of the politicians who addressed the congress. According to Mr. Ombrasine, a reporter of the newspaper Le Mauricien, in the course of his speech the respondent 'who was then speaking about the 'capitalistes blancs' referred to two Court cases in the following terms:

- (1) 'Ainan aine dimoune fine touyer, li pas fine gagne narien parcequi li ainan galette-le fine aller-aine zenfant fine mort; and
- (2) aine creole travaille FUEEL fine gagne aine accident travail, li fine vine 50% infirme, zaffaire fine alle en Court Supreme, case fine dismiss, parcequi li FUEEL parcequi Missie Series qui la-bas, aine sou li pas fine gagne. Alla la justice ici.'

Translation (1):

There is a person who committed murder, he got away with it because he has got money, he has left - a child is dead.

Translation (2):

A creole working at FUEEL met with an accident at work. He is now 50% incapacitated. The case was referred to the Supreme Court. The case was dismissed. Because it is M. Series who is there, he did not get a penny in compensation. This is the kind of justice we have here.

It is the submission of the applicant that the respondent was thereby taxing the Supreme Court with showing preference and bias in favour of the wealthy.

The respondent has denied having uttered the incriminated words and it was submitted on his behalf that it had not been proved with strictness which is required in cases of contempt of court in view of the criminal character of the offence, that the respondent did in fact utter those words.

In the Supreme  
Court of  
Mauritius

No. 17  
Judgment  
23rd October  
1980  
(continued)

The case for the applicant rests on the evidence of Mr. Ombrasine the press reporter.

On the 19th May the issue of Le Mauricien carried a report on the regional congress, in which the following appears with reference to the respondent:

Il a publiquement conteste des jugements rendus par des tribunaux. L'orateur a remis en question le judiciaire et a fait des declarations, que nous ne pouvons reproduire ici, contre les magistrats du pays.

Translation:

He publicly contested the rulings of the courts. The speaker challenged the judiciary and made statements which we cannot reproduce here against the country's magistrates. The incriminated words themselves do not appear in the published report.

According to Mr. Ombrasine, he had covered the congress for his newspaper and had heard and noted down what the respondent said, and subsequently drafted his report which included the incriminated words. On the morning of the 19th May he handed his report together with his notes to the editor in chief of the newspaper. The latter decided against publishing the actual words of the respondent, as reproduced in the report and substituted therefor the passage quoted above; he kept the original report as well as the notes of Mr. Ombrasine in his safe. Subsequently Mr. Ombrasine was interviewed by the Police and gave a statement; the Police made photocopies of his

notes on the matter which photocopies have been filed (Document B) and identified in Court by Mr. Ombrasine.

In the Supreme  
Court of  
Mauritius

Under cross-examination Mr. Ombrasine maintained that the respondent had made the incriminated remarks and denied that it was all a fabrication on his part to harm the respondent.

No.17  
Judgment  
23rd October  
1980  
(continued)

The respondent in Court denied having in the course of his speech ever mentioned any Supreme Court case or having ever referred to FUEL or to Mr. Series. He stated that he never prepared his speeches, but could remember the important points thereof. He became aware of the report published in Le Mauricien of the 19th May on the same day, but did not consider taking steps to deny the false allegation made against him or bringing the newspaper to Court, being given that the press was always publishing all sorts of things against the government, the labour party and its members.

The two witnesses who in an affidavit sworn to on the 11th July stated that they had listened to the speech of the respondent and had not heard the incriminated words deponed before us. We have found them to be thoroughly unconvincing and unreliable and we have no hesitation in discarding their evidence.

We were told that one police officer had been specifically detailed to cover the congress and that other officers were at the time on duty at Mare d'Albert to control traffic. It has been readily admitted by the applicant that according to their reports or statements, none of the police officers heard the respondent uttering the incriminated words.

We have considered the evidence of Mr. Ombrasine and the complete denials by the respondent and find that the issues of fact raised in the present case are clear cut. The question of Mr. Ombrasine having possibly misunderstood or mistakenly reported what the respondent would have said, we find just does not arise. Either the respondent did utter the incriminated words or he did not and Mr. Ombrasine would have deliberately fabricated evidence against him.

Counsel for the respondent submitted that we should not be satisfied with the uncorroborated word of Mr. Ombrasine, who was the only witness the applicant could produce before the Court to substantiate the case against the respondent. The more so, counsel submitted, as Mr. Ombrasine should be considered as a partisan witness, being attached to a newspaper which does not support the Labour Party. The Court, in the circumstances, should not discard, in the absence of corroboration from any other quarter, be it the police, for example, or other press reports, the possibility of Mr. Ombrasine having been bent on harming the respondent and his party and ex post facto fabricating evidence to justify himself with regard to what had been published in Le Mauricien concerning the respondent.

Now we full agree with what this Court had to say in the quoted case of D.P.P. v. Masson and anor 1971 M.R. 292 as to the standard of proof in cases like the present one. The relevant passage of the judgment is to be found at p. 294 of the report and reads:

It is to be recalled that contempt of court is an offence of a criminal character and that it must be proved with such strictness as is consistent with the gravity of the offence charged. A person's liberty may be at stake. To use the consecrated expression, the court

must be satisfied beyond reasonable doubt of his guilt before punishing him.

In the Supreme  
Court of  
Mauritius

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No. 17  
Judgment  
23rd October  
1980  
(continued)

This does not mean, however, and there is nothing under our law to that effect, that a court could not commit a person for contempt on the uncorroborated evidence of one witness if the court entertains no doubt as to the genuineness of such evidence.

Bearing the above principles in mind we have, in the light of the remarks of counsel, anxiously considered all the evidence before us and are fully satisfied of the good faith of Mr. Ombrasine. The absence, in the circumstances of corroborating witness has not shaken our unreserved belief that Mr. Ombrasine has spoken the truth and we are satisfied that the respondent did utter the incriminated words.

As to the first part of the incriminated remarks (about a child who had died) as we intimated at the hearing of the motion, we are not satisfied even in the context of the final words 'alla la justice ici' that the respondent must have been referring and been understood to refer to a court case. He may well, we find, have meant and been understood to mean that the case never went to court. We shall accordingly ignore the first part.

By his latter remarks, on the other hand, relating to the man who had been incapacitated at 50% we have no doubt that the respondent meant and could only have been understood to mean that this man's claim for damages or compensation had been unjustly dismissed by the Supreme Court because the other party to the case happened to be a wealthy company. It was, we find, nothing else but a serious

accusation of bias being levelled at the Supreme Court and can in no way be possibly considered, as was suggested by counsel, as having been a comment on the difficulties poor litigants may encounter in having their cases adequately presented in Court.

In the Supreme  
Court of  
Mauritius

No.17  
Judgment  
23rd October  
1980  
(continued)

We accordingly hold that the respondent has been guilty of contempt of court.

Now the respondent having throughout denied having made the contemptuous remark he could hardly be expected to express regret for having done so. He however stated in Court that he had the highest respect for the Judiciary and had, throughout his forty years career as politician and trade unionist never made any such attacks upon the Judiciary even under parliamentary immunity, at the Assembly.

The fact remains that we find that the grave and unwarranted accusation which he chose to level at the Supreme Court on the 18th May was clearly meant to shake public confidence in the administration of justice in Mauritius.

In the circumstances we sentence the respondent to undergo six weeks simple imprisonment, with costs.

(sd) P.Y. Espitalier-Noel, Judge

(sd) A.M.G. Ahmed, Acting Judge.

23rd October 1980

A MARE D'ALBERT HIER

LES TRAVAILLISTES ATTAQUENT LE JUGE GLOVER ET LE JUDICIAIRE

EN GENERAL

Virulentes sorties contre les capitalistes blancs dont un aurait  
demande au gouverneur-general le depart de SSR

La Place d'Armes ne peu pretendre diriger le pays, dit

M.K. Jagatsingh.

Le Parti travailliste a decide de faire feu de tout bois pour  
remonter la pente. En cela, le labour ne reculera devant rien.

A Mare d'Albert hier matin, les principaux orateurs du parti, en  
l'occurence Mm. Kher Jagatsingh, Lutchmeeparsad Badry et James  
Burty David, s'en sont pris aux 'capitalistes blancs' qui, selon  
eux, sont les principaux responsables des maux du P.Tr. et qui  
n'auraient qu'un but: renverser le gouvernement de Ramgoolam'.

Et dans ce contexte, ces 'capitalistes blancs' financent massivement  
les adversaires du parti et, ont allegue les Travaillistes,  
s'abritent derriere des organisations-telles l'Association des  
Contribuables (MTPA) et Action Civique.

Cependant, M. Kher Jagatsingh s'est empiesse de preciser aux  
quelque 200 a 300 delegues reunis au centre social de la region,  
qu'il n'est pas pourtant en faveur de l'elimination du secteur prive.

'Nous reconnaissons que ce secteur a joue un grand role pour le  
developpement de notre economie, mais nous lui refusons le droit de  
mettre son nez dans les affaires internes du Parti Travailliste'.

M.K. Jagatsingh declare qu le P. Tr. ne pardonnera ja ais tel



No. 18

BOOKLET CONTAINING THREE PHOTOGRAPHS

In the Supreme  
Court of  
Mauritius

No. 18  
Booklet  
containing three  
photographs  
21st May 1980

REPRODUCTION OF NOTE BOOK OF MR. OMBROISINE (REPORTER)

Taken on 21.5.80 at about 1555 hours.

I took 3 snaps containing 5 documents under the instructions of Mr Leve Hang, A.C.P.(C) and in presence of Mr Lindsay Riviere and Mr Madoorapen, Chief Inspector also presence Mr Ombroisine.

by Insp. C.F. Ramasaway  
Chief Photographer



independant la C.A. & G.A.  
Commissaire

Division n° 1 de la C.A.

4. Classes de lecture et de calcul  
pour les enfants de 6-7 ans  
dans les écoles  
Zona de la C.A.

le livre sera remis  
dans les écoles  
Zona de la C.A.  
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(Kher Jagatsing)  
Secretary-General

(J.B. David)  
President

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onal le di-  
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le Centre

Centre régional

\* Pour tous les centres  
Centre

Nous voudrions le faire  
Orbi s'élèvera

Par le haut de la  
Potterwood

Centre  
Central en terre  
Puis en terre

Centre régional



à la base de la  
Centre ou stade

- fait 10 jours par la base  
Centre ou stade

en)

regional le di-  
e Centre a l'ère

(J.B. avid)  
Président

(Kher Jagtsing)  
Secrétaire-général

.....

capitaliste blanc' d'etre alle voir le gouverneur general pour lui demander de 'fou Ramgoolam dehors'.

In the Supreme  
Court of  
Mauritius

No. 19

Le leader du PSM, M. Harish Boodhoo, ainsi que Mm. Beedassy et Mangoosingh ont ete publiquement insultes.

Extract from  
issue of news-  
paper Le  
Mauricien dated  
19th May 1980  
(continued)

Pour M. Badry, le Parti travailliste devra 'poursuivre la lutte commencee par Rozemont et Seeneevassen'. Il faut 'nationaliser de port et arracher une partie des terres des mains due secteur vive.

Ces terres pourraient etre 'distribuees aux chomeurs afin qu'ils puissent les exploiter pour gagner leurs vies'.

L'ancien ministre de la Securite Sociale n'a pas manque de mancer une pointe contre le juge Glover qui, en tant que president de la commission d'enquete, l'a trouve coupable de corruption.' Est-ce M. Glover qui pour dirige ca pays-la? Sivaient alors des propos grossiers que nous ne pouvons reproduire.

Il a d'autre part, publiquement conteste des jugements ets rendus par destribunaux. L'orateur a remis en question le judiciaire et a fait des declarations, que nous ne pouvons reproduire ici, contre les magistrats du pays.

M. Badry a lance aux 200 delegues, dont pour la plupart des ainnes. 'Nou 99% nous qui fine travail, nous qui fine litte .. c'est la le temps ine arrive pour nous respirer. Le temps ine pour nous bizin monte dadac'.

Le secretaire-general du P. Tr. , M. Kher Jagatsingh, a publicment declare que le gouvernement a fait une 'erreur monumental en nommant une commission d'enquete pour etudier les allegations de fraude et de corruption contre Mm. Lutchmee-parsad Badry et Giandeo Daby. Si le gouvernement l'avait ecoute les choses seraient autrement aujourd'hui. En effet, il

explique qui'il avait combattu l'idee de nommer une commission d'enquete mais 'zotte pas fine ecoute moi, zotte ils faireli.

In the Supreme Court  
of Mauritius

No. 19

Extract from issue of

newspaper Le

Mauricien dated

19th May 1980

(continued)

Maintenant nous voyons que les adversaires du P.Tr. se servent de ce 'pretexte' pour faire circuler des 'rumeurs' sur des personnalites politiques du pays, et parfois memo 'des epouses des ministres ne sont pas epargnees'.

Toutes ces rumeurs sont 'savamment circulees' par des 'batiaras' des 'capitalistes blancs' qui veulent a tout prix 'deloger Sir Seewoosagur Ramgoolam, afin qu'ils puissent y mettre un homme qui partage leurs idees'.

L'ancien ministre s'est ensuite pris aux 'capitalistes blancs', plus particulierement aux managers des sucreries 'qui touchent des salaires princiers sur le dos des petits planteurs, des artisans et des laboureurs. 'Nous bizin deposed zotte'.

Le secretaire general du P.Tr. s'est ensuite refere aux salaires princiers des managers de sucreries qui frisent les Rs. 400,000 par an (chifres cites en Cour Supreme) et a allegue que Mm. Harish Boodhoo, Berenger et L'Association des Contribuables ont milite l'annee derhiere 'pour que cette categorie de gens ne paient pas la taxe'.

'Ces salaires, des managers les ont sur le dos des petits planteurs, des laboureurs et des artisans' a-t-il allegue.

M. Jagatsingh a, par la suite, parle des 'manigances' des capitalistes pour 'retirer le pouvoir politique des mains du P.Tr. 'Pour atteindre ce but 'les gens de la Place d'Armes' utilisent M. Boodhoo et d'autres organisations telles l'Association des Contribuables et l'Action Civique, pour 'detourner l'attention de la masse des veritables problemes qui l'affrontent'.

'Non satisfaits, ils ont meme envoye un de leurs representants chez le gouverneur general pour reclamer la demission de SSR', a ajoute M. Jagatsingh.

Quoiqu'il n'oit pas voulu citer son nom, le ministre de l'Education a declare que celui-ci 'c'est ene blanc qui pas capave marche, li pe craque'.

In the Supreme  
Court of  
Mauritius

Il a, par ailleurs, annonce que ses collegues et lui 'ne cederent plus' sur la question de la nationalisation du port en depit de l'attitude de 'certaines personnes'. M. Jagatsingh a rappelle que le gouvernement a depense pres de 400 millions de roupies pour le developpement du port, et que maintenant il ne peut laisser de port entre les mains de capitalistes pour que ces derniers fassent des profits 'sur le dos des contribuables'.

No. 19

Extract from issue  
of newspaper Le  
Mauricien dated  
19th May 1980  
(continued)

En ce qui concerne les sucreries, le ministre a declare que le gouvernement n'a aucunement l'intention de nationaliser les usines. Mais a-t-il ajoute 'nou pou taxer li quand bizin'.

M. Kher Jagatsingh a, d'autre part, severement critique M. Harish Boodhoo et ses deux collegues. Il les a qualifies de 'voleurs' et 'd'assasins'. 'Voleurs' parce qu'ils ont vole la confiance de l'electorat travailliste, et 'assasins' parce qu'ils 'fine detruire tout nous travail parlementaire'.

Translation of  
extract from issue  
of newspaper Le  
Mauricien dated  
19th May 1980

AT MARE D'ALBERT YESTERDAY:

THE LABOURITES ATTACK JUSTICE GLOVER AND THE JUDICIARY  
GENERALLY

Virulent lash out at the "whites capitalists" one of whom would have "asked the Governor-General the departure of SSR (Sir Seewoosagur Ramgoolam).

"The Artillery Square cannot claim to lead the country". says Mr. K. Jagatsingh.

The Labour Party has decided to go all out to climb up hill again. For so doing the Labour will shrink from nothing. At Mare d'Albert yesterday morning, the main speakers of the party, in the circumstances Messrs. Kher Jagatsingh, Lutchmeeparsad Badry and James Burty David, have attacked



the "whites capitalists" who, according to them are mainly responsible for the troubles of the Labour Party and would have only one goal: "Overthrow Ramgoolam's government". And in that context, those "whites capitalists" finance heavily the party's opponents and, have alleged the Labourites, shield themselves behind organisations such as the (Mauritius) Tax Payers Association (M.T.P.A.) and 'Action Civique' (the Civic Movement).

However, Mr. Kher Jagatsingh was eager to make it clear to the 200 to 300 delegates gathered at the Social Centre of the locality, that he is not though in favour of the elimination of the private sector. "We acknowledge that that sector have played a great part in the development of our economy, but we deny it the right to poke its nose in the internal affairs of the Labour Party".

Mr. Jagatsingh has stated that the Labour Party will never forgive such and such "white capitalist" to have called on the Governor-General to ask him to 'kick Ramgoolam out'.

The leader of the P.S.M. (Parti Social Mauricien - Mauritius Socialist Party), Mr. Harish Boodhoo as well as Messrs. Beedassy and Gungoosingh have been publicly insulted.

In the opinion of Mr. Badry, the Labour Party must "continue the fight started by Rozemont and Seeneevassen". "The harbour should be nationalised and part of the lands should be snatched from the hands of the private sector".

These lands could be "distributed to the unemployed so that they could cultivate them for their livelihood."

The former Minister of Social Security has not failed to throw a dart at Justice Glover who, in his capacity as Chairman of the Commission of Enquiry, has found him guilty of corruption. "Is it Mr. Glover who is going to lead this country?" Then followed rough remarks that we cannot bring forward again.



He has on the other hand, contested publicly judgments delivered by Courts. The speaker has challenged the Judiciary and has made statements, that we cannot bring forward again here, against the country's magistrates.

In the Supreme  
Court of Mauritius

No. 19

Translation of  
extract from issue  
of newspaper Le  
Mauricien dated  
19th May 1980.  
(continued)

Mr. Badry rapped out to the 200 delegates, the majority of whom were young ones. "We are 99%, we have worked we have fought ..... now has come for us the time for respite. The time has come for us to have a ride!"

The General Secretary of the Labour Party, Mr. Kher Jagatsingh has publicly stated the government made a 'colossal mistake' in appointing a Commission of Enquiry to investigate the allegations of fraud and corruption (made) against Messrs. Lutchmeeparsad Badry and Giandeo Daby. Had the government listened to him, matters would have been otherwise today. In fact, he has explained that he fought against the idea of appointing a Commission of Enquiry but 'they did not listen to me, they did it'.

Now we see that the opponents of the Labour Party are making use of this "pretext" to circulate "rumours" on political personalities and even sometimes "ministers wives are not spared".

All those rumours are "wittingly circulated" by 'cheap agents and touts' of whites capitalists who want by all means "to oust Sir Seewoosagur Ramgoolam so that they may place in his stead a man who shares their views".

The ex-minister then attacked "whites capitalists", more especially managers of sugar estates "who earn princely salaries at the expense of small planters, factory workers and labourers." "We must disposses them".

The General Secretary of the Labour Party then referred himself to the princely salaries of sugar estates managers that is close to Rs. 400,000 per annum (figures quoted before the Supreme Court) and has alleged that Messrs. Harish Boodhoo

Berenger and the Tax Payers Association have militated last year "in favour of that category of persons who do not pay taxes".

In the Supreme Court of Mauritius

No. 19  
Translation of  
extract from issue

"These salaries, the managers get them at the expense of small planters, labourers and factory workers", he alleged.

of newspaper Le Mauricien dated 19th May 1980

(continued)

Mr. Jagatsingh has afterwards spoken about the 'moves' of capitalists to "remove political power from the hands of the Labour Party". To reach that goal "people of the Artillery Square" make use of Mr. Boodhoo and other organisations such as the Tax Payers' Association and the Civic Movement, to "turn away the attention of the mass from the real problems that confront it".

"Not satisfied, they have even sent one of their representatives to the Governor General to claim the resignation of SSR", added Jagatsingh.

Even though he did not want to cite his name, the Minister of Education has stated that this latter "is a white-man who cannot walk, he is collapsing.

He has, on the other hand, notified that his colleagues and himself "will not give in any longer" on the issue of nationalisation of the harbour in spite of the attitude of "some persons". Mr. Jagatsingh recalled that government has spent nearly 400 million rupees of the development of the harbour, and that now it could not leave the harbour in the hands of capitalists for these latter to make profits "at the expense of the tax payers".

Concerning the sugar factories, the minister has stated that government had not the least intention to nationalise factories. But he added "we shall tax them when necessary."

Mr. Kher Jagatsingh has, on the other hand, severely criticised Mr. Harish Boodhoo and his two colleagues. He called them "robbers" and "murderers". "Robbers"

because they had stolen the trust of the labour electorate and "murderers" because they "have destroyed all the work we have done in Parliament".

In the Supreme Court  
of Mauritius  
No. 19  
Translation of extract  
from issue of news-  
paper Le Mauricien  
dated 19th May 1980

No. 20

INVITATION TO REGIONAL CONGRESS

PARTI TRAVAILLISTE

Congres Regional

No. 20  
Invitation to  
Regional Congress  
undated

(Circonscription No. 12 Mahebourg/Plaine Magnien)  
Camarades,

Le Parti Travailleiste vous invite a un congres regional le  
dimanche 18 mai a 10 heures a.m. au Social Welfare  
Centre a Mare d'Albert.

Theme

Reponses aux detracteurs du Parti Travailleiste

- (i) Utilisation politique du rapport du Public Accounts Committee et du Rapport Glover.
- (ii) Les palabres sur l'affaire des bijoux.
- (iii) Comment le P S M trompe les travailleurs.
- (iv) Les **Scandales** du Rapport Balmano
- (v) Rumeurs, etc. ....

Orateurs:

Sir Veerasamy Ringadoo  
Sir Harold Walter  
L. Badry  
H. Ramphul

K. Jagatsing

J.B. David

D. Basant Rai

P. Doongoor

R. Chettiar

Le Parti Travailleiste proceders au recrutement des  
membres a l'issue du congres

Nom: .....

Prenom: .....

Adresse: .....

Circonscription .....

Date ..... Signature .....

Je voudrais m'inscrire comme membre du Parti Travailleiste.

(J.B. David)

President

(Kher Jagatsing)

Secetaire-General

Translation:

In the Supreme  
Court of  
Mauritius

PART II

NO. 3 Invitation to Regional Congress

(Constituency No. 12 - Mahebourg/Plaine Magnien)

No. 20  
Invitation to  
Regional Congress  
Translation

Comrades,

The Labour Party invites you to a regional congress on Monday  
18th May at 10 a.m. at the Social Welfare Centre at Mare d'Albert.

Subject

Answers to the detractors of the Labour Party

- (i) Political use of the Public Accounts Committee report and the Glover report.
- (ii) Gossip relating to the Jewellery affair.
- (iii) How the PSM hoodwinks the workers.
- (iv) The scandal of the Balmano report.
- (v) Rumours etc. ....

Speakers:

Sir Veerasamy Ringadoo

Sir Harold Walter

L. Badry

H. Ramphul

K. Jagatsing

J.B. David

D. Basant Rai

P. Doongoor

A. Chettiar

The Labour Party will proceed with the recruitment of members at the  
end of the congress.

Surname .....

Christian name .....

Address .....

Constituency .....

Date ..... Signature .....

I would like to register as a member of the labour Party.

In the Supreme  
Court of  
Mauritius

No. 20

Invitation to  
Regional Congress

(J.B. David)

(K. Jagatsing)

Chairman

General Secretary

No. 21

MOTION PAPER

No. 21

Motion paper  
23rd October  
1980

IN THE SUPREME COURT OF MAURITIUS

In re:

D.P.P. Applicant

v.

L. Badry Respondent

And

L. Badry Applicant

v.

D.P.P. Respondent

MOTION PAPER

Counsel is instructed to move this Honourable Court for an Order:-

(a) Granting leave to the applicant to appeal to Her Majesty in Council against the Judgment of the Supreme Court of the 23rd October 1980, sentencing the applicant to undergo six weeks simple imprisonment with costs.

(b) Fixing the time within which the Record of the case shall be prepared; and

(c) Fixing the amount of recognizance to be entered into by applicant for the prosecution of his said appeal.

(d). For a stay of execution of the sentence.

AND this for the reasons fully set forth in the hereto annexed affidavit.

Under all legal reservations.

Dated at Port-Louis, this 23rd October 1980

(s) M. Mardemootoo

of George Guibert Street, Port-Louis.

Attorney for the applicant.

(s) E. Juggernaut

of Counsel for the Applicant

In the Supreme  
Court of  
Mauritius

No. 21  
Motion Paper  
23rd October 1980  
(continued)

No. 22  
AFFIDAVIT OF L. BADRY

No. 22  
Affidavit of  
L. Badry  
23rd October 1980

I Lutchmeeparsad Badry, member of the Legislative Assembly,  
Port Louis,

Make solemn affirmation as a Hindoo and say:-

1. That on the 7th day of July 1980 a motion was made to the Supreme Court of Mauritius for a Rule calling upon me to show cause why I should not be committed to prison or otherwise for contempt of Court for having on the 18th May 1980 at a regional congress of the Labour Party held at Mare d'Albert referred to two Court cases in the following terms:

'Ainan aine dimoune fine touyer, li pas fine gagne narien parcequi li ainan galette, li fine aller-aine zenfant fine mort. Aine creole travaille FUEL fine gagne aine accident travail, li fine vine 50% infirme, zaffaire fine alle en cour Supreme, case fine dismiss, parcequi li FUEL parcequi missie Series qui la-bas, aine sou li pas fine gagne. Alla la justice ici.'

Translation:

"There is a person who committed murder, he got away with it because he has got money, he has left - a child is dead. A creole working at FUEL met with an accident at work. He is now 50% incapacitated. The case was referred to the Supreme Court. The case was dismissed. Because it is FUEL because it is M. Series who is there, he did not get a penny in compensation. That is the kind of justice we have here.

2. That on the 23rd day of October 1980 the Supreme Court sentenced me to undergo six weeks simple imprisonment with costs.

3. That by section 70A of the Courts Ordinance, an appeal lies as of right to Her Majesty's Privy Council against the said final judgment of the Supreme Court.

4. That I wish to appeal against the said Judgment of the Supreme Court.

5. That it therefore urgent and necessary that the Supreme Court should:

(a) grant me leave to appeal to Her Majesty in Council against the Judgment of the Supreme Court of the 23rd day of October 1980 sentencing me to undergo six weeks simple imprisonment, with costs.

(b) fixing the time within which the Record of the case shall be prepared.

(c) fixing the amount of the recognizance to be entered into by me for the prosecution of the said appeal, and

(d) releasing me on such terms as the Court may impose pending the determination of the appeal.

6. That I therefore pray accordingly.

Solemnly affirmed by the abovenamed deponent )  
at Chambers, Court House, Port Louis this 23rd ) (sd) L. Badry  
day of October 1980

Before me  
(sd) J. Forget  
Master & Registrar  
Supreme Court

Drawn up by me

(sd) M. Mardemootoo

In the Supreme  
Court of  
Mauritius

No. 22  
Affidavit of  
L. Badry  
23rd October  
1980  
(continued)



Solicitor

Reg. A424 No. 2768

No. 23  
MINUTES OF 23.10.1980

On Thursday the 23rd October 1980

Before Hon Y. Espitalier-Noel, Judge and

Hon. A.M.G. Ahmed Ag. Judge

In the Supreme  
Court of  
Mauritius

No. 22  
Affidavit of  
L. Badry  
23rd October  
1980  
(continued)

No. 23  
Minutes  
23rd October  
1980

L. Badry v. D.P.P. (3 cases)

E. Juggernaut with L. Seetohul for the Applicant.

S. Hatteea for the Respondent.

E. Juggernaut moves in terms of the motion papers which he files together with an affidavit in support of each motion.

No objection.

In an oral judgment Court grants the motions upon condition that:-

- (1) The applicant shall by Monday the 27th October 1980 enter into good and sufficient security to the satisfaction of the Master & Registrar in the sum of Rs. 10,000. for the due prosecution each appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or if the appeal being dismissed for non-prosecution, or of the Judicial Committee of the Privy Council ordering the applicant to pay the costs of the appeals (as the case may be);
- (2) In case the said conviction be affirmed the said applicant do surrender to prison in accordance therewith and do also pay such costs as may be ordered to be paid by the Judicial Committee of the Privy Council.
- (3) The applicant shall procure the preparation of the record and despatch thereof to England within 90 days from this day.

Court orders that the execution of the judgment to be stayed.

(sd) R. Obgrah

for Master and Registrar.

No. 24

DOCUMENT 3 - PRAECIPE

For an Order of the Master and Registrar of the above Court accepting (i) Mr. Jeewoolal Shiw Maharaj, a proprietor, residing at Boulevard Victoria No. 11 Port-Louis, owner of an immoveable property situate at Ave, Olliver, Quatre- Bornes, of the extent of 104 toises and (ii) Mr. Tricanipillay Canarapen, a proprietor, residing at Pere Laval St., Rose-Hill, owner of an immoveable property situate Vacaos, of an extent of 10 perches, as sureties for the applicant for the prosecution of the above appeal.

Under all legal reservations.

Dated at Port-Louis, this 27th day of October 1980

(sd) M. Mardemootoo

Of George Guibert Street, Port-Louis.

Attorney for the applicant.

REG. A 424 No. 2943

No. 25

AFFIDAVIT OF J. SHIW MAHARAJ

I, Jeewonlall Shiw Maharaj, a proprietor, of Boulevard Victoria, Port-Louis,

Make solemn affirmation as a Hindoo and say:-

1. That I am the owner of an immoveable property of the extent of 104 toises situate at Ave. Olliver, Quatre-Bornes.
2. That there exists on the said immoveable property a house.
3. That the said immoveable property is free from any mortgage inscription and is worth more than Rs. 100,000.

In the Supreme  
Court of  
Mauritius

No. 23  
Minutes  
23rd October 1980  
(continued)

No. 24  
Praecipe  
27th October 1980

No. 25

Affidavit of J.  
Shiw Maharaj  
27th October 1980

(4) That all my debts and liabilities paid I am still worth more than Rs. 10,000.

(5) That I am desirous of standing as surety for Mr. Lutchmeparsad Badry, the abovenamed applicant, for the prosecution by him of an appeal to the Privy Council against a judgment of the Supreme Court of Mauritius delivered on the 23rd day of October 1980.

Solemnly affirmed by the abovenamed  
deponent at Chambers, Court House  
Port-Louise this 27th day of October 1980

Before me  
(sd) J. Forget  
Master and Registrar S.C.

Drawn up by me  
(sd) M. Mardemootoo  
Solicitor.  
REG A 423 No. 5709

No. 25

AFFIDAVIT OF T. CANARAPIEN

I, Tricanipillay Canarapen, a proprietor, residing at Pere Laval Street Rose-Hill

1. Make solemn affirmation as a Hindoo and say:-  
That I am the owner of an immoveable property of the extent of 10 perches situate at Vacoas.
2. That there exists on the said immoveable property a house.
3. That the said immoveable property and the said house together are both worth more than Rs. 100,000 and are free from any mortgage inscription.
4. That all my debts and liabilities paid I am still worth more than Rs. 10,000.

In the Supreme  
Court of Mauritius  
No. 25  
Affidavit of J.  
Shiw Maharaj  
27th October 1980  
(continued)

No. 25

Affidavit of T.  
Canarapen  
27th October 1980

That I am desirous of standing as surety for Mr. Lutchmeeparsad Badry, the abovenamed applicant for the prosecution by him of an appeal to the Privy Council against a judgment of the Supreme Court of Mauritius delivered on the 23rd day of October 1980.

Solemnly affirmed by the abovenamed  
deponent at Chambers, Court House,  
Port-Louis this 27th day of October 1980) } (sd) T. Canarapen

Before me  
(sd) J. Forget  
Master and Registrar  
Supreme Court

Drawn up by me

(sd) M. Mardemootoo

Solicitor

REG. A423 No. 5710

No. 26  
RECOGNIZANCE

No. 26  
Recognizance  
27th October 1980

Be it remembered that we:-

1. Honourable Lutchmeeparsad Badry, a Member of the Legislative Assembly, of Inkerman Street, Port-Louis
2. Jeewonlall Shiw Maharaj, a proprietor of Boulevard Victoria, No. 11 Port Louis
3. Tricanipillay Canarapen, a proprietor of Pere Laval Street, Rose-Hill,

DO hereby acknowledge ourselves to be indebted jointly and in solido to Her Majesty the Queen in the sum of Ten Thousand rupees (Rs.10,000).

Whereas on the 23rd day of October 1980 judgment was delivered by the above Court sentencing the abovenamed applicant to undergo six weeks imprisonment and to pay the costs of the case.

And whereas by an oral judgment of the above Court made on the 23rd day of October 1980 it was adjudged that the applicant should have leave to appeal under section 81 (1)(d) of the Constitution of Mauritius and section 70A of the Courts Ordinance Cap 168, as amended by Section 7 of Act 17 of 1980 upon condition:

(1) That applicant shall by Monday the 27th day of October 1980 enter into good and sufficient security to the satisfaction of the Master and Registrar in the sum of Rs. 10,000 (ten thousand rupees) for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to apply or of the appeal being dismissed for non prosecution, or of the Judicial Committee of the Privy Council ordering the applicant to pay the costs of the appeal as the case may be.

(2) In case the said conviction be affirmed, the said applicant do surrender to prison in accordance therewith and do also pay such costs as may be ordered to be paid by the Judicial Committee of the Privy Council.

(3) That the applicant shall procure the preparation of the record and the despatch thereof to England within 90(ninety) days from the date of this judgment.

Now the conditions of this obligation are such that in case the abovenamed applicant does not prosecute the above appeal in case the applicant does not pay all costs that may become payable to the respondent in the event of the applicant not obtaining an order granting him final leave to appeal or of appeal of the applicant being dismissed for non prosecution or of the Judicial Committee of the Privy Council ordering the applicant to pay the costs of the appeal (as the case may be) then this obligation to be null and void, otherwise to remain in full force.

1. Good for the sum of ten thousand rupees(sd) L. Badry
2. Good for the sum of ten thousand rupees(sd) J.S. Maharaj
3. Good for the sum of ten thousand rupees(sd) T. Canarapen

In the Supreme  
Court of Mauritius  
No. 26  
Recognizance  
27th October 1980  
(continued)

Taken and acknowledged before me,

The applicant has satisfied me that he has this day provided good and sufficient security in the sum of Rs. 10,000 (Ten thousand rupees) from: (1) Mr. Jeewonlall Shiw Maharaj, a proprietor of No. 11, Boulevard Victoria, Port-Louis and (2) Mr. Tricanipillay Canarapen, proprietor, of Pere Laval Street, Rose-Hill by subscribing the foregoing in my presence. Chambers, Court House, Port-Louis, this 27th day of October 1980.

(sd) J. Forget  
Master and Registrar, Supreme Court  
REG C 328 No. 3096

No. 27

RULE GRANTING LEAVE TO APPEAL

On Thursday the 23rd of October 1980 in the 29th year of the reign of Queen Elizabeth II.

In the matter of:

L. Badry

Applicant

vs.

The Director of Public Prosecutions Respondent

UPON hearing E. Juggernaut, with L. Seetohul, of counsel for the applicant, S. Hattea of counsel for the respondent;

IT IS ORDERED that the applicant BE and HE IS HEREBY granted leave to appeal to Her Majesty in Council against a judgment of the Supreme Court delivered on the 23rd of October 1980 sentencing the applicant to undergo six weeks simple imprisonment with costs, upon condition that:-

No. 27  
Rule granting  
Leave to Appeal  
23rd October 1980

IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE SUPREME COURT OF MAURITIUS

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IN THE MATTER OF:

LUTCHMEEPARSAD BADRY

Applicant

v.

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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RECORD OF PROCEEDINGS

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Messrs. Donald Nelson & Co.,  
124 Wigmore Street,  
London W1

Solicitors for the Appellant

Messrs. Charles Russell & Co.,  
Hale Court,  
Lincolns Inn,  
London WC2

Solicitors for the Respondent