

40/82

No. 5 of 1981

IN THE PRIVY COUNCIL

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ON APPEAL  
FROM THE SUPREME COURT OF MAURITIUS

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B E T W E E N :

LUTCHMEEPARSAD BADRY

Appellant

-and-

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,  
Lincoln's Inn,  
London WC2

Solicitors for the Respondent

Approved for legal reproduction  
successful

26.5.82

S.C.R. 23520

P.C.Appeal 5 of 1981

S U P R E M E C O U R T  
MAURITIUS

RECORD OF PROCEEDINGS  
APPEAL TO THE PRIVY COUNCIL

The Director of Public Prosecutions

Applicant

versus

Lutchmeeparsad Badry

Respondent

INDEX OF REFERENCE

PART 1

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

The Director of Public Prosecutions

Applicant

-v-

Lutchmeeparsad Badry

Respondent

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IN THE PRIVY COUNCIL

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ON APPEAL  
FROM THE SUPREME COURT OF MAURITIUS

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B E T W E E N :

LUTCHMEEPARSAD BADRY

Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS Respondent

---

---

RECORD OF PROCEEDINGS

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NO.1  
MOTION PAPER

In the Supreme Court  
of Mauritius

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No. 1

Motion Paper  
7th July 1980

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 could 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 affidavits sworn in this matter by C. de Labauve d'Arifat, Esq., Director of Public Prosecutions, Desire Louis Appou, a press reporter of the newspaper 'l'Express' and Jean Berky Ombrasine, a press reporter of the newspaper 'Le Mauricien' which words contain certain scandalous matters respecting Mr. Justice Glover, 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 the words used were likely to impair the preservation of public confidence in the honesty and impartiality of the Courts in general and most specially of impartiality of Mr. Justice Glover.

In the Supreme Court  
of Mauritius

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No.1  
Motion Paper  
7th July 1980  
(continued)

WITH COSTS.

Under all legal reservations.

Dated this 7th day of July 1980.

(s) G. Bisasur

of Jules Koenig Street, Port Louis

Senior Crown Attorney and Applicant's Attorney

(s) K. Matadeen

of Counsel for applicant.

NO.2

NOTICE OF MOTION

No. 2

Notice of Motion  
30th June 1980

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' and Desire Louis Appou Esq., a press reporter of the newspaper 'l'Express', which words contain certain scandalous matters respecting Mr. Justice Glover 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 the words used were likely to impair the preservation of public confidence in the honesty and impartiality of the Courts in Mauritius in general and more especially of Mr. Justice Glover.

No. 2  
Notice of Motion  
30th June 1980

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

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.

Under all legal reservations.

Dated this 28th June 1980.

(s) G. Bisasur

Of Jules Koenig Street, Port Louis.

Senior Crown Attorney and Applicant's Attorney.

To The Respondent abovenamed and styled.

This Notice of Motion together with 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.

On Monday the 30th day of June 1980

(s) S. Khoyratty

S. Usher, S/Court

Reg. DH 422 No. 3145

NO.3  
AFFIDAVIT SWORN BY  
CYRILLE DE LABAUVE D'ARIFAT  
ON 2ND JUNE 1980

In the Supreme  
Court of Mauritius

No. 3  
Affidavit sworn by  
Cyrille de Labauve  
d'Arifat on 2nd  
June 1980

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

1. That on the 21st December 1978 a Commission was issued by His Excellency the Governor General requiring His Lordship Mr. Justice V. Glover to enquire into allegations of fraud and corruption, if any, made against Messrs. Lutchmeeparsad Badry and G. Daby then Minister of Social Security and Minister of Co-operatives and Co-operatives Development respectively.
2. That on the 2nd May 1979, the Commission of Enquiry reported adversely against Mr. Lutchmeeparsad Badry.
3. That 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.
4. That Mr. Lutchmeeparsad Badry, a Member of the Legislative Assembly was one of the persons who addressed the gathering at the congress.
5. That in the course of his speech, Mr. L. Badry said:  
"Nous bande zenfants coolies qui ine passe misereres, nous pou besoin prend nous vengeance, est-ce qui Missie Glover qui pou dirige ca pays la, bisin dechire calecon Missie Glover dans ca pays la".



Sworn by the abovenamed deponent, )  
at Chambers, Supreme Court House, )  
this 2nd day of June 1980. ) (s) C. de L.d'Arifat

In the Supreme Court  
of Mauritius

No.3

Affidavit sworn by  
Cyrille de Labauve  
d'Arifat on 2nd  
June 1980

(Continued)

Before me

(s) J. Forget

Reg. A. 421 No. 6215 Master and Registrar

Translation paragraph 5:

"We, the children of the coolies, who have suffered hardships, we shall take our revenge. Is it M. Glover who is going to run this country? M. Glover must be taught a good lesson and exposed for what he is in this country".

NO.4

AFFIDAVIT SWORN BY JEAN BERKY OMBRASINE

I, Jean Berky OmbRASINE, a press reporter of 95 Hugnin Road, Rose Hill, make oath and say:

No. 4

Affidavit sworn by  
Jean Berky OmbRASINE  
30th May 1980

1. That I am a reporter for the newspaper 'Le Mauricien'.
2. That on the 18th May, 1980 I attended a regional congress of the Labour party held 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 gathering of about some two hundred persons.

4. That in the course of his speech Mr. Badry said inter alia:

"Quand zenfants coolies pou prend so vengeance, est-ce qui missie Glover qui pou dirige ca pays la, nous bisin dechire so calecon dans ca pays la."

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

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

Before me  
(s) J. Forget  
Master and Registrar

Reg A 421 No.6216

Translation paragraph 4:

" When the children of the coolies take their revenge is it M. Glover who is going to run this country? We must teach him a lesson, in this country, and expose him for what he is."

NO.4a

AFFIDAVIT SWORN BY DESIRE LOUIS APPOU

I, Desire Louis Appou, a press reporter of Ryal Road, Pointe aux Sables, make oath and say:

In the Supreme  
Court of Mauritius

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No 4a  
Affidavit sworn by  
Desire Louis Appou  
30th May 1980

1. That I am a reporter for the newspaper l'Express.
2. That on the 18th May 1980 I attended a regional congress of the Labour Party held at the Social Welfare Centre of Mare d'Albert.
3. That I reached the Social Welfare Centre at 9.45 a.m.

when Mr. Lutchmeeparsad Badry, a Member of the Legislative Assembly was addressing the gathering of about some two hundred and fifty persons.

4. That in the course of his speech Mr. Badry said inter alia:

"Nous bande zenfants coolies qui ine passe misere nou pou bisin prend nous vengeance. Est ce qui missie Glover qui pou dirige ca pays la - bisoin dechire calecon missie Glover dans ca pays la."

Sworn by the abovenamed deponent )  
at Chambers, Supreme Court House ) (s) D.L. Appou  
this 30th day of May 1980 )

Before me  
(s) J. Forget  
Master and Registrar

Reg A 421 No 6217

Translation paragraph 4:

"We the children of the coolies, who have suffered hardships, we shall have to take our revenge. Is it M. Glover who is going to run this country? M. Glover must be taught a lesson, in this country, and exposed for what he is".

NO.5

MINUTE DATED THE 7TH JULY 1980

No. 5

Minute dated the 7th  
July 1980

On Monday 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, and moves in terms of the motion paper which he files together with the notice of motion and two affidavits in support in each case.

In the Supreme  
Court of Mauritius

No. 5  
Minute dated 7th  
July 1980

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

(continued)

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

(sd) Y.A. Beebeejaun  
For Master and Registrar

NO.6  
AFFIDAVIT AFFIRMED BY LUTCHMEEPARSAD BADRY

No. 6  
Affidavit affirmed  
by Lut chmeeparsad  
Badry  
11th July 1980

I, Lutchmeeparsad Badry, a member of the Legislative Assembly, residing at Port Louis, make solemn affirmation as Hindoo and say:

1. That I am the Respondent in the above matter.
2. That I have taken cognizance of the affidavit sworn by Mr. Cyrille de Labauve d'Arifat on the 2nd June, 1980 (A 421 No 6215)
3. That I deny the averments made in paragraph 5 thereof in its form and tenor and aver that I made the following statement:  
  
"Zenfants coolies et esclaves bisoin prend vengeance astere et nous bisin continuer la lutte Rozemont et Anquetil."
4. That I have taken cognizance of the affidavit sworn by Mr. Jean Berky Ombrasine on the 30th day of May 1980 (A 421 No 6216)

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 of the said affidavit in its form and tenor and aver that on the 18th day of May 1980 at Mare d'Albert Social Centre, I made the following statement:

"Zenfants coolies et esclaves bisin prend vengeance astere et nous bisin continuer la lutte Rozemont et Anquetil".

7. That I have taken cognizance of the affidavit sworn by Desire Louis Appou on the 30th May 1980 (Reg A 421 No 6217).

8. That I am not aware of the averments made in paragraphs 1, 2 and 3 thereof.

9. That I deny the averments contained in paragraph 4 of the said affidavit in its form and tenor and aver that on the 18th day of May 1980 I made the following statement:

"Zenfants coolies et esclaves bisin prend vengeance astere et nous bisin continuer la lutte Rozemont et Anquetil."

10. That I therefore pray that the application be set with costs.

Solemnly affirmed by the abovenamed )  
deponent at Chambers, Court House, )  
Port Louis this 11th July 1980 ) (s) L. Badry

)  
Before me

(s) J. Forget  
Ag. Master and Registrar

Drawn up by me  
(s) M. Mardemootoo  
Solicitor  
11th July 1980  
Reg A 421 No 0842

Translation

Paragraph 3, 6 and 9

"The children of the coolies and slaves must now take their revenge and must carry on with the fight started by Rozemont and Anquetil".

In the Supreme  
Court of Mauritius

No. 6

Affidavit  
affirmed by  
Lutchmeeparsad  
Badry 11th July  
1980

Translation

AFFIDAVIT OF I. RAMDAWON  
AND L.R.L. SOPHINE

In the Supreme  
Court of Mauritius

No. 7

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

Affidavit of I.  
Ramdawon and L.R.L.  
Sophine  
11th July 1980

(2) Louis Rene Loliothe Sophine, a fisherman and Secretary of the Mauritius Fishermen 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 ) (s) I. Ramdawon  
 Louis this 11th day of July 1980 ) (s) L.R. Sophine

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

Drawn up by me  
 (s) M. Mardemootoo  
 Solicitor 11.7.80  
 Reg A 421 No 6843

NO. 8  
MINUTE DATED 14th JULY 1980

In the Supreme Court  
of Mauritius

No. 8  
Minute dated 14th  
July 1980

On Monday 14th July 1980  
Before Hon. C.I. Moollan,  
Ag. Chief Justice

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 Beebeejaun  
for Master & 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  
v  
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, Jean Berky Ombrasine Esq., a press reporter of the newspaper Le Mauricien and Desire Louis Appou, Esq., a press reporter of the newspaper l'Express, which words contain certain scandalous matters respecting Mr. Justice Glover 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 the words used were likely to impair the preservation of public confidence in the honesty and impartiality of the courts in Mauritius in general and more especially of Mr. Justice Glover.

By the Court

(s) O. KHODADIN

For Master & Registrar

Reg B 122 No 9108

In the Supreme Court  
of Mauritius

No. 9  
Rule

14th July 1980  
(continued)

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

No. 10

Respondent's list  
of witnesses  
1st September 1980

1st September 1980  
(continued)

intends to summon in order to give evidence on his behalf at the hearing of the above matter, viz.:-

- (a) The Commissioner of Police, to depute -
  - (i) Police Constable 1503 Dayalah
  - (ii) Deputy Commissioner of Police A. Hyderkhan
  - (iii) Chief Inspector Mestry
  - (iv) Inspector Bissessur, and
  - (v) P C Bharat
- (b) Indarjeet Ramdawan, Chairman of Mare d'Albert Social Centre,
- (c) Louis Reny Sophine, Secretary Mauritius Fishermen Co-operative Federation.

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

Dated at Port Louis, this 1st of September 1980.

(s) M Mardemootoo  
Of George Guibert Street, Port Louis  
Attorney for the respondent

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

Received copy: (s) Choo Box Sang, for DPP 2.9.80

Return: The foregoing list of witnesses was duly served by me the undersigned usher, upon the Director of Public Prosecutions having his legal domicile 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 of September 1980

(s) P. Jugnarain  
Usher, Supreme Court

Reg DH 422 No 7995

On Tuesday 16th September 1980  
Before Hon. Y. Espitalier Noel, Judge  
and Hon. A.M.G. Ahmed, Ag. Judge

23520      The D.P.P.      v      L Badry  
23521      The D.P.P.      v      L Badry

G. d'Arifat, Q.C., (S. Hattea with him)  
appears for the applicant in both cases.

A. Kumar Sen, Q.C., (E. Juggernaut<sup>h</sup> and  
L. Seetohul with him) appears for respondent in both  
cases.

On motion of both counsel and by order of  
Court, the two cases are consolidated with evidence in  
one case to be evidence in the other case.

Court directs that the proceedings be taken  
in shorthand notes.

Case for applicant

d'Arifat Q.C., tenders D.L. Appou for cross-  
examination

1. Desire Louis Appou is cross-examined by  
A.K. Sen.
2. Jean Berky Ombrasine sworn, who is cross-  
examined by A.K. Sen

Case closed for applicant

At this stage, d'Arifat states that the  
statements of the Police Officers, present at the meeting,  
do not contain the offending words.

Case for respondent

3. Lutchmeeparsad Badry S.A.H. is cross-  
examined by d'Arifat, Q.C., and re-examined by A.K. Sen

d'Arifat then states that he has no other questions  
to put to the two other witnesses namely, Indarjeet Ramdawon  
and Louis Rene Sophie apart from those which he put  
to them this morning in the matter of D.D.P. v/s L. Badry,  
SCR No. 23519.

Both counsel agreeing, the evidence of the two witnesses aforementioned in the case SCR No. 23519 is made evidence in the present cases.

In the Supreme  
Court of Mauritius

No. 11

Minute dated 16th  
September 1980  
(continued)

Case closed for Respondent.

Case is adjourned to tomorrow (17th September) for continuation.

(Vide shorthand transcript notes).

(sd) O.A. KHODADIN

for Master and Registrar

NO. 12

MINUTE DATED 17TH SEPTEMBER 1980

No. 12

Minute dated 17th  
September 1980

On Wednesday 17th September 1980  
Before Hon Y. Espitalier Noel, Judge  
and Hon. A.M.G. Ahmed, Ag. Judge

23520 The D.P.P. v L Badry  
23521 The D.P.P. v L Badry

G. d'Arifat, A.C., (S. Hatteea with him) for  
the applicant in both cases.

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

A. Sen, Q.C., addresses Court, in the course  
of which he quotes:

- D.P.P. v Virahsawmy - 1972 MR p 62 at p 64
- Commissions of Inquiry Ordinance - Cap 286
- Borrie and Lowe - Law of Contempt -  
chapter 10 from p 297 onwards
- R. v Daily Mail, Ex part - Farnsworth
- Bhagwati Sinha v Jyoti Narain - A I R  
1956 p 66
- Law Reports 1931 - Appeal from Australian  
High Court p 294-296
- Hon. Attorney General v Hon. Moignac  
1961 MR p 200

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

- Borrie and Lowe - The Law of Contempt -  
chapter 10 at pp 300 and 307
- D.P.P. v Masson & Anor. - 1972 MR p 97

Court reserves judgment  
(vide shorthand transcript notes)

No. 12  
Minute dated 17th  
September 1980  
(continued)

(sd) O.A. KHODADIN  
for Master and Registrar

NO. 13  
CIRCULAR LETTER

Circular letter from the Registry, Supreme Court, dated  
21st October 1980 informing attorneys and counsel that  
judgment will be delivered by the court on 23rd October  
1980.

No. 13  
Circular letter  
21st October 1980

NO.14  
MINUTE DATED 23RD OCTOBER 1980

On Thursday 23rd October 1980  
Before the Hon. Y. Espitalier Noel, Judge  
and Hon. A.M.G. Ahmed, Ag. Judge.

No. 14  
Minute dated 23rd  
October 1980

23520 The D.P.P. v L Badry  
23521 The D.P.P. v L Badry  
S. Hattea, replacing G. d'Arifat, for  
applicant.

E. Juggernaut and L. Seetohul for the  
respondent.

His Lordship Y. Espitalier Noel reads out the  
judgment of the Court (filed of record) finding that in  
each case the respondent has been guilty of contempt  
of court and sentencing him in each of the two cases  
to undergo six weeks simple imprisonment - the sentences  
to be served concurrently; with costs.

(s) R OOGRAH  
for Master and Registrar

NO. 15  
JUDGMENT

In the Supreme  
Court of Mauritius

RECORD NOS. 23520 and 23521

No. 15  
Judgment  
23rd October 1980

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

The Director of Public Prosecutions  
Applicant

v

L. Badry Respondent

AND

In the matter of:

The Director of Public Prosecutions  
Applicant

v

L. Badry Respondent

JUDGMENT

These two motions to commit or otherwise punish the respondent for contempt of Court have been on the joint request of the parties heard together. In both cases it is averred that the respondent uttered words containing scandalous matters respecting Mr. Justice Glover and which were calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius.

Mr. Justice Glover was on the 21st December 1978 appointed by the Governor-General under the provisions of the Commissions of Inquiry Ordinance of 1944 (cap.286) (to which we shall be referring as the Ordinance) as sole commissioner to inquire into allegations of fraud and corruption if any made against the respondent and Mr. G. Daby then Minister of Social Security and Minister of Co-operatives and Co-operative Development respectively.

It is common ground that on the 2nd May 1979 the Commission reported adversely against the respondent.

The incriminated words in each case are alleged to have been uttered by the respondent in the course of a speech delivered at a regional congress held by the Labour Party at Mare d'Albert Social Welfare Centre on the 18th May 1980.

No. 15  
Judgment  
23rd October 1980  
(continued)

The incriminated passages, as set out, in the affidavits supporting the 2 motions are respectively the following:

1. "Nous bande zenfants coolies qui ine passe miserres, nous pou besoin prend nous vengeance, est-ce qui Missie Glover qui pou dirige ca pays la bisin dechire calecon missie Glover dans ca pays la."
2. "Ape utilise rapport Glover pour detruire moi-pas tout ce qui li fine ecrire qui vrai - ainan aine paquet quiquechose qui li pas fine prend en consieration."

The respondent has denied having uttered those words and in Court said that he had been the first speaker to address the congress and had had to leave shortly after his address which had lasted some ten minutes. Although one of the themes earmarked for discussion at the congress was the report of the Glover commission, or more precisely the political use being made of it, he personally at no time in the course of his speech touched upon the subject.

It has been readily stated by the Director of Public Prosecutions that according to their reports and statements, neither the Police Officer who had specifically detailed to cover the congress, nor the other officers present at Mare d'Albert to control traffic, would have heard the words being spoken by the respondent.

The case for the applicant rests on the evidence of Messrs. Appou and Ombrasine, press reporters of the newspapers l'Express and Le Mauricien respectively who covered the congress for their papers. Those two witnesses have been cross-examined at length and their independence and good faith challenged. They have both maintained

that the respondent did utter the incriminated words and have denied the suggestion that they were biased against the Labour Party and respondent and would have fabricated evidence against the latter.

The two witnesses who had in an affidavit sworn on the 11th July stated that they had listened to the speech of the respondent and did not hear the incriminated words, deposed in Court; we have found them to be thoroughly unconvincing and unreliable and have no hesitation in discarding their evidence.

After anxious consideration of the whole of the evidence, in the light of the remarks made by Counsel, we are left in no doubt as to the good faith of Messrs. Appou and Ombrasine, on whose evidence we find that we can safely act.

We are satisfied that the respondent did utter the words which are the subject matter of the two motions before us.

Now it is common ground that, in each case, the incriminated words were uttered of Mr. Justice Glover in relation to the report of the Commission.

It was submitted, in law, that the remarks of the respondent being aimed at the Commissioner and not at the Judge did not constitute a contempt of Court. Counsel for the respondent argued that the common law of contempt of Court was only applicable to Courts of law, and a commission of enquiry was not - as was granted by the applicant - a court of law. There could be in relation to a commission of inquiry no punishable contempt in absence of statutory provisions to that effect.

Counsel referred us to the English "Tribunals of Inquiry (Evidence) Act of 1921" and the Indian "Commissions of Inquiry Act of 1952" as subsequently amended. It was submitted that whilst both those enactments contained "contempt provisions" no such provision is to be found in our corresponding Ordinance, which only provides that contempt in the face of the Commission shall be an offence punishable by a fine to be imposed by the Commission.



We agree that section 11(3) of the Ordinance to which we were referred does no more than confer on a commission of Inquiry substantially the same authority as that given to Magistrates under sections 102 and 103 of the Courts Ordinance, when dealing with conduct and behaviour ex facie their Courts. It admittedly does not make provision - nor does any other part of the Ordinance - for other forms of contempt of the Commission.

Does such absence of specific "contempt provisions" from the Ordinance, prevent the Supreme Court from considering that comments scandalising a commission of inquiry - whether such comments amount to scurrilous abuse or attack the good faith or impartiality of the commission - still constitute a punishable contempt of Court as tending to undermine confidence in the administration of justice in Mauritius? We find that an answer to this question has already been given by this court in the case of D.P.P. v/s Masson and Anor (1972) MR P.47.

The head note of the reported decision reads:

"Contempt of Court - scandalising a Quasi-Judicial Authority.

Circumstances in which it was held that an article published in a newspaper was calculated to bring into suspicion and contempt a Board of Enquiry set up by the Minister of Labour and constituted a contempt of court.

The Court, in assessing the penalty ... "

The Board of Enquiry then in question had been set up by the Minister of Labour, in virtue of the powers conferred upon him by the Trade Disputes Ordinance 1965 to enquire into the remittance and disposal of any monies received by X on behalf of a trade union.

Now when one compares the status of such a Board of Enquiry with that of the Commission of Inquiry appointed under the ordinance, it makes no doubt that the decision of the Court in the Masson case must have been the same, had the Court been dealing with the scandalising of a Board of Enquiry a punishable contempt.

It has been suggested that the point now being raised would appear not to have been specifically canvassed and considered by the Court in the Masson case. We need only say that we fully agree with the Court's decision in that case.

We find that it is in accordance with the sound reasoning which has in England led the Salmon Committee an interdepartmental committee set up in 1969 under the chairmanship of Salmon, L.J. to consider the whole question of how the law of contempt affects tribunals of enquiry - to conclude that the law of contempt is applicable to tribunals of enquiry.

We may conveniently quote herefrom Chapter 10 of Borrie and Lowe "The Law of Contempt" to which we were referred by both counsel.

We find at pages 300 and 307 respectively in Borrie and Lowe the following:

Page 300

The Salmon Committee did examine the view that: "proceedings before a Tribunal of Inquiry are so fundamentally different from those before a Court of Law, the Law of Contempt should not apply to Tribunals at all".

However while the Committee agreed that there is a:

"profound difference between a criminal trial which takes place before a judge and jury and proceedings before a Tribunal. Juries are far more vulnerable to influence than is a Tribunal of Inquiry".

it concluded that:

"there is no such profound difference between a trial before a judge alone and proceedings before a Tribunal of Inquiry as would justify affording the protection of the law of contempt to persons involved in the one but not in the other".

The Committee entirely rejected the argument that as the tribunal's sole function is to investigate and to find facts and to make a report to Parliament, the worst that can happen if the tribunal makes wrong findings of fact, is that Parliament will be misinformed. As the Committee pointed out, the whole future of a number of persons depends upon the tribunal's findings since their "political, commercial, and social reputations may be (and sometimes have been) utterly ruined and their careers brought to an abrupt end" and as the Committee stated:

"It is certainly of no less public importance that justice should be done to individuals by Tribunals of Inquiry than that it should be done by the courts."

A second important reason for a broad application of the law of contempt to Tribunals of Enquiry is to enhance its ability to arrive at the truth:

"..... on the very rare occasions when crises of public confidence occur, it is essential in the public interest that the evil, if it exists, shall be exposed so that it may be rooted out, or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours or suspicions by which the public has been disturbed. It is only thus that the purity and integrity of our public life can be preserved; and without it a successful democracy is impossible."

The Salmon Committee were therefore convinced that, as it was very much in the public interest that tribunals of inquiry should reach the right conclusions and not to be impeded in their efforts to do so, the law of contempt should be applicable.

In view of the support already outlined, and especially the findings of the Salmon Committee, there can now be little doubt that the law of constructive contempt is applicable to tribunals of inquiry, and it only remains to be discussed how the law operates.

Page 307:

"Scandalising the Tribunal

The Law of contempt also operates to restrict comments which "scandalise" a court and bearing in mind that the basic rationale of this type of contempt is not to uphold the personal dignity of the judges but to maintain public confidence in the courts, it seems also apt to apply this branch of contempt to tribunals of inquiry. As WILMOT, J., said in R. V. Almon: "The arrangement of the justice of the judges ... excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction to justice."

It was submitted that the Salmon Committee were only concerned with the scope of application of the contempt provision set out in Sec 1(2) (c) of the Tribunals of Enquiry (Evidence) Act of 1921 which reads:

"If any person -

(a) .....

(b) .....

(c) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court;

.....

and not with the application of the common law of contempt, as such, to tribunals of enquiry.

We consider that the reasoning adopted, as appears in the above quotations, and with the soundness of which we agree, must still hold good generally, and in our opinion, justifies the application of the common law of contempt to our commissions of inquiry.

Indeed when one considers the nature of the responsibility with which, by its very *raison d'etre*, a commission of enquiry is entrusted, we have no doubt that, in the interest of justice in Mauritius, it is as important in the case of a commission of enquiry as it is in the case of any Court of Law, that its integrity in the performance of its duties should not be attacked with impunity.

We accordingly hold that conduct amounting to contempt of a commission of enquiry can constitute a punishable contempt of court although the Ordinance does not specifically provide that it should be so.

As to the incriminated words subject matter of the first motion, leaving aside the surrilous language used we have to consider what was thereby being conveyed to the audience and what the respondent must have been understood to mean.

We understand the respondent to have been complaining that the government was allowing itself to be dictated its decisions by Mr. Justice Glover and saying that Mr. Justice Glover must be brought down from such pre-eminence.

Such comments, taken by themselves, as they are indeed averred in the motion for committal, we consider would not amount to any imputation against Mr. Justice Glover in relation to the performance of his duties as commissioner - a commission of enquiry having clearly no power or authority to dictate any of its decisions to the Executive.

On the other hand we have no doubt that the actual words used amounted to a "scurrilous abuse" of Mr. Justice Glover, as commissioner, and tended to bring the administration of justice generally into disrepute.

We hold that the words constitute a contempt  
of Court.

No. 15  
Judgment

Turning to the passage incriminated in the second motion, we find that the respondent was alleging in so many words that the commissioner had not taken into consideration a large number of matters and written in his report things that were not true. This is a clear attack on the integrity and impartiality of the commissioner and we find constitutes a serious contempt of court.

23rd October 1980  
(continued)

We accordingly find that in each case the respondent has been guilty of contempt of court.

Now the respondent was no doubt anxious to disculpate himself in the eyes of the congress but it is inexcusable that he should have allowed himself to attempt to discredit in public a judge of the Supreme Court whom the Governor-General had thought it desirable in the circumstances to entrust with the holding of that enquiry.

We have already held that contempt of a commission of enquiry may constitute a contempt of court - whoever be the commissioner(s) - we cannot however shut our eyes to the fact that when the commissioner also happens to be a member of the judiciary, as in the present case, such contempt is all the more likely to be damaging to the administration of justice in that the public will not always differentiate between the commissioner, who is being attacked, and the judge.

We sentence the respondent in each of the two cases to undergo six weeks imprisonment, the sentences to be served concurrently with costs.

A copy of this judgment to be filed in Record No. 23521.

(sd) Y. ESPITALIER-NOEL  
Judge

(sd) A.M.G. AHMED  
Ag. Judge

23rd October 1980

Translation Paragraph "1"

" We, the children of the coolies, who have suffered hardships, we shall have to take our revenge. Is it M. Glover who is going to run this country? M. Glover must be taught a lesson, in this country, and exposed for what he is".

Translation Paragraph "2"

"The Glover report is being used to destroy me - it is not everything he said that is true - there are a lot of things which he did not take everything he has not taken into account".

NO. 16

SITTING OF 16TH SEPTEMBER 1980

No. 16  
Sitting of 16th  
September 1980

Supreme Court of Mauritius

Tuesday, 16th September, 1980

Before Hon. P.Y. Espitalier-Noel, Judge

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

23520 Director of Public Prosecutions

Applicants

v

L. Badry

Respondent

23521 Director of Public Prosecutions Applicants

v

L. Badry

Respondent

Mr. C. d'Arifat Q.C., (with Mr. S. Hattea)  
for the applicant in both cases.

Mr. A. Kumar Sen., Q.C., appears for the respondent in both cases.

On motion of both counsel and by order of Court the two cases are consolidated with evidence to be evidence in the other case;

Cross-examination of Desire Louis Appou  
(Mr. A.K. Sen cross examines Mr. Desire Louis Appou, Senior Reporter, Express, residing at Pointe Sables, sworn.

Q. Mr. Appou, would you look at the affidavit in this matter. You would find at the bottom, in creole, it is stated that Mr. Badry has stated that "we, children of coolies have suffered and we must revenge. Is it Mr. Glover who will rule this country?"

A. Oui, ce sont les mots exactes que Monsieur Badry a dits.

Translation:

Yes these are the exact words of M. Badry

Q. You were present at the meeting of 18th of May?

A. Oui, j'etais la.

Translation:

Yes I was there

Q. And you made a report in the newspaper, Express?

A. Oui, C'est cela.

Translation:

Yes this is correct

Q. Can you look at the paper of the 19th May?

A. Oui.

Translation:

Yes.



Q. This is a report on the first three columns made by you.

A. Oui.

Translation:

Yes.

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Sitting of 16th  
September 1980  
(continued)

Q. Where do you find these words?

A. Je vais expliquer pourquoi je n'ai pas mis ces mots la. Etant donne a l'heure ou je suis arrive au bureau, il y avait seulement que les sous-redacteur qui etait de de service. Je me rendais parfaitement compte que les propos tenus par Mr. Badry portaient prejudice a quelqu'un et que si je donne publication de ce qu'il a dit je cour le risque de porter prejudice au journal. C'est a cause de ca que j'ai fait un compte rendu epure de certain propos que M. Badry a tenu ce jour la. L'article a paru lundi matin le 19 Mai. J'avais discute le lendemain matin, c'est a dire, le 19 Mai au cours d'un 'briefing' avec le directeur pour lui dire pourquoi j'ai juge prudent de ne pas publier certains propos que contenait mon aide memoire, mon carnet de notes. Et puis, Mardi, la police etait venu me voir pour me demander si j'etais present au meeting, etant donne J'avais fait un compte rendu. Il m'a demande de dire exactement ce qui se passait, ce que j'ai entendu. A cet effet, j'ai produit mon carnet de notes et j'ai fait une deposition. Entre temps certains membres du parti Travailleiste auquel appartenait M. Badry ont tenu une conference de presse pour dire que d'apres le compte rendu de L'Express de Lundi il n'y avait rien qu'il ont dit de reprehensible. Pour servir le verite et pour servir lecteur j'ai juge utile de publier tout ce que contenait mon carnet de notes et l'article a paru le Mercredi en page 7. Les notes que j'ai prises au cours de ce mini congres de Mare d'Albert.

Translation:

I am going to explain why I did not include these words. Given the time at which I arrived at the office, only the sub-editors were on duty. I perfectly realised that the remarks made by M. Badry were prejudicial to somebody and that if I published what he said I ran the risk of damaging my paper. This is the reason why I did not include in my report certain remarks made by M. Badry on that day. (continued)

The article was published on the Monday morning of the 19th May. On the following morning, that is the 19th May, I talked it over with the editor, during the course of a briefing, to tell him why I considered it wise not to publish certain remarks contained in my aide-memoire, my note book. And then on the Tuesday, the police visited me to ask me whether I was present at the meeting in view of the fact that I had written an article on it. He asked me to relate exactly what went on, what I heard. To this effect, I produced my notebook and I made a statement. In the meantime, some members of the Labour Party, to which belong M. Badry, held a press conference to say that, according to the press report in the Monday edition of the Express, they had not said anything which was reprehensible. In order to serve the truth and to serve the reader I judged it necessary to publish the whole content of my notebook and the article was published on page 7 of the Wednesday issue - the notes that I took down during the mini congress at Mare d'Albert.

Q. Do you remember that Mr. Jagatsing had openly given a statement regarding 'Le Mauricien' saying that 'Le Mauricien's' reports were confirmed by l'Express at the same meeting?

A. C'est justement. Je me souviens que M. Jagatsing <sup>In the Supreme Court of Mauritius</sup> avait fait une déclaration.

Translation:

This is correct I do recall that M. Jagatsing had made a statement.

Q. Was it then that he got the news that these words also must be put in to corroborate 'Le Mauricien'?

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Sitting of 16th  
September 1980  
(continued)

A. Non pas pour corroborer. Etant donné qu'on avait dit que l'Express n'avait pas publié et que moi j'avais ces notes et j'ai expliqué dans quelles circonstances j'avais pas publié étant donné qu'on a voulu prendre une déposition de moi j'ai jugé bon de mettre exactement ce qui se passait là-bas.

Translation:

No not to corroborate. Given that it had been said that the Express had not published and that I had these notes, and I gave an account of the circumstances which prevented me from publishing, and in view of the fact that a statement was required from me, I considered it proper to write exactly about what went on there.

Q. If not for corroboration, then why did you come at this late hour to say the same thing?

A. J'ai une conscience professionnelle. L'Express a été un journal qui servait la vérité. Étant donné que nous avons été mis en cause par cette déclaration du ministre il était plus que nécessaire que précision soit apportée.

Translation:

I have a professional conscience. The Express has been a newspaper at the service of the truth. Since we have been implicated by this statement from the minister it was more than necessary that some precisions should be made.

Q. Jagatsing did not say anything about your report. He says only about Le Mauricien's report?

A. M. Jagatsing avait aussi dit mercredi lorsque j'avais publié le compte rendu en créole qu'il était complètement d'accord à ce qui avait été dit, et lui et M. James Burty David.

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Sitting of 16th  
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(continued)

Translation:

M. Jagatsing had also said that, on the Wednesday when I had published the report in patois, he totally agreed with what had been said, both he and M. James B. David

Q. Jagatsing had taken no exception to the report. He said that your report is correct?

A. Yes.

Q. Then why did you go out of your way to produce a report which contradicts your previous report?

A. Peut être, on m'a mal compris. Je parlais du rapport que j'ai fait mercredi.

Translation:

Maybe I was misunderstood. I was talking about the report which I made on the Wednesday.

COURT: What he has just stated about Mr. Jagatsing is the report made on Wednesday, that is on the 20th, and not the original one.

Q. He came out with the subsequent report in order to support Le Mauricien according to him?

COURT: He said no.

Q. Why did you do this on your own? What made you do it on your own, if not to support the Le Mauricien?

A. J'ai expliqué ce fait parce que M. Jagatsing avait cette déclaration pour dire que l'Express ne contenait absolument rien de ce que le Mauricien avait reproduit ce jour-là. Étant donné que moi j'étais là-bas, j'ai pris des notes, je savais ce qui se passait et ensuite l'Express

a été mis en cause, étant donné que je dois une vérité à mon lecteur, c'est, je crois, le point fondamental de tous les journalistes, étant donné que j'avais fini de donner des dépositions, je crois utile de publier exactement ce que contenait mon carnet de notes.

Translation:

I explained this fact because M. Jagatsing had made this statement to say that the Express contained nothing of what the Mauricien had reported on that day. In view of the fact that I was there, I took down notes. I knew what was going on there, and the Express was implicated. Given that I owe it to my readers to report the truth, it is, I believe, the fundamental principle of all journalists. Given that I had finished making my statements, I believed it useful to publish exactly what my notebook contained.

Q. Jagatsing did not raise any quarrel with your report?

A. No.

Q. His quarrel was with Le Mauricien's report?

A. Je ne sais pas.

Translation:

I do not know.

Q. Then, what was it the reason to come out suddenly with something to falsify Jagatsing?

COURT: The witness says he said that Mr. Jagatsing referred to the Express on the 18th saying that it had not mentioned anything of 'Mauricien' has said, and he says that according to his conscience as a reporter, he found it duty bound to clarify it.

Q. It was your conscience, your sense of public duties to come out with the subsequent report? Your conscience was not alive at the time you made your original report?

A. J'expliquais justement c'est parce que il n'y avait pas de senior redacteur a ce moment la et que je ne pouvais pas prendre sur moi pour publier des propos qui aurait porte prejudice a mon journal. On a deja fait de tristes experiences.

Translation:

I was just explaining that it was because there was no senior editor present at that time and that I could not take it upon myself to publish remarks which could have caused prejudice to my paper. We have already had some unhappy experiences.

Q. There is no responsibility on your own part if you report of these facts. The responsibility does not mean if you have reported those facts. What are the responsibilities which prevented you from giving these facts in your first report?

COURT: Witness says that there was only a junior editor at the time, on Monday and he did not take the risk of saying words which he considered might create trouble to the newspaper. That is how he explains it.

Q. So you are not prepared to vouch the veracity of these facts at the time.

A. C'est pas une question de veracite des faits. J'avais publie un compete rendu epure mais j'etais frappe par certains propos que je considerais comme etant des publications que auraient pu porter prejudice au journal et a une tierce personne et que nous avons connu dans le passe pas mal de malheureux problemes a cet effet. Et meme, jepeux vous citer un cas que nous avons fait au cours d'un congres a Woodlands. M. Jagatsing avait fait allusion au relief workers, traveailleurs de developpement et ensuite il avait dit on a publie un article d'epure. Il a conteste le fait de ce qu'on qvait decrit n'etait pas correcte. Le lendemain on a publie un compte rendu verbatim en creole. Il n'y a pas eu de mise au point. Il n'a rien dit. C'est un peu la politique lorsqu'il n'y a pas de senior reporter je ne peux pas prendre une decision mais je garde mes notes.

Translation:

It is not a question of the veracity of the facts. I had published an edited report but I was alarmed by certain remarks which I considered as being publications which could have caused prejudice to the newspaper and to a third party. And we have in the past experienced lots of unfortunate problems to this effect. And I can even mention a case which we made at a congress in Goodlands. M.Jagatsing referred to relief workers, development workers, and he then said that we published an incomplete article. He contested the fact that what we had published was not correct. On the following day we published, verbatim, a report in patois. There was no come back. He did not say anything. It is in a way the policy when there is no senior reporter and I cannot make a decision but I keep my notes.

Q. Would you take the next affidavit. The words in creole which in English means "They are using reverse report to destroy me, not all he has written is true - there are many things he has not taken into consideration." Why did you not mention this? Does this find place in your report of the 19th May?

A. No.

Q. What is the question of libelling in this matter?

A. J'ai mis tout simplement que M. Badry a dit que certains hommes politiques se servent de certains propos du juge pour le detruire, mais la je considerais "pas tout ce qui li fine ecrire qui vrai - ainan aine paquet quiquechose qui li pas fine prend en consideration" comme etant des propos tres chauds, des propos qui sont tres judiciables.

Translation:

I simply wrote that M.Badry had said that certain politicians are using certain of the Judge's remarks to destroy him, but in that instance I was considering "not everything he wrote is true - there are a lot of things he has not taken into consideration" as being very hot remarks that are very prejudicial.

Q. Would you take the next affidavit. The words in creole which in English means: "They are using reverse report to destroy me, not all he has written is true - there are many things he has not taken into consideration." Why did you not mention this? Does this find place in your report of the 19th May?

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Translation:

I simply wrote that M. Badry had said that certain politicians are using certain of the judge's remarks to destroy him, but in that instance I was considering "not everything he wrote is true - there are a lot of things he has not taken into consideration" as being very hot remarks that are very prejudice.

Q. "Ape utilise rapport Glover pour detruire moi?"

Translation:

"The Glover report is being used to destroy me".

A. ca j'ai mis.

Translation:

This I wrote.

Q. Where is it?

A. C'est pas de pure moi, mais j'ai mis "Monsieur Badry a dit que certains hommes politiques se servent de certains propos du juge pour le detruire.

Translation:

These are not my own words, but I wrote "M Badry said that certain politicians are making use of certain of the judge's remarks to destroy him".



COURT: C'est pas verbatim.

Translation:

This is not verbatim.

A. C'est pas verbatim. C'est en francais.

Translation:

It is not verbatim. It is in French.

Q. No, I am asking you about this. Not all that he wrote is true.' 'there are many things he has not taken into consideration'?

A. J'ai juge prudent de ne pas mettre.

Translation:

I judged it wise not to include it.

Q. Is it not there?

A. C'est pas ecrit parceque j'ai juge prudent de pas le mettre.

Translation:

It is not written because I judged it wise not to include it.

Q. You point out and underline where you have said this?

COURT: He said he did not put in the words. He finds it to be very hot and might cause prejudice.

A. En tout cas de la facon dont ca a ete dit, etant donne le contexte dans lequel meme le congres s'etait deroule j'ai juge prudent de ne pas le mettre.

Translation:

Concerning the way it had been said, and given the context itself in which the congress took place, I judged it prudent not to include it.

Q. What is the libelling then?

A. "pas tout ce qui li fine ecrire qui vrai".

Translation:

Not everything that he wrote is true

Q. Mr.Appou, you and your paper are not in sympathy with the Labour Party?

A. Je ne crois pas. Ces considerations ne nous interessent pas. Ce que nous faisons, nous pratiquons une politique de verite. Nous faisons un journal pour tous les mauriciens. Nous sommes un journal independent et je ne crois pas que nous avons une certaine consideration penchant pour aucun parti politique et d'ailleurs je crois c'est pas le role du journaliste.

Translation:

I do not believe so. These considerations do not interest us. What we do is to practice a policy of veracity. We publish a newspaper for all the Mauritians. We are an independent newspaper and I do not believe we have any inclinations towards any political party and besides I think it is not the role of the journalists.

Q. What I am suggesting is that your policy is not a policy which is in support of the Labour Party?

A. Je ne crois pas.

Translation:

I do not believe so.

Q. Is it in support of the Labour Party?

A. Parce que nous donnons publication de beaucoup de choses que fait le Parti Traveailliste. Il n'y a qu'a voir la collection de l'Express pour etre convaincu.

Translation;

Because we publish many things which the Labour Party does. One only has to have a look at the archives of the Express to be convinced.

Q. I am not asking about the publication of news. I am asking about the support your paper lends to the Labour Party?

A. J'ai deja repondu. Ces considerations ne nous interessent pas. Nous faisons un journal pour tous les mauriciens. Nos politiques a nous c'est une politique de verite.

Translation:

I have already answered. These considerations do not interest us. We publish a newspaper for all the Mauricians. Our policy is one of veracity.

Q. You remember Mr. Badry had in his speech of the 18th May advocated the end of exploitation, distribution of land and various other progress, the naturalisation of docks.

A. Oui.

Translation:

Yes

Q. Your paper were in support of that view?

A. Je ne peux pas repondre pour mon journal.

Translation:

I cannot answer for my paper.

Q. I am not asking as a fact. But your paper supports this view?

A. Je ne sais pas.

Translation:

I do not know.

Q. It is a fact that it does not?

A. Non, je ne sais pas. Je ne peux pas le dire non plus.

Translation:

No, I do not know. I cannot say it either.

Q. You remember that all the time there were problems about the dock workers numbering about 3000 and Mr. Badry had proposed the grant of pension to the 3000 workers which will cost about 10 millions to the dock owners?

A. Oui

Translation:

Yes.

Q. And this is one of the reasons why you are advocating the cause of the dock workers, is that a fact?

A. Oui.

Translation:

Yes.

Q. Was that programme favoured by the dock owners?

A. Je ne peux pas vous parler des dock owners.

Translation:

I cannot talk to you about the dock owners.

COURT: Est ce que vous savez si la mesure preconisee par M. Badry plaisait aux proprietaires des docks?

Translation:

Do you know whether the course of action advocated by M. Badry pleased the dock owners.

A. Non pas particulierement.

Translation:

No, not particularly.

Q. There was a good deal of opposition against it?

A. Je suppose, oui,

Translation:

I suppose, yes.

Q. And it would not be unusual for anyone who wants to harm him to start stories about it?

A. Si vous me placez dans cetre categorie, je ne sais pas.

Translation:

If you put me into this category, I do not know.

Q. I suppose that is why you did not publish certain things in your news on the 19th of May because you do not believe in publishing incorrect news?

A. Ce n'est pas vrai. Mais J'ai donne un compte rendu ou j'ai dit que:

"M. L. Badry a parle de la guerre economique que le PTR doit livrer pour apporter une meilleure distribution des richesses du pays"

Je ne vois pas quel est le plus grand argument que je puisse accorder a M. Badry.

".... et retirer de la main d'un groupe d'individus cette richesse. Il a parle des salaires des managers des etablissements sucriers compares a celui du Premier ministre. Il est d'opinion que cela est un handicap pour les travailleurs pour trouver une solution a leurs problemes, etant donne qu ces gros salaires empechent de mettre en pratique certaines demandes de la classe laborieuse."   
Je me demande si c'est pas justement en faveur de M. Badry.

Translation

This is not true. But I made a press report in which I said:

"M. Badry spoke about the economic warfare which the Labour Party must wage in order to provide this country with a better distribution of wealth".

I cannot see what greater argument I could accord M. Badry.

".... and remove this wealth from the hands of a group of individuals. He spoke about the salaries of the sugar estates managers compared to that of the Prime Minister. He is of the opinion that this is a handicap for the workers to find a solution to their problems, given that these high wages prevent the putting into practice of certain demands of the working class.

I wonder if this is not actually in favour of M. Badry.

Q. This is why you publish all these correct things but you did not publish the other things?

A. J'ai explique pourquoi je n'ai pas dit.

Translation:

I have explained why I did not publish them.

Q. The fact remains that when you published about docks and everything, you did not publish these things.

I suggest that because you do not belong to that category of journalist to put up wrong news that you did not think it fit to include these things?

A. Non, ce n'est pas vrai.  
l'Express dated 19th May put in and marked  
"A".

Translation

No this is not true.

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(continued)

Cross examination of Jean Berky Ombrasine

Mr. A.K. Sen cross examines Mr. Jean Ombrasine,

Press Reporter, residing at Rose Hill, sworn

Q. You admitted that the offending words in your two affidavits of the 30th May do not figure in your report of the 19th May. How did you say in your earlier statement before this court that these words were contained in a note which you have produced?

A. Ce que j'ai dit au debut c'est que ces mots la se trouvent dans mon texte original et puis dans les photo-copies.

Translation

What I said at the beginning is that these words were in my original text and then in the photocopies.

Q. And this is the first time that you produced it to the police when they came to investigate the matter?

A. A la demande des policiers on a soumis les notes.

Translation

We submitted the notes at the request of the police.

Q. And apart from the fact that according to you that somebody has deleted those offending words and you have no other explanation to offer why these were deleted?

COURT: Vous avez dit ce matin que certains mots dans votre article original avaient ete retires par l'Editeur en chef et c'est la seule explication pour laquelle ces mots la ne paraissent pas dans votre article du 19 Mai?

Translation

You said this morning that certain words in your original article had been crossed out by your chief editor and this is the only explanation why these words do not appear in your article of the 19th May.

A. C'est ca.

Translation

This is correct.

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Q. You remember I have asked you about Mr. Badry's views and the Labour Party's views regarding the land nationalisation and the docks nationalisation and I am trying to make it short to you. I am trying to recollect the facts about the fringe the dock workers demand and the pension scheme and so on. You remember that you said all those problems were quite acute at that time.

A. Yes.

Q. And these matters became matters of controversy?

A. There were many articles referring to such questions.

Q. These matters which I am asking you about became matters of controversy. I am not asking you about other matters. I am only asking you these matters to which I referred to and which became very controversial at the time?

A. Oui.

Translation

Yes.

Q. Your paper never brought out these offending words even after the 19th May when there was a public controversy raised by Mr. Jagatsing.

A. Le Mauricien n'a pas publié les propos rapportés à l'éditeur en chef considérant que ces propos pourraient être considérés comme étant un outrage à la cour.

Translation

The Mauricien has not published the remarks reported to the chief editor considering that these remarks might be taken as a contempt of court.

Q. Even when there was a letter written to you by Mr. Jagatsing to your paper saying that how is it that certain words were attributed to Mr. Badry which l'Express has published and that you did not come out with those words?

In the Supreme Court of Mauritius No. 16 Sitting of 16th September 1980 (continued)

A. Le Mauricien n'a pas publié mais seulement le lendemain l'Express a publié certain propos que l'Express n'avait pas rapporté la veille.

Translation

The Mauricien did not publish but on the following day "The Express" published certain remarks which it had not published the day before.

Q. What I am saying is that even after Mr. Jagatsing letter to Le Mauricien those words were not reported by you?

A. Yes.

Mr. Sen: The Learned Director of Public Prosecutions admitted that the police statement does not contain any reference to those offending words.

COURT: You are going to make the same statement as it appears in the other case.

Mr. d'Arifat I swear.

Mr. Sen To the effect that the statement of the police officers who were present at the meeting do not contain those offending words.

Cross examination of Lutchmeeparsad Badry

Mr. C.d'Arifat cross-examines Mr. Lutchmeeparsad Badry, Member of the Legislative Assembly, residing at Port Louis S.A.H.

Q. Mr. Badry, I take it that before you swore an affidavit on the 11th of July in both cases you took cognizance or you were informed by your lawyers of the contents of the affidavit which I swore myself before the Master and Registrar?

A. Yes.



Q. I note that whilst you dispute using certain words on the 18th of May at the Labour Party Regional Congress yet you have no comments to make on the following allegations, the following sworn statements in my affidavit namely that:

"On 21st December 1978 a Commission was issued by His Excellency the Governor-General requiring his Lordship Mr. Justice V. Glover to enquire into allegations of fraud and corruptions, if any, made against Messrs. Lutchmeparsad Badry and G. Daby then Minister of Social Security and Minister of Co-operatives and Co-operative Development respectively."

This is a fact?

A. Yes.

Q. And it is also a fact that on the 2nd of May 1979 the Commission of Enquiry reported adversely against you?

A. Yes

Q. Now, the Congress took place on the 18th of May?

A. Yes, my Lord.

Q. Could you tell us Mr. Badry whether your feelings were favourable about the report or how do you look at the report?

A. The report was made and I was found by the Commission that I was guilty. I cannot do otherwise. I am a man of patience, I have to wait until everything can be cleared but I have no grudge or anything against the Judge Glover and on that day I never stated or uttered any word against him. My speech was very short of about 10 minutes. I talked about land, docks and especially about journalists who are manipulating everything and I said that it is a pity that the Labour Party do not have a good paper to support their policy and to inform the public properly and I said that even we are industrialising but this is not a solution. A solution is that 25% of the land should be distributed amounting labour workers.

Q. Mr. Badry, is it a fact that your party did not feel happy about the outcome of the Glover Commission of Enquiry?

A. I cannot reply on behalf of my party. Probably certain members of the party were not so happy.

Q. I put to you a question this morning, you remember on the Agenda of the meeting of the 18th of May there was to be discussion about the Glover report?

A. Yes.

Q. But you did not discuss it?

A. We did not touch this subject.

Q. Have you ever since or before made any comment on this report?

A. I myself. No, my colleagues have made in several meetings.

Q. You are aware that there was a suggestion that the matter be discussed at a Select Committee?

A. Yes.

Q. Were you favourable to this?

A. I moved for that.

Q. When you saw the paper of the 19th of May or thereafter which made reports of the matters having been dealt with at the meeting you did not think it fit to make any comments?

A. No, I asked Mr. Jagatsing and Mr. David what had happened. I spoke only for 10 minutes and I went out because I had to attend a funeral of my relative.

Q. So that you were not aware of what took place after your departure?

A. Yes.

Q. Did you endeavour to find out what could have been said about it afterwards?

A. I had a talk with the President of the Labour Party. He said that they never criticised or made some comments on the report.

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Q. And you were personally satisfied with the reply?

A. Yes, I trust the President of the Labour Party

Q. You have heard, Mr. Badry, the evidence of Mr. Ambroisine and Mr. Appou, would you say that these gentlemen on oath have deliberately lied in order to do damages to you?

A. I think so.

Re-examination of Lutchmeeparsad Badry

Re-examination

Mr. A.K. Sen re-examines Mr. Lutchmeeparsad Badry

Q. Mr. Badry, whenever a matter on the report of the Judge Glover came in question in the Assembly did you make any comments and attack on the judge personally?

A. No. not at all

Q. Did you ever before make any comment about the Judge Glover?

A. Only last year I made a small remark that just for justification the report must go to a Select Committee. I had ample opportunity during the time of the budget this year but I never spoke a single word against the judge. I know I am governed by the Parliament.

Q. You know that you have an immunity of Parliament?

A. Yes, because I am a member of the Parliament.

Mr. d'Arifat: As far as the two witnesses are concerned I have no other question to ask them except those I have asked this morning. If my learned friend has no objection, they should be transcribed in those two cases.

Mr. Sen It will be the same examination.

COURT: The evidence given in the first case may be treated as evidence in these two cases. Do you agree?

Mr. Sen Yes

The case was adjourned for the 17th September 1980.

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NO.17

SITTING OF 17TH SEPTEMBER 1980

IN THE SUPREME COURT OF MAURITIUS  
On Wednesday 17th September 1980  
Before Hon. P.Y. Espitalier-Noel, Judge.  
Hon. A.M.G. Ahmed, Ag. Judge.

No. 17

Sitting of 17th  
September 1980

In the matter of:-

SCR 23520

The Director of Public Prosecutions

Applicant

v.

L. Eadry

Respondent

In the matter of:-

SCR 23521

The Director of Public Prosecutions

Applicant

v.

L. Badry

Respondent

Mr. C. de Labauve d'Arifat, Q.C. (S. Hattea with him) appear for the Applicant in both cases.

Mr. A.K. Sen (E. Juggernaut & L. Seetohul with him)  
appear for the Respondent in both cases.

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Arguments of Mr. A.K. Sen:

My Lords, the two offending passages which are the subject matter for the present proceedings, the first one is: "We, children of "Coolies" we have suffered, we must venge. Is it Mr. Glover who will rule this country. We must tear Mr. Glover's trousers in this country". This tearing part of it is very out of place and your Lordships will be surprised to find that such an important thing is not to be found in "Le Mauricien on the 19th of May. It only stops here. "Is it Mr. Glover who will rule this country?" If such an important parenthesis was to be added, it would be remarkable to find that this is omitted. One would make it a very prominent feature and take exception to it and in reading it, it does not fit in the context: "Is it Mr. Glover who will rule this country? We must tear Mr. Glover's trousers in this country".

It has only been added later, completely out of context. The contemporaneous report is not to be found in l'Express on the 19th. These two sentences are not to be found neither namely: Is it Mr. Glover who will rule this country, that also is not to be found and far less the last line. That would be natural because Mr. Glover does not fit into this cry to taking action against exploitation by the children of "Coolies". Mr. Glover has nothing to do with the exploitation, how does he come in here is something very curious. But assuming it is there, this, as I told, Your Lordships, does not find any place in l'Express report and the long explanation given by the reporter, Mr. Appou is absolutely unconvincing. He said that he thought action should be taken that's why neither of these two sentences do appear.

What action my Lords, "Is it Mr. Glover who will rule this country?". Nobody will take this action. No libel action is sustained on this statement even if it is false. The inference is very clear that he is not prepared to vouch the authority for these two sentences, that is why neither of them appears in l'Express and the last sentence does not occur in Le Mauricien either and the explanation given is very very unconvincing again that the editor has deleted this. The editor was not called and the most important part of it is that no policeman on duty was called who has reported on the subject matter. I rely very strongly on a very case cited by my learned friend yesterday namely M.R. 1972, the Director of Public Prosecutions v. Virahsawmy and if I may place before your Lordships once more the passage at page 64. This is very important, my Lords, about the question of corroboration which I have submitted in my submission in the earlier case. When the partisan witnesses come they are committed to uphold the veracity of what they have stated in their affidavits. Such statements have to be corroborated and the corroboration needed is stated very clearly, my Lords, in this passage:

"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 insisted in cross-examination that the respondent did say the words ..... ""

So the Constable was called in this case

"He did not record them in his notebook at once but did so about five minutes later".

So none of the police officers has been called with their notebook and the evidence is very clear from Mr. Hyderkhan and the admission made by the learned Director of Public Prosecutions very fairly as is expected that there is no such statement to be found in their notes or statement:

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"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 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".

So, my Lords, in the absence of any independent corroboration which here was forthcoming from the constable even then the Lordship said that it had to be corroborated and the admission made by the respondent had the effect of corroborating mistakes. It is remarkable that such important thing could not find its place in any other paper. Only one paper carried it and in a mutilated form. There was the last sentences that the trousers of Justice Glover will be torn off is not to be found in one and the other line also is not to be found in any paper whatsoever. And as I said Mauritius is quite rich in journals and every morning so many papers come out. And what I say in the absence of any corroboration by the constable and any contemporaneous report, my submission before your Lordships is that the prosecution has failed to discharge the onus laid heavily on them and on the lone testimony and uncorroborative even by the contemporaneous reports in the two journals. This testimony is not worth anything and therefore my submission is that on the facts your Lordships will have no hesitation in accepting what Mr. Badry had said. Look at the case, if Mr. Badry has to empty his venom on Justice Glover, or anyone else or judges, he has a forum open to him when anybody will be completely immune from any action as regards any attack he might have made.

But he has chosen not to make it on the floor of the Assembly That shows his respect for the judicial system of the country and the probabilities must therefore be answered

in favour of the respondent. Now, my Lords, this is my submission on the facts. It is very clear that it has to be proved, it has to be corroborated, there is no corroboration and the two witnesses are unconvincing on the way they have said, the explanations they have given why these reports did not appear in the papers. In any event the absence of any contemporaneous report of the offending sentences makes the offending sentences absolutely unproved.

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Now, my Lords the next paragraph is: "They are using Glover's report to destroy me - not all that he wrote is true - there are many things that he has not taken into consideration." This is really a report which shows that it really comes from the Secretary General of the party in which he said there is no right to appeal against this report and the Select Committee has seized up this matter and they will decide what to do with the report. This is very clear from the report of l'Express and also of Le Mauricien. It will be up to the party, that was in a statement made by Mr. Jagatsing and that was what was stated by all the three witnesses for the respondent, Mr. Badry and the other two. What Mr. Jagatsing said even if it is put in the mouth of the respondent does not make any contempt. The authority of 1936 A.C. and 1968 Queen Bench say that anybody is entitled, even if it is in a court of law, to say that this gentleman is being used to destroy me and there are many things which have not been taken into consideration by the learned commissioner. He is entitled to say so with regard to any judge because the path of criticism is the normal path and justice can only flourish if it is subject to scrutiny of public criticism. But this is hardly a criticism at all. Anybody is entitled to say that the learned judge is not to do so and anything and I am not accepting it so far as I am concerned and that ends our case and that is the case of Lord Atkin himself with regard to Lord Denning. Even assuming on the facts, my submission is that it has not been proved that



the author, it does not amount to any contempt whatsoever  
I do not want to read those two cases, I have already  
cited them and your Lordships' decision is very clear  
that fair criticism without imputing motive is the birth  
right of every citizen and it is a part of the freedom of  
expression which is guaranteed under the Constitution.

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Now, my Lords, these are the facts. On the law there  
would be one more submission of these two cases namely  
that they have come out with contempt proceedings for  
utterance made outside the office of the Commissioner of  
Enquiry. For that is not being made the subject of contempt  
by the statute and in common law it is only courts  
inferior to the High Court called the Supreme  
Court here, which are inferior to the Supreme Court and  
the High Court under the superintendence of the Supreme  
Court and the High Court - High Court in England, the  
Supreme Court here - this contempt can be the subject of  
proceedings in the Supreme Court. That is the law all  
over the Commonwealth apart from the special statute. In  
England, in India, here and everywhere that under  
the common law the High Court or the Supreme Court as  
the case may be has been held in jurisdiction to take  
proceedings by way of contempt committed against  
courts inferior to the High Court and the Supreme Court  
but they must be courts and commissions of enquiry are  
not courts at all.

Before I proceed further, may I take your Lordships to  
the relevant ordinance by which the commissions of enquiry  
are set up. If your Lordships will be pleased to take  
the ordinance, it is called the Commissions of Inquiry  
Ordinance, Chapter 286, page 422. It is a very short  
ordinance and I am going to read most of it including  
the oath part because the oath taken by the Commissioner  
is quite different from the oath taken by a judge. May  
I read, my Lords, first of all the second section:

"2. (1) The Governor-General may, with the advice and consent of the Legislative Assembly, issue a commission under his hand and the public seal of Mauritius appointing one or more Commissioners and authorising such commissioner or commissioners, or such quorum of commissioners as may be specified in the commission, to inquire into any matter of public interest or concern, or into any matter in which an inquiry would be for the public welfare".

Almost words for words as the Indian Act. It does not say that it must be a judge. It is only an accident that the commissioner chosen may be a judge but more often they are. In England they are mostly Queen's Counsel and sometimes it is a matter of technical importance like economic matters or other matters, then specialists are also associated and rarely a judge. It depends upon the subject matter but as a matter of practice on such matters where ministers' conduct are to be inquired into, usually in recent time judges have been associated. For instance I know one case in India, a very important case against the Finance Minister. In the Enquiry Commission a sitting judge in the Supreme Court was the chairman but two other members were civil servants, the Chief Secretary of Madras and the Chief Secretary of ??? and it was a very important Commission of Enquiry on the result of which the Finance Minister resigned and I may tell your Lordships that part of that commission's findings were not accepted by Parliament because neither the Parliament nor the government is obliged to accept the findings in toto. That is the difference between the Commissioner of Enquiry's findings and a judge. A judge is a binding judge and it is unforcible. Whilst the recommendations of a Commission of Enquiry is only recommended, it has no binding force.

Now, my Lords may I proceed further. What I was saying is that it is not necessary for a judge to be appointed or a sitting judge to be appointed, very frequently retired judges have been appointed. In England called the Devlin Commission as he was in the commission, he has ceased to be a judge. When Mrs. Gandhi's alleged misconduct was brought before a commission, the commissioner was a retired judge of the Supreme Court.

Now, my Lords may I proceed further:

"(3) Every such commission shall specify the subject of inquiry, and shall, if there is more than one commissioner ..."

There may be more than one commissioner.

"... direct which commissioner shall be chairman, and may, in the discretion of the Governor-General, further direct where and when the inquiry shall be held and the report rendered, and prescribe how the commission shall be executed, and whether the inquiry shall or shall not be held in public."

There have been commissions which have not been held in public. Lord Denning said that it was not held in public, it was held in camera and it is very different from the court and a commission.

"(4) In the absence of a direction to the contrary, subject however to the provisions of the next succeeding sub-section, the inquiry shall be held in public."

(5) The commissioner or commissioners may refuse to allow the public ..... the preservation of order, or for any other reason."

In fact, the Profumo Enquiry was never published.  
In fact your Lordships will remember the famous Profumo

Enquiry held in camera, the evidence was taken in camera and the findings were never sorted out.

Then, my Lords, if your Lordships will now come to Section 5:

"(5) Every commissioner appointed under this Ordinance shall make and subscribe an oath in the form set out in the Schedule to this Ordinance, which oath may be taken before the Governor-General, or before such person as the Governor-General may appoint."

If your Lordships will now turn to page 426 where the form of the oath is given after section 18:

"I .... having been appointed under a commission dated .... perform the duties devolving upon me by virtue of the said commission."

This is quite different from a judge's oath which I will show to your Lordships in a moment.

Section 7:

"7. The Commissioner or commissioners shall, after taking oath ... and, in due course, shall report to the Governor-General, .... "

It is not a decision rendered.

" ..... in writing, the result of such inquiry;  
..... to any conclusion arrived at or reported.

This is a recommendation and in England it has been held that this is not acceptable to the writ of certiorari and the Superior Court cannot vest in it because this is not a decision rendered, it is not a court.

Section 8:

"8. If commissioners shall, in any case, be equally divided on any question that arises during the proceedings of the commission, the chairman of the commission shall have a second or casting vote."

Then my Lords, this is very important:

"9. The commissioner or commissioners acting under this Ordinance ..... only to the terms of the commissions."

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They are masters of their own procedure. They are not guided by Civil procedure of courts. In fact your Lordships will see that in this particular case the commissioner first of all examines the witnesses in Chambers. Then they were produced publicly for cross examination which is completely alien to the very idea of judicial examination because no judge can see any witness before he is in the box.

Now, my Lords, may I proceed further:

"10.(1) A commissioner or commissioners acting under this Ordinance shall have power to summon witnesses, ...: on oath.

(2) All summons for the attendance ..... by the Secretary."

Then my Lords the duty of witnesses is very important.

Section 11:

"11. (1) Any witness summoned to attend ..... issued from the Supreme Court ... "

So this is the special power given and the special obligation imposed on witnesses as if they were before the Supreme Court.

" ..... and shall be entitled to such expenses .... think fit.

2) Orders for the payment of the expenses ..... to witnesses in the Supreme Court .... "

Sub-section (3) is very important:

"(3) Every person refusing or omitting, without sufficient cause ..... wilfully insult the commissioner or any of the commissioners, .... "

This is the same as sub-section 1(a) and (b) of the English Act as I shall show to your Lordships namely an insult made in Court, an ex facie contempt.

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"..... or the secretary, or shall wilfully interrupt the proceedings ..... District Courts (Criminal Jurisdiction) Ordinance."

It is very clear that it is not a court. It is given a power to fine for a certain thing. Unlike the English Act and the Indian Act it has not been made a contempt either because in the English Act and the Indian Act this is made a contempt by statute to be adjudicated upon by the High Court and under the English Act and the Indian Act contempts made outside the precinct of the commission also are made punishable as contempt unlike here. Here neither contempt of ex facie nor contempt outside the court are made punishable as contempt but punishable if it is ex facie only as an offence with a penalty of Rs. 500 no imprisonment.

Then section 12. (1) gives indemnity as to a judge.

"12(1) A commissioner shall not be liable ... commissioner.

(2) No evidence given before .....

(a) give rise ..... evidence

(b) be admissible against ..... false evidence."

This is very important, same in England and in India. This is why it has been held that this evidence is not even admissible in a court of law. It is purely evidence given for a particular purpose of finding and recommending to the Government.

Now, my Lords, this is the gist of the law and it is very clear that it is nowhere provided that this is either

a court or that contempt of it will be punishable. Only one species of contempt is punishable not as contempt but as a statutory offence incurring the penalty of Rs. 500, that is insult to the commission and impeding its progress and refusing to answer questions.

Now, my Lords, before I proceed to the authorities, may I give your Lordships the wonderful tip under this subject by Borrie. It is the Law of Contempt, page 298 and onwards. May I read the whole of Chapter 10: "From the seventeenth century until 1921, the usual method of inquiring into alleged misconduct of Ministers or other ..... Act 1921 ....." "

This is, my Lords the Parent Act from which the Commonwealth countries have taken their respective act like Mauritius.

"..... if both Houses of Parliament .....  
..... Queen's Counsel."

As I said, my Lords, it is only by accident if the judges appointed are the sole commissioners of enquiry or are one of the members. It is not necessary that a judge must be appointed.

"There have been only seven Tribunals of Inquiry .....  
to allay public anxiety."

This is important, the Commission of Enquiry is an Enquiry, inquisitorial in its nature whilst a court of law is not inquisitorial, it is a court of adjudication. This is the fundamental difference.

"The report cited the Lynskey Tribunal into alleged bribery of Ministers and other public servants in 1948, the Bank Rate Tribunal in 1957, and the Vassall Tribunal in 1962".

"The contempt provisions set out in s.1(2) are as follows:

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This is absolutely the same as the Mauritian Act and it is present in the Indian Act.

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"If any person -

(a) on being duly summoned ....."

In the Indian Act it came as an amendment after the Supreme Court decided in 1956 that contempt will not be available for commission of enquiry in the absence of statutory provisions. Then, my Lords, I think in 1964 came an amendment similar to the English Act.

"If any person -

(a) on being duly summoned as a witness before a tribunal makes default in attending;"

My Lords, this is the Mauritian Ordinance, it incurs a penalty of Rs. 500 not as a contempt but as a statutory offence.

"(b) being in attendance as a witness refuses to take an oath legally required by the tribunal to be taken, or to produce any document in his power or control legally required by the tribunal to be produced by him, or to answer any question to which the tribunal may legally require an answer;

or

(c) does any other thing ....."

The Mauritian Ordinance takes out of any other things only the ex-facie contempt part, insult to the court and your Lordships will remember not scandalising the court outside, that part of it is not taken.

"(c) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court.



The chairman of the tribunal may certify the offence of that person under his hand to the High Court, or in Scotland the Court of Session, and the court may thereupon inquire into the alleged offence and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

Now, my Lords, supposing here for a moment the difference between the Mauritian Ordinance section 11 sub-section 1 and 3 are manifest namely, my Lords, the Mauritian Ordinance does not make any act which is a contempt of Court as if it is a court, but it singles out 2 sets of conduct for punishment not as contempt of court but as a statutory offence namely first refusal to attend and to produce documents and to answer the questions, that is punishable per se by the commissioner himself, punishable to only a fine of Rs. 500. The second category my Lords, out of general contempt is insult ex-facie to the court that is singled out as a second category of contempt and sub-section 3 punishable again with a fine of Rs. 500 not as a contempt but leaves any contempt committed outside the precinct of the court, out of the purview of the statute. So that, my Lords, no suspicion of conduct becomes statutory offence.

None of the offending acts becomes contempt of court under this statute. This is the difference with the English Act and the Mauritian Act. They do not equate the Commission of Enquiry with a court and takes any conduct affecting the Commissioner of Enquiry as if it is a contempt of that enquiry authority to be deemed to be a court for this purpose. This, my Lords, the Mauritian Ordinance has not done.

Now, my Lords, may I read the following passage:

"Although in practice tribunals of inquiry are rarely

set up, the scope of the contempt provisions contained in S.1(2) has given rise to considerable controversy and, indeed, the whole question of how the law of contempt affects tribunals of inquiry was considered in detail in 1969 by an Inter-departmental Committee under the chairmanship of Salmon, L.J. The great difficulty in determining the scope of S.1(2) is that apart from two cases, A.G. v Clough and A.G. v Mulholland and Foster".

Both cases are cases of refusal to answer not scandalising the court of ex-facie contempt.

" ..... both of which concerned the relatively straightforward problem of witnesses refusing to answer questions and which were therefore directly covered by s.1(2)(b), there have been no other cases which have considered the section. In view of this lack of authority, the findings of the Salmon Committee are of considerable importance and it is therefore proposed to refer to them in detail.

It may be argued that it is necessary to determine the exact scope of these contempt provisions since in any event the High Court could still punish a contempt of the tribunal of inquiry by exercising its supervisory jurisdiction in the same way as it does inferior courts."

That is, my Lords, the very foundations of these proceedings. Now, this is the law relating to inferior courts and your Lordships have followed that in two decisions. "As Avory, J., said in R. v Daily Mail, ex parte Farnsworth:

Wherever and whenever this court (i.e. the High Court) has power to correct an inferior court, it also has power to protect that court by punishing those who interfere with the due administration of justice in that court."

My Lords, this is a foundation of the jurisdiction of High Court and Supreme Court, here a punishing contempt

of inferior courts.

Now, my Lords, may I proceed next:

"In referring to the High Court's power to correct an inferior court, Avory, J., was no doubt thinking particularly of its ability by means of the prerogative order of certiorari to quash an inferior court's decision as being ultra vires or showing an error of law. Such an argument is probably inapplicable to tribunals of inquiry, since the tribunal makes no decision which the High Court can correct and certiorari has no application.

This is most important. They held jurisdiction for punishment of contempt of an inferior court is absent whilst the Tribunal of Inquiry is not liable to be corrected by means of certiorari because they make no decision which the High Court can correct and certiorari has no application.

"There is little difficulty in determining the scope of S.1(2) or of S.1(2) (b) which simply provide ..... no witness will be justified in refusing to answer any question until his costs have been paid."

This country has taken care of it because witnesses have to be paid as if they are witnesses in the High Court.

"The provision which has caused the greatest controversy is S.1(2)(c) which ....."

Your Lordships will remember turning back to page 297 where a contempt will be contempt of court, if it were a court. If it is done in a Commission of Inquiry, it would be contempt as if it was a court. This has caused the controversy because some people think that S.1(2)(c) must be confined only to (a) and (b) - refusal to answer and refusal to produce. Lord Justice Salmon thinks that having regarded the wide terms of 1 2 (c), it will cover both contempt of ex-facie and also contempt committed outside the precinct of the court. Your

Lordships will find at the bottom of Page 299 the recommendations made by Lord Justice Salmon:

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"In our view the language of paragraph (c) of Section 1(2) is in such wide terms that it would be impossible to hold that its application is restricted to contempt in the face of the Tribunal. No doubt, the powers it confers upon Tribunals of Inquiry makes them unique. But they undoubtedly are unique because they possess many other powers not enjoyed by any other type of tribunal"

But we are not concerned with the scope and width of S.1(2)(c) but we are concerned with the simple question that in the absence of statutory provisions the contempt of a Tribunal of Inquiry cannot be regarded as a contempt of Court punishable by the High Court or the Supreme Court held in its jurisdiction because it is not a court, it does not decide anything, it is not a court inferior to the High Court in a sense that the High Court can correct those errors, that is page 298 at the top. This is, my Lords, the ratio which finds favour in the Supreme Court because the Indian Act was amended.

May your Lordships take the Indian Act. Previous to 1971, Section 10 alone remains in the Statute of the Indian Act namely:

"Members, etc., to be public servants. Every member of the Commission and every Officer .....  
Code (45 of 1860)."

Section 10: Public Servant:- The section provides that  
(a) every member of the Commission .....  
and contempt of public servants."

Then my Lords, Section 10 (a) came in 1971:

"10 A. Penalty for acts calculated to bring the Commission or any member thereof into disrepute:-

(1) If any person, by words either spoken or intended to be read, makes or publishes any statement or does any

other act, which is calculated to bring the Commission or any member thereof into disrepute, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine or with both."

Previously the refusal to answer questions and to produce documents is punishable by the Commission Act. This was also made punishable not as contempt again but as a statutory offence or in other words it became penal in its nature not contempt to be taken cognizance of by the superior court but offence which is recognizable under the penal law of the country.

May I give your Lordships the decision of the Supreme Court of India.

May I give a decision of the Lord of the Supreme Court of India, at page 66, AIR 1956 and name of the case is Bhagwati Sinha v. Jyoti Narain. It starts with the contempt of Courts Act (1952) S. 3 - 'Court', meaning of - Tests to determine - Commissioner appointed under Act 37 of 1850 is not a Court etc.etc.

"The word 'Court' is not defined in the Contempt of Courts Act and the expression courts subordinate to the High Courts in S. 3(1)".

It is the same level as here.

"In Sec. 3(1) ..... for the sake of abundant caution or clarification of the position."

Now my Lords, your Lordships come to the judgment itself, at the next page:

This appeal with certificate under Art. 134(1)(c) ..... served upon him."

Instead of punishing him for Rs. 500 for failing to obey, he proceeds on the contempt of jurisdiction.

"A rule was issued by the High Court .....  
in respect of contempts of itself."

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It is the same, my Lords as the common law here  
everywhere.

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"No High Court shall take cognizance of justice through  
the Union.

(9) It would be relevant, however, to notice the  
definitions of 'Court' available elsewhere."

Then, my Lords, according to Stephen:

"In every Court, there must be at least three  
constituent parts - the actor, reus and judex  
.....and by its officers to apply, the remedy."

Then, my Lords, Section 3, Evidence Act (1 of 1872) and  
then your Lordships will come to the next page, the  
3rd para:

"The pronouncement of a definitive judgment .....  
The exercise of this power does not begin until some  
tribunal which has power to give a binding and  
authoritative decision is called upon to take action."

That is what Borrie says that the difference between a  
commission of Inquiry and a court is that it takes no  
decision. This is the whole ratio.

"Their Lordships further enumerated at .....

1. A tribunal is not necessarily a Court in this  
strict sense because it gives a final decision;

This is, My Lords, the Privy Council.

(2) Nor because it hears witnesses on oath  
.....by an ad hoc tribunal an exercise by a Court of  
judicial power."

In Cooper's case:

"A true judicial decision ..... which  
disposes of the whole matter ....."

This is my Lords, the most important:

"(4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of Law."

And the next para:

"18. It is clear, therefore, that in order to constitute a Court in the strict sense of the term ..... it must be held that there is a judicial proceeding to which this immunity ought to attach."

These are very important:

"It seems to me that the sense in which the word 'Judicial' is used in that argument is this: it is used as meaning .....

(20) Lord Esher M.R. expressed himself as follows while dealing with this argument at page 422."

Then My Lords, only to point out the conclusion, at page 73:

"An enquiry under this Act is not at all compulsory..... called upon to take further evidence or give further explanation of his opinion."

Then, My Lords, after the next paragraph:

While considering the same, however, the position of the Commissioner was discussed and the conclusion to which the Court ..... and it lacked both finality and authoritativeness."

This, My Lords, concludes this decision.

The next decision was in 1958. I read on paragraphs 1 and 9, the Public decision of the Act. This is the famous case where the Chairman was a sitting Judge of the Supreme Court. After the head note:

"While we find ourselves ..... and the elaborate discussion," and so on and so forth.

The terms of enquiry are set up in the very first page of Clause 10. Their Lordships set out the whole notifications;

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"Any regularities ..... should be taken" that strikes us:

"By way of securing redress of punishment of the Act as They say this not within the commission of enquiry Act. They are prescribing a punishment by the commissioner of the enquiry which is not within the act and that is what their Lordships say, My Lords.

Their Lordships put it in Para. 9:

"Learned Counsel appearing ..... securing a way of punishment."

There they go outside the scope of the Act. They say that is not part of the enquiry Act. This is the distinction between the commission of enquiry and a court, namely a court fines, sentences but a court of enquiry will recommend.

There is one further case, I only want to cite to your Lordships.

It is Law Reports 1931 at page 275 - Appeal from Australian High Court. The relevant part of it is found from page 294 to the end of the first para. at page 296. The Supreme Court of India laid restrictions namely on this namely the whole mark authoritativeness and definitiveness in the decision of the body concerned which make the record as distinguished as the other title namely that body which decides and which enforces a decision, that body alone is a court though the other body may have the trappings of a court.

Now I would refer Your Lordships to MR 1961 at page 200: this is foundation of jurisdiction of contempt proceedings:

"The Supreme Court has inherent jurisdiction to protect the integrity of courts of subordinate jurisdiction and to punish for contempt where a Magistrate is alleged



to be partial in the exercise of his judicial functions."

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Therefore, My Lords, it is only courts subordinate to your Lordships' Court, which contempt can be taken cognizance. In other words they have been the subject of specific matters. Now the Mauritian Law as I have shown to your Lordships in Sect. 11(3) punishes not by the High Court but punishes should be by commissioner of enquiry itself or to the criminal courts by making a special offence of all those who disobey the summons, disobey the order of the court to appear as witnesses, or to produce documents: all, my Lords, are offending courts species. So far as the first two species are concerned are alone made punishable by a fine of Rs. 500. The two species of punishment *ex facie* and punishment for insulting behaviour outside the Court are not made punishable.

Now, my Lords, law of contempt proceeding of libelling which regard to such bodies by any statutory provisions like sec. 1, sub. sec. 3 of the English Act and Sec. 10(a) of the Indian Act and all these are not Courts because they do not decide anything. There cannot be any contempt excepting what is provided for in Sect. 11 sub sec. 3 and that is not contempt but that is punishment of the penal offence. The difference between contempt of Sect. 11(3) of Mauritius Ordinance says that 11(3) makes a penal offence punishable per se with imprisonment plus a fine, does not make it a contempt, like Sect 1(3) of the English Act or Sect. 10(A) of the Indian Law. That is totally one thing: Mauritius Ordinance stands were the Indian stood before the introduction of Sect. 10, when, My Lords, the Supreme Court has decided those cases.

Arguments of Mr. G. d'Arifat

My Lords, two motions which remain to be adjudicated, it is my suggestion that in connection with both of them there are three matters on which the Court will have to judge and decide.

The first I will refer to as the credibility to be given to the witnesses who have deponed namely Mr. Ombrasine and Mr. Appou. Your Lordships have the opportunity of hearing their cross-examination, and the manner in which they related how they came to make reference to what had been said by the respondent at Mare de'Albert, the circumstances in which they decided not to include those reports in the first edition of the newspapers, and how afterwards they came out with the parts which are referred to in the present motion. My Lords, in fairness to those witnesses, I think it my duty to submit that there is no partisan, they cannot be found guilty of being partisan in the circumstances. After all, from the document produced yesterday they were the guests. This was merely a congress of the Labour Party and they were among the guests, guest reporters of the Labour Party.

The other point on which I wish to refer en passant is the absence of the policemen. Of course, they are always easy targets. When they are there, when they see and when they hear, they are being questioned for what they see and what they hear, and what they give evidence about and when they are not there and they do not see and we have not heard the same remarks are there. I think in this respect we must remain content with taking notes that the police was there and that the police reports are that they have not heard Mr. Badry using the words complained of. It is my submission that the Court would not be justified in drawing any further or more inferences from the absence of the police to give evidence on the matter.

The next point I wish to refer to, My Lords, is the contents of the words alleged to be used by the respondent: "Pas tout ce qui li fine ecrire qui vrai" - "ainan aine paque quiquechose qui li pas fine prend en consideration."

Translation

Not everything he wrote was true" - "there are a lot of things which he did not take into consideration".

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There is no doubt there that the respondent was referring to the Glover's Report. According to him there are in the report statements which are not true. It is not true because there are several factors which have not been considered.

This, my Lords, in my submission amounts to partiality, the lack of integrity. There is all the difference in the words between a fair comment where a speaker who makes specific reference to a fact or to a finding and comments thereon by saying that those specific facts have been omitted, have not been taken into consideration and it would be impossible because of the omission to reach a different conclusion. This is not the sort of comment we meet here. We have a general wide statement saying: "Pas tout ce qui li fine ecrire qui vrai - ainan aine paquet quiquechose qui li pas fine prend en consideration."

Translation

"Not everything he wrote was true - there are a lot of things which he did not take into consideration".

What is it that he has not taken into consideration?  
What is it that he has written and which is not true?  
We therefore come back to those essential principles the protection from extreme attack upon the integrity or impartiality which could have a tendency justifiably to undermine public confidence in the commissioner. As I submitted yesterday, the important thing is the impact which those words may have had on an audience and I submit that it is fair to think that persons who were listening to Mr. Badry when he used those words could verily believe to what extent Mr. Glover was fair and impartial in his conclusions.

The next motion which contains those words:

"Ape utilise Rapport Glover pou detruire moi."

Translation

"The Glover report is being used to destroy me".

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Now I wish to pause here on the question of credibility because in the Affidavit which I did swear and which Mr. Badry admitted in cross-examination, namely that that the decision of enquiry reported adversely against him. Is it not normal that someone in the position of Mr. Badry would have said indeed: here is a report which is adverse to me and people are using it against me. I wish to differ from my Learned Friend on this point when he said there is a connection between the possibility of Mr. Badry using those words and the situation in which Mr. Badry had found himself.

So, when I turn to the next motion, the words being:

"Nous bande zenfants coolies qui ine passe miseres, nous pou besoin prend nous vengeance, est-ce qui Missie Glover qui pou dirige ca pays la, bisin dechire calecon Missie Glover dans ca pays la."

Translation

"We, the children of the coolies, who have suffered hardships, we shall have to take our revenge. Is it M. Glover who is going to run this country? M. Glover must, in this country, be taught a lesson and exposed for what he is."

My understanding of the creole language in the circumstances makes the contempt in the words:

"bisin dechire calecon missie Glover".

Translation

"M. Glover must be taught a lesson and exposed for what he is".

To me they mean that everything should be done to lower the prestige, the credibility, the reputation of Mr. Glover. The allusion, in my submission, is that Mr. Glover had made a report in which one could find fault with it because Mr. Glover had come to

certain conclusions which is the views of some could lead the way of certain decisions to be taken. To this extent, my submission is that the words: "bisin dechire calecon missie Glover"

Translation

"M. Glover must be taught a lesson and exposed for what he is".

refer to the lowering of everything, of anything that Mr. Glover would represent in the eyes of the public, and therefore, in my submission, constitutes a contempt in the sense that they are, I submit, scurrilous abuse of a commissioner, even after the case is over.

The 3rd and last point to which I wish to refer is the question of the contempt of Court and the Tribunal of Enquiry. I shall also refer to Chap. 10 of Borrie and Lowe and I concur with my Learned Friend on the other side that there existed in England a Controversy about the situation which led to the Salmon Committee in 1969. I wish, therefore, to refer your Lordships to the conclusion of the Salmon Committee as they are reproduced at page 300 and 307 of Borrie and Lowe: "The Salmon Committee did examine the view that: "proceedings before a Tribunal of Enquiry are so fundamentally different from those before a court of law of contempt should not apply to Tribunals at all".

However, while the Committee agreed that there is a : "profound difference between a criminal trial which takes place before a judge and jury and proceedings before a Tribunal. Juries are far more vulnerable to influence than is a Tribunal of Inquiry."

It concluded that:

"There is no such profound difference between a trial before a judge alone and proceedings before a Tribunal of Inquiry as would justify affording the protection of the Law of contempt to persons involved in the one but not in the other."

" A second important reason for a broad application of the law of contempt to Tribunals of Enquiry is to enhance its ability to arrive at the truth."

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At page 307, Your Lordships will find that they refer to this aspect of law of contempt concerning (d) scandalising the Tribunal:

"The law of contempt also operates to restrict comments which 'scandalise' a court and bearing in mind that the basic rationale of this type of contempt is not to uphold the personal dignity of the judges but to maintain public confidence in the courts, it seems also apt to apply this branch of contempt to tribunals of inquiry.

As WILMOT, J. said in R. v Almon:

"The arraignment of the justice of the judges ..... excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction to justice."

There is one word on which I would wish to lay an emphasis: it seems also apt to apply this branch of contempt to tribunals of inquiry. My submission My Lords, is not that the Tribunal of inquiries are Court of Law. My submission is that the law of contempt as it exists in Mauritius extends to apply to Tribunal of inquiries presided by a judge or not by a judge. My Lords, although the matter was not actually in dispute I wish to refer your Lordships to the local decisions of Director of Public Prosecutions v. Masson and Anor. reported in M.R. 1972, at page 47. The title is Contempt of Court - scandalising a Quasi-Judicial Authority:

"Circumstances in which it was held that an article published in a newspaper was calculated to bring into suspicion and contempt." But as I said in this case, the point was not raised but we have the jurisprudence that our Supreme Court has already in 1972 presided by no less a person than Sir Maurice Latour-Adrien,

the then Chief Justice and our present Senior Puisne Judge, Mr. Justice Moollan as he then was decided that the law of contempt did extend to apply to cases in which a Quasi-Judicial Authority was scandalised after a decision has been communicated.

My Lords, these are my three submissions, unless the Court wishes to hear anything else.

MR. A.K. SEN REJOINS:

My only reply to this is that as I earlier stated that this point never raise at all. The point is that the issue in the Court as to whether the board of enquiry was a court or not, but decisions that I referred to your Lordships show that jurisdiction depends upon an inferior the court being scandalised, and for the credibility I will answer in a case where the point has been raised and decided.

COURT: In general the contempt does not apply when somebody would have been scandalised in the Supreme Court itself?

MR. SEN: Yes.

COURT: There would be no contempt?

MR. SEN: Of course, yes, because the law of contempt is that the Supreme Court protects itself and Courts subordinate to it.

COURT: I want to have it clear.

MR. SEN: Since we are concerned with subordinate courts, no, this point does not raise, not for a moment I am suggesting that. Many decisions show that the inherent jurisdiction of the Supreme Court to commit for contempt arise act of scandalising the Supreme Court itself or any Courts subordinate to it. Here, we are not concerned with the Supreme Court but with a Court subordinate to it and the point is that Board of Enquiry is a subordinate to it and from Borrie and Lowe it is not a court of law and passages that have just been read by my Learned Friend are in relation to the Section of 13 (c) as to what weight interpretation should be given

and they say 1(3) properly interpreted where the real interpretation not only the imitation but the extension namely that they should also be opened for contempt proceeding to be initiated against scandalising conduct against ..... That is all that they say, not that to hold 1 3(c), My Lords, that they say. Salmon commission was entirely concerned with the scope of 1 3(c), My Lords.

(At this stage, judgment is reserved)

P A R T    I I  
D O C U M E N T S

A copy of Newspaper L'Express dated 19th  
May 1980 Marked "A"

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No. 18  
Copy of Article from  
L'Express dated  
19th May 1980

Passions politiques et communales

a Mare d'Albert

Le parti Travailleiste, devant environ 300 personnes, a denounce hier, a Mare d'Albert un complot ourdi par l'opposition visant a se debarrasser du Premier ministre, Sir Seewoosagur Ramgoolam, et a lui oter le pouvoir politique. Le Premier ministre et le ministre des Finances qui ont pour habitude d'honorer de leur presence le congres regionaux du PTr ne l'ont pas fait pour des raisons personnelles. Ils se sont fait excuser. Ceux qui ont participe au congres d'hier ont reaffirme leur loyaute envers Sir Seewoosagur Ramgoolam. Les orateurs au cours de leurs interventions, se sont laisses guider par certaines passions politiques et communales. l'Action civique, la MTPA et M.H. Boodhoo n'ont pas ete epargnes.

M.L. Badry a parle de la guerre economique que le PTr doit livrer pour apporter une meilleure distribution des richesses du pays et retirer de la main d'un groupe d'individus cetter richesse. Il a parle des salaires des managers des etablissements sucriers compares a celui du Premier ministre. Il est d'opinion que cela est un handicap pour les travailleurs pour



trouver une solution a leurs problemes, etant donne que ces gros salaires empechent de mettre en pratique certaines demandes de la classe laborieuse. Abordant le rapport Glover, M. Badry a dit que certains hommes politiques se servent de certains propos du juge pour le detruire.

Il a reaffirme sa loyauté au PTr qui, dit-il, doit se debarrasser des griffes des capitalistes. Il s'est prononce pour la nationalisation du port et a dit que les investissements due gouvernement dans ce secteur ne doivent pas profiter qu'a une poignee de personnes. Ces personnes, selon l'orateur sont des reactionnaires.

Pour le ministre de l'Education et secretaire general du labour, le PTr n'a jamais attaque les institutions democratiques. Le PTr doit se defendre contre les attaques demagogiques de l'opposition qui se servent des rapports Pillay et Glover pour masquer les leurs. Il ne voit pas pourquoi les deux rapports ne peuvent etre contestes. Il y a, bien sur, un droit d'appel. Il croit qu'un Select Committee de la Chambre pourrait faire la lumiere sur les conclusions de ces deux rapports. Le SG du Labour a fait allusioin aux salaires du Premier ministre et a ceux d'un administrateur d'une sucrerie. Il a estime la raison pour laquelle l'argent n'est pas disponible pour la refection d'une route des cites ouvrieres de l'industrie sucriere.

Pour l'orateur l'Action Civique et la Mauritius Tax Payers Association sont des organisations qui, sous le couvert de la chose sociale, font de la politique partisane et servent les interets des capitalistes. A cet effect, il a parle de la lutte menee par ces deux organisations avec l'aide de M. Boodhoo pour empecher le gouvernement dobtenir Rs 300 millions pour boucler son budget. Il a parle de M. Boodhoo comme un acteur qui interprete a merveille un playback que lui ont dicte les capitalistes.

Il est d'opinion que l'action concertée de ces deux organisations et de M. Boodhoo a empêché le gouvernement de mettre en vigueur son plan pour une meilleure distribution des richesses. Pour le secrétaire général du PTr, les capitalistes "kidnappent" l'attention de la population sur les vrais problèmes à travers ces diverses organisations.

Il a annoncé l'intention du gouvernement de concentrer ses efforts sur le chômage et, à cet effet, le PTr va lancer une campagne de sensibilisation. Il a aussi parlé en faveur de la nationalisation du port et ne voit pas pourquoi le gouvernement doit laisser entre les mains d'un groupe de personnes un secteur où il a dépensé plus de Rs 400 millions.

Quant à M. James Burty David, président du PTr, il a lui aussi dit que le PTr n'a jamais attaqué les institutions démocratiques du pays. Il a dit que l'opposition refuse le droit au PTr de s'expliquer et cela, à son avis, démontre le fascisme de l'opposition. Il a dit que c'est l'opposition qui a brûlé le rapport Richard sur l'éducation et qu'à aucun moment le PTr n'a voulu mettre en cause le judiciaire et le rapport de l'Audit. Il s'est demandé si c'est de la démocratie que de brûler le rapport Richard et de ne pas permettre aux parlementaires de se prononcer sur le rapport Glover. Dans ce rapport, dit-il, le juge Glover a dit que certains points restent à être éclaircis. Il s'agit de l'affaire Ramkhelawon, Valerie, Chintamun et autres et que les conclusions du rapport Glover ne sont pas finales. M. David a dit qu'il ne peut comprendre l'hypocrisie de l'opposition qui avait accepté devant le Speaker la nomination au Public Accounts Committee de MM. A.V. Chettiar, Badry et G. Daby pour venir ensuite la contester. Il a dit que le MMM, tout en mettant l'accent sur les conclusions du rapport Pillay, escamote les

irregularites soulignees par le directeur de L'Audit sur l'administration municipale du MMM. Il a parle longuement de ce qu'il a qualifie de l'affaire Darga et a colle a M. Boodhoo l'etiquette d'instrument capitaliste.

Part II Documents  
Copy Article from  
Newspaper l'Express  
dated 19th May 1980  
Marked "A"  
(continued)

MM D. Basant Rai et H. Ramphul, respectivement ministre du Commerce et de l'Industrie et secretaire parlementaire au ministere de la Jeunesse de des Sports, ont parle du communalisme de l'opposition. Ils ne voient pas pourquoi des personnes ne prennent pas avantage des dispositions contenues dans la constitution en ce qu'il s'agit du droit d'association.

TRANSLATION:

The Labour Party in front of about 300 persons has denounced yesterday, at Mare d'Albert a plot hatched by the opposition with a view to get rid of the Prime Minister, Sir Seewoosagur Ramgoolam and to take away from him political power. The Prime Minister and the Minister of Finance who used to honour by their presence regional congresses have not done so for personal reasons. They have excused themselves. Those who have participated at yesterday's congress have affirmed their loyalty to Sir Seewoosagur Ramgoolam. The speakers, during their intervention, have allowed themselves to be guided by some political and communal passions. "L'Action Civique" (the Civic Movement), the Mauritius Tax Payers Association and Mr. H. Boodhoo have not been spared.

Mr. L. Badry spoke about economic fight that the Labour Party has to put up to bring about a better distribution of the country's wealth and to remove from the hands of a group of persons that wealth. He spoke about the salaries of the managers of sugar estates compared with that of the Prime Minister. He is of the opinion that this is a handicap for workers to find a solution to their problems, being given that those high salaries prevent the application of some requests made by the working class. Dealing

with the Glover Report, Mr. Badry said that some politicians make use of some remarks of the Judge to destroy him. He reaffirmed his loyalty to the Labour Party which, he said, must get clear of the clutches of capitalists. He declared himself in favour of the nationalisation of the harbour and said that government's investment in that sector should not benefit a handful of persons only. Those persons according to the speaker are reactionaries.

In the Supreme  
Court of Mauritius

Part II Documents

Translation of copy  
of Article from  
newspaper l'Express  
dated 19th May 1980  
Marked "A"  
(continued)

In the opinion of the Minister of Education and General Secretary of the Labour, the Labour Party has never attacked democratic institutions. The Labour Party must defend itself against demagogic attacks of the opposition which make use of the Pillay and Glover Reports to screen theirs. He cannot see the reason why the two reports cannot be contested. There is, of course, a right of appeal. He believes that a Select Committee of the House could clear up the conclusions of those two reports. The General Secretary of the Labour alluded to the Salary of the Prime Minister and that of a sugar estate manager. He has considered the reason why money is not available for the repair of a road in the workmen's garden-cities of the sugar industry.

In the opinion of the speaker the Civic Movement and the Mauritius Tax Payers Association are organisations which, under social-activity cover, go into party politics and serve capitalists' interests. To that effect, he spoke about the fight led by those two organisations to prevent government from obtaining Rs. 300 millions to make both ends meet. He spoke of Mr. Boodhoo as an actor who plays marvellously a playback role dictated to him by capitalists. He is of the opinion that the concerted action of those two organisations and of Mr. Boodhoo has prevented government from putting into force its plan for a better distribution of wealth. In the opinion of the General Secretary of the Labour Party, the

capitalists 'kidnap' the attention of the population from the real problems through those various organisations

In the Supreme Court of Mauritius

Part II Documents

He has given notice of government's intention to concentrate its efforts on unemployment and, to that end, the Labour Party will launch a campaign to make the people conscious. He has also spoken in favour of the nationalisation of the harbour and cannot conceive why the government must leave in the hands of a group of persons a sector in which he has spent more than Rs. 400 millions.

Translation of copy of Article from Newspaper l'Express dated 19th May 1980 Marked "A" (continued)

As far as Mr. James Burty David, Chairman of the Labour Party, is concerned, he also said that the Labour Party has never attacked democratic institutions of the country. He said that the opposition refuses to the Labour Party the right to explain itself and that, to his mind, shows the facism of the opposition. He said that it is the opposition that burned the Richard Report on Education and that at no time has the Labour Party wanted to put into cause the judiciary and the Audit Report. He asked himself if it is democracy to burn the Richard report and not allow members of Parliament to adjudicate on the Glover's Report. In that report, he said, Glover Judge stated that certain points remain to be cleared up. It concerned the Ramkhelawon, Valerie, Chintamun affair and others and that the conclusions of the Glover Report are not final. Mr. David said that he could not understand the hypocrisy of the opposition who had accepted before the Speaker to the appointment on the Public Accounts Committee of Messrs. A.V. Chettiar, Badry and G. Daby to come and contest it later. He said that the M.M.M. (Mouvement Militant Mauricien' - The Maurician Militant Movement), while laying stress on the conclusions of the Pillay Report, makes away with the irrregularities underlined by the Director of Audit on the M.M.M. municipal management. He spoke at length on what he called the Darga affair and dubbed Mr. Boodhoo with the label of instrument of capitalists.

Messrs. D. Basant Rai and H. Ramphul, respectively Minister of Commerce and Industry and Parliamentary Secretary of the Ministry of Youth and Sports, spoke about the communalism of the opposition. They cannot see why people should not take advantage of the provisions contained in the Constitution regarding the right of association.

No. 19  
MOTION PAPER

In the Supreme  
Court of Mauritius  
Part II Documents

Translation of copy  
of Article from  
Newspaper l'Express  
dated 19th May 1980  
Marked "A"  
(continued)

No. 19  
Motion paper  
23rd October 1980

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 the 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

(sd) M. Mardemootoo  
of George Guibert Street, Port Louis.  
Attorney for the Applicant

(sd) E. Juggernaut  
Of Counsel for the Applicant

AFFIDAVIT OF L. BADRY

AFFIRMED ON 23RD OCTOBER 1980

In the Supreme  
Court of Mauritius

No. 20

Part II Documents(2)  
Affidavit of L.Badry  
23rd October 1980

I, Lutchmeeparsad Badry, a member of the Legislative Assembly, of 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 uttered the following words: "Nous banne zenfants coolies qui inne passe miserés, nous pou besoin prend nous vengeance, est ce qui Missie Glover qui pou dirige ca pays la, bisin dechire calecon Missie Glover dans ca pays la".

Translation:

"We the children of the coolies, who have suffered hardships we shall have to take our revenge. Is it M. Glover who is going to run this country? M. Glover must be taught a lesson and exposed for what he is."

2. That on the 23rd October 1980 the Supreme Court of Mauritius sentence 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 in 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 is 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 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;

(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 day of October ) (s) L. Badry  
1980 )

Before me  
(s) J. Forget  
Ag. Master & Registrar

Drawn up by me  
(s) M. Mardemootoo  
Solicitor 23.10.80  
Reg. A424 No. 2769

No. 3

MINUTE DATED 23RD OCTOBER 1980

On Thursday 23rd October 1980  
Before Hon. Y. Espitalier-Noel, Judge and  
Hon. A.M.G. Ahmed, Ag. Judge.

L. Badry v. D.P.P. (3 cases)  
E. Juggernaut with L. Seetohul for the  
Applicant.  
S. Hattea for the Respondent.

In the Supreme  
Court of Mauritius

No. 20

Part II Documents(2)  
Affidavit of L.Badry  
23rd October 1980

(continued)

No. 21  
Minute dated  
23rd October  
1980 (3)



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

No objection.

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

In the Supreme  
Court of Mauritius  
No. 21

Part II Documents  
Minute dated 23rd  
October 1980 (3)  
(continued)

- 1) The applicant shall by Monday the 27th October 1980 enter into good and sufficient security to the satisfaction of the Master and Registrar in the sum of Rs. 10,000 for the due prosecution of each appeal and the payment off 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.

(s) R. OOGRAH

For Master and Registrar

NO. 4

PRAECIPE

No. 22

Praecipe (4)  
27th October 1980

For an order of the Master and Registrar of the above Court accepting (i) Mr. Jeewonlall Shiw Maharaj a proprietor, residing at Boulevard Victoria No. 11, Port Louis, owner of an immoveable property situate at Avenue Ollier, 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 at Vacoas, 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 October 1980.

(s) M. Mardemootoo

Of George Guibert Street, Port Louis

Attorney for the Applicant.

Reg. A424 No. 2944.

NO. 5

AFFIDAVITS OF SURETIES

I, Jeewonlall Shiw Maharaj, 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. Ollier, 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.
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. 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.

In the Supreme  
Court of Mauritius

No. 22

Part II Documents  
Praeipie (4)  
23rd October 1980  
(continued)

No. 23

Affidavits of  
Sureties (5)

27th October 1980

Solemnly affirmed by the abovenamed )  
deponent, at Chambers, Court House, ) (s) J. Maharaj  
Port Louis, this 27th day of October )  
1980 )

In the Supreme  
Court of Mauritius  
No. 23  
Affidavits of Sureties  
(4)  
27th October 1980  
(continued)

Before me  
(s) J. Forget  
Ag. Master and Registrar

Drawn up by me  
(s) M. Mardemootoo

Solicitor 27.10.80  
Reg. A423 No. 5707

I, Tricanipillay Canarapen, a proprietor residing at  
Pere Laval Street, Rose Hill, make solemn affirmation as  
a Hindoo and say:

1. 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.
5. 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 ) (s) T. Canarapen  
October 1980. )

Drawn up by me  
(s) M. Mardemootoo  
Solicitor 27.10.80  
Reg. A 423 No. 5708.

Before me  
(s) J. Forget  
Ag. Master & Registrar

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.

In the Supreme  
Court of Mauritius  
No. 24  
Part II Documents  
Recognizance (6)  
27th October 1980

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 the 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.

In the Supreme  
Court of Mauritius  
No. 24  
Part II Documents  
Recognizance (6)  
27th October 1980  
(continued)

NOW the conditions of this obligation are such that in case the abovenamed applicant does not prosecute the above appeal and 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 the 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 (s) L. Badry
2. Good for the sum of ten thousand rupees (s) M. Maharaj
3. Good for the sum of ten thousand rupees(s) T. Canarapen

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.) Tricanipillay Canarapen, a 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.

(s) J. Forget  
Master and Registrar  
Supreme Court.

Reg. C. 328 No. 3098.

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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B E T W E E N :

LUTCHMEEPARSAD BADRY

Appellant

-and-

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,  
Lincoln's Inn,  
London WC2

Solicitors for the Respondent