Trinity Term
[2026] UKPC 29
Privy Council Appeal No 0087 of 2023

JUDGMENT

Devendranath Hurnam (Appellant) *v* PV Veerabudren (Respondent) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Sales
Lord Lloyd-Jones
Lord Hamblen
Lord Leggatt
Lord Ericht

JUDGMENT GIVEN ON
29 July 2026

Heard on 6 May 2026

Appellant
Emma Mockford
Joanna Connolly
(Instructed by Pallas Partners LLP (London))

Respondent
Andrew McLeod
(Instructed by RWK Goodman LLP (London))

LORD ERICHT:

Introduction

1. As the Board has previously explained, "there is a single legal order in Mauritius but its sources are French law, English law, and Mauritian statute law and case law" (*Ahnee v Director of Public Prosecutions* [1999] 2 AC 294 at 304–305). The issue in this appeal from the Supreme Court of Mauritius engages with all of these sources and is as follows: can a judge of the Intermediate Court of Mauritius be held personally liable in an action for damages for words uttered or gestures made in open court during the hearing of a matter within the judge's jurisdiction?

2. The respondent submits that the principle of judicial immunity has been received into Mauritian law from the English common law, and that this principle provides a complete defence to the action. The appellant accepts that the principle has been received, but submits that the scope of the immunity under the received principle of judicial immunity is governed by the terms of a Mauritian statute, the Public Officers' Protection Act 1957 (the "1957 Act") which, properly interpreted, provides that a judge of the Intermediate Court can be personally liable for any act within jurisdiction where the act was done maliciously and without reasonable or probable cause.

The Plaint

3. This appeal comes before the Board on a preliminary objection based on judicial immunity. No determination has been made by any court below as to the facts or as to the application to the facts of the substantive law of the damages claim. For the purposes of the appeal, the Board proceeds on the basis of the alleged facts set out in the plaint, and the legal basis pleaded in the claim. If this appeal is successful, then the facts and law applicable to the claim will require to be determined by the Mauritian courts in due course.

The Facts as pleaded in the Plaint

4. The appellant was plaintiff in a case in the Intermediate Court of Mauritius (the "Gulbul case"), in which he was representing himself. On 8 April 2019 the Gulbul case was called on before the Presiding Magistrate and the respondent, sitting as second Magistrate, who postponed the hearing to be listed on 29 May 2019.

5. The appellant avers that on 8 April 2019 an exchange took place between him and the respondent regarding the time to be fixed for the hearing on 29 May 2019 which became acrimonious. The respondent insisted that the time fixed for the hearing was to be 10.30 am. She marked this by showing her muscles and finally "yelled" in a tone and a language which provoked the appellant, leading the respondent to state "we decide when to call cases; the other parties are not complaining why are you etc" and the respondent "went on rambling and she sighed—'chut' [a derogatory term] whereupon the appellant expressed in terms appropriate for the occasion that she was undermining the court and holding herself in disrepute". The appellant was stunned and annoyed with the "chut" sigh by a judicial officer in court. The appellant avers that the respondent's conduct was "pregnant with malice and without reasonable or probable cause".

The legal basis of the claim in the Plaint

6. In the Plaint the appellant avers that the respondent's conduct smacks of faute grave as a result of which the appellant suffered damage and prejudice in his capacity as a litigant and as a professional which he assessed at 1 million Mauritian Rupees (approximately equivalent to £15,950). He seeks damages in that amount in view of the reprehensible conduct of a judicial officer in open court.

7. The legal basis of the damages claim is article 1382 of the Code Civil Mauricien which provides:

> "**1382.**Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer."
>
> **(1382.** Any act by a person which causes harm to another obliges the person at fault to repair it.)

The proceedings in the courts below

8. The respondent raised a preliminary point of law that the appellant could not proceed with the present action as the respondent was immune from civil suits in the discharge of any responsibilities of a judicial and administrative nature. On 2 October 2020, the Intermediate Court ruled that this was a point of law which would dispose of the whole action if it succeeded, and allowed the issue of immunity to be raised as a preliminary point of law at an initial stage without the respondent having to file a plea on the merits.

9. On 2 June 2021 the Intermediate Court held that the respondent was immune from civil proceedings in the performance of her judicial function, and that therefore the appellant's action was null and void, and dismissed the plaint. The court found that the cases of *Sirros v Moore* [1975] QB 118, *Hurnam v State of Mauritius* [2003] SCJ 54, *Hurnam v Gulbul* [2017] SCJ 88 and *Hurnam v Yeung Sik Yuen* [2010] SCJ 373 conferred upon judges an implied immunity in their performance of their judicial function. The court also found that it was clear from articles 505, 510 and 511 of the Code de Procédure Civile (Mauricien) that there were stringent procedures to be followed as prerequisites to the filing of a suit against a judicial officer and that failure to follow those procedures as laid down in the Code rendered the whole action null and void. In support of that ruling the Intermediate Court referred to Code de Procédure Civile Annoté, A Tissier, A Darras et Louiche-Desfontaines, Vol 2, Titre III, De la prise à partie, a. 505, notes 38 et 39, as cited in *Hurnam v Yeung Sik Yuen*. In the court's view it was abundantly clear that the respondent was exercising her judicial function even if she had uttered "chut".

10. The appellant appealed to the Supreme Court of Mauritius, and submitted that the Intermediate Court had failed to address their minds to section 6 of the 1957 Act, which conferred power to sue a magistrate. On 5 April 2022 the Supreme Court dismissed the appeal.

11. The Supreme Court held that sections 4 and 6 of the 1957 Act dealt with the procedural aspects to be followed in an action in respect of any act or omission by a public officer and a magistrate. Section 6 could not be read in isolation but should be construed in accordance with the principles of the Rule of Law enshrined in the Mauritius constitution which provided for the independence of the judiciary, which was essential for the functioning of democracy wherein the judiciary should decide matters impartially without threats or interferences. The court cited *Hurnam v Yeung Sik Yuen*, *Sirros v Moore*, *Hurnam v State of Mauritius*, *Hurnam v Gulbul*, *Haggard v Pélicier Frères* [1892] AC 61 (PC), and *Halsbury's Laws of England* 4th ed, vol 1 (1973), at pp 197 et seq.

12. The Supreme Court rejected the appellant's submission that the Intermediate Court had wrongly directed itself by reference to the Code de Procédure Civile. The Code de Procédure Civile provided for limited instances in which a judicial officer could be sued for acts or omissions in the exercise of judicial functions. The procedure was very strict and leave had to be sought from the court. The provisions of the 1957 Act were to be read in conjunction with, and not to the exclusion of, the requirements of the Code de Procédure Civile, which set stringent procedures to be followed which were prerequisites to the filing of a suit against a judicial officer. Failure to follow these specific statutory procedures rendered the whole action null and void.

13. The appellant appeals to the Board.

Reception of English common law constitutional principles into Mauritian law

14. Prior to the cession of Mauritius to Britain by France, the law of Mauritius was French law as set out in the Napoleonic code. That French law continued as the common law of Mauritius, subject to statutory changes from time to time (*Raphael Fishing Co Limited v State of Mauritius* [2008] UKPC 43 at para 2). However, as with other ceded colonies, the colony also became subject to the administrative public law of Great Britain (*Abbott v Fraser* (1874) LR 6 PC 96 at 106–107). As Lord Stowell pointed out as long ago as 1821, when territory is acquired by conquest or cession:

> "no small portion of the ancient law is unavoidably superseded...The allegiance of the subjects and all the law that relates to it – the administration of the law in the sovereign and appellate jurisdictions – and all the laws connected with the exercise of the sovereign authority – must undergo alterations adapted to the change".
>
> (*Ruding v Smith* (1821) 2 Hag Con 371, quoted in *Kodeeswaran v Attorney-General* of Ceylon [1970] AC 1111 at 1118A–B).

15. An example of the application of this principle in more modern times can be found in *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645, which concerned the detention of the appellant's husband after the Unilateral Declaration of Independence by the government of the then colony of Southern Rhodesia. The colony had been annexed by the Crown in 1923, and its constitution provided that the law to be administered was the pre-existing Roman-Dutch law. The Board (at p 721C–E) approved the statement of the Chief Justice of South Africa (Innes) in the South African case of *Union Government (Minister of Lands) v Estate Whitaker* [1916] AD 194, 203 (S Afr) that:

> "Now, when the Sovereign agrees that the system of law prevailing in a conquered settlement shall continue in force thereafter, it would seem a necessary inference, in the absence of any stipulation to the contrary, that the rights of the State, with regard to the acquisition, alienation and disposition of property, are intended to be regulated by the legal principles which the Sovereign expressly sanctions. Such questions as whether the Crown is amenable to the jurisdiction of the courts,

> and its constitutional position in regard to matters of government, stand on a different footing, and no inference affecting them could properly be drawn from the establishment of a system of law differing from that of England”

The Board went on to hold that the nature of the sovereignty of the Queen in Parliament over a British colony must be determined by the constitutional law of the United Kingdom and it was therefore unnecessary to consider points as to Roman-Dutch law (p 721E).

16. The rule of law and the independence of the judiciary are a fundamental part of the constitutional law of the United Kingdom and accordingly the English common law principles governing judicial immunity have been received into Mauritian law, as *Haggard v Pélicier Frères* [1892] AC 61 makes clear.

17. Accordingly, it is necessary firstly to consider what these English common law principles are, and secondly to consider whether these are qualified or limited by statutory law of Mauritius as found in the 1957 Act. To set the background to that consideration, it is useful at this stage to describe the status of the Intermediate Court within the court system of Mauritius.

The status of the Intermediate Court of Mauritius

18. In the early days of the introduction of a British court system into Mauritius, magistrates were equiparated with justices of the peace. For example, article V of Ordinance No 34 of 1852 empowered the Governor to invest District Magistrates “with all or any of the powers or attributions given in England to Justices of the Peace … and any such District Magistrate so appointed, shall, in the discharge of any power confided in them, be entitled to do in Mauritius all such acts as Justices of the Peace are entitled to do in England, in execution of the same or like powers.”

19. The court system in Mauritius has evolved considerably since then. There are three levels of court: the Supreme Court, the Intermediate Court and the District Court. The judges in the Intermediate Court are “Magistrates of the Intermediate Court”, with “District Magistrates” being the judges of the District Court (Sections 81 and 94 of the Courts Ordinance as amended by the Courts Amendment Act 1971 (the “1971 Act”)).

20. The Intermediate Court has civil and criminal jurisdiction. It was created in its current form by the 1971 Act. Three features of the Intermediate Court are worthy of notice at this stage.

21. Firstly, the Intermediate Court is a court of record (Section 80 of the Courts Ordinance as amended by the 1971 Act).

22. Secondly, writs of error and certiorari have been removed and the only form of review of the Intermediate Court is an appeal to the Supreme Court. Section 135 of the Courts Ordinance (as amended by the 1971 Act) provides:

> "**Error and Certiorares taken away**
>
> No judgment, order or determination, given or made by any Court, nor any cause or matter brought or pending before him, shall be removed by appeal, motion, writ of error, certiorari or otherwise into any other Court whatever, save and except in the manner and in accordance with the provisions of the laws governing appeals."

23. Thirdly, magistrates of the Intermediate Court are not lay persons but must be barristers admitted in one of the superior courts of the United Kingdom with at least three years standing at the bar (section 119 of the Courts Ordinance as amended by the 1971 Act).

24. These features of the Intermediate Court need to be borne in mind when considering the English common law of judicial immunity and the English case law on courts of record, inferior courts and justices of the peace.

Judicial immunity under English law

25. The current case concerns a judge acting within her jurisdiction.

26. It has long been established under English common law that a judge acting within jurisdiction has immunity.

27. In *Sirros v Moore*, Lord Denning MR considered the case law on judicial immunity under two categories: acts within jurisdiction and acts outside jurisdiction. He set out the law on the former category as follows (pp 132D–133A):

> "1. Acts within jurisdiction

> Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. Of course, if the judge has accepted bribes or been in the least degree corrupt, or has perverted, the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable to an action for damages. The reason is not because the judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear. It was well stated by Lord Tenterden CJ. in Garnett v Ferrand (1827) 6 B & C 611, 625:
>
>> 'This freedom from action and question at the suit of an individual is given by the law to the judges, not so much for their own sake as for. the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be.'
>
> Those words apply not only to judges of the superior courts, but to judges of all ranks, high or low. Lord Tenterden C J spoke them in relation to a coroner. They were reinforced in well-chosen' language in relation to a county court judge by Kelly CB in Scott v Stansfield (1868) LR 3 Exch 220, 223; and to a colonial judge by Lord Esher MR in Anderson v Gorrie [1895] 1 QB 668, 671".

28. The principle that no action is maintainable against a judge for acts within jurisdiction has also been applied in Mauritian law. *Haggard v Pélicier Frères* [1892] AC 61 was an appeal to the Board from the Supreme Court of Mauritius. Mr Haggard, sitting as a judge in the Consular Court of Madagascar, dismissed an action brought by Pélicier Frères. Pélicier Frères then raised an action personally against Mr Haggard for

damages for the dismissal. Lord Watson, delivering the judgment of the Board, said, at pp 65–66:

> "... it does not appear to their Lordships to admit of doubt that the appellant, whilst sitting and acting as judge of the Consular Court, was entitled to the same degree of protection which is accorded by the law of England to the judge of a Court of Record. In *Kemp v. Neville* (10 CB (NS 549), Erle C J, delivering the unanimous judgment of the Court of Common Pleas, reviewed the authorities bearing on the point, and stated their result as follows:
>
>> 'The rule that a judicial officer cannot be sued for an adjudication according to the best of his judgment upon a matter within his jurisdiction, and also the rule that a matter of fact so adjudicated by him cannot be put in issue in an action against him, have been uniformly maintained.'

In *Hamilton v Anderson* (3 Macq. 378), Lord Cranworth laid down the same doctrine, with this not unimportant addition:

> 'I need hardly say that the merely adding that it was done maliciously amounts to nothing at all. That would, in the opinion of the aggrieved party, be always true, or at all events would be what he would be perfectly able to state.'"

29. *Scott v Stansfield* is an example of the operation of judicial immunity on facts which, similarly to the current case, involved words allegedly said by a judge to one of the parties during a court hearing. In that case the judge said to the party: "You are a harpy, preying on the vitals of the poor." An action against the judge for damages for slander was held not to be maintainable. Kelly CB stated at pp 222–223:

> "The question raised upon this record is whether an action is maintainable against the judge of a county court, which is a court of record, for words spoken by him in his judicial character and in the exercise of his functions as judge in the court over which he presides, where such words would as against an ordinary individual constitute a cause of action, and where they are alleged to have been spoken maliciously and

> without probable cause, and to have been irrelevant to the matter before him. The question arises, perhaps, for the first time with reference to a county court judge, but a series of decisions uniformly to the same effect, extending from the time of Lord Coke to the present time, establish the general proposition that no action will lie against a judge for any acts done or words spoken in his judicial capacity in a court of justice. This doctrine has been applied not only to the superior courts, but to the court of a coroner and to a court martial, which is not a court of record. It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law independently and freely, without favour and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences."

30. The Board observes that while the case-law has established that a judge acting within jurisdiction has immunity, there is less certainty in respect of acts done outside jurisdiction. Historically, a distinction has been drawn in English common law between judges of the superior courts of record on the one hand, and judges of the inferior courts on the other, with the latter having no immunity when acting outside jurisdiction (*Sirros v Moore* pp 133A–B and 136). In *Sirros v Moore*, Lord Denning commented that the distinction was no longer valid and that as a matter of principle every judge should be protected to the same degree (p 136A–E). He went on to comment that the principle should cover justices of the peace also (p 136E–F). These *obiter* comments are not applicable to the current case and do not require further consideration here, since this appeal is not about acts outwith jurisdiction, nor about acts by a justice of the peace, but about acts by a judge within jurisdiction. In view of the erudite submissions which the Board received from Mr Andrew McLeod for the respondent, it does however think it right to observe that there is a serious question whether Lord Denning's comments about the position of justices of the peace may have been made per incuriam, as there is authority which suggests that they too enjoyed immunity at common law, which was arguably recognised in section 1 of the Justices Protection Act 1848: see *Law v Llewellyn* [1906] 1 KB 487 and *Everett v Griffiths* [1921] 1 AC 631.

31. In *Everett v Griffiths* Viscount Finlay clarified that section 1 of the Justices Protection Act 1848 applies to the ministerial, but not judicial, functions of a justice of the peace, at p 666:

> "The protection given to justices of the peace by the first section of the statute 11& 12 Vict c 44 [the Justices Protection Act 1848] is not wanted, and does not apply, in respect of acts of a purely judicial nature relating to matters within the justices' jurisdiction. Its protection is wanted in respect of acts of a ministerial character, and its provisions have not the effect of rendering justices of the peace liable to be sued in respect of purely judicial acts, even if alleged to be malicious."

32. In that regard the Board also notes the decision of the House of Lords in *In re McC* [1985] AC 528, which concerned the liability of justices of the peace under Northern Irish law. Lord Bridge took the opportunity to express *obiter* views in relation to the immunity of justices of the peace under English law, when acting both within and outside jurisdiction. In relation to acts of a justice of the peace within jurisdiction he expressed the view that the old common law "action on the case as for a tort" against justices acting within their jurisdiction maliciously and without reasonable and probable cause no longer lies, and they should benefit from the same judicial immunity as other judges (p 541D–E). In relation to acts of a justice outside jurisdiction, he disagreed with Lord Denning's view in *Sirros v Moore* that the distinction between superior and inferior courts should be abolished (p 550F–G). Lord Elwyn-Jones agreed with Lord Bridge. Lord Templeman agreed with Lord Bridge that the former cause of action against a magistrate for acting within jurisdiction but maliciously and without reasonable or probable cause was obsolete or obsolescent (p 559E). On the other hand, Lord Keith of Kinkel had reservations about whether the liability of justices for acts done within their jurisdiction but with malice and without probable cause should be treated as having fallen into desuetude, and preferred to leave that question to be decided after full argument in an appropriate case (p 533 D–E). Lord Brandon stated that the question of whether the common law liability of justices for acts done within their jurisdiction but with malice and without reasonable cause was obsolete in England was not wholly free from doubt, and he reserved his opinion on it (pp 552H–553A).

33. The current case before the Board concerns a judge of the Intermediate Court. The Plaint in the current case is founded on Article 1382 of the Code Civil Mauricien, so it makes no difference if the English tort is or is not obsolete. The issue in the current case is immunity within jurisdiction, so the divergence of views between Lord Bridge and Lord Denning as to maintaining the distinction between superior and inferior courts in relation to acts without jurisdiction is not in point. The Board expresses no concluded view on these issues.

34. As set out above, it is established that under principles of English common law a judge acting within jurisdiction has immunity. It is also established that these principles of English common law have been received into the law of Mauritius. Leaving aside for

the moment the effect of the 1957 Act, it follows from these principles that a judge of the Intermediate Court of Mauritius cannot be held personally liable in an action for damages for words uttered or gestures made in open court during a hearing in which the judge is exercising the jurisdiction conferred on them, as the respondent was. The next question which arises is whether these principles are in any way qualified or abrogated by Mauritian statute law, namely the 1957 Act.

The effect of the 1957 Act on the reception into Mauritian law of the English common law principles of judicial immunity

35. The appellant submitted that where the legislature has defined in statute the scope of the immunity to which inferior judges are entitled, that provision must be given effect. The 1957 Act was such a statute, and provided that Magistrates in Mauritius would not benefit from the defence of judicial immunity in an action within jurisdiction, but proof was required of malice and absence of reasonable or probable cause.

36. The principle of judicial immunity for acts done within jurisdiction is an important constitutional safeguard. It enables a judge to do his duty with complete independence and free from fear (Lord Denning in *Sirros v Moore* at p132D–133A, quoted in para 27 *supra*). It supports finality of judicial decisions, which would be undermined if those disappointed in a decision could bring proceedings against a judge as a means of attacking the decision (*Queensland v Stradford* [2025] HCA 3 at para 76). It does not mean that judges are unaccountable for their conduct on the bench (*Fingleton v The Queen* (2005) 227 CLR 166 at para 39): misconduct can be dealt with by judicial disciplinary procedures.

37. The 1957 Act is, as its name the "Public Officers' Protection Act" suggests, designed to provide protections for public officials. "Public Officer" is defined as "a Government servant and an officer of a Municipal City Council, Municipal Town Council or District Council" (section 2). Section 3 provides protection to public officers by making it a criminal offence to forcibly resist a public officer in the performance of his duty. Section 4 provides public officers with protection from civil or criminal action for their acts or omissions in the execution of their duty by setting out various procedural protections such as prior written notice of the action and a two-year time bar. Further protection is given by section 5 in relation to a seizure with probable cause.

38. The text of sections 4 and 5 is as follows:

> "**4. Limitations of actions**

(1) Every civil or criminal action, suit, or proceeding, by a person, other than the State, for any fact, act or omission, against a -

(a) public officer in the execution of his duty;

(b) person engaged or employed in the performance of any public duty; or

(c) person acting in aid or assistance of the public officer or person mentioned in paragraphs (a) and (b),

shall, under pain of nullity, be instituted within 2 years from the date of the fact, act, or omission which has given rise to the action, suit, or other proceeding.

…

(2)(a) No civil action, suit or proceeding shall be instituted, unless one month's previous written notice of the action, suit, proceeding and of the subject matter of the complaint, has been given to the defendant.

(b) No evidence shall be produced at the trial except of the cause of action as specified in the notice.

(c) In default of proof at the trial that the notice under paragraph (a) has been duly given, the defendant shall be entitled to judgment with costs.

(3) Where -

(a) before the institution of any civil action, suit or proceeding, the defendant has offered to the complainant an indemnity which is determined to be sufficient by the Court before which the case is brought; or

(b) after any civil action, suit or proceeding has been commenced, the defendant has paid into Court a sum of money which the Court determines to be sufficient as damages or indemnity to the complainant,

the case shall be dismissed, subject to such order as to costs as the Court thinks just.

(4) Where, in any civil action, suit or proceeding, the Court certifies on the record that the defendant acted upon reasonable or probable cause, the plaintiff shall not be entitled to more than nominal damages, or to any costs.

5. Nominal penalty

(1) Where -

(a) an information is filed against a public officer on account of a seizure; and

(b) judgment is given against the defendant,

only a nominal penalty shall be imposed and the claimant shall not be entitled to any costs if the Court certifies on the record that there was reasonable or probable cause of seizure.

(2) In a civil action, suit or proceeding brought against the public officer in respect of the seizure, the plaintiff shall only be entitled to judgment for the things seized or their value, and not to damages or costs."

39. Section 6 extends the protections in sections 4 and 5 to those working in the courts. In so doing, where the act is within jurisdiction, section 6 imposes an additional requirement of malice and lack of reasonable or probable cause. The extension applies not only to judges but also to court clerks and officers:

"**6. Action against Magistrate**

(1)(a) Sections 4 and 5 shall apply to a civil or criminal action, suit or proceeding, brought against a Magistrate, or a clerk or officer of any district or other Court, for any act done by him, or for any omission, in the execution of his office.

(b) Subject to subsection (2), the plaintiff shall also expressly allege that the act was done, or omission made, maliciously and without reasonable or probable cause.

(c) Where the plaintiff fails to prove the allegation mentioned in paragraph (b), the defendant shall be entitled to judgment with treble costs.

(2)(a) Any person who has been injured by an act done -

(i) by a Magistrate, clerk or officer in a matter in which he has no jurisdiction or in which he has exceeded his jurisdiction;

(ii) under any conviction made or warrant issued in a matter mentioned in subparagraph (i),

may maintain an action without averring and proving that it was done maliciously.

(b) No action under paragraph (a) shall be brought for anything done under a conviction until the conviction has been quashed by a Court on appeal or otherwise."

40. The wording of section 6 cannot be read as a reduction in the scope of judicial immunity so that the immunity does not apply when the judge acts with malice and without reasonable and proper cause. The 1957 Act does not deal with judges separately but as part of a group including court clerks and officers who are not judges and to whom judicial immunity does not apply. The fact that judges are treated in exactly the same way as these clerks and officers tends to suggest that what is being regulated by this section is not judicial acts within jurisdiction. Instead, what is being regulated by section 6 is protection for ministerial or administrative acts, whether done by judges, officers or clerks.

41. That interpretation of section 6 is consistent with its legislative history. Its earliest antecedent in Mauritius was the District Courts (Criminal Jurisdiction) Ordinance 1888. At that time, District Magistrates in Mauritius had the same powers as English Justices of the Peace, so it is unsurprising that Mauritius protected District Magistrates exercising their administrative functions by enacting a provision that was in similar terms to the protections afforded by the Justices Protection Act 1848 to English Justices of the Peace exercising their administrative, rather than judicial, functions (see *Everett*, cited at para 31 *supra*).

42. On any view, the 1957 Act does not contain clear and unambiguous language demonstrating an intention to limit the scope of the common law principle.

43. For these reasons, the Board finds that the 1957 Act does not govern the scope of judicial immunity for acts done within jurisdiction. The relevant principles of English common law, received into Mauritian law, continue to apply and are not limited or abrogated by the 1957 Act. Accordingly, a judge of the Mauritian Intermediate Court cannot be held personally liable for words uttered or gestures made in open court during the hearing of a matter within the judge's jurisdiction.

44. That is sufficient to decide the case and dismiss the appeal. It is not necessary for the Board to consider the appellant's subsidiary argument that the courts below erred in taking the view that an implied personal immunity for Magistrates could be derived from the Constitution of Mauritius: as personal immunity for judicial acts has been received into Mauritian law from the English common law there is no need for the Board to consider whether such immunity has additionally entered Mauritian law by the separate route of implication from the wording of the Constitution.

45. There was also discussion at the hearing of the appeal of whether the different procedural requirements of the 1957 Act and the prise à partie procedure set out in articles 505–13 of the Code de Procédure Civile operated cumulatively in the current action. As the Board has concluded that the respondent has judicial immunity in respect of this action, it is not necessary to determine that issue.

Conclusion

46. For the reasons given above, the appeal is dismissed.

47. The Board thanks counsel on both sides for their clear and helpful submissions, both oral and written, with particular thanks to counsel for the appellant as they acted pro bono.