

SAKEASI BUTADROKA

v.

ATTORNEY-GENERAL

[HIGH COURT, 1993 (Ashton-Lewis J), 18 June]

Civil Jurisdiction

B *Constitution-Parliament-whether subject to scrutiny by the High Court-whether internal proceedings subject to fundamental rights and freedoms contained in the Constitution- whether suspension of member from Parliament a violation of constitutional rights-whether Standing Orders unconstitutional-Constitution 1990, Chapter II; Sections 63(1), 63(3), 67(1)-Parliamentary Powers & Privileges Act (Cap 5) Section 28.*

C The Plaintiff who was a member of the House of Representatives was suspended from the House after a confrontation with the Speaker. He sought declarations from the High Court that the manner of his suspension was in breach of the House's Standing Orders, that the Standing Orders themselves infringed his constitutionally guaranteed freedoms and that he had been denied natural justice.

D The Court examined in depth the relationship between Parliament and the Court and HELD: (1) Save where specific provisions to the contrary appear in the Constitution the internal proceedings of Parliament are not subject to the jurisdiction of the High Court (2) the Standing Orders of the House of Representatives are not subject to Chapter II of the Constitution and (3) that the Plaintiffs suspension was in no way unconstitutional.

E Cases cited:

Bradlaugh v Gossett (1883-4) 12 QBD 271

British Railways Board v Pickin [1973] QB 219; [1974] 2 WLR 208

James Madhavan & Anr v John Neil Falvey 19 FLR 140

Nationwide News Proprietary Ltd v Wills (1992) CLR 658

F *Pickin v British Railways Board* [1974] WLR 208

R v Jackson (1987) 8 NSW LR 116

R v Secretary of State for Trade ex parte Anderson [1983] 2 All ER 233

Stockdale v Hansard (3 State TR NS) 748

S. Stanton and V. Parmanandam for the Plaintiff

G *A. Cope and W. Rigamoto* for the Defendant

Ashton-Lewis J:

In the case before the court the Plaintiff, by way of Originating Summons seeks the following Declarations:-

1. A Declaration that in the events that have occurred the suspension of the Plaintiff purported to be pursuant to Standing Orders of the House of Representatives of Fiji (hereafter S.O.) and in particular SO 66 (4) (a) and/or SO 30 (4) and 30 (5) was:

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 - (a) null and void and of no effect in that it was contrary to the manner and form of the SO; and
 - (b) was in excess of the jurisdiction conferred; and

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 - (c) did not represent in fact or otherwise a proper exercise of a privilege or the adjudication into the question of whether there had been a breach of the S.O. or any such privilege; and
 - (d) was null void and of no effect on account of the fact that the Plaintiff was denied natural justice in all the circumstances.

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2. A Declaration that in the circumstances the suspension of the Plaintiff from attending the House of Representative of Fiji was contrary to the Standing Orders in that there was:

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 - (a) no ground available and/or applicable in respect of SO 30 in the circumstances;
 - (b) no certificate was sought nor produced in compliance with SO 30 (3) in respect of the alleged conduct of the Plaintiff amounting to a breach of privilege;

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 - (c) there was a total failure to comply with and/or implement the due observance of the manner and form of the procedure of SO 30 and 31.
3. A Declaration that in the circumstances that have occurred the SO of the House of Representatives of Fiji are or have the tendency to infringe the fundamental freedoms of the Constitution of Fiji in that:

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 - (a) they fail to ensure secure protection of law contrary to s. 11 of the Constitution;

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 - (b) they fail to provide and/or ensure freedom of expression contrary to s.13 of the Constitution;
 - (c) they fail to allow and/or protect freedom of assembly and association and conscience contra to ss 15 and 12 of the Constitution.

- A 4. A declaration that the suspension of the Plaintiff on the Report of the Select Committee of a Privilege was null void and of no effect on account of the fact that the Plaintiff was denied natural justice.
- B 5. A Declaration that in the events that had occurred the Plaintiff having been dealt with and suspended from attending the house of Representatives for 3 (THREE) days such suspension to occur on and from 20th April, 1993 the matter was of at an end and all parties were functus officio."

C The facts are as follows. The Plaintiff is the elected member for the Constituency of Rewa Province in the House of Representatives in the Parliament of Fiji. During the April 1993 sittings of the Parliament the Plaintiff took part in the debates of the House of Representatives. On Monday the 19th of April members of the House spoke against the Plaintiff because of alleged opinions he held in relation to a prominent member of Fijian society. After the morning tea adjournment the Plaintiff was accused in the House by some members of creating instability within Fiji, and damaging national unity. Reference again was made to the Plaintiff's opinion concerning the respected member of Fijian society.

D During the course of debate the Plaintiff took offence at the accusations made against him, and when he replied he spoke in equally strong terms in defence of himself. During the course of the Plaintiff's reply, the Speaker began to interrupt him and called him to order. The interruptions by the Speaker increased and eventually the Plaintiff and the Speaker began to raise their voices and shouted at each other. The House then adjourned.

E On Wednesday the 21st of April the House of Representatives reconvened and the Plaintiff resumed his speech. Shortly after resuming, another member of the House interjected with a point of order which the Speaker began to adjudicate upon. The plaintiff began to repeat the matter raised by the interjecting member and was ordered by the Speaker to withdraw certain remarks made by him.

F The Plaintiff questioned the Speaker in this regard and then became involved in another heated exchange with yet another member of the House. The Speaker again reprimanded the Plaintiff and indicated that he would be stopped from speaking further if he did not behave. The Plaintiff continued speaking and was interrupted by a member who sought a ruling from the Speaker on a point of order. Debate then took place on the point of order which had been raised.

G When the Plaintiff resumed his speech another member raised a further point of order for the Speaker to rule on. The Speaker discontinued the Plaintiff's speech and the Plaintiff again remonstrated with the Speaker over being discontinued. The Speaker then ordered the Plaintiff to leave the House which he did.

After the luncheon adjournment on that day the Plaintiff was advised in writing that he had been suspended from the House of Representatives for three sitting

days and that he could resume his seat on Monday the 26th of April.

When the Plaintiff resumed his seat on the morning of Monday the 26th of April he was served with a copy of a report of the Select Committee of the House of Representatives on Privileges concerning his alleged breach of privilege in the House on Wednesday the 21st of April.

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The report recommended that the Plaintiff be suspended from the House of Representatives for the June/July sittings of the Parliament. The House then resolved in accordance with the recommendation and the Plaintiff is now so suspended.

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The issues to be determined in this case are as follows:-

1. To what extent, if at all, are the actions of the Speaker, committees and members of the House of Representatives within the internal proceedings of the House, subject to the scrutiny and control of the High Court?
2. Do all the general provisions of the Constitution of Fiji apply to the internal proceedings and privileges of the Parliament, in particular Sections 11, 12, 13, 14 and 15 set out in Chapter 2 therein?
3. Did the manner in which the Speaker applied the Standing Orders of the House of Representatives against the Plaintiff, and his ultimate suspension from the House of Representatives amount to a violation of his guaranteed constitutional rights set out in Ss. 11, 12, 13, 14 and 15 of the Constitution, and thus render the Plaintiff's suspension void?
4. Are the Standing Orders of the House of Representatives unconstitutional?

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The Standing Orders of the House of Representatives could fairly be described as occupying the position of the statute law of the House relating to its internal proceedings. They are to all intents and purposes rules for regulating the procedure of the House of Representatives, their chief characteristic being to make provision for the efficient and effective progress of the business of the House by checking and limiting the opportunities for debate.

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The Standing Orders are concerned to see that all the members of the House of Representatives are given an opportunity to participate in the debates of the House. The position and role of the Speaker in this scheme is to act as a neutral referee whose duty is to ensure fair play in this regard. As one of the principal features of Parliament is debate, the position and powers of the neutral Speaker are of paramount importance with regard to the limiting of debate.

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A The power to limit and control debate is set out in Standing Order 39. Under that Standing Order the Speaker is vested with a wide discretion in order to ensure equal opportunity and fair play during the debates of the House. An adjunct to this is the power of the Speaker to enforce his decisions and maintain the order of the House. The ultimate authority on the matter of order etc. is the House itself, however, the Speaker occupies the position of Chief Executive Officer of the House by whom the rules set out in the Standing Orders are enforced. Standing Order 42 invests the Speaker with wide powers and discretion in dealing with breaches of order. This ranges from reprimanding a member and discontinuing his speech, to suspending him from the House. Standing Order 42 (8) empowers the House of Representatives to deal with any breach of order of the House in any way it thinks fit.

B Closely associated with the application of Standing Orders with regard to the maintenance and control of the order of the House of Representatives is the application of the privileges enjoyed by the members. I can do no better than quote from the 21st edition of "PARLIAMENTARY PRACTICE" by Mr. Erskine May at page 69 in this regard. At that page the learned author states:-

C "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members. When any of these rights and immunities is disregarded or attached, the offence is called a breach of privilege and is punishable under the law of Parliament."

D If a member breaches the privileges of the House he is then liable to be punished under Standing Orders.

E One of the privileges of parliament is the right to the exclusive cognizance of its own internal proceedings. Such principle was clearly established in England in 1689 with the enactment of Article 9 of the Bill of Rights. Article 9 states:-

“That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”

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This had the effect of making the House of commons in England the sole Judge of its own proceedings and empowering it to settle its own code of procedure. The House of Commons thus became the sole Judge of the lawfulness of its own proceedings and was able to depart from its own procedure without having such departure questioned in a court of law. This was the case even where the procedure of the House, or the right of the member to take part in the proceedings of the House was ensured under statute.

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In Bradlaugh v Gossett (1883-4) 12 QBD 271 the court gave unqualified recognition to the principle obtaining under the Bill of Rights by authoritatively pronouncing on its own incompetence to inquire into the internal proceedings of the Houses of Parliament.

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With regard to the House of Commons procedures, Coleridge C.J. at 274 said that the House:-

“..... as for certain purposes and in relation to certain persons it certainly is, and is on all hands admitted to be, - the absolute judge of its own privileges, it is obvious that it can, at least for those purposes and in relation to those persons, practically change or practically supersede the law.”

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His Lordship Mr. Justice Stephen expressed the view that even if the House of Commons prohibited a member of the House from doing what a statute required him to do, and in order to enforce the prohibition, excluded the member from the house, the Court had no power to interfere. In this regard, he said at p. 278:-

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“I think that the House of Commons is not subject to the control of Her Majesty’s Courts in its administration of that part of the statute-law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable The whole of the law and custom of Parliament has its original from this one maxim, that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere.”

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Further, at p. 280 he said:-

“It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own was is

concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly.”

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The proceedings of the Houses of Parliament relate to the formal actions such as the business of the House of which a principal aspect is debate. A member takes part in the proceedings of the House by debating, and voting etc. The House of Commons Select Committee on the Official Secret Act in 1938-39, when reporting on the meaning of the term “proceeding” described it as covering:-

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“.....both the asking of a question and the giving of written notice of such question, and includes everything said or done by a Member in the exercise of his functions as a Member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular.While taking part in the proceedings of a House, Member, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.”

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See “PARLIAMENTARY PRACTICE” by E May 21st Ed. at p. 92.

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The question of jurisdiction between the Court and the Houses of Parliament in relation to their privileges and proceedings is not new, but has been litigated at various times over the past 500 years.

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From the mid 1400s attempts were made by litigants to have the High Court intervene in questions concerning the privileges and proceedings of Parliament. These attempts were always unsuccessful, the court holding that there was a body of law known as the Law of Parliament which was not part of the general law and was therefore not known to the common law of the realm and was thus not justiciable nor reviewable by the courts of judicature.

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In the 19th century the court continued to hold that the proceedings and privileges of the House of Parliament were part of the Law of Parliament and not part of the general law, and thus not reviewable in the High Court.

In 1836 in Stockdale v Hansard (3 state TR NS 748), the court accepted that the House of Commons had exclusive jurisdiction over its own internal proceedings and privileges, and that the court could only determine whether a particular claim fell within that category and inquire no further.

As mentioned previously the case of Bradlaugh v Gossett (1883-4) 12 QBD 271, established that in matters relating to its own internal management,

procedure and privileges the House of Commons had an exclusive jurisdiction which was not reviewable by the High Court even if the House wrongly interpreted a statute prescribing rights within the House itself. This would also apply to Standing Orders.

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In recent times in the United Kingdom the courts have continued to recognise the need for an exclusive jurisdiction of the Parliament in this area as being necessary for the maintenance of the dignity of the House of Parliament. The courts have held that when a matter is a proceeding of the House of Commons commencing and terminating within the House itself it is outside the jurisdiction of the court. However the view has been expressed that if a proceeding of the House affected the rights of persons exercisable outside the House, the jurisdiction of the court might be invoked so as to inquire whether the act complained of was duly covered by the privilege of the House.

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In British Railways Board v Picking [1973] QB 219, Lord Denning said at p. 231:-

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"In my opinion it is the function of the Court to see that the procedure of Parliament itself is not abused, and that undue advantage is not taken of it. In so doing the court is not trespassing on the jurisdiction of Parliament itself. It is acting in aid of parliament, and, I might add in aid of justice."

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As powerful a statement as that is in going against the established principle of the inviolability of the internal proceedings of parliament by the courts, and by as eminent a jurist as Lord Denning, the House of Lords (See [1974] 2 WLR 208) in overruling the decision in that case took an equally strong opposing view re-affirming the traditional position based on the 19th century authorities that a court could not inquire into the internal proceedings of Parliament. Lord Reid held that the authorities for the past century supported that conclusion. Lord Simon of Glaisdale held that any other conclusion would impeach the proceedings of Parliament contrary to Article 9 of the Bill of Rights.

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In R v The Secretary of State for Trade and Others, ex parte Anderson [1983] 2 All ER 233 Dunn LJ held that for a court to inquire into what had been said or done within the walls of Parliament during its proceedings for the purposes of Judicial Review of those proceedings, would be contrary to Article 9 of the Bill of Rights.

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The Development of the case law in the United kingdom over the last 500 years is clear. The High Court will not, in fact considers that it cannot, inquire into the internal proceedings and privileges of the Houses of Parliament even where the House, or an officer of the House has misinterpreted or misapplied the statute law, or, I might add, the rules of the House itself under Standing Orders.

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Position in Fiji

A I now turn to consider firstly the relevant statute law as applies in Fiji.

Section 2 of the 1990 Constitution states:-

“This Constitution is the supreme law of Fiji and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.”

B Section 61 of the Constitution recognises the supremacy of the Constitution within the realm of law making for Fiji. Section 61 states:-

“Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Fiji.”

C These sections make clear that a law enacted by Parliament which breached the provisions of the Constitution would be void and of no effect. Parliament in its legislative role is thus clearly subordinate to the provisions of the Constitution with respect to law making for Fiji in general. While Section 61 addresses itself to the legislative power of the Parliament for Fiji as a whole, D Section 63 focuses on regulating the internal procedures of each of the House of Parliament. Section 63 (1) states:-

“S. 63 (1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may make rules for that purpose, including, in particular, the orderly conduct of its own proceedings.”

E This subsection gives the mandate to each House of Parliament to regulate its own procedure and make rules relating thereto, subject to the provisions of the Constitution. This would appear to be the subsection under which the Standing Orders of the House of Representatives are made, as these orders deal with matters such as the transaction of the business of the House, order of business, F debating and passing of bills, committees etc. Standing Orders along with Parliamentary Practice and Rulings of the Speaker from the Chair form the rules of procedure for regulating the smooth flow of the business of the House. The House can make, amend and alter any of its rules or orders in this regard provided that such rules or orders do not offend or violate the provisions of the Constitution applicable under that subsection.

G Thus, it would appear that under that Section 63(1) the same principles apply to each of the Houses of Parliament internally as apply to the Parliament externally under Section 61, to the extent that any Standing Order or Rules of Procedure which are inconsistent with, or violate an applicable provision of the Constitution, would be void and of no effect.

Under Section 63 (3) Parliament is empowered by the Constitution to provide for the Powers Privileges and Immunities of each House, its Members and Committees. Section 63 (3) states:-

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Parliament may, for the purpose of the orderly and effective discharge of the business of each House, make provision for the powers, privileges and immunities of each House and the committees and members thereof."

This subsection would appear to be that which confers on the Parliament the power to grant to each House, its committees and members their privileges and immunities in addition to the powers to apply and enforce their own Standing Orders and regulations made under Section 63(1). For example, the power of the Speaker under Standing Orders to limit debate, keep order and suspend a member from the House etc. It is interesting to note that this subsection is not made subject to the provisions of the Constitution.

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How have the courts in Fiji interpreted the application of Section 63 of the Constitution to the internal proceedings of Parliament? In 1973 in the case of James Madhavan v John Niel Falvey and Others 19 FLR 140, the Fiji Court of Appeal was called upon to consider this question. While dealing with the provisions of the 1970 Constitution, those provisions are in identical terms to their counterparts in the 1990 Constitution. For the sake of ease I will refer to the sections considered in that case by their Section numbers in the 1990 Constitution. In that case the manner in which the position of the Speaker of Parliament was occupied during a sittings of the House of Representatives was challenged in the High Court. The Defendants were successful in having the Plaintiffs application struck out as disclosing no reasonable cause of action on the grounds that the matter related to the internal proceedings of the House of Representatives which were not cognizable in the High Court. The Plaintiff appealed to the Court of Appeal.

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The facts of the case were that the Appellant was a member of the House of Representatives. At the end of a duly convened sittings the Speaker adjourned the House under Standing Orders. The Respondents objected to the adjournment and physically took over the House and the fifth Respondent purported to sit as Deputy Speaker. The Appellant sought amongst other things a Declaration from the High Court that the actions of the fifth Respondent in physically taking over the chair of the Speaker, and sitting as Deputy Speaker when the Speaker was still present was a breach of Section 67 (1) of the Constitution. Section 67(1) states:-

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"The speaker or in his absence the Deputy Speaker or in their absence a member of the House of Representatives (not being a Minister or Assistant Minister) elected by the House for the sitting or sittings shall preside at any sitting of the House."

The Court of Appeal held inter-alia that:-

- A 1. The privilege of the House of Representatives to control its own proceedings had become part of the Law of Fiji unless the Constitution otherwise required, and,
2. The House of Representatives had exclusive control over its own internal proceedings under Section 63 (1) of the Constitution, and,
- B 3. The decision as to whom should preside as Speaker of the House was exclusively one of internal procedure and not reviewable in the Court.

C Their Lordships took the view that by Section 2 of the Constitution it was the supreme law of Fiji and that to the extent that the privilege of the House of Representatives having control over its own proceedings, was inconsistent with the Constitution then, to the extent of the inconsistency the privilege would be void. However, their Lordships held that the internal proceedings of the House of Representatives could not be inquired into by the court. In relation to the alleged breach of Section 67 (1) of the Constitution by the Respondents, their Lordships stated that the court could only ascertain whether the requirements of Section 67(1) had been met in so far as the Speaker, Deputy Speaker or an elected member had in fact presided at the sittings. Such a view would be in accordance with the requirements of the Constitution in relation to its application to the privilege of Parliament to control its own proceedings. The application of that principle did not however extend to reviewing the internal proceedings by which one of the persons mentioned in Section 67 (1) came to so preside, or the manner in which they came to so preside. That was a matter for the House of Representatives itself to determine free from the interference of the court.

In this regard their Lordships said at p.148 lines D-G and following:-

F "With respect we agree entirely with' what the Chief Justice has said there about the purpose of Article 57(1)[S. 67(1)] being to ensure that there will be someone to preside over the sittings of the House. At least in part, it is procedural but, unlike most procedural matters, it has been made a part of the Constitution. That being so, it must be a provision of the Constitution within the wording of Article 97 [S.113] and contravention of its terms may, provided the other requirements of Article 97 [S. 113] are fulfilled, be the subject of an application to the Supreme Court under that Article. The Court would have jurisdiction to ascertain whether there had been a contravention. The Constitution is, by Article 2 thereof, the supreme law, and to any extent that the Parliamentary privilege was inconsistent with it, but only to that extent, the

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privilege would be void.

It is to be noticed that in an example given by Stephen J. in Bradlaugh v Gosset (supra) at p.278, he says-

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"The legal question which this statement of the case appears to me to raise for our decision is this:- Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying out? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable."

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It is one of the functions of a Court so to construe the law as to avoid conflict, if that can properly be done. The passage just quoted from the judgment of Stephen J. indicates that even the statute law will not be examined by the Courts if it relates to the internal proceedings of the House. We think it both permissible and proper to apply that approach to Article 57(i)[S.67(I)] and to hold that the basic requirements that the Speaker, Deputy Speaker or elected Member shall preside are constitutional, and if material business is transacted at a sitting of the House not so presided over it may be a contravention of the Constitution challengeable (by a person qualified) under Article 97[S.113]. But the decision which of the persons mentioned shall preside is essentially one of internal procedure, which must necessarily be resorted to by the House in deciding the question. In that sphere the privilege mentioned continues to operate and the Courts may not inquire whether the House has interpreted the law correctly or not."

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Thus, as I understand it, the decision in Madhavan's case established that the privilege of the House of Representatives of Fiji to control its own internal proceedings was part of the law of Fiji. Also, the House of Representatives has exclusive control over its own 'internal proceedings'. As such, the internal proceedings of the House of Representatives are not subject to the jurisdiction of the Court. The High Court can only inquire into the internal proceedings of the House where it can do so in its capacity as guardian of the Constitution, and that will only be where the internal proceedings of the House are specifically

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A provided for in the Constitution, such as found in Section 67(1) where the Constitution specifically sets out the requirement that someone must preside at a sittings of the House of Representatives and defines whom it is that should preside. The jurisdiction of the court to inquire in such an instance being based on the fact that a part of the internal procedure of the House of Representatives has been specifically incorporated as a provision of the Constitution.

B It follows from this, that where a procedure of the House of Representatives is not specifically incorporated into the Constitution then the High Court has no jurisdiction to inquire into the internal proceedings of the House. From this it would further follow that the manner, of the application of Standing Orders by the Speaker, and the activities of the privileges committee, in matters concerning the internal proceedings of the House of Representatives, unless specifically provided for in the Constitution, are not cognizable in the court.

C Other relevant legislation which should be considered as supportive of this view is Article 9 of the Bill of Rights of 1689. By virtue of Section 22 (1) and Section 24 of the High Court Act Cap 13, Article 9 of the Bill of Rights is part of the Law of Fiji. That Article clearly established the supremacy of Parliament with regard to the control of its own proceedings, and not having them called into question in the courts of law.

D Also the Parliamentary Powers and Privileges Act Cap.5 is relevant Section 28 of that Act states:-

E "Neither the Speaker, Deputy Speaker, President or Vice President nor any other officer of Parliament shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in such officer by or under this Act."

F Clearly, the intention of Section 28 is that the activities of the named officers with regard to the internal proceedings of the House of Representatives are not subject to the jurisdiction of the Court.

Mr. Stanton, on behalf of the Plaintiff made a number of submissions which can be categorised conveniently as follows:-

- G 1. That the Plaintiff's suspension from the House of Representatives under the Standing Orders was void in that the procedure as set out in the Standing Orders had not been properly followed by the Speaker and the Privileges Committee.
2. That the actions of the Privileges Committee in inquiring into and recommending the Plaintiff's further suspension from the House of Representatives for the June/July sittings amounted

to a breach of one of his fundamental rights guaranteed under Section 4 of the Constitution and set out in Section 11 (8).

3. That the Standing Orders of the House of Representatives in themselves were unconstitutional in that they breached the Fundamental Freedoms set out in Sections 11, 12, 13 and 15.
4. That the suspension of the Plaintiff from the Parliament amounted to a breach of the Fundamental Freedoms guaranteed to him under Sections 12, 13, 14 and 15 of the Constitution.

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Mr. Stanton filed written submissions in this case read them and find that the questions raised determination can best be answered on the grounds principle.

Central to the determination of the questions before the Court is a consideration of Section 63 (1) and (3) of the Constitution. Of crucial importance is the decision in Madhavan's case. The Fiji Court of Appeal authoritatively pronounced on matters similar to those raised in this case. The court there construed and applied Section 63 (1) of the Constitution.

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The decision in that case being a decision of the Court of Appeal is binding on this Court.

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As I have mentioned previously, Madhavan's case decided that the Privilege of the Houses of Parliament having exclusive Control over their own internal proceedings was part of the law of Fiji, and, that under Section 63 (1) of the Constitution the House of Representatives had exclusive control over its own internal proceedings. As also has been noted, Section 63(1) is expressed as being, "*Subject to the provisions of this Constitution*". How did the Court of Appeal approach the application of those words to the matter before it? This would seem to be set out at p.148 of the decision which I have referred to at pp.21 and 22 herein. The words "...even the statute law ..." have significant meaning in relation to the questions to be answered in this case. Mr. Stanton submitted that Madhavan's case clearly decided that while the House of Representatives had exclusive control over its own internal proceedings, Section 63(1) also clearly established that those internal proceedings were subject to all the provisions of the Constitution, and that when an internal proceeding of the House breached any of the provisions of the Constitution, and in particular the Chapter 2 provisions (which set out the Fundamental Freedoms in Sections 11, 12 13, 14 and 15), then those proceedings would be void. He submitted that clearly the Chapter 2 provisions applied to the internal proceedings of the House of Representatives and that if any of those provisions were breached during the course of the proceedings of the House then the High Court could rightfully and properly intervene and adjudicate on the correctness or otherwise of those proceedings. He submitted that Madhavan's case at p.148 line D where their Lordships said:-

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A "The Constitution is, by Article 2 thereof, the supreme law, and to any extent that the Parliamentary privilege was inconsistent with it, but only to that extent the privilege would be void."

was ample authority for that proposition.

B Mr. Cope on the other hand, submitted that what might be called the narrow construction to Section 63(1) applied. He submitted that because the decision in Madhavan's case affirmed that the House of Representatives had exclusive control over its own internal proceedings, such proceedings were subject only to the Constitution where the Constitution specifically referred to, and provided for the proceedings of the Parliament, such as found in Section 67 (1). He said that in that Section the Constitution clearly referred to the office of the Speaker and who should occupy that position, and that it was only where specific provision was made, such as in that section, that the Constitution applied to the internal proceedings of the House of Representatives. He emphasised that Madhavan's case was not an authority for the proposition that all the provisions of the Constitution such as found in Chapter 2, applied to the internal proceedings of Parliament. In support of his submission he referred the court to page 148 of their Lordship's judgment where the court said:-

D "..... even the statute law will not be examined by the Courts if it relates to the internal proceedings of the House. We think it both permissible and proper to apply that approach to Article 57(1)[S. 67(1)] and to hold that the basic requirements that the Speaker, Deputy Speaker or elected Member shall preside are constitutional, and if material business is transacted at a sitting of the House not so presided over it may be a contravention of the Constitution challengeable (by a person qualified) under Article 97[s. 113]. But the decision which of the persons mentioned shall preside is essentially one of internal procedure, which must necessarily be resorted to be the House in deciding the question. In that sphere the privilege mentioned continues to operate and the Courts may not inquire whether the House has interpreted the law correctly or not. It has often been said that this particular privilege is one of necessity and it would lead to a chaotic situation if any member could rush to the Courts for a declaration that the election of a member to preside was in some way defective."

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I believe that it is this question, i.e. the degree or extent of the application of the Constitution to the internal Proceedings of the House of Representatives, as per the construction of Section 63(1) that is the nub of the case now before the court. It is the application of what I might call the Madhavan principle that will be decisive to the matters raised for consideration here.

After reading Madhavan's case a number of times I am satisfied that the narrow application to the construction of Section 63(1) as submitted by Mr. Cope is the only way to give effective legal sense to the decision.

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Sections 63 (3) gives Parliament power, for the purpose of the orderly and effective discharge of the business of each House to make provision for the powers, privileges, and immunities of each House and the committees and members thereof. This section I believe arms and enforces the procedures set out under Standing Orders. The powers and privileges created under this subsection do not appear to be subject to the Constitution. Madhavan's decision in relation to the House of Representatives maintaining exclusive control over its own proceedings would appear to reflect this. I might also add that this subsection would appear to reflect the sentiments of 500 years of the common law, Article 9 of the Bill of Rights, and Section 28 of the Parliamentary Powers and Privileges Act.

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Section 63(1) ensures that Standing Orders as drawn do not violate the Constitution with regard to the procedural aspects of Parliament which are specifically set down in the Constitution. If the Standing Orders do offend in this regard they may be challenged under Section 113. In such an instance the court would have jurisdiction, to intervene, and, to the extent that the Standing Orders were inconsistent with any specific procedural provisions of the Constitution, could strike down the offending Standing Orders. However, where the Standing Orders do not offend the Constitution in this regard the question of how the privileges of Parliament under Standing Orders are applied, I believe, is purely an internal procedure of the House and in the light of Madhavan's case, is clearly not subject to the jurisdiction of this Court.

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I refer again to the judgment of Stephen J. in Bradlaugh v Gossett (1883-4) 12 QBD 271 at pp.285-6 where His Lordship said:-

"The assertion that the resolution of the House goes beyond matter of procedure, and that it does in effect deprive both Mr. Bradlaugh himself and his constituents of legal rights of great value, is undoubtedly true if the word "procedure" is construed in the sense in which we speak of civil procedure and criminal procedure, by way of opposition to the substantive law which systems of procedure apply to particular cases. No doubt, the right of the burgesses of Northampton to be represented in parliament, and the right of their duly-elected representative to sit and vote in parliament and to enjoy the other rights incidental to his position upon the terms provided by law are in the most emphatic sense legal rights, legal rights of the highest importance, and in the strictest sense of the words. Some of these rights are to be exercised out of parliament, others within the walls of the House of Commons.

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A Those which are to be exercised out of Parliament are under the protection of this Court, which, as has been shown in many cases, will apply proper remedies if they are in any way invaded, and will, in so doing be bound, not by resolutions of either House of Parliament, but by its own judgment as to the law of the land, of which the privileges of Parliament form a part. Others must be exercised, if at all, within the walls of the House of Commons; and it seems to me that, from the nature of the case, such rights must be dependent upon the resolutions of the House. In my opinion the House stands with relation to such rights and to the resolutions which affect their exercise, in precisely the same relation as we the judges of this Court stand in to the laws which regulate the rights of which we are the guardians, and to the judgments which apply them to particular cases; that is to say, they are bound by the most solemn obligations which can bind men to any course of conduct whatever, to guide their conduct by the law as they understand it. If they misunderstand it, or (I apologise for the supposition) wilfully disregard it, they resemble mistaken or unjust judges; but in either case, there is in my judgment no appeal from their decision. The law of the land gives no such appeal; no precedent has been or can be produced in which any Court has ever interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in which the Courts have declared the limits of their powers outside of their respective Houses. This is enough to justify the conclusion at which I arrive.

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F We ought not to try to make new laws, under the pretence of declaring the existing law. But I must add that this is not a case in which I at least feel tempted to do so. It seems to me that, if we were to attempt to erect ourselves into a Court of Appeal from the House of Commons, we should consult neither the public interest, nor the interests of parliament and the constitution, nor our own dignity. We should provoke a conflict between the House of Commons and this Court, which in itself would be a great evil; “

G I am of the opinion that provided the privileges, set out in the Standing Orders do not breach a specific Constitutional provision with regard to the procedure of the House of Representatives, the court will go no further. The court will not examine the internal proceedings of the House of Representatives to see if the application of the Standing Orders by either the Speaker or the Privileges Committee was either incorrect in terms of its own procedure, or led to a breach of the Chapter 2 provisions of the Constitution. As the Parliament under S.63(3) is not subject to the provisions of the Constitution in providing

for its own powers and privileges etc, for the orderly conduct of its business, I am of the opinion that the Chapter 2 provisions of the Constitution do not apply to the internal proceedings of the House of Representatives as no specific constitutional provision is made for the application of that Chapter to the proceedings of Parliament. In my view the proper construction of Section 63 (1) of the Constitution is that the High Court is concerned to see that the Standing Orders and their application conform to the provisions of the Constitution where the Constitution specifically provides for the procedure of the House. That is where the jurisdiction of the High Court ends. That being so, once the House acts under Standing Orders then the jurisdiction of the court is satisfied. The manner of the application of Standing Orders, whether in accordance with the procedures set out therein or not is an internal matter within the walls of Parliament relating to the powers and procedure of the House, and, in accordance with the decision in Madhavan's case is clearly not cognizable in this court.

I think that Mr. Cope's submission that Madhavan's case has established that the general provisions of the Constitution, including the provisions of Chapter 2, do not apply to the internal proceedings of the House of Representatives, and that those proceedings are only subject to the Constitution where it specifically provides for the internal proceedings of the House, is a sound analysis. Such an analysis makes sense of, and reinforces the reasoning and decision in Madhavan's case. To come to the conclusion as submitted by Mr. Stanton on behalf of the Plaintiff would mean that the court would have to scrutinise the internal proceedings of the House of Representatives to see if a breach of the Chapter 2 provisions had occurred. This would lead to precisely what the decision in Madhavan's case said that the court could not do. If the provisions of Chapter 2 applied to the internal proceedings of the House those proceedings would be open to investigation by the High Court everytime a member alleged that the authority of the House, its Committees or its Officers had violated those provisions either in the manner of the application of Standing Orders themselves, or in any ultimate sanction imposed under them.

This could lead to every aggrieved member of the House who had been silenced, suspended or otherwise dealt with under Standing Orders, alleging a breach of his Fundamental Freedoms under Chapter 2 and seeking to have the High Court adjudicate on the internal proceedings of the House that gave rise to the complaint. Clearly such an occurrence would be neither desirable nor in the best interests of the Parliament. For this court to inquire into, and adjudicate on the activities of the Speaker and the Privileges Committee in the application of the powers and privileges set out under the Standing Orders, without a specific mandate to do so from the Constitution, would involve in my opinion an unlawful invasion by the court into the Constitutionally guaranteed right of the House of Representatives to regulate its own proceedings, and, to provide for its own powers, privileges and immunities free from the interference of the

Court. I return to the dicta of their Lordships in Madhavan's case where at page 148 they said:-

- A "It is one of the functions of the court so to construe" the law
as to avoid conflict if that can properly be done."

I believe that to apply the authority of the decision in the Madhavan's case in the manner as submitted by Mr. Cope fulfills their Lordships exhortation.

- B I am further fortified in this view by the dicta of Lord Morris of Borth-y-Gest in Pickin v British Railways Board [1974] WLR 208, where at page 220 His Lordship said:-

- C "The conclusion which I have reached results, in my view,
not only from a settled and sustained line of authority which I
see no reason to question and which I think should be endorsed
but also from the view that any other conclusion would be
constitutionally undesirable and impracticable. It must surely
be for Parliament to lay down the procedures which are to be
followed before a Bill can become an Act. It must be for
Parliament to decide whether its decreed procedures have in
fact been followed. It must be for Parliament to lay down and
to construe its Standing Orders and further to decide whether
they have been obeyed: it must be for Parliament to decide
whether in any particular case to dispense with compliance
with such orders. It would be impracticable and
undesirable for the High Court of Justice to embark upon an
inquiry concerning the effect or the effectiveness of the internal
procedures in the High Court of Parliament or an inquiry
whether in any particular case those procedures were
effectively followed."

- F Mr. Stanton submitted that the Plaintiff's suspension from Parliament was void because the Speaker and the Privileges Committee of the House did not follow, and did not apply correctly the procedure for suspending a member as set out in the Standing Orders. He submitted that the court had the jurisdiction to inquire into those allegations and if found to be true to declare it the resolution of the House void. Again, I think the decision of Bradlaugh v Gossett (1883-4) 12 QBD 271 is helpful to consider, remembering that in that case a similar question as here arose, but one relating to the House of Commons not complying with an act of Parliament as opposed to Standing Orders. The Court there nevertheless held that it could not interfere with the internal proceedings of the House of Commons. I am satisfied that the same applies in Fiji. The court does not have either the power or jurisdiction as contended for it by Mr. Stanton. The manner of the application of Standing Orders by the Speaker, and the activity of the Privileges Committee are purely matters of internal procedure over which the House has exclusive jurisdiction and control. Standing Orders

set out the rules of procedure of the House and the powers vested in the House and its Officers to enforce those rules. I am satisfied that under Section 63(1) of the Constitution those rules are only subject to the Constitution where it specifically provides for the proceedings of Parliament. The powers contained in the Standing Orders derive from Section 63 (3) of the Constitution. Those powers are not subject to any provisions of the Constitution. The Court is thus only able to adjudicate upon the question as to whether the Standing Orders as such are in conformity with any specific provision of the Constitution which relates to the proceedings of the Parliament. Once so satisfied the jurisdiction of the court ends there. The manner, method and degree of application of Standing Orders by the Speaker etc. are not subject to review in this court.

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With regard to the submission as to the general applicability of all the provisions of the Constitution to the internal proceedings of the House of Representatives under Section 63(1), Mr. Stanton emphasised the paramountcy of the Plaintiff's fundamental rights as set out in Chapter 2 in Sections 11 (8), 12, 13, 14 and 15. He submitted that such was the importance of those rights in Fiji that the internal proceedings of the House could not but be subject to them. Such a submission I believe treats those fundamental rights as absolutes. I think it is also important to bear in mind that those rights are in fact not absolute but subject to proviso's. Those proviso's need to be weighed against the position, role and function of the Houses of Parliament in Fiji. The proviso's themselves place limits upon the particular Fundamental Freedoms in the interests of those freedoms being respected in others, or in the interests of the public generally and public order. A helpful statement in this regard was made by Gaudron J. of the High Court of Australia when discussing powers conferred by Section 51 of the Australian Constitution which were made "Subject to the Constitution". In Nationwide News Proprietary Ltd v Wills (1992) CLR 658, at page 689 Gaudron J. said:-

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"..... powers conferred by s 51 of the Constitution, because they are conferred "subject to the Constitution" do not authorise laws which impair or curtail freedom of political discourse, albeit that that freedom is not absolute. Because that freedom is not absolute and for the reasons which I state in Australian Capital Television Pty. Ltd. v The Commonwealth [No. 2] freedom to discuss matters pertaining to government institutions and agencies may be curtailed by a law under s 51, but only if its purpose is not to impair freedom, but to secure some end within power in a manner which, having regard to the general law as it has developed in relation to the written and spoken word, is reasonably and appropriately adapted to that end. "

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In R. v. Jackson (1987) 8 NSW LR 116 Hunt J. when reviewing the standing of the privileges of Parliament said at p.121:-

A "The English and American authorities stress the immense historical importance of art 9 [of the Bill of Rights]. They also stress that the privileges and rights of Parliament go beyond the interests of an individual member of Parliament and are necessary to represent the interests of Parliament as a whole. "

B These dicta, in conjunction with an examination of the proviso's themselves set out in Sections 11, 12, 13, 14 and 15 of the Constitution assist me in reaching the conclusion that the Fundamental Freedoms set out in those sections are not absolute, but are tempered generally by the need to place their operation in the context of the competing interest of others in the setting to which they are to be applied.

C The limitation upon the natural operation. of those sections in Chapter 2 of the Constitution when applied side by side with the authoritative decision in Madhavan's case, which would require the Constitution to do that which it has not done, i.e. to make specific provision for the application of the Chapter 2 provisions to the internal proceedings of Parliament, further reinforces me in the view that an alleged breach of any of the Chapter 2 provisions of the Constitution arising from internal proceedings of the House of Representatives is neither cognizable nor reviewable in the High Court. Thus, the words "*Subject to the provisions of this Constitution*" as set out in Section 63 (1) do not have the effect of applying the Chapter 2 provisions to the internal proceedings of the House of Representatives and making such proceedings subject to those provisions.

E The compelling authority of the common law and the law as applies in Fiji I believe forcefully and logically can only lead to the conclusion that Parliament in its internal proceedings should not be, and is not subject to the scrutiny or jurisdiction of the High Court unless specifically provided for in that capacity in the Constitution.

F Parliament must be free to control and regulate its own internal proceedings free from the interference of the court. In a society where the rule of law is paramount, Parliament is presumed to, and can be relied upon to act properly and to lawfully regulate itself. Given the unique and onerous responsibility of the Parliament as being in effect, and fact, the people of Fiji acting through their elected representatives as the supreme law making body of the land, it must be free to order its own affairs without interference from the court. It must be unfettered in controlling its own proceedings, empowering itself to give force and effect to those proceedings and applying those powers in a manner and with the discretion of its own choosing.

G The court can only inquire into, and adjudicate on those proceedings where the mandate to do so is clearly established. I am of the opinion that the law in Fiji is clear in this regard. In the management of its own internal proceedings,

powers and privileges The House of Representatives has the exclusive control of those proceedings subject only to the Constitution, where it specifically provides for the regulation of those proceedings-. The matters of which the Plaintiff complains arose out of the internal proceedings of the House of Representatives which are not specifically provided for in the Constitution, and as such, fall within the category of being wholly internal proceedings of the House into which this court cannot inquire.

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The remedy that the Plaintiff seeks is not to be found in a court of law, but within the walls of Parliament by appealing to the conscience and charity of the members themselves. In this regard I echo the sentiments of Coleridge C.J. in Bradlaugh v Gossett (1883-4) 12 QBD 271, at page 277 where His Lordship said:-

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“The history of England, and the resolutions of the House of Commons itself, shew that now and then injustice has been done by the House to individual members of it. But the remedy, if remedy it be, lies, not in actions in the courts of law (see on this subject the observations of Lord Ellenborough and Bayley, J, in Burdett v Abbott, 14 East, 150, 151, and 160, 161), but by an appeal to the constituencies whom the House of Commons represents.”

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While the court is sympathetic to the position that the Plaintiff finds himself in with regard to his suspension from the House of Representatives, it cannot interfere with the proceedings of the House which led to that result.

From the foregoing I believe that the questions raised under issues 1 and 2 can be answered in the following. The internal proceedings in the House of Representatives of Fiji are not subject to the jurisdiction of the High Court. The regulation of procedure, and the manner of the application and enforcement of the powers, privileges and immunities of the House by the Speaker and Committees under Standing Orders, are part of the internal proceedings of the House of Representatives and as such remain within the exclusive jurisdiction, control and discretion of the House itself and are not subject to the jurisdiction of the High Court.

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I am also satisfied that all the provisions of the Constitution generally do not apply to the internal proceedings of the House of Representatives, and that those proceedings are only subject to the Constitution where provision is specifically made with regard to the operation, function and procedures of the Houses of Parliament.

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Accordingly I am satisfied that the declarations sought by the Plaintiff in paragraphs 1, 2, 4 and 5, of the Originating Summons relate to matters of privilege and procedure which are purely internal proceedings of the House of Representatives, and are not subject to the jurisdiction of this court. I decline

to grant the declarations sought in those paragraphs.

- A With regard to the submission that the Standing Orders of the House of Representatives are unconstitutional, Mr. Stanton said that the Standing Orders as drawn infringed or at least had the tendency to infringe the provisions of Chapter 2 of the Constitution in that they were in breach of the Fundamental Freedoms set out in Sections 11, 12, 13 and 15 therein. Those sections provide for the protection of law, freedom of conscience, freedom of expression and freedom of movement. This submission is reflected in paragraph 3 of the
- B Originating Summons. I am satisfied that the authority of Madhavan's case establishes that under Section 63(1) of the Constitution the internal proceedings of the House of Representatives including Standing Orders are only subject to specific Constitutional provisions dealing with the procedure of each House of Parliament. They are not subject generally to all the provisions of the
- C Constitution, and this includes the Fundamental Freedoms set out in Chapter 2. I am satisfied that the Standing Orders of the House of Representatives as published refer to, and make provision for the regulating of procedure, privileges, powers and immunities of the House of Representatives in accordance with the requirements of Section 63(1) and (3) of the Constitution. They are not subject to the provisions of Chapter 2 and as such do not infringe the Constitution in this regard. Accordingly, I decline to grant the declaration sought in paragraph
- D 3 of the Plaintiff's Originating Summons.

That addresses matters raised in the Plaintiff's pleadings.

- E I now turn to consider further submissions made by Mr. Stanton on behalf of the Plaintiff that also raised grounds for relief, but were not pleaded in the Plaintiff's Originating Summons.

- F Those submissions were based on the allegation that the manner in which the Speaker applied the Standing Orders against the Plaintiff also violated his Fundamental Freedoms set out in Section 11(2) and (8) of the Constitution, and that his suspension from the Parliament was in itself a violation of Sections 12, 13, 14 and 15 of the Constitution, therefore unconstitutional and void.

- G Although those matters were not specifically pleaded in the Originating Summons, Mr. Stanton sought to raise them before me pursuant to Section 19 of the Constitution which gives the court power to hear complaints by persons who allege that any of their constitutional freedoms set out in Chapter 2 have been breached.

Mr. Cope on behalf of the Defendant objected to the court hearing submissions on those matters as they had not been specifically pleaded by the Plaintiff. I decided to hear the further submissions of Mr. Stanton as the allegations raised questions which were of constitutional significance and did not raise any new matters or take the Defendant by surprise.

In relation to the submission that the manner in which the Standing Orders were applied against the Plaintiff breached his constitutional rights under Section 11 (2) and (8). The manner of the application of the Standing Orders by the Speaker within the House of Representatives being exclusively an internal proceeding of the House of Representatives is not subject to the jurisdiction of the Court. Also, given that I am satisfied that the internal proceedings of the House of Representatives are not subject to the provisions of Chapter 2 of the Constitution then clearly Section 11 (2) and (8) have no application in this regard and thus fall from consideration. I might add however, that even if this section did raise itself for determination it is difficult to see how Section 11 (2) could apply to the Plaintiff's suspension. That subsection specifically relates to the rights of a person who has been charged with a criminal offence. The Plaintiff's suspension from the House of Representatives did not arise as a result of any criminal act on his part, nor was he charged with any such offence. In relation to Section 11 (8). That subsection sets out the obligation incumbent upon any court or authority, which is required or empowered by law to determine the existence or extent of any civil rights obligation, to be both independent and impartial, and to afford a person a fair hearing within a reasonable time. Neither the Speaker, nor the Privileges Committee in dealing with the Plaintiff under Standing Orders were an authority called upon to determine the existence or extent of a civil right or obligation of the Plaintiff. They were simply dealing with proceedings internal to the House of Representatives. Mr. Stanton submitted that the Plaintiff had a civil right to be heard before the Privileges committee before it reached the decision to recommend his further suspension from the House. I am not satisfied that such a right exists. The Plaintiff in his affidavit acknowledged the existence of the privilege of the House of Representatives to have exclusive control over its internal proceedings. He thus did not challenge the existence of the privilege. Neither did he challenge the extent of the privilege. He challenged the manner of its application. I would further add that I am not satisfied that the Privileges Committee is in fact an authority within the meaning of the subsection. Under Standing Order 66(4) the Privileges Committee is a committee whose duty is to:

"4.

- (a) To bring to the attention of the House any breach of the privilege of the House committed by any person or persons and recommended to the House what action should be taken;
- (b) To consider and report upon such questions of privilege as may be referred to it by the House;
- (c) To conduct enquiry into any complaint that may be referred to it by the House concerning any breach of privilege on the part of any person or persons from time to time; and for such purposes

to have and exercise the powers available to the House in respect of any matter for consideration by the House or any committee thereof."

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Those matters relate to the privileges of the House of Representatives. The Privileges Committee is not empowered by any law to determine the existence or extent of the civil rights or obligations of the members of the House of Representatives. The Privileges Committee when acting under Standing Order 66 is not a court or authority that carries out any of the responsibilities set out in Section 11 (8) and thus is not a body to which Section 11 (8) is addressed or applies. That subsection I believe, would apply to bodies such as courts of law or administrative tribunals, e.g. immigration tribunals etc.

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I turn now to consider the submission by Mr. Stanton that the Plaintiff's suspension itself breached Sections 12, 13, 14 and 15 in that the suspension violated the Plaintiff's freedom of conscience, expression, assembly and association and movement.

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I am satisfied that the Plaintiff's suspension from Parliament was not in any way unconstitutional. The suspension does not breach any of the Fundamental Freedoms set out in Sections 12, 13, 14 and 15. All those freedoms are still available to the Plaintiff, unhindered outside the walls of Parliament. As I have mentioned earlier, those freedoms are not absolute but limited by the considerations of public order, and respect for those same rights in others. To fail to place such limitations upon those Fundamental Freedoms would, I believe, given the nature of man as it is, have a tendency to lead to anarchy. In other words those rights are limited for the orderly conduct of society. The Houses of Parliament are also mandated by the Constitution to regulate themselves to provide for the orderly conduct of their own business and proceedings.

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I might further add that those sections anticipate that the Fundamental Freedoms set out therein may also be limited by the consent of the individual himself. The fact that the Plaintiff took his seat in the House of Representatives implies consent on his part to be bound by the rules of the House and to accept the limitations imposed on members for the orderly conduct of its business and proceedings. The suspension of the Plaintiff from the House of Representatives was pursuant to its own internal rules. As I have said earlier the suspension does not affect those Fundamental Freedoms in the Plaintiff outside the Parliament and in society in general, it is just that he cannot exercise them within the walls of Parliament for two months. I cannot see that any rights in the Plaintiff have been infringed, for his rights in relation to the taking of his seat in the House of Representatives is the right to take that seat in accordance and compliance with the rules and regulations of the House of Representatives.

Finally, Mr. Stanton submitted that the suspension of the Plaintiff was void because the rights of all the constituents of Rewa to be represented by the Plaintiff in the Parliament had been breached. I am not persuaded by this

submission. Under Section 19 of the Constitution it is for a constituent of Rewa himself who alleges a grievance to apply to the court. The Plaintiff cannot apply on his behalf. There has been no such application, and if there was would such constituent be able to point to any breach of his Fundamental Freedoms by the Plaintiff's suspension from the House of Representatives? Those Fundamental Freedoms exercisable by him individually are in no way violated by the Plaintiff's suspension.

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Also, it is important to note that the Constituents of Rewa are still represented in the House of Representatives by their second member who may continue to take his seat during the Plaintiff's suspension. The right of the constituents of Rewa if any, with regard to the Plaintiff taking his seat in the House of Representatives is surely the right to be represented by their elected member, taking his seat in accordance, and in compliance with the rules of the House of Representatives and not otherwise.

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Thus, the questions raised under issues 3 and 4 are answered in the negative. I therefore decline to grant the declarations sought and dismiss the Plaintiff's Originating Summons.

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(Judgment for the Defendant).

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