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Jugement
17
1965

21 OF 1964

Supreme Court of Mauritius

RECORD OF PROCEEDINGS
APPEAL IN PRIVY COUNCIL

In re :-

THE MAYOR & CORPORATION OF PORT LOUIS

(PLAINTIFFS) APPELLANTS

versus

THE HONOURABLE THE ATTORNEY GENERAL

(DEFENDANT) RESPONDENT

DAUGHTER AND MAY,
18, AUSTIN FRIARS,
LONDON, E.C.2.

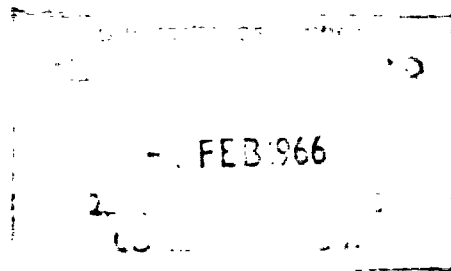
Solicitors for Appellants

Civil Record No. 11605

CHARLES RUSSELL & Co.,
87, NORFOLK STREET,
STRAND, W.C.2.

Solicitors for the Respondent.

P.C.
~~G.M.R.G.R.~~



80956

21 OF 1964

Supreme Court of Mauritius

RECORD OF PROCEEDINGS

APPEAL IN PRIVY COUNCIL

In re :-

THE MAYOR & CORPORATION OF PORT LOUIS

(PLAINTIFFS) APPELLANTS

versus

THE HONOURABLE THE ATTORNEY GENERAL

(DEFENDANT)

Civil Record No. 11605

CORRIGENDA

<u>Page</u>	<u>Line</u>	
21	36	Please delete 'it' after 'submit'
27	28	Please read '12' for '14'
39	27	Please read 'departments' for 'department'
39	35	Please insert a comma after 'was'
45	14	Please read '20' for '28'
45	26	Please read 'motors' for 'meters'
46	4	Please read '8. 5. 63' for 8. 7. 63'
46	13	Please read '8. 5. 63' for '8. 7. 63'
48	19	Please read 'departments' for 'department'
48	40	Please read 'I' for 'It'
50	31	Please read 'July' for 'May'
54	10	Please read 'Vallée Pitot' for Vallée des Pretres'
54	19	Please read 'Bois' for 'Boix'
62		After line 30 to add ' <u>Case closed</u> ' (sd) Frank Mosses for Master and Registrar
67	5	Please read 'Rollo' for 'Rolloo'
68	45	Please read 'direct' for 'district'
76	4	Please read 'not' for 'nor'
88	6	Please insert 'be' after 'will'
98	15	Please insert 'May' after '2nd'
100	9	Please read 'regulations' for 'regulation'
100	29	Please add 'to' after 'also'
109	25	Please read 'Vol. II' for 'Vo. II'
110	22	Please read 'Radcliffe' for 'Radeliffe'
110	28	Please read 'Vol. 12' for 'Vo. 12'

INDEX OF REFERENCE

PART I

Civil action between the above parties

-Supreme Court Record No. 11713 -

No.	Description of documents	Page
1.	Statement of Claim and 'Annexure' to Statement of Claim	1-13
2.	Statement of Defence	14-16
3.	Reply	17-18
4.	Notice of Trial (Omitted)	19
5.	Proceipe for Cause List (Omitted)	19
6.	Minutes of proceedings in Court on 21. 10. 63 (Omitted)	19
7.	Minutes of Proceedings in Court on 28. 10. 63	19-20
8.	Plaintiffs' Notice of documentary Evidence (Omitted)	20
9.	Plaintiffs' Notice of Facts (Omitted)	20
10.	Plaintiffs' Further Notice of Documentary Evidence (Omitted)	20
11.	Minutes of proceedings in Court on 12. 11. 63	20-23
12.	Minutes of proceedings in Court on 13. 11. 63	23-26
13.	Minutes of proceedings in Court on 14. 11. 63	26-27
14.	Minutes of proceedings in Court on 19. 11. 63	27-31
15.	Minutes of proceedings in Court on 22. 11. 63	31-37

PART I

Civil action between the above parties

No.	Description of documents	Page
<u>EVIDENCE FOR PLAINTIFFS</u>		
16.	Evidence of Joseph Raymond Hein at sitting on 13. 11. 63	38-49
17.	Evidence of Joseph Raymond Hein at sitting on 14. 11. 63	50-53
<u>EVIDENCE FOR DEFENCE</u>		
	Evidence of Félix Laventure at sitting on 14. 11. 63	53-62
	(Extract from Shorthand Transcript)	108-111
18.	Judgment of the Court dated 9. 12. 63	63-76
19.	Minutes of proceedings in Court on 9. 12. 63	77

PART II

Application for leave to appeal

No.	Description of documents	Page
1.	Notice of Motion (Omitted)	77
2.	Motion Paper	77-78
3.	Affidavit in support of motion	78-79
4.	Minutes of proceedings in Court on 30. 12. 63	79-80
5.	Judgment granting leave to appeal	80
6.	Security Bond dated 27. 1. 64 (Omitted)	81

PART III

Exhibits produced in the Supreme Court Record No. 11713

No.	Exhibit numbered	Page
1.	1 and 1A	81-82
2.	2	82-83
3.	3 and 3A	83-84
4.	4	84-93
5.	5	93-94
6.	6	94-95
7.	7	95-96
8.	8	96
9.	9	96-97
10.	10	97-98
11.	11	98
12.	12	99-101
13.	13	101-102
14.	14	102-103
15.	15	103-104
16.	16	104
17.	17	104-105
18.	18	105
19.	19	105-106
20.	20	106-107
21.	21	107-108
Certificate of the Master and Registrar		111

IN THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF MAURITIUS

PART I

In the matter of:

THE MAYOR & CORPORATION OF PORT LOUIS

(Plaintiffs) APPELLANTS

v/s

THE HONOURABLE THE ATTORNEY GENERAL,

10.

of Port Louis "Crown Law Office"

(Defendant) RESPONDENT

RECORD OF PROCEEDINGS

No. 1

No. 1.

Statement of
Claim

23rd September,
1963

STATEMENT OF CLAIM

10. The plaintiffs are entrusted by law with the Local Government of the Town of Port Louis.

20

20. Apart from the town of Port Louis, various portions of Crown land, areas, places, property and undertakings set out in the Fourth Schedule to Ordinance No. 16 of 1962 are controlled and maintained by the plaintiffs under the provisions of the said Ordinance.

30. Prior to Proclamation No. 12 of 1963, the boundaries of the Town of Port Louis were as described in the First Schedule to Ordinance No. 16 of 1962, as originally enacted, and covered an area of 1540 acres.

40. Under the provisions of the said Ordinance the Governor in Council may, by Proclamation alter the boundaries of any town after consultation with the Local Authority concerned, i. e. may alter the boundaries of the Town of Port Louis after consultation with the plaintiffs and with each of the other local authorities concerned.

50. By a letter dated the 2nd May, 1963, addressed by the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development, to the Town Clerk, the plaintiffs
10 were informed that it was proposed to alter the existing boundaries of the Town of Port Louis by the addition of various Village Council areas, totalling 7088 acres, lying outside the said boundaries, enumerated in the said letter and shown in a map attached thereto.

By the same letter the plaintiffs were requested to submit to the Ministry their views on the proposed alteration by the 13th of May, 1963.

60. As a consequence of the said letter, 11 out of the 16 Municipal Councillors resigned from membership on the 11th of May, 1963
20 and the Municipal Council was left without a quorum.

70. By a letter dated the 13th May, 1963, the Town Clerk informed the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development, that the matter could not be discussed by the Municipal Council before the resignation of the said Councillors and that the views of the Council could not therefore be given to the Ministry.

80. On or before the 11th of June, 1963, His Excellency the Governor, in the exercise of the powers conferred upon him by Section 46 of Ordinance No. 16 of 1962, as amended by Section 2
30 of Ordinance No. 16 of 1963, appointed six Municipal Councillors to fill six of the said eleven vacancies, the quorum of the Council being thereby restored.

90. By a letter dated the 18th June, 1963, addressed by the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development, to the Town Clerk, the plaintiffs
40 were informed that the proposed alteration of the town boundaries were also to include the areas known as Vallée Pitot and Bell Village, an additional area of 916 acres, and were further requested to express their views on such proposed alteration on or before the 6th of July, 1963.

100. At its meeting of the 3rd of July, 1963, the General Purposes Committee (a committee of the whole Council) considered the aforementioned letters of the 2nd May and 18th June, 1963 and decided that, prior to any views being expressed by the plaintiffs

one way or the other in connection with the proposed alteration, the Ministry of Local Government and Co-operative Development should be approached with a view to obtaining certain essential information on the subject.

11o. By a letter dated the 8th July, 1963, addressed to the Minister of Local Government and Co-operative Development the Mayor conveyed to him the request for the information required by the plaintiffs, as set out in the annexed particulars.

10 12o. By a letter dated the 10th of July, 1963 addressed to the Town Clerk, the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development called the plaintiffs' attention to the fact that their views had not been submitted by the 6th of July, 1963 as requested, insisted that such views should be forwarded early for consideration by the Governor in Council and intimated to the plaintiffs that the date for so doing was extended to the 18th of July, 1963 at latest.

20 13o. By a letter dated the 11th of July, 1963 addressed to the Mayor in answer to his letter of the 8th July, 1963 to the Minister the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development, insisted that the plaintiffs' views be submitted to the Ministry by the 18th of July, 1963 and informed the plaintiffs that the points raised in the Mayor's letter would be considered by Government.

30 14o. By a letter dated the 15th July, 1963 addressed to the Minister of Local Government and Co-operative Development the Mayor repeated that the Committee of the whole Council had decided that, before the plaintiffs should be in a position to express their views on the matter of the proposed extension of the boundaries of the Town of Port Louis, it was essential that they should have the information previously requested. The Mayor insisted that such information should be forthcoming as early as possible.

15o. By a letter dated the 19th July, 1963 addressed to the Mayor, the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development informed the plaintiffs that no further extension of time could be given to them to express their views.

40 16o. By a letter dated the 29th July, 1963 addressed to the Ministry of Local Government and Co-operative Development the Mayor on behalf of the plaintiffs, recorded his strong objection to any action being taken by Government in connection with the proposed extension of the town limits before the plaintiffs had expressed their views on the proposal and urged the Minister to supply the plaintiffs with the information already requested, so that they should be able to express their views.

17o. By a letter dated the 13th August, 1963 addressed to the Town Clerk, the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development informed the plaintiffs that the Governor in Council had decided to issue a Proclamation, of which an advance copy was enclosed, to extend the boundaries of the town of Port Louis, adding that, although it had not been possible to meet the plaintiffs' wishes every effort had been made to reach a comprehensive solution satisfactory as a whole to the population of Mauritius.

10 18o. That apart from the correspondence mentioned in paragraphs 5o to 17o above there was no communication or exchange of any sort whether verbal or written on the subject of the proposed extension of the boundaries of the town of Port Louis between plaintiffs and the Ministry of Local Government and Co-operative Development.

20 19o. On August 14th, 1963, Proclamation No. 12 of 1963 was issued in Government Gazette No. 50 of 1963 (General Notice 851/1963) whereby the Governor in Council, purporting to have consulted the local authorities concerned, proclaimed and ordered "inter alia" with consequential and supplemental administrative arrangements, that the boundaries of the Town of Port Louis should be altered and extended by the inclusion of all the areas totalling 8004 acres described in paragraphs 5o & 9o of this Statement of Claim.

20o. The plaintiffs aver:

- 30 (a) that the information requested by them from the Ministry of Local Government and Co-operative Development as detailed in the letter dated the 8th July, 1963 addressed to the Minister (vide particulars given under paragraph 11o above) was not available to them.
- (b) that the said information was essential to them in order to allow them properly to study the proposal to extend the boundaries of the town of Port Louis so as to be able to express their views on such a proposal.
- (c) that the said information has never to this day been imparted to plaintiffs by the said Ministry and no effective discussions of the aforesaid proposals could take place or did ever take place.

40 21o. The plaintiffs further aver that they were not given sufficient time and a reasonable opportunity to express their views on the said proposal.

22o. Consequently, the plaintiffs aver that there has been no

"consultation with the local authority concerned" as provided by law and that Proclamation No. 12 of 1963 purporting "inter alia" to extend the boundaries of the town of Port Louis as aforesaid, with consequential and supplemental administrative arrangements is "ultra vires" and null and void to all intents and purposes in so far as it relates to the extension of the boundaries of the town of Port Louis.

10 The plaintiffs therefore move this Honourable Court for a declaration that the said Proclamation is "ultra vires" and null and void to all intents and purposes in so far as it relates to the extension of the boundaries of the town of Port Louis. With costs.

You, the said defendant are hereby required, called upon and summoned to cause an appearance to be entered for you in the Supreme Court of Mauritius by filing in the Registry thereof within FIVE DAYS from the service hereof upon you a Statement of Defence in answer to the present Statement of claim.

Under all legal reservations.

Dated at Port Louis, this 23rd day of September, 1963.

(s) René Humbert.

20 Of No. 22 bis, Lislet Geoffroy Street, Port Louis, plaintiffs' attorney.

To:

The Honourable the Attorney General, Crown Law Office, Pope Hennessy Street, Port Louis.

ISSUED by the abovenamed and styled plaintiffs electing their legal domicile in the office of their duly appointed attorney at law, Mr. René Humbert, of No. 22 bis, Lislet Geoffroy Street, Port Louis.

30 Nota. If the above claim is admitted and the costs incurred up to now amounting to Rs 1,000/- (subject however to taxation) be paid to the plaintiffs or for them to the abovenamed attorney at law, within four days from service of the present statement of claim, all further proceedings will be stayed.

40 This Statement of Claim together with the annexure under paragraph 11 herewith annexed was duly served by me, the undersigned Usher, on The Honourable The Attorney General, by leaving true and certified copies thereof with Honourable Maurice Lavoipierre, Attorney General, personally at his Chambers at the Crown Law Office in Pope Hennessy Street, Port Louis.

On Tuesday the 24th day of September, 1963.

(s) François Rivet
Senior Usher

Registered at Mauritius on the twenty fourth day of
September, one thousand nine hundred and sixty three. Reg. DH351
No. 3243. Received One Rupee.

(s) E. Cupidon

ANNEXURE UNDER PARAGRAPH 11o OF THE STATEMENT
OF CLAIM

GENERAL

1o. It is assumed that your Ministry has strong reasons in support of its proposal. It would be much appreciated if the proposal could be fully substantiated and the Municipality informed of the reasons which have prompted the proposal.

2o. It is noted that the Ministry would wish the proposal to be treated with extreme urgency. Could the Municipality be given
10 full details concerning the urgency of the matter so as to be in a better position to appreciate the point of view of the Ministry and eventually to cope with the situation.

ADMINISTRATION

3o. The Municipal Council is now working on a Committee System basis and it has been found out that this system facilitates administration considerably. With the present town limits Councillors are very often called upon to attend Committee Meetings three times a week or even more. Is it the intention of the Government to increase the number of Councillors for the
20 town of Port Louis? If so, by how many?

STAFF

4o. (a) If the Government's proposal as outlined in the Ministry's letter is implemented the Town Engineer's Department, inter alia, will have to be considerably enlarged and qualified technical staff employed. The Municipal Council has met with enormous difficulties to recruit such staff (and is still at a loss to do so). If the proposed extension of town limits is to be given effect to within a fairly short time will the Government
30 agree to cede to the Municipality on a full time basis and for a period of four to six years the services of:-

- (i) two fully qualified engineers;
- (ii) one architect;
- (iii) five competent works superintendents.

If the answer is in the affirmative what proportion of these officers' salaries will the Government be prepared to pay as grants-in-aid during such time as these officers will be at the service of the Municipality.

40 (b) Assessment of properties requires qualified competent and reliable personnel. The Municipality is already

submerged by the enormous amount of assessment, re-assessment, division etc. of properties within the present town limits. What is the technical assistance which the Government is prepared to give to the Municipality to ensure that the fantastic amount of assessment work which will fall upon the Municipality as a result of the proposed extension will be adequately met.

TOWN PLANNING

- 10 50. Port Louis has been declared Town Planning Area. Is it the intention of the Government to declare the whole of the proposed new urban areas town planning area and to apply thereto Town Planning principles as will be advocated by the Town Planning Committee?

HOUSING

60. What will be the policy of Government as far as the housing problem in the proposed new urban areas is concerned? Will the Municipality be given the means to deal with the problem or will it be left to the Central Housing Authority?

20

SLUM CLEARANCE

70. Does Government intend introducing slum clearance legislation and give to the Municipality the legal, administrative and financial means of clearing slum areas and replacing them by decent housing estates? If so, will full details be given on the Government intention and the planning of the slum clearance scheme?

LEGISLATION

80. (a) Is it the intention of the Government to have at any time any law applicable to the existing urban areas and not applicable to the proposed new localities? If so, will the Ministry give instances when such distinct legislation will apply and justify it?
- 30 (b) Will the Government expect the Municipality to apply all Municipal Regulations to the new areas without any exception whatever as soon as they are given urban status? If not, will the Ministry set out in full the Regulations which will not be applied in the new localities and give in each case the reasons of the intended differentiation?

SANITATION

- 9o. What is the present frequency of
- (i) the house refuse collection
 - (ii) the street cleansing
 - (iii) the weeding
- of each of the proposed new areas?
- 10o. What is the mileage of streams to be cleaned in each of the proposed new areas?
- 10 11o. What is the frequency of the night soil service if any, and the number of pail latrines in each of these areas?
- 12o. Is the Sewerage Reticulation System covering the proposed new areas? What are the exact areas, if any, which are not covered? What steps will be taken by the Government to extend the reticulation system so as to cover the whole of the proposed new urban areas? Will the Government give an undertaking that the Ministry of Works will extend the Sewerage service to the new localities as promptly as the Municipality will be expected to attend all its services to these localities?

WATER

- 20 13o. The present law makes it an obligation on the Municipality to supply water to the inhabitants of the town of Port Louis who apply for same and leaves it to the Municipality to decide on such supplies for extra-urban applicants. Will the Government expect the Municipality to meet all the applications for water supply in the proposed new urban areas?

30 If this is to be done then the Municipality will have to extend considerably its water distribution network and find ways and means of increasing the volume of water entering the district of Port Louis. This will involve extensive capital works worth many millions of rupees and the recruitment of qualified personnel.

What is the financial assistance which the Government is prepared to give to the Municipal Water Undertaking to that end? Will the Government agree to cede to the Municipality the services of:-

- (i) one qualified water engineer
- (ii) two senior competent water works superintendents?

What proportion of these officers' salaries is the Government prepared to pay to the Municipality as grants-in-aid?

14o. How many Mare aux Vacoas Consumers are there in each area and what has been their consumption of water for the last two quarters?

15o. How many public fountains are there in each area and where are they located?

PLANNING

(for each area separately)

16o. What is the area of river and mountain reserves?

10 17o. What is the area of undeveloped land? (Including land under culture).

18o. What is the area of developed land?

19o. What is the mileage of asphalted and non-asphalted proclaimed roads?

20o. What is the mileage of existing surface water drains (earth, concrete or masonry)?

21o. What is the mileage of existing footways?

22o. What is the number of existing street lighting points?

23o. During the past three years what has been the mileage of:-

20 (i) roads constructed
 (ii) footways constructed
 (iii) drains constructed.

REVENUE AND EXPENDITURE AND GRANTS-IN-AID

(for each area separately)

24o. What is the population?

25o. What is the cadastral value of existing privately owned buildings?

26o. What is the cadastral value of existing Government buildings?

30 27o. What is the number of licences issued in each category of trade carried out in each area?

28o. What has been the recurrent expenditure on roads for the past three years?

- 29o. What has been the recurrent expenditure on drains for the past three years?
- 30o. What has been the recurrent expenditure on footways for the past three years?
- 31o. What has been the recurrent expenditure on House Refuse collection and disposal for the past three years?
- 32o. What has been the recurrent expenditure on street cleaning for the past three years?
- 10 33o. What has been the recurrent expenditure on weeding for the past three years?
- 34o. What has been the recurrent expenditure on street lighting (fittings and energy separately) for the past three years?
- 35o. What has been the recurrent expenditure on cleaning and maintenance of streams for the past three years?
- 36o. What has been the capital expenditure on roads for the past three years?
- 37o. What has been the capital expenditure on drains for the past three years?
- 20 38o. What has been the capital expenditure on footways for the past three years?
- 39o. What has been the capital expenditure on house refuse collection and disposal for the past three years?
- 40o. What has been the capital expenditure on street cleansing for the past three years?
- 41o. What has been the capital expenditure on street lighting for the past three years?
- 42o. What has been the recurrent expenditure on administration on all services in the proposed new areas for the past three years?
- 30 43o. The specific grants of the Government's grants-in-aid are strictly limited to recurrent expenditure and all works of a capital nature do not rank at all for grants. In view of the enormous amount of capital works which would have to be undertaken in the proposed new urban areas what grants is the Government prepared to give to the Municipality to carry out such works?

44o. What is the estimated amount of grants-in-aid based on the present system, should each area be annexed within the Town Limits?

RATING

- 10 45o. (a) As from what date is the Ministry envisaging to cause the proposed extension of town limits to become operative? Does the Ministry foresee that all rates, taxes and generally all charges levied in the town presently will be levied in the new localities as from the date the extension becomes operative? Does the Ministry undertake to give the Municipality the technical, financial and administrative assistance required to ensure that claims would be made as soon as the extension becomes operative?
- (b) How many of the house owners of the new localities are likely to be exempted from the payment of house rate on grounds of poverty?

SALE OF MEAT

- 20 46o. Is the Government envisaging to introduce legislation to become operative on the same day as the extension of town limits to close down all butchers shops in the new localities? If the answer is in the negative, will not the control exercised by the Municipality on the sale of fresh meat in the town be jeopardised by the existence of butcher's shops? If the answer is in the affirmative, what steps is the Government envisaging to take to avoid causing undue hardship to the inhabitants of the proposed new urban areas?

INDUSTRY

- 30 47o. Is there any industry already set up in these localities? Please enumerate.

EDUCATION

- 48o. How many schools primary and secondary are there in each locality? What is the number of children attending these schools?
- 49o. What has Government done so far in the field of adult education for the inhabitants of these localities?

TRANSPORT

50o. What are the transport facilities already existing from each of the localities concerned to the centre of the town?

What are the steps which the Government is envisaging to take to improve the transport facilities and to extend the various inter-urban bus route to cover adequately the whole of the proposed new urban areas?

SHOPS AND RESTAURANTS

51o. How many shops and restaurants are there in each locality?

10

SUNDRY SERVICES

52o. How many of the following services are there in each of the localities concerned?

- (i) Public markets
- (ii) Cemeteries
- (iii) Public libraries
- (iv) Day nurseries
- (v) Public conveniences
- (vi) Children's playground
- (vii) Public gardens

20 53o. Is the Government prepared to lease to the Municipality at very nominal prices vast extents of Crown Lands in each of the new localities to be converted into gardens, playing fields, etc. ?

54o. Does the Government intend to set up a Commission of Enquiry to ascertain the wishes of the inhabitants?

Registered at Mauritius on the Twenty fourth day of September, one thousand nine hundred and sixty three, Reg. A350 No. 11465 Received One Rupee.

(s) E. Cupidon

No. 2

No. 2

Statement of

STATEMENT OF DEFENCE

Defence

IN THE SUPREME COURT OF THE COLONY OF
MAURITIUS AND ITS DEPENDENCIES

4th October,
1963

In the matter of:

THE MAYOR & CORPORATION OF PORT LOUIS

Plaintiffs

v/s

THE HONOURABLE THE ATTORNEY GENERAL,

10

of Port Louis, Crown Law Office

Defendant

STATEMENT OF DEFENCE

The defendant admits paragraphs 1, 2, 3, 4, 5, 9, 11, 14, 16 & 17 of the Statement of Claim. (Reg. DH 351 No. 3243).

2. Para. 6 of the Statement of Claim

The defendant records the statement made in para. 6 of the Statement of Claim.

3. Para. 7 of the Statement of Claim

20

The defendant admits that the letter was in fact received but denies that the matter could not, as averred, be discussed by the Municipal Council before the resignation of the said Councillors and the views of the Council given to the Ministry by the date fixed.

4. Para. 8 of the Statement of Claim

30

The defendant admits that on the 10th of June 1963 His Excellency the Governor, in exercise of the powers conferred upon him by section 46 of Ordinance No. 16 of 1962, as amended by section 2 of Ordinance No. 16 of 1963, appointed six persons to be members of the Municipal Council to fill six of the eleven vacancies, thereby providing

for a quorum of the Council.

5. Para. 10 of the Statement of Claim

The defendant has no knowledge of what took place at the meeting of the General Purposes Committee held on the 3rd July, 1963.

6. Para. 12 of the Statement of Claim

The defendant states that by a letter dated the 10th of July 1963 addressed to the Town Clerk, the Principal Assistant Secretary, Ministry of Local Government and Co-operative Development, :
10 called the plaintiffs' attention to the fact that their views had not been submitted by the 6th of July, 1963 as requested, and informed him that such views should be forwarded early for consideration by the Governor in Council and requested that the plaintiffs should send their views by the extended date of the 18th of July, 1963 at latest.

7. Para. 13 of the Statement of Claim

The defendant admits that in letter of the 11th of July, 1963 the plaintiffs were again asked to submit their views to the Ministry by the 18th of July, 1963 and were informed that the points raised
20 in the Mayor's letter would be considered by Government.

8. Para. 15 of the Statement of Claim

The defendant admits the averments contained in para. 15 of the Statement of Claim except that the letter was dated the 19th instead of the 18th July, 1963.

9. Para. 18 of the Statement of Claim

The defendant avers that the question of the proposed extension of the boundaries of the Town of Port Louis had been amply set to the plaintiffs and that no other communication or exchange of any sort on the subject was necessary.

30 10. Para. 19 of the Statement of Claim

The defendant admits that the Governor in Council issued Proclamation No. 12 of 1963, but avers that the local authorities concerned had been consulted.

11. Para. 20 of the Statement of Claim

The Municipal Council were informed that the points raised in their letter of the 8th July, 1963 would be considered by Government and the Municipal Council were in as good a

position as the Minister to obtain such information sought in the abovementioned letter as did not relate to Government policy. The views of the Municipal Council had been sought on a definite proposal and they could, had they chosen, have made an affirmative, a negative, or a qualified reply.

12. Para. 21 of the Statement of Claim

The defendant denies that the plaintiffs were not given sufficient time and a reasonable opportunity to express their views.

10 13. Para. 22 of the Statement of Claim

The defendant denies that there has not been any "consultation with the local authority concerned" and that Proclamation No. 12 is ultra vires in so far as it relates to the extension of the boundaries of the Town of Port Louis.

The defendant therefore moves that Plaintiffs' prayer be set aside with costs.

Dated this 4th day of October, 1963.

20 (s) E. Perdreau
of Pope Hennessy Street, Port Louis
Crown Attorney & Defendant's Attorney

To:

R. Humbert, Esquire, Attorney-at-Law, of 22 bis,
Lislet Geoffroy Street, Port Louis, Plaintiffs' Attorney.

This Statement of Defence was duly served by me the undersigned Usher, on R. Humbert, Esquire, Plaintiffs' Attorney, by leaving a true and certified copy thereof for Mr. R. Humbert with his Chief Clerk, François Savrimoutou Esq. at his office in Lislet Geoffroy Street, Port Louis.

On Friday the 4th day of October, 1963.

30 (s) François Rivet
Senior Usher

Registered at Mauritius on the seventh day of October,
one thousand nine hundred and sixty three, Reg. DH351 No. 3383
Received One Rupee.

(s) E. Cupidon

No. 3.

No. 3.

REPLY

Reply

IN THE SUPREME COURT OF MAURITIUS

11th October,
1963

In the matter of:

THE MAYOR & CORPORATION OF PORT LOUIS

Plaintiffs

v/s

THE HONOURABLE THE ATTORNEY GENERAL,
of Port Louis "Crown Law Office",Defendant

10

REPLY

10. The plaintiffs record the admissions contained in paragraphs 1o, 3o, 4o, 7o, & 8o of the Statement of Defence. (DH 351 No 3383).

20. The plaintiffs record the statements contained in paragraphs 5o & 6o of the Statement of Defence.

30. The plaintiffs deny the averment contained in paragraph 9o. of the Statement of Defence and deny particularly that no other communication or exchange of any sort on the subject was necessary.

40. The plaintiffs record the admission contained in paragraph 10o. of the said Statement of Defence and deny the averment therein contained.

50. In answer to paragraph 11o. of the Statement of Defence the plaintiffs admit (as already averred by them in paragraph 13o. of the Statement of Claim) that they were informed that the points raised in the Mayor's letter dated the 8th July, 1963 would be considered by Government but deny:-

- 30
- (i) that they were in as good a position as the Minister to obtain the information sought in the said letter of the 8th July, 1963 and
 - (ii) that they could have, in the circumstances disclosed in the Statement of Claim and, more

particularly, in the absence of such information and within the insufficient delay granted, have given any considered and reasonable reply to the proposal.

60. The plaintiffs maintain generally the averments of the Statement of Claim, and maintain in particular:-

- (i) that, being denied essential information, they were unable to express their views.
- 10 (ii) that they were not given sufficient time and a reasonable opportunity to express such views;
- (iii) that there was no "consultation" between the parties as provided by law and
- (iv) that the Proclamation under reference was " Ultra vires" and null and void to all intents and purposes as averred in the Statement of Claim.

Plaintiffs join issue with the defendant and move for a Declaration in terms of their Statement of Claim.

Under all legal reservations.

Dated at Port Louis, this 11th day of October, 1963.

20

(s) René Humbert

Of No. 22 bis, Lislet Geoffroy Street, Port Louis
Plaintiffs' Attorney.

TO: The Honourable the Attorney General, Crown Law Office,
Pope Hennessy Street, Port Louis.

The annexed Reply was duly served by me, the undersigned Usher, on The Honourable the Attorney General, by leaving a true and certified copy thereof with him personally at his Chambers at the Crown Law Office in Pope Hennessy Street, Port Louis.

30

On Monday the 14th day of October, 1963.

(s) François Rivet
Senior Usher

Registered at Mauritius on the Fourteenth day of October, one thousand nine hundred and sixty three, Reg. DH 351 No. 3458. Received One Rupee.

(s) E. Cupidon

No. 4

Notice of Trial
(OMITTED)

No. 5

Proceipe to set down matter on the Cause List
(OMITTED)

No. 6

MINUTES OF PROCEEDINGS IN COURT
on 21st October, 1963
(OMITTED)

No. 7

MINUTES OF PROCEEDINGS IN COURT
28th October, 1963

Before The Honourable Sir Rampersad Neerunjun,
Chief Justice, and H. Glover, Judge.

A. Raffray, Q. C., appears for the plaintiffs
with Sir André Nairac, Q. C.

M. Latour Adrien, Solicitor General, appears
for the defendant.

20 The Court states that this case is mentioned
to-day for Counsel to consider the following:

1. (a) Has this Court jurisdiction to act under
order 25 rule 5 of the English Rules of
the Supreme Court and make a declaratory
judgment in a case of this nature bearing
in mind, inter alia, the question of whether
there is a live issue or not before the
Court; if so,

30 (b) Has the Court a discretion to make the decla-
ration and is this a proper case for the
exercise of the discretion?

No. 4

Notice of
Trial

11th October,
1963

No. 5

Proceipe

11th October,
1963

No. 6.

Minutes of
Proceedings
in Court

21st October,
1963

No. 7

Minutes of
Proceedings
in Court

28th October

2. Has this Court jurisdiction to decide on the validity of an executive act of the Governor in the absence of any specific provision to that effect?

The case stands fixed to 12th, 13th and 14th November, 1963, to be heard on the merits.

(s) France Koo Seen Lin
for Master and Registrar

No. 8 -----	<u>No. 8.</u>
10 Notice of Evidence -----	Plaintiffs' Notice of Documentary Evidence (OMITTED)
4th November, 1963	-----
No. 9 -----	<u>No. 9</u>
Notice of Facts -----	Plaintiffs' Notice of Facts (OMITTED)
4th November, 1963	-----
No. 10 -----	<u>No. 10</u>
Notice of Evidence -----	Plaintiffs' Notice of further documentary Evidence (OMITTED)
11th November 1963	-----
No. 11 -----	<u>No. 11</u>
Minutes of Proceedings in Court -----	MINUTES OF PROCEEDINGS IN COURT 12th November, 1963
20 12th November 1963	Before the Honourable Sir Rampersad Neerunjun, Chief Justice, M. Rivalland, Senior Puisne Judge and H. Glover, Judge.

A. Raffray Q. C., appears for plaintiffs together with Sir André Nairac Q. C.

M. Latour Adrien, Solicitor General, appears for respondent together with H. Garrioch.

Court accepts that, as proposed by Sir André with the agreement of M. Latour Adrien, only duly certified

copies of the letters exchanged between the Government and the plaintiffs on the subject matter of this case be produced and filed of record.

Sir André's proposal is meant to facilitate in the course of the case references to those documents by the Honourable Judges and defendant's Counsel to whom additional copies thereof are communicated.

10 Court directs that the opening address of A. Raffray Q.C., for plaintiffs be taken down in shorthand by the Supreme Court shorthand writers.

A. Raffray Q.C., opens the case for plaintiffs. In the course of the opening are produced and filed of record the following documents:

	1.	Certified copy of the letter dated 2. 5. 63 marked.	1
		and the plan attached thereto marked..	1A
	2.	Certified copy of the letter dated 13. 5. 63 marked	2
20	3.	Certified copy of the letter dated 18. 6. 63 marked	3
		and the plan attached thereto marked. . .	3A
	4.	Certified copy of the letter dated 8. 7. 63 marked	4
	5.	Certified copy of the letter dated 10. 7. 63 marked	5
	6.	Certified copy of the letter dated 11. 7. 63 marked	6
	7.	Certified copy of the letter dated 15. 7. 63 marked	7
30	8.	Certified copy of the letter dated 19. 7. 63 marked	8
	9.	Certified copy of the letter dated 29. 7. 63 marked	9
	10.	Certified copy of the letter dated 13. 8. 63 marked	10

Raffray Q.C., goes on to submit it in the main that Government has, contrary to s. 73 of Ord. 16 of 1962,

refrained from consulting with the Municipality before taking the decision of enlarging the Municipal area to over six times its original size, consequently the Proclamation No. 12 of 1963 being "ultra vires" is null and void in the eyes of plaintiffs.

In support of his submissions, he makes references to Authorities and Case Law as set out in extenso * in the shorthand transcript.

AFTER RECESS

In answer to 2 of the 3 questions put by Court and which read as follows:

1. (a) Has the Court jurisdiction to act under Order 25, Rule 5 of the English Rules of the Supreme Court and make a declaratory judgment in a case of this nature bearing in mind, inter alia, the question of whether there is a live issue or not before the Court? If so,
- (b) Has the Court a discretion to make the declaration and is this a proper case for the exercise of the discretion?

20

Raffray Q. C. ,

1. Submits that this Court can rightly act under Order 25 Rule 5 because were it otherwise, Plaintiffs would be left without any remedy.
2. Explains that the issue before Court is a live one because Plaintiffs are already saddled with statutory obligations.
3. Quotes instances of:
 - (a) refusals by Court to make the declarations sought because:
 - (i) there were other remedies available to litigants, or
 - (ii) the issues were hypothetical;
 - (b) declarations made by Court because no other legal remedy was available to litigants.

30

* Vide extract of shorthand transcript at pages 108 - 111

4. Submits on the strength of the authorities quoted, as detailed in the shorthand transcript, * that the answer to Court question 1(b) is in the affirmative.

At 3.30 p. m. Court postpones the case to 13. 11. 63 for continuation.

(s) Frank Mosses
for Master and Registrar

No. 12

MINUTES OF PROCEEDINGS IN COURT
on 13th November, 1963

No. 12

Minutes of
Proceedings
in Court

13th November,

Before the Honourable Sir Rampersad Neerunjun, 1963
Chief Justice, M. Rivalland, Senior Puisne Judge and
H. Glover, Judge.

A. Raffray, Q. C., appears for plaintiffs, together
with Sir André Nairac, Q. C.

M. Latour Adrien, Solicitor General, appears for
defendant together with H. Garrioch.

A. Raffray, Q. C., in answer to the Court question
no. 2.:

" Has this Court jurisdiction to decide on the validity
of an executive act of the Governor in the absence
of any specific provision to that effect? "

makes submissions which are taken down in shorthand.

In the course of his address, A. Raffray, Q. C.,

1. Refers to:

(a) s. 73 of Ord. 16 of 1962 and to the provision
therein for "consultation" prior to any altera-
tion of the boundaries of townships and therefore
to the exercise of the legislative power delegated
to the Governor in Executive Council, and

(b) the Ordinance of 1960 under which boundaries of
the town could be altered by Proclamation from
the Executive Council on the initiative of the
Municipality.

* Vide extract of shorthand transcript at pages 108 - 111

2. Refers to Halsbury Vol. 5 vo. Commonwealth and Dependencies - note 1259 - pages 587 - 588 - de Verteuil v. Knaggs and anor and stresses that delegated power is to be exercised only within the scope of such power.

3. Refers to:

- (a) Halsbury Vol. 5 - Note 1209 pp. 558 - 559,
- (b) Order in Council, 1958, in Government Gazette of 13. 8. 58 - p. 449 - Part II paragraphs 4 - 5, refer to the duties and powers of the Governor and Executive Council and their functions to be exercised as prescribed "inter alia" by the law in force in the colony,
- (c) Letters Patent, 1958, in Government Gazette of 14. 2. 59 - p. 88 ss 4 & 5 re. Governor's authority to be in accordance "inter alia" with local laws.

4. Submits that it is therefore clear under our Constitution that the Governor or the Governor in Council cannot act otherwise than in accordance with the law of the Colony specially in a simple, domestic matter such as the exercise of delegated power regarding the alteration of the boundaries of the area controlled by a local Government Body.

5. Submits that in the light of a long series of authorities on the matter, this Court has full jurisdiction in the present case.

6. Refers to the definition of "Governor in Council" as given in the Interpretation of General Clauses Ordinance No. 44 of 1957, and adds that the Court could take Judicial Notice of the Governor's Commission - the Governor not being a Vice-Roy,

7. Refers to:

- (a) Cameron v. Kite reported in English Reports, Vol. 12 Privy Council - at p. 682 para. 343 - a clear case of the limitation of the powers of a Governor.
- (b) Musgrave v. Pulido - 1879 - 5 Appeal Cases - p. 102 at p. 111.

Governor of a Colony is not a Vice-Roy
- his authority is limited by his commission.

Acts beyond the Governor's power to do

are not "acts of state".

- (c) *Sprigg v. Sigcau* - (1897) - Appeal Cases 238 at p. 247 (bottom) - p. 248, p. 241.
- (d) *Commercial Cable Co. v. Government of Newfoundland* (1916) - 2 Appeal Cases 610 at p. 604 (bottom), p. 625 (top) p. 616 (Governor not a Vice-Roy).
- (e) *Queen v. Clarke* - Privy Council cases 1877 - English Reports Vol. 13 - p. 808.
- (f) *de Verteuil v. Knaggs and anor* (1918) A.C. p. 557, Law Journal - Privy Council (1918) Vol. 87 p. 128 middle para. p. 130 on jurisdiction.
- (g) *Eshugbayi Eleko v. Officer Administering the Government of Nigeria* (1931) - Appeal Cases pp. 662, 668, 669, 670, 671 (as an executive, the officer can act only in accordance with the powers given him by law).
- (h) *Oke Lamp Laoye & or. v. Amo Oyetunta* (1944) Appeal Cases - p. 170, p. 175 (top).
- (i) *Empire Digest Vol. 8* - title "Commonwealth and Dependencies" pp. 689, 691, 694, 692,

10

20

Summing up, he

8. Submits that Order 25 Rule 5 is not a positive Rule establishing a positive act of procedure. It is a negative Rule meant to prevent technical objections which might be raised in pleadings. It fits in with and follows the trend of our own Rules. It is therefore the power of the Court to apply that Rule.

9. Submits that there is a live issue involved in the present case.

30

10. Re. the declaration this Court is prayed to make, submits that it was a practice fully admitted and which existed when the Court of Equity was separate from the Court of Common Law.

11. Re. discretion, submits that the circumstances of the case and the Proclamation fully justify the Court to exercise its discretion.

12. Finally submits that this Court has full jurisdiction in the present case.

After his opening address, A. Raffray, Q.C., calls and examines J. Raymond Hein, Mayor of Port Louis, on oath.

AFTER RECESS

A. Raffray, Q. C. , resumes the examination of J. Raymond Hein, who is also cross-examined by M. Latour-Adrien.

At. 3.30 p. m. , Court postpones the case to the 14th November, 1963, for the continuation of the Mayor's cross examination and for continuation of the case.

(s) Frank Mosses
for Master and Registrar

No. 13

No. 13

10 Minutes of
Proceedings
in Court

MINUTES OF PROCEEDINGS IN COURT

on 14th November, 1963

14th November
1963

Before the Honourable Sir Rampersad Neerunjun, Chief Justice, M. Rivalland, Senior Puisne Judge and H. Glover, Judge.

Raffray, Q. C. , appears for the plaintiffs together with Sir André Nairac, Q. C.

M. Latour-Adrien, Solicitor General, appears for the defendant together with H. Garrioch.

20

M. Latour-Adrien continues the cross examination of J. Raymond Hein, on oath, who is re-examined by Sir André Nairac, Q. C.

A. Raffray, Q. C. , closes the case for plaintiffs.

Defence

M. Latour-Adrien, Solicitor General, calls and examines on oath Félix Laventure, former Minister of Local Government, who is cross examined by Sir André Nairac, Q. C.

AFTER RECESS

Sir André Nairac, Q. C. , resumes the cross examination on oath of Félix Laventure.

30

M. Latour-Adrien closes the case for the Defence.

Case Closed

Court postpones the case to the 19th November, 1963, and the 22nd November, 1963, for argument.

(s) Frank Mosses
for Master and Registrar

No. 14

No. 14

MINUTES OF PROCEEDINGS IN COURT
on 19th November, 1963

Minutes of
Proceedings
in Court

19th November,

10 Before the Honourable Sir Rampersad Neerunjun, Chief Justice, M. Rivalland, Senior Puisne Judge and H. Glover, Judge, 1963

A. Raffray, Q.C., with Sir André Nairac, Q.C., appears for plaintiffs.

M. Latour-Adrien, Solicitor General, appears for defendant.

M. Latour-Adrien, addressing the Court.

1. Re. Court Question No. 2: "Has this Court jurisdiction to decide on the validity of an executive act of the Governor in the absence of any specific provision to that effect",

20 declares that Courts have made pronouncements on the validity of the executive acts of Governors and he refers to:

(a) Sprigg v. Sigcau (1897), Appeal Cases at p. 238.

(b) de Verteuil v. Knaggs and anor (1918) Appeal Cases, p. 557.

(c) Rex v. Crewe (1910) 2 KB p. 576

(d) Eshugbayi Eleko v. Officer administering the Government of Nigeria (1931) Appeal Cases - p. 662.

30 2. Submits that the issue of the Proclamation No. 14 of 1963 is a legislative act in the exercise of a Statutory power by an authority of a legislative character. The Governor in Council acting under s. 73 of the Local Government Ordinance, 1962, is performing a legislative act. The Legislative Council sets limits to the town and delegates its power to the Governor in

Council. He accordingly refers to:

(a) Halsbury, Laws of England, Vol. XXXVI (3rd Edition) pp. 490 - 491 Vo. Statutes paras. 742 - 743; s. 3 headed Judicial Control,

(b) Rex v. Bhageerutty, M.R. 1942 p. 158.

3. Submits that what is outside the control of the Court is the discretionary exercise of an executive power of Government.

10 4. Re. the Court Question: " Has the Court jurisdiction to act under Order 25, Rule 5? "

Agrees that that is a delicate and thorny point.

The power exercised under that order is a statutory one.

Historically Order 25 Rule 5 is derived from the Chancery Act of 1852, s. 50 - Prior to 1852.

The Court of Chancery made declarations only in cases when relief was sought -

Guarantee Trust Co. of New York v. Hannay 1915 - 2 K.B. p. 526 is referred to.

20 5. Submits that the jurisdiction exercised under Order 25 Rule 5 is the old equitable jurisdiction of the Court of Chancery. Refers to Snell, Equity - at page 564 - Same old jurisdiction extended by statute.

6. Defines "jurisdiction" as being not the power of the Court to deal with a type of cases but the mode in which Court may deal with a case within its inherent jurisdiction.

7. Submits that Order 25, Rule 5 does not confer jurisdiction but extends the practice of the Court -

Guarantee Trust Co. of New York v. Hannay is again referred to.

30 8. States that the Supreme Court is vested with the authority of the Queen's Bench and of the Court of Equity with power and authority for the administration of equitable jurisdiction. In the case of common law jurisdiction, this Court has its own rules; in the exercise of its equitable jurisdiction, it follows the English practice.

9. Declares that plaintiffs come to this Court as to a Court of Equity.

10. Refers (a) to Ordinance No. 2 of 1850 which vests in the Supreme Court the jurisdiction of the Queen's Bench as it was in 1850; (b) to *Bird v. An Attorney*, MR. 1914, p. 94.

11. Submits that Order 25, Rule 5 which is a Rule of Practice may be followed by this Court although this Court is not bound to follow it.

12. Submits that the exclusion of Rule 5 from our Rules does not "ex necessitate" exclude it from the practice of this Court. He accordingly refers to the last sentence in the head note to: *Bird v. An Attorney*.

10

13. Agrees to A. Raffray's submission re. Rule 77.

14. Re. the Court Question: "Has the Court jurisdiction to make a declaratory judgment?"

Declares that the English Courts have made declarations in a large variety of cases. He says he has not been able to find a case in which a Proclamation has been challenged by an English Court.

In the colonies, the validity of a Proclamation has been challenged in the following cases:

20

- (a) *Sprigg v. Sigcau*
- (b) *de Verteuil v. Knaggs and anor*

15. Refers to *Rex. v. Bhageerutty* M.R. 1942 p. 158 at p.165 re. Interpretation of Statute.

16. Submits that it is clear that the validity of a Proclamation may be challenged.

17. Submits that under Order 25, Rule 5, the power of the Court to make a declaration is unlimited. In fact, it is limited only by its discretion.

He refers to:

30

- (a) *Hanson v. Radcliffe Urban District Council* (1922) 2 Chancery p. 490 at p. 507.
- (b) *Cooper v. Wilson* (1937) 2 K.B. 309 at p. 322.
- (c) *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government* (1960) Appeal case 260 at p. 286.

18. Concludes on this question that the right of the Court

to make a declaration exists until it is expressly removed by statute.

19. Re. the question whether there is a live issue before this Court?

Defines a "live issue" as a "cause of action" i. e. "the seeking of some relief", and quotes:

"Guarantee Trust Co. of New York v. Hannay (1915) 2 K.B. 536 at pp. 536, 559, 562 also re. the difference between -

- 10 (a) a declaratory judgment
(b) a declaration of right - p. 570

20. As plaintiffs ask for a declaratory judgment not a declaration of right i. e. as they seek some relief or seek to establish a right to substantive relief - p. 572 of Guarantee Trust Co. of New York v. Hannay - he agrees to the decisions already quoted by A. Raffray Q.C., that it is a matter of discretion and that this is a proper case for the exercise of judicial discretion.

20 This Court has power if the relief sought is not unconstitutional or inequitable and refers to the list of cases given in Halsbury, Laws of England, Vol. 22 pp. 749 - 750 re. exercise of discretion.

Re. the facts of the case

21. Submits that the main issue is the question of consultation.

22. Re. the meaning of the word "consultation" refers to 3 main cases:

- 30 (a) Rollo v. Minister of Town and Country Planning, 2 All E. R. 488, (1947),
1 All E. R. 13, (1948)
(consultation under sub-section 1 of section 1 of New Town Act);
- (b) Fletcher and ors v. Minister of Town and Country Planning; (1947) 2 All E. R. at p. 496.
- (c) Union of Beneficès of Whippingham and East Cowes (1954) - 2 All E. R., p. 22.,

and submits that the meaning attached to "consultation" is not of universal application but is restricted to s. 1(i) of the Act setting out a procedure to be followed. He adds that in our

law there is no special requirement for consultation. He goes on to say that he is reinforced in his submission by the dictum of the Court in the Whippingham case (Privy Council) when the Court did not consider itself bound by the definition of "consultation" given in Rollo case.

23. Refers to the dictionary meaning of the verb "consult" i. e. to take counsel or seek information or advice from some person.

10 24. Submits that "consultation" is the seeking of the views of a party and the giving to that party of an opportunity for expressing his views - in the spirit of the Rollo case - but not necessarily awaiting such views. Therefore if a party chooses to cause obstruction and not to submit any views, that party has all the same been consulted.

20 25. Goes on to review the facts and circumstances of the case from the receipt of the letter - exhibit 1 - and submits that it is proper to infer that the Mayor used dilatory tactics because the Council were against the proposed extension of the town and they consequently refrained from giving their views in order to cause obstruction. "The longer the delay, the greater the obstruction."

26. Submits that considerations re. the appointment of a special commission are irrelevant because no such procedure is set out in the local government act, 1962.

27. Submits that exhibit 21 is the best proof that the Municipality was in as good a position as, even in a better position than Government to obtain information about the questions put in its letter - Exhibit 4 - The M. C. was bent on being obstructive.

30 At this stage, Court postpones the case to the 22nd November, 1963, for continuation of argument.

(s) Frank Mosses
for Master and Registrar

No. 15

MINUTES OF PROCEEDINGS IN COURT

on 22nd November, 1963

No. 15

Minutes of
Proceedings
in Court

22nd November,

Before the Honourable Sir Rampersad Neerunjun, ¹⁹⁶³
Chief Justice, M. Rivalland, Senior Puisne Judge and H.
Glover, Judge.

A. Raffray Q. C. with Sir André Nairac, Q. C. , appears for plaintiffs..

M. Latour-Adrien, Solicitor General, appears for defendant.

M . Latour-Adrien, resuming his address,

1. Submits that the Government had clearly put to the Municipal Council the proposal of extending the limits of the town of Port Louis and had given to it opportunity to express its views on the proposal, but rather than co-operate with the Government, the Municipality used dilatory tactics.
- 10 2. Recalls that on 29. 7. 63, the M. C. sent a letter to the Ministry to object to any action by Government before the M. C. had expressed its views on the proposal of Government. That letter, he submits, shows that the M. C. was still convinced that Government would not take action so long as the M. C. would not have expressed its views.
3. Submits that twice Government could have proceeded with its proposed extension i. e. on 13. 5. 63 and 6. 7. 63 on which dates, the delays granted by Government expired and no further delays were asked for by the M. C. It cannot therefore be said that
20 Government did not give to the M. C. ample time and opportunity to express its views. In fact, the M. C. had 9 weeks to express their views, and give an affirmative reply or a negative reply or a qualified reply.
4. Submits that "consultation",
 - (a) does not mean that Government had to wait for the M. C. 's views before taking action;
 - (b) started when Government posed the proposal to the M. C. and gave it opportunity to express its views;
 - (c) ended by the expression of the views sought or
30 failure or what amounted to failure to express views.

Therefore the consultation which was started was ended by M. C. 's obstructiveness.

5. Submits that Government was entitled to act without waiting any longer for the M. C. 's views which it knew would never be given - and refers to de Verteuil v. Knagg (1918) Appeal Cases - pp. 557, 559-560 re. obstructive conduct of the consulted party.
- 40 6. Concludes that the evidence establishes that the M. C. has been consulted and the Proclamation is therefore valid and

of full effect.

7. Adds that, if his submission re. "consultation" is rejected by Court, he submits that this is not a proper case for the Court to exercise its discretion because all the parties interested in this case are not before Court. In support of his submission, he quotes:

10 London Passenger Transport Board v. Mosscrop (1942)
Appeal Cases pp. 332, 345 in which case neither the
Transport Union nor the National Transport was made
a party.

8. Submits that the parties in this case are:

1. The Governor in Council
2. The Local Authority of Port Louis

but the other local authorities affected by the Proclamation are:

3. The District Council of Pamplémousses -
Rivière du Rempart
4. The District Council of Plaines Wilhems -
Black River
5. Various Village Councils.

20 The parties at 3, 4, 5 directly affected by the Proclamation
are not before Court.

Therefore on the principle enunciated in London Passenger
Transport Board case, Court should not exercise its discretion
and make the declaration prayed for.

9. Lastly submits that this Court should not exercise its
discretion because such an exercise would be inequitable since
the obstructiveness of the M.C. amounts to coming to Court
with unclean hands.

A. Raffray Q.C. replying

30 1. Declares that he was astounded to hear M. Latour-Adrien
raising the point that this Court could not exercise its discre-
tion in this case because District Councils and Village Councils
affected by the Proclamation were not before the Court.

(Court intervenes to say that this point raised by the
defence need not be elaborated as it will not be
considered).

2. Refers to s. 73(1) of Ordinance No. 16 of 1962 under which
limited delegated legislative powers can be exercised by the

Governor in Council subject to consultation with the Local Authority concerned.

3. Refers to the Dictionary meanings of the verb "to consult" which are: to take counsel together, to deliberate, to confer, to talk together.

Therefore, he submits, a consultation is not a monologue but a dialogue.

4. Submits that there is a world of difference between the so-called consultation in the present case and the consultation
10 resorted to and detailed in the 3 following cases:

(a) Fletcher v. Minister of Town and Country Planning (1947) - 2 All E.R., pp. 496, 499 and s. 1(i) of the New Town Act, 1946

- (i) no questions were left unanswered,
- (ii) the 2 conferences were frank, open, uninhibited,
- (iii) the consultation lasted 4 months

(b) Rollo case, (1947) - 2 All E.R. pp. 488 et seq., Appeal (1948) 1 All E.R. at p. 13

- (i) the Minister disclosed everything,
- 20 (ii) took the consulted party into his confidence,
- (iii) the Minister gave every information, discussion was invited and questions answered - discussion took the form of questions and answers,
- (iv) "the Minister with receptive mind" should allow any question to be raised and seek help and advice,
- (v) consultation means, on the one side, that the Minister must supply sufficient information to enable the tendering of advice, and, on the
30 other side, that sufficient opportunity must be given to tender advice.

(c) Union of the Beneficès of Whippingham and East Cowes (1954) 2 All E.R., p. 22 Head Note: "a full and sufficient opportunity must be given to ask questions and submit opinions", at bottom of p. 24 and top of p. 25 - questions were asked and answered.

There was a dialogue not a monologue.

It was not found that the parties asking the questions were being obstructive and were using delaying tactics.

40 5. Submits that those 3 cases show clearly the importance for the consultant to enlighten the parties consulted.

If questions asked are not answered, submits that the consultant is not giving the consulted party an opportunity to express views.

AFTER RECESS

A. Raffray Q.C. resuming his address:

10 1. Points out that the case opens with the letter of the 2. 5. 63 and that this is not a case for a trifling rectification of boundaries but of a major operation by which the acreage of the town of Port Louis is increased from 1540 to 8628 ie. by an addition of 7088 acres.

The Municipality as from the date of the Proclamation is saddled with considerable administrative and financial obligations.

2. Refers to s. 73 of Ordinance 16 of 1962 under which the Governor in Council must consult the Local Government Body prior to any rectification of the boundaries of its township. In the Ordinance of 1960, the boundaries of the town of Port Louis could be rectified on the initiative of the M. C. subject to Government approval.

20 3. Submits that the change of procedure brought about by Ordinance 16 of 1962 made it all the more important that the M. C. should have full opportunity to make out a case - supported by facts and figures for or against the proposal. Therefore the questions put by the M. C. were not unreasonable.

4. Submits that the terms of the letter of the 2. 5. 63 are curt and supercilious and contrasts it with the letters of invitation to submit views as given in the cases of Rollo and Fletcher.

30 5. Submits that the letter - Exhibit 1 - gives the impression that it is a mere formality, which impression is borne out by the pleadings and Laventure's evidence.

6. Re. the question of delay, submits that the short delay from the 2. 5. 63 to the 13. 5. 63 - 7 working days - passes understanding.

7. Submits that it cannot be assumed that the Councillors are not honest men. It is not fair to infer:

(a) obstruction, non-co-operation - from their attitude when they are faced with the letter of 2. 5. 63 - tantamount to an ultimatum, and

- (b) delaying tactics from the resignation of the 11 Councillors on the 11. 5. 63, and the postponement of the meeting to the 13. 5. 63 .

8. Points out that in the statement of defence there is no allegation that the plaintiffs wanted to defeat the proposed consultation by delaying tactics.
9. Submits that the 11 Councillors' resignation could not be reasonably interpreted as a definite refusal to answer the Government question.
10. Submits that "consultation" and the "resignation" are on two different planes - the former results from a corporate decision, the latter from individual decisions - and Government understood it when the new M. C. is asked to submit its views.
11. Submits that to represent the Mayor as a schemer to paralyse the consultation is a very grave allegation - which is left to the appreciation of the Court.
12. Submits that the delays granted by Government were not statutory delays - therefore failure to answer within the delays granted by Government could not put an end to the consultation.
13. Submits that the short delays granted were indicative of the determination of Government to rush the proposal through.
14. Submits that letter - Exhibit 3 - is quite as dictatorial, as curt and unenlightening as the letter - Exhibit 1.
15. Submits that Exhibits 12, 13, 14 raised a number of extremely important points embodied in the questionnaire sent to Government. It cannot therefore be reasonably argued that the raising of those points formed part of delaying tactics and that the Town Architect, the Town Treasurer were trying to delay Government measure.
16. Submits that it is for the Court to decide:
- (a) whether those questions were relevant, reasonable, necessary to allow the M. C. to reach reasonable views and conclusions,
 - (b) whether it was fair for the Government to refuse to answer a single question.
17. Points out that para. 11 of the statement of defence does not deny the averment at para. 20(b) of the statement of claim.
18. Refers to Exhibit 6 - letter of 11. 7. 63 in which Government

does not say that the questions were foreign to the proposed extension.

19. Submits that Exhibit 21 highlights the point that detailed information must precede the expression of opinion even in a case of minor extension of boundaries.

20. Submits that the M.C. wanted to look into the matter of the proposed extension more carefully than the Ministry had done, hence the M.C.'s questions on staff, water, for instance.

10 21. Submits that what the Ministry did, after its letter of the 2.5.63 to the M.C. was a farce of a consultation for there was never a frank dialogue as detailed in the cases of Rollo and Fletcher.

22. Submits that though the M.C. did not ask for delay yet the Ministry by not granting in its letter - Exhibit 8 - any further extension of delay, understood the implied M.C.'s request for further delay.

20 23. Submits that not only was there not a trend of obstruction on the part of the M.C., but there was a trend of worse than obstruction on the part of Government bent on forcing the extension.

24. Submits that the point of obstruction goes to the root of the matter. If there has been no consultation, Court, in his views, cannot refrain from making the declaration prayed for.

Court reserves judgment.

(s) Frank Mosses
for Master and Registrar

No. 16

Plaintiffs' Evidence

Joseph Raymond
Hein

Examination 13. 11. 63

EVIDENCE FOR PLAINTIFFSNo. 16EVIDENCE OF JOSEPH RAYMOND HEIN

Examined by A. Raffray, Q. C.

I am the Mayor of the Municipality of Port Louis for 1963. I was elected Mayor in December, 1962.

10 On the 2nd or 3rd May, 1963, the Town Clerk received from the Ministry of Local Government the letter - copy of which is marked 1 - together with the Map marked 1A. As a result of that letter 11 out of the Municipal Councillors resigned from membership. The Municipality was therefore left without a quorum which according to law is 7.

On 13. 5. 63, the Town Clerk wrote the letter - the copy of which is marked 2 - to inform the P. A. S. of the Ministry of Local Government that he was unable to give the views of the Municipal Council on the question of boundaries because of the resignation on the 11. 5. 63 of 11 Councillors.

20 On 2. 5. 63, I was laid up with 'flu' . The letter - copy of which is marked 1 - was received at the Municipality on Thursday, 2. 5. 63 in the afternoon.

The 4th and 5th May, 1963 were public holidays. I started work again on 7. 5. 63, a Tuesday. On 7. 5. 63, I heard from the Town Clerk that he had convened a meeting of the General Purposes Committee for the 8. 5. 63. I was not in a position to examine in 2 days the question raised. I had the meeting postponed to Monday, 13. 5. 63. In the meantime, the resignation of the 11 councillors took place and so the meeting could not be held. That was the purport of the letter - copy of which is marked 2.

30 On 18. 6. 63, after the new councillors had been appointed by the Governor, the letter - copy of which is marked 3 - was received by the Town Clerk. That letter was dated 18. 6. 63. I saw it on 21. 6. 63. That letter informed the Municipality that there were a few inaccuracies in letter - copy of which is marked 1 and that the total error was of about 1,000 acres. The Municipality was asked to express its views on the question raised on or before 6. 7. 63.

40 The meeting of the General Purposes Committee was convened for 3. 7. 63. I presided over that meeting. I have an extract of the minutes of proceedings at that meeting. I produce that extract which is marked 11 and filed of record.

At that meeting all the Councillors except Abba Sakoor and Chang Kye were present.

When I drew a parallel between local and English law, I had notes which had been prepared by the Town Clerk, the Town Engineer and the Town Treasurer regarding the reference to the English Rules and Regulations and Procedure. The Town Clerk had prepared the notes regarding the English procedure. I produce those notes of the Town Clerk - which are marked 12.

10 Those notes (12) contain general indication of the English procedure for the alteration of Local Government areas and the various matters which are considered by the Commission of Enquiry in England prior to any alteration.

I read out those Notes to the Committee to which new members had been newly appointed.

After reading out the relevant sections of the Local Ordinance, I read out those Notes as a guidance as to the facts and matters that are taken into consideration in England in such a case.

20 I made it clear to the Committee members that the notes I was reading out to them were merely meant as a guide.

I produce the documents prepared by the Town Treasurer and the Town Engineer - documents are marked 14, 13 respectively.

I had asked the Town Treasurer and the Town Engineer to look into the matter of the extension of boundaries. Those were the Notes they had supplied to me to be conveyed to the Committee on relevant factors on which they might wish to be enlightened.

30 The Heads of Department were present at the meeting and I informed the members of the Committee that they could ask those Heads of Departments any information they required on the points raised by Government and on any points they themselves wanted to raise.

Regarding all the points raised by the Town Treasurer and the Town Engineer in the papers mentioned, there was no information available to the Municipality. As a result of this general discussion, the decision taken was being given the importance of the question, I should correspond directly with the Minister with a view to obtaining from the Ministry information on the points raised by the Heads of Departments and the members present at the meeting.

40 I told members that if between the date of the meeting and the date the proposed letter is sent, there was some further

information they required on the points raised by Government or by themselves and which would not be available to the Municipality, they might see me and I would embody their questions in the letter.

That was on the 3. 7. 63. The letter which I had received from the Ministry set Saturday the 6. 7. 63 as the time-limit. On the next day, I drafted that letter which was meant to embody the various points raised in the course of the discussion.

10 There were also points which occurred to me personally and which I embodied in that letter. One of those points was the increase of the number of councillors.

I sent that letter to the Minister - copy of which is marked 4. I came down to the Municipality on Saturday the 6. 7. 63. I had a last look at that letter and it was sent to the Minister on Monday morning of the 8. 7. 63.

The Municipality had no information on the points raised at the Committee meeting and which were embodied in that letter - marked 4.

AFTER RECESS

20 A. Raffray, Q. C., resumes the examination of Joseph Raymond Hein, sworn.

At the meeting of the 3. 7. 63, the Committee saw clearly what the position was and that it was impossible for it to express an opinion on the proposed extension of Municipal area without the information sought from the Minister of Local Government. The Committee was also of opinion that it was impossible for it to express an opinion on the subject within the short time allowed.

I myself raised the question about the administration of the larger Port Louis.

30 The number of councillors is fixed by law. To change that number, the law must be modified accordingly. I have adopted the Committee system at the Municipality with only 16 Municipal Councillors to serve on the Committees and Sub-Committees, it often happened that councillors had to be rung up to ask them to make an effort to attend meetings. It also happened that meetings could not be held for want of a quorum. That particular difficulty would be increased if the Municipality is given wider duties following the extension of the town area.

40 The population of Port Louis prior to the Proclamation of the new municipal area was about 90,000. The urban population after the Proclamation could be over 100,000. From the

Municipal Year Book for 1962 for U.K., I pick 4 towns of approximately the same acreage and population as Port Louis. The number of councillors there varies between 56 and 64.

10 The Municipality was entirely in the dark regarding Government policy for the administration of the wider area. It was I who raised the question of increase of staff, specially of technical staff. The questions asked by some members of the Committee were passed on to the Town Engineer. He gave tentative figures which were embodied in my letter to the Minister. I have no indication of what Government future policy might be.

In the past I had difficulty in recruiting water engineers.

Generally speaking I had difficulty in finding qualified technical employees for the Municipality.

The Municipality has 4 housing estates: (1) Cité Martial (2) Cité Rozemont, (3) Cité Vallonville (4) Cité Mgr. Leen.

The houses built by the Municipality are of a higher standard than those built by the Central Housing Authority.

20 As the policy of Government is that either the Municipality or the Central Housing Authority will have to be responsible for housing in the town area, housing in the new area is therefore a factor to be taken into consideration.

The Central Housing Authority is exempted from building regulations; houses built by the Municipality must conform to building regulations. On that question of housing the Municipality had no inkling of Government policy.

RE. SLUM CLEARANCE

30 The new regions e.g. Roche Bois, Vallée des Pretres are essentially slum areas. The councillors wanted to know whether Government would help by legislation for slum clearance. We had no means of obtaining information other than by asking questions to the Minister.

Further the Municipality administers many regulations re. building, market, slaughter houses, the growing of canes within the town limits.

RE. LEGISLATION

I asked whether Government intended to apply to the additional localities the regulations now in force within the old town limits e.g. sale of meat outside the market. According to the Ordinance, meat can only be sold within the markets

in the town limits. The councillors had no means of finding out what Government policy would be in that respect. Will the butchers' shops, for instance, have to close down?

RE. SANITATION - paras 9 - 12

The Councillors had no information at all on any of the points raised. Recourse to the Minister was for us the surest way to obtain information on those points. The additional localities were under Village Councils and District Councils which were responsible to the Minister of Local Government.

10 It was better and speedier to write to the Ministry and obtain from it the required information rather than ask for it by writing to each District Council and Village Council separately.

The Sewerage system in those localities is 100% Government controlled. The Councillors wanted to know whether in the additional localities the sewerage would still be 100% Government controlled or whether the Municipality would be expected to run part of it. In parts of the present town of Port Louis i. e. before the enlargement, the Municipality runs a pail service which is not a paying proposition.

20 RE. WATER

The Municipality supplies water from G. R. N. W. The Municipality is bound to supply water to all town dwellers within the previous Port Louis boundaries and is at liberty to supply water within the district of Port Louis according to the capabilities of the Municipal plant: Since the end of 1961, the Municipality runs a 24-hour service of water supply.

At present the water supply is run at a loss of Rs 400,000 a year. All the questions put to the Minister under the item 'water' are essential to enable the assessment of the further
30 commitments of the Municipality.

At present, the Municipality may supply water to inhabitants outside the Port Louis town limits. When the Municipality is unable to supply water, Government supplies water. In the additional areas, Government supplies water wherever the Municipality cannot do so.

I have no idea of the future Government policy re. water supply in the larger Port Louis town area.

Any extra responsibility of the Municipality re. water supply to the new urban areas will entail capital expenditure of
40 several millions of rupees and also staff problems .

RE. PLANNING

The questions under 'planning' were put because the Councillors wanted to know what area would have to be developed by the provision of streets and footways, etc.

We therefore wanted to know what would be our future commitments and their financial implications.

RE. REVENUE AND EXPENDITURE

The question about population was put because part of the grant-in-aid of Government is a capitation grant.

10 Re. Q. 25. Government pays the 'matching' grant in lieu of House Rate.

Questions 25-27 were therefore concerned with the future resources and expenditure of the Municipality following the enlargement of the town of Port Louis.

Questions 28-35 refer to recurrent expenditure and future commitments and future grants in aid from Government for recurrent expenditure.

Question 42 re. administrative recurrent expenditure was put because we wanted to have an idea of the additional staff required.

20 RE. RATING AND SALE OF MEAT

We wanted to know what the Government policy would be.

RE. INDUSTRY

The questions were put because we collect licences under the Trades and Industries Ordinance.

RE. EDUCATION

30 Since 1958, the Municipality has been granting bursaries to school children. Between 1958 and 1962, the figures of such grants have increased sixfold. If the new regions were to come within the town limits, the number of bursaries would have to be increased or to restrict the grant of bursaries only to school children within the old town limits.

I had no means other than by asking the Minister of obtaining information about the future Government policy with regard to schools.

RE. TRANSPORT FACILITIES

Questions were put because we wanted to give to the

inhabitants in the outlying parts of the town greater facilities of access to the centre of the town and to its amenities.

If those inhabitants are to pay taxes, they should have better means of transport.

RE. SHOPS AND RESTAURANTS

The Municipality is the authority controlling shop hours etc.

I have no idea of what is the position as regards shop hours in areas outside the present town limits.

10 I received the reply dated 10. 7. 63 from the P. A. S. - copy marked 5 - that letter crossed my letter addressed to the Minister in the morning of the 8. 7. 63.

I received letter - copy of which is marked 6 - dated 11. 7. 63 and addressed to me. In that letter the Ministry insisted that the views of the Municipality should be submitted by the prescribed date.

I wrote the letter - copy of which is marked 7 - to the Minister. In that letter I again insisted on having the information asked for.

20 I received letter - copy of which is marked 8 - from the P. A. S. informing me that no further extension of time could be given for the submission of our views.

On 29. 7. 63, I again addressed to the Minister the letter - copy of which is marked 9 - in which I urged the Minister to supply the needed information.

On 30. 7. 63, the whole correspondence was laid on the Council table. The Council confirmed then the minutes of proceedings of the meeting on 3. 7. 63 of the General Purposes Committee.

30 Finally, I received from the Ministry the letter - copy of which is marked 10 - informing me of the intention of Government to issue the Proclamation No. 12 of 1963.

All the information we sought from the Minister was not available to the Municipality. It was essential for us to have them before expressing an opinion on the question. But the required information was never given us.

Plaintiffs consider that they were given neither sufficient time nor reasonable opportunity to express their views on the question.

Plaintiffs therefore contend that as there has been no consultation in the terms of the law, the Proclamation issued is 'Ultra Vires' and null and void to all intents and purposes and ask the Court for a declaration accordingly.

Since the issue of the Proclamation, the Municipality has received one letter dated 16. 8. 63 from the District Council of Plaines Wilhems, Black River.

10 That letter was addressed to the Town Clerk by the Secretary Treasurer of the Plaines Wilhems, Black River District Council. I produce copy of that letter which is marked 15. That letter conveyed that the assets and liabilities of the Village Councils of Grand River North West and Cassis should be handed over to the Municipality.

The Municipality also received a letter dated 28. 8. 63 from the Pamplemousses and Rivière du Rempart District Council to the same effect. I produce a copy of that letter - copy marked 16.

The answer made to Exhibit 15 was that the matter was receiving consideration. I produce copy of that reply - marked 17.

20 To letter (16), the Town Clerk made a similar reply - copy of which is produced and marked 18.

Subsequently the present action was entered before the Court and no action was taken on Exhibits 15 and 16.

Further, the Municipality has so far taken no action under the Proclamation 12 of 1963.

The Municipal Council has also received applications for building permits, installations of meters, for permission to hold a meeting at one of the District Council halls. No action at all has been taken on those applications.

30 Finally at the meeting on 4.9.63 of the General Purposes Committee, the question of the extension of the Municipal boundaries was considered. The committee decided that the Municipality should challenge Government action on that issue before Court. I produce a certified copy of the minutes of proceedings - marked 19 - that decision was ratified by the Council at its meeting of the 11. 9. 63.

Xed by M. Latour-Adrien

Cross-Examination

I was first elected to the Municipal Council on 1. 9. 56. Since then I have been a Councillor. I am now the Mayor.

The 1st letter from the Ministry of Local Government reached the Municipality on 2. 5. 63. That letter was communicated

to me on Tuesday, 7. 5. 63, when I resumed work.

Between the 2. 5. 63 and the 7. 5. 63, I did not know that that letter had been received at the Town Hall. The meeting convened for the 8. 7. 63 had been so convened without my knowledge. I believe that the Town Clerk had seen the Deputy Mayor or the Senior Councillor, Mr. Koenig, before convening that meeting. I suppose the Town Clerk knew that I was away from the Town Hall on account of illness. I think I called at the Municipality almost every single day since the beginning of the year.

10 When letter (1) was communicated to me, I considered that it raised an important matter - far more important than urgent.

I had been given until the 13. 5. 63 to reply to that letter. The meeting was convened for the 8. 7. 63 and not for an earlier date because Saturday the 4th was a public holiday and the 5th a Sunday. The meeting could have been convened even if I could not attend it. I meant to communicate to the members at that meeting, the letter dated 2. 5. 63. Up to the 13. 5. 63, some councillors had possibly some knowledge of that letter. Each councillor personally could say when that letter was communicated to him. Perhaps the
20 Town Clerk can say when that letter was communicated to the councillors.

Up to the 13. 5. 63, I remember having discussed with some councillors the purport of that letter without actually communicating its contents to them.

I discussed the purport of that letter with Mr. Devienne possibly with Mr. Koenig and my deputy, Mr. Lan Fat Po.

I cannot remember if I discussed the purport of that letter with the other councillors.

30 Apart from Devienne, Koenig, Lan Fat Po, the Councillors were possibly aware of the contents of that letter.

As a consequence of that letter 11 out of the 16 councillors resigned. They resigned because they felt they could not take it upon themselves, not having had a mandate to that effect from the electorate, to decide on the question.

They wanted the electorate to decide at a by-election.

Their resignation took effect on the 11th. Before the 11th, someone brought to their knowledge the contents of that letter.

40 The councillors who resigned represented in Council the Electorate. They did not each tell me personally why they resigned. But I gathered that they resigned for the reason I have just given.

A meeting of councillors of Port Louis, Curepipe, Rose Hill, Quatre Bornes belonging to the Parti Mauricien was held which I did not attend.

At that meeting it was decided that all councillors of the Parti Mauricien, apart from the Mayor and Deputy Mayor, the Chairman and Vice-Chairman should resign. I was informed by my deputy mayor of the decision arrived at. It was before the 11th May. I do not believe that the 11 Municipal Councillors resigned in order not to express their views on the question of the extension of the Municipal boundaries. I do not believe that that was their reason for their resignation. I could attend the meeting of the 8. 5. 63. On 7. 5. 63, the Town Clerk postponed the meeting to the 13. 5. 63 to enable me to look personally into the matter to be discussed at that meeting. As from the 7. 5. 63, I knew that I would not be in a position to reach a decision by the 13th May, 1963, which was the limiting date. I asked the Town Clerk to ring up the P. A. S. at the Ministry of Local Government to inform the Minister that the meeting would be held on the 13. 5. 63 and that the views of the committee would be conveyed as soon as possible afterwards - perhaps on the 14. 5. 63.

My averment in para. 18 of the statement of claim is correct because I did not consider the telephone message I have just referred to, to be worth mentioning. I did not consider that telephone message as an exchange of correspondence. By "exchange of correspondence" I meant correspondence going to the root of the matter - the telephone message was not a correspondence going to the root of the matter.

Since the delay granted by the Ministry had elapsed and no views had been expressed by the Council, it did not occur to me that Government would none the less give effect to its proposed extension of the town limits. I considered that our views had to be received by Government before it could act.

Six persons were chosen by the Governor to serve on the Council to restore the quorum. We received the letter of their appointment on 11. 6. 63 at 3 p. m. Those councillors were sworn in on 19. 6. 63, a Wednesday, 8 days after their appointments. The usual meetings are held on Wednesdays. It was not considered necessary to change the routine for the swearing in of the new councillors

I received a 2nd letter dated the 18. 6. 63. It was seen by me on the 21. 6. 63. I do not know whether it was handed over to me at the Town Hall on the 18. 6. 63. According to the record of the Municipality, that letter was received at the Municipality on the 19. 6. 63 and communicated to me on the 21. 6. 63. I might have been at the Town Hall on the 19. 6. 63 and the 20. 6. 63. I speak from memory when I say that I received that letter on the 21. 6. 63.

That letter mentions the inclusion of 2 other areas of 916 acres in extent in the township of Port Louis and informs me that the delay for submitting the views of the council was extended to 3. 7. 63.

I communicated both letters to the Committee on 3. 7. 63. It is not the practice to communicate letters personally to councillors outside committee meetings. The committee system obtains in England. It is not my way to communicate letters personally to councillors.

10 On the 19. 6. 63, the new councillors were sworn in and the new Committees and Sub-Committees formed. On 26. 6. 63, a special meeting of the Committee to elect the Chairman and the Vice-Chairman thereof was held as well as a meeting of the Finance Committee. There was a long agenda before the Finance Committee because urgent matters had been left in abeyance since the resignation of the 11 councillors on the 11. 5. 63. I believe that the Finance Committee sitting went on after 8 p. m.

20 In the meantime, as there were new councillors, not conversant with the question of the proposed extension of the boundaries of Port Louis, I had asked the Heads of department to look into that matter, prepare notes that I would convey to the Committee and as far as possible to be ready with replies to questions that might be put to them in order to save time.

At no time before then did I give to the new councillors an inkling that since their appointments, I had received another communication from Government.

On 28. 6. 63, at a Council meeting, under heading communication from the Mayor, sub-item 3 of item 232 - entitled "Expansion of Town Limits", I read the communication which is produced and marked Exhibit 20.

30 The meeting of the 3. 7. 63 was a meeting of the General Purposes Committee which is a Committee of the whole Council. That Committee meets as and when required.

That Committee deals with matters not falling under the matters dealt with by each of the 4 standing committees.

40 It was after that committee meeting that I explained to the new councillors the English Procedure for the extension of the boundaries of a township. I talked to them about the notes which had been prepared and told them what is the usual procedure followed in U. K. for altering the boundaries of townships. It only meant to guide them.

At the meeting of the 3. 7. 63, the Committee considered both letters - as shown in the minutes.

At the meeting of the 28. 6. 63, I did not place before the Council the letter of the 2. 5. 63.

By 'recommendations' the Council means their views.

It was at that meeting that it was decided to send the letter - Exhibit 4 - of the 8. 7. 63 which I wrote to ask for particulars. That was 3 days before the expiry of the 2nd extension of time, I started drafting that letter on 4. 7. 63. The final letter after several changes was ready on Saturday at about noon, which is the time at which the offices of the Ministry close, that letter
10 was sent on Monday the 8th July, 1963, in the morning.

On the 3rd July, as the Committee had decided that they required information, I knew that I would not be in a position to express views by the 6th July. I did not inform the Ministry that I would not be able to express any views on the question by the 6th July. I was hoping that my letter which made matters very clear would be ready to be delivered by Saturday, 6. 7. 63. It was ready just too late to be delivered on that Saturday and at a time when there could be no telephone communication with the Ministry.

20 In that letter I did not apply for an extension of time for the submission of our views but that an extension of time was necessary followed from that letter.

The questions on administration, staff, town planning, slum clearance, water, etc. , were put, because I wanted to know the future Government policy on those matters.

My purpose was to point out to Government the difficulties the Municipality would have to face in administering the additional areas. Those difficulties might weigh for or against the matter raised by Government after taking every relevant
30 factor into consideration.

The information about population, number of markets, sanitation could be more easily obtained from the Government.

The question whether Government would set up a Commission of Enquiry to ascertain the wishes of the inhabitants is based on English practice. in such a case. The regulations I quoted to the members and embodied in the letter give the terms of reference of the Commission of Enquiry.

(s) Frank Mosses
for Master and Registrar

No. 17

No. 17

Plaintiffs' Evidence

Joseph Raymond
Hein
---EVIDENCE OF JOSEPH RAYMOND HEIN (continued)

Cross-exami-

nation Cross-examined by M. Latour-Adrien

14. 11. 63

I was asked yesterday to try and find out the date of the meeting at which the councillors belonging to the Parti Mauricien decided to resign their membership of the Municipal Council and Urban Councils.

10

A dinner party was arranged by Koenig's friends on the occasion of Koenig taking the silk. At that party held on the 6. 5. 63 were present some but by no means all Municipal and Town Councillors of the Parti Mauricien. The question of the resignation of Councillors was then broached. The final decision was made later in the week. I cannot remember exactly the date when that decision was made - possibly it was the 8th or the 9th May. Two councillors from whom I tried to obtain yesterday evening the information as to that date, could not help me with any precise information.

20

When I asked the Town Clerk to postpone the meeting from the 8. 5. 63 to the 13. 5. 63, I also asked him to phone to the Ministry of Local Government about the change of date. The Town Clerk accordingly phoned to Mr. Lassemillante, the Principal Assistant Secretary. The Town Clerk did not tell me on what day he phoned to the Principal Assistant Secretary. Possibly he phoned to the Principal Assistant Secretary on the 7th or the 8th.

30

I resumed work on the 7th May. On the 19. 7. 63, I received letter dated the 19th - Exhibit 8 - informing me that no further extension of delay would be granted to the Municipality to submit the views of the Council.

On the 29th May, I sent to the Minister letter Exhibit 9 - saying that Government should not take any action on the matter before I had given my views after I should have received from the Ministry the information I had asked for.

40

The Councillors resigned because they had no mandate from the Electorate to express views on the proposed extension of the boundaries of the town of Port Louis. I had no mandate either to express any views on that subject.

It was decided at a meeting of the Parti Mauricien which was held on the 8th or 9th May and which I did not attend, that the Mayor, Deputy Mayor, the Chairman and

and the Vice-Chairman would remain in office to carry on the day to day business of their respective Councils.

When I saw that by passing a law with retrospective effect and thus preventing the anticipated election or referendum and that Government was proceeding with its proposal to alter the boundaries of the Town of Port Louis, I felt it my duty to do my best after looking at all the facets of the question to try to express my views on the question.

10 Even though I had no mandate, I considered it my civic duty as the Mayor of Port Louis to study the question.

Government gives the following financial aid to the Municipality:

1. Capitation Grant
2. A grant made towards the payment of the salaries of qualified Municipal Officers e. g. the Town Clerk who must be either a barrister or a solicitor, the Town Treasurer when he is a qualified accountant, the Engineer, the Veterinary, the Medical Officer.
- 20 3. A grant of 25 cents per each rupee of General Rate collected by the Town Council.
4. A 'matching grant' in lieu of House Rate for Government building within the town.

There are some other items about which I could obtain information from the Treasurer.

There is also a modernization grant for the mechanization of the Treasury.

30 The system of grants is liable to review every 3 years. As a result of the last change made, the Municipality lost about Rs 80,000 a year. I am not sure if the Municipality receives a training grant. I think that part of the interest due by the Council to Government for loans for housing is "granted" back in respect of a particular housing scheme.

There is no grant for capital expenditure. That is the reason why I put specific questions.

For the rebuilding of the Town Hall there has been no loan from Government, but only a guarantee by Government. Only part of the loan was guaranteed.

The Municipality receives a grant for the running of Fire Services.

40 In connection with the filter beds at Pailles, Government made a loan to the Municipality.

Re-exa-
mination

Re-examined by Sir André Nairac

According to me, there was no urgency in the matter of the extension of the boundaries of the town of Port Louis. It was urgent merely because Government stated the matter to be urgent.

Most definitely I did not nor do I consider that a matter of such magnitude could be studied and discussed between the 2. 5. 63 and the 13. 5. 63. I was never given any reason why I was ordered to reply by the 13. 5. 63 to the 1st letter. I make the same
10 reply as regards the letter of the 16. 6. 63. I raised that point in my letter of the 8. 7. 63 in which I asked for reasons. I was never given a reply to my question.

Yesterday afternoon I ascertained that a copy of the letter of the 2. 5. 63 was annexed to the agenda of the meeting of the 8. 5. 63 which was addressed to councillors on 3. 5. 63.

There was no connection between the meeting of the Parti Mauricien about resignation and the postponement of the meeting of the 8. 5. 63 to the 13. 5. 63.

I was ignorant of anything about the proposed resignation
20 of councillors. When I asked the Town Clerk to postpone the meeting to the 13. 5. 63 , it was merely to give myself time to study the question in as detailed a way as possible for my own benefit and that of the Council.

In fact, I did not meet any of my fellow councillors while I was ill and until I saw the Town Clerk on the 7th May in the morning.

I do not agree to the opinion that failure of the Municipality to express an opinion on the matter by the 13. 5. 63 allowed the Government to go ahead with its proposal. I think so because
30 the Council was not given a reasonable time to express reasoned views to Government.

The letter I received on 11. 6. 63 referred only to the appointment of 6 persons as Municipal Councillors. That letter was signed by the Minister but the persons were appointed by the Governor.

The letter of the 18. 6. 63 had been communicated to new councillors prior to the meeting of the 3. 7. 63. I gave them on 28. 6. 63 the purport of that letter at a meeting of the Council. Copies of the letters of the 2. 5. 63 and 18. 6. 63 were annexed
40 to the agenda sent out to councillors on the 29. 6. 63 for the meeting of the 3. 7. 63.

My new Council and I, we were determined to study the question of the extension of the town. Most definitely, we were doing our best.

I first took legal advice on the case which is now before this Court on the 17th or 18th August, 1963, after the issue of the Proclamation i. e. 3 or 4 days afterwards. I personally went to see the legal adviser of the Corporation with the file of the question.

10 I obtained the opinion of the legal adviser on the 4. 9. 63. Prior to the 14. 8. 63 - date of the Proclamation - I never considered that I would defeat the Government measure by refusing to express my views.

Case closed for Plaintiffs

Evidence for Defence

Defendant's
Evidence

EVIDENCE OF FELIX LAVENTURE

Félix
Laventure

Examined by M. Latour-Adrien

Examination

From 1959 until quite recently, I was the Minister of Local Government.

20 When it was proposed to extend the limits of the town of Port Louis, the Governor in Council had, in law, to consult the local authorities concerned. As Minister of Local Government, I was entrusted with the task of writing to those local authorities about the proposal. I did write to them.

30 My Ministry wrote about that proposal to the Municipal Council. In that letter dated 2. 5. 63 - Exhibit 1 - I informed the Municipal Council of the proposal to extend the limits of the town of Port Louis. I set out, in the map attached to that letter, the areas which it was intended to include within the new limits of the town. Unfortunately there was an error in that letter. At least 2 regions: Vallée Pitot and Bell Village administered by Village and District Councils were omitted from that letter. But the map attached to that letter - Exhibit 1A - showed clearly what was in Government's mind.

In the letter of the 2. 5. 63, the areas which it was proposed to include within the town were set out. Those areas were indicated on the map attached to that letter - Exhibit 1A.

As to the 2 areas: Vallée Pitot and Bell Village, I informed the local authorities that those 2 areas were to be included within the new limits.

On the 7. 5. 63 at a meeting of the Legislative Council, I said very clearly that Government intended to alter the limits of the town of Port Louis in order to make it co-terminous with the district of Port Louis.

In a letter to the Town Clerk signed by the Principal Assistant Secretary of the Ministry of Local Government that proposal was made quite clear. Exhibit 3 is the letter I was just referring to. To Exhibit 3 was attached the map, Exhibit 3A, showing all the areas to be included. The omission of the 2 areas: Bell Village and Vallée des Pretres was an error of the Government Surveyor who is responsible to another Minister.

In both those letters, besides mentioning the areas to be included within the new Port Louis town, I requested the Municipal Council to submit its views on the question by a certain date. I sent a letter similar to Exhibit 1 to each of the Local Government Authorities - Urban and Rural - e. g. the Municipality, the District Council of Pamplemousses and Rivière du Rempart, the District Council West - Plaines Wilhems and Black River - and 6 Village Councils in the North - Roche Boix, Ste. Croix, Vallée des Pretres, and in the West - Tranquebar, Cassis and Grand River North West. All those local authorities were concerned in the Government's proposal.

Village Councils are controlled by District Councils as regards finance. Vallée Pitot, Bell Village were administered directly by District Councils. The Village Councils administered the areas mentioned in my letter.

On the 13. 5. 63, I received no reply from the Municipality. I saw letter - Exhibit 2 - addressed to the Principal Assistant Secretary and signed by the Town Clerk, on 13. 5. 63. Before receiving that letter on the 13. 5. 63, my Ministry received no phone message to the effect that the Municipal Council would not be able to give their views on the question by the 13. 5. 63. I came back from Rodrigues on 13. 5. 63 when I saw the P. A. S. and asked for the file on the matter. There was nothing in that file about any phone message or reply from the Municipality re. the proposed alteration of the boundaries.

In the letter - Exhibit 3 - the P. A. S. of my Ministry asked for a reply on the proposal by the 6. 7. 63. That letter was sent on the strict instructions of the Governor in Council. Everything written, said or done on that matter by my Ministry was on the instructions of the Governor in Council.

According to the letter of the 2. 5. 63, the Municipal Council had to reply by the 13. 5. 63. In the letter of 18. 6. 63 from my Ministry, the delay for the reply was extended to the 6. 7. 63.

That extension of delay was granted by the Governor in Council.

As from the 11. 5. 63, there was no quorum at the Municipal Council. The Governor in Council was bound in law to appoint new councillors. Government's proposed alteration of boundaries had to be considered by the new council. Government was satisfied that the former Municipal Council had every opportunity to submit its views on the proposal but the new Municipal Council too had to look into the matter to submit its views.

10 Exhibit 4 - dated 8. 7. 63 - is a letter addressed to me by the Mayor. In that letter was included a list of various matters.

According to Government some of the matters listed in Exhibit 4 were the responsibility of the Governor in Council. As for the other questions, replies to them would have been given after the extension of the town. About matters not depending on Government policy, the Municipality was, in my view, in as good a position as the Ministry to obtain the information sought from the Ministry. Those matters are: population, scavenging, for instance.

20 The Municipality could have written for information to the District Councils or the Village Councils concerned. If the Ministry had to send such information as required, it would have had to seek it from the Director of Statistics, the Village Councils, the District Councils and that would have taken more time. I am referring to information sought on matters not depending on Government policy.

To the letter of 8. 7. 63, a reply was made on the 11. 7. 63 - Exhibit 6.

The Mayor was informed that the points raised by him would be considered by Government but the Municipality was asked to submit its views on Government's proposal.

30 In the letter - Exhibit 5 - mention is not made of an application for an extension of delay.

The Municipality might have asked for an extension of delay. I cannot ascertain from my files that such extension of delay was asked for.

The final delay for the submission of the views of the Municipality had expired the day before the date of the letter - Exhibit 8.

Another letter received by the Ministry was dated the 29. 7. 63.

40 By the letter dated 13. 8. 63 - Exhibit 10 - my Ministry informed the Municipality that a Proclamation was to be issued;

an advance copy of that Proclamation was attached to that letter.

In a paragraph of that letter it is said that it had not been possible to meet the wishes of the Municipality.

Q. What is meant by "the wishes of the Municipality"?

10 A. As from the start, the Municipality was against any extension of the limits of the town. After all the delaying tactics used by the Municipal Council, Government in Council concluded to tell the Municipal Council that the Government had taken the decision to extend the limits of the town of Port Louis.

There was no meeting of the Municipal Council between 2. 5. 63 and 11. 5. 63, when the Councillors resigned, leaving the Municipal Council without a quorum. There was therefore no meeting of the Municipal Council to discuss that most important matter.

Cross-
Examination Cross-Examined by Sir André Nairac

I was Minister of Local Government from 9. 4. 59 - 11. 11. 63. Questions of extension of the town limits were part of the matters coming under my Ministry.

20 I directed my P. A. S. to write the letter of the 2. 5. 63 - Exhibit 1 - but I myself was directed by the Governor in Council to tell the Municipal Council that the Government intended to alter the limits of the town of Port Louis.

That question was considered in Executive Council. Normally, the Ministry concerned is responsible for putting up matters for discussion by the Executive Council. Usually the Ministry has the initiative for putting up matters before the Executive Council but it was not so in this particular case.

The extension of the limits of the town of Port Louis was a matter initiated by the Governor in Council.

30 I was first informed in Executive Council by the Governor in Council that it was proposed to alter the limits of the town of Port Louis.

Government first studied the matter which was next studied by my Ministry on directives received.

I visited the whole district of Port Louis after discussing the matter with my Executive Council colleagues. I visited Port Louis district before I had letter - Exhibit 1 - written.

I had the matter also examined in my Ministry.

Q. Did your Ministry examine the financial implications of the proposed extension of the limits of the town of Port Louis?

A. Yes, We had to.

Personally, I wanted to know what would be the extra expenditure involved for Government.

Q. Did your Ministry examine, prior to writing letter of 2. 5. 63, what financial implications would result for the Municipality from the proposed extension of the boundaries of the town of Port Louis?

10 A. Those financial implications, in my view, were related to the grant system.

I wanted to know what would be those implications as far as grants were concerned in case the limits of the town of Port Louis were extended. Government pays grants to Urban and Rural Council. After extension the capitation grant would be increased from Re. 1 paid to Village Councils to Rs 1. 65 paid to Urban Council.

It is quite impossible before the extension is actually carried out to fix the amount of grants payable by Government.

20 Besides capitation grants, there are Treasury grants, modernization grants, salary grants, sanitation grants and so on.

My Ministry studied the question of the eventual population in the wider Port Louis.

Q. 24 re. population - put by the Municipality was one of the points my Ministry had to study. The population figure varies yearly. I knew there was to be an increase in that population figure following the extension of the town limits but I did not know exactly what the new population figure would be.

AFTER RECESS

(Cross Examination continued)

30 This morning in Court I referred to the question of the extension of the town limits as to a very important matter.

Government in its discretion had decided that it was an important matter. That is all I have to say about the importance of that matter.

I considered the matter important because Government's decision to consider the matter important was enough for me to consider it so.

According to the plan (1A) the area of the town of Port Louis before the Proclamation was 1540 acres. According to the letter of the 18. 6. 63, that area was to be increased a second time by 916 acres, acreage of Vallée Pitot and Bell Village, therefore the size of the town of Port Louis was to be increased more than five fold.

10 The intention of the Government was to make the town of Port Louis co-terminous with the district of Port Louis. I agree that such increase would have financial implications for the Municipality. In principle, I agree that in order to decide whether it was good or bad so to increase the size of Port Louis, it was necessary to find out what the financial implications would be for the Municipality.

Most of these financial implications would have to be considered by Government after the extension of the limits of the town.

Government would help the Municipality, as it had done generously in the past, after examining all the points raised by such extension.

20 In my letter of 2. 5. 63, when I requested the Town Clerk to let me have the views of the Municipality on the proposed extension all I expected from the Municipality was an answer indicating whether they favoured such an extension or they were against an extension or whether they had any suggestion as regards the areas they wished to see included within the limits of the town of Port Louis.

The Municipality had ample time to submit their reply. They might make suggestions.

30 I have been Mayor of Port Louis and Municipal Councillor. Speaking from experience, I can say that the Municipal Councillors had ample time to give to Government an answer on that particular question.

It was not necessary for the Municipality to look into the financial implications of the extension before making an answer because those questions would be looked into by Government as they arose.

In 1960, there was a question of a proposed minor extension of the limits of the town of Port Louis. The letter - produced as Exhibit marked 21 - was sent on the 11. 5. 60 by the P.A.S. to the Municipality.

40 Exhibit 21 shows that the Municipality is able to supply the information it sought from the Ministry.

Q. Do you consider that the questions asked in that letter were right and proper to make up your mind whether to approve of that small extension or not?

A. Yes, I wanted to have all sorts of information before submitting to Government the proposal of the Municipal Council.

In my view, I had to submit to Government all sorts of information whether relevant or irrelevant. I considered that I had to submit information which would help Government to come to a decision.

10 I did not have in my Ministry in 1963 information as to the estimated increase in Revenue and Expenditure as regards Scavenging, Lighting, Sanitation, Public Works, Street Maintenance, etc.

In fact, those questions were included among the questions put to me by the Municipality.

The Municipality was granted more than Rs 100,000 - to supply water to Roche Bois and that sum was given by instalments.

Q.Q. 24 - 44 - Among the questions put to me by the Mayor in his letter of the 8.7.63, concerned Revenue and Grants in aid which would result from the extension of the limits of the town.
20 The Municipality knows that there is no cadastre of buildings outside townships.

I had not the answers to those questions.

Immovable properties outside townships have been valued by the Government valuer for income tax purposes. The valuation for income tax differs from that for House Rate.

The Municipality could have obtained from District Councils and Village Councils the information it sought from my Ministry. For, from District Councils, the Municipality could have obtained information re. number of restaurants, cleaning and maintenance of streets, scavenging. Health is the responsibility of Village Councils in some cases. Funds are allocated to District Councils which in their turn re-allocate them to Village Councils for various purposes.
30

My Ministry was concerned 'inter alia' with Village and District Councils which are autonomous bodies. They submit their estimates which the Ministry approves or disapproves.

My Ministry had all information about the financial situations of Village and District Councils.

40 But the scavenging is sometimes performed by the Ministry of Health. The Municipality would have had to go to the Ministry

of Health and to District Councils for information about scavenging.

Streets are mainly dealt with by the Ministry of Works in the areas of Village Councils.

The Municipality, for information about streets, would have had to go to the Ministry of Works.

I still think that between the 2. 5. 63 and 13. 5. 63 the Municipality could have obtained the information and been able to reply to the Ministry. But it was not necessary to have information on all those items. I agree that the interval between 2. 5. 63 and 13. 5. 63
10 included 4 'dies non' - 2 public holidays and 2 Sundays.

By the letter of the Ministry of the 18. 6. 63, the Municipality had up to the 6. 7. 63 to make a reply. From the 4. 5. 63 to the 13. 5. 63 I was in Rodrigues on official visit.

Q. Could you tell me why, given the facts that the Minister in charge was in Rodrigues up to the 13. 5. 63, and that the Government eventually decided on setting the time limit at 6. 7. 63, why was that time limit of the 13. 5. 63 imposed in the 1st instance?

A. I think that the Government was satisfied that the Municipality would be in a position to answer by the 13. 5. 63.

20 Q. What satisfied the Government that that was so?

A. That was in the Government's discretion.

The Municipality was using all sorts of tactics. The Government was satisfied that it was so. The Government wanted to have the views of the Municipality on the proposed extension, whatever those views might be. Government wanted any kind of views from the Municipality.

The 6 new Municipal Councillors were appointed by the Governor.

I wrote to the Mayor on 18. 6. 63, hoping that my letter
30 would be considered by the new Municipal Council. I hoped that the new Municipal Council would give an answer on the proposed extension. I had no reason at all to say that the new Municipal Council was trying to avoid answering the question put by Government.

In my reply sent on the 11th July to the Mayor's letter of the 8th July, I repeated my request for the views of the Municipal Council on the proposed extension. I did not answer any one of the questions put by the Municipality for the reasons I have already given.

To Q. 54 re. the setting up of a Commission of Enquiry.

I did not know the answer, I would not have favoured a Commission of Enquiry.

The setting up of a Commission of Enquiry was never considered by Government and I as Minister would never have been in favour of such a Commission.

Q. Will you agree with me that on the answers to many of the questions of policy put to Government depended the question of whether the Municipality could or could not administer the proposed new town?
10

A. No.

The matter of additional staff would be considered by Government after the extension.

The Government would see what to do after the limits had been extended. Government would consider those questions as they arose after the limits had been extended.

Q You consider that the Municipality should have replied, agreeing or disagreeing with the proposed extension without caring to find out how they could manage afterwards if the limits were extended?
20

A. The Mayor was able to submit the views of the Municipal Council because he had 2 important factors which were supplied to the Council: The area and the map of the district of Port Louis. Government would have the views and suggestions submitted before coming to a decision.

The Ministry had told the Mayor since 19. 7. 63 that no further extension of time would be given.

On the 18. 6. 63, a letter was sent by the Ministry to the Town Clerk in which he was asked to submit the views of the Municipal Council by the 6. 7. 63.
30

On 19. 7. 63, I replied to the letter of the Municipality of the 15. 7. 63.

In the letter of 11. 7. 63 - Exhibit 6 - the Ministry said to the Municipality that the Government would consider the points raised by the Municipal Council.

I do not agree that the fact of telling the Municipality that the points raised by the Council would be considered, implied that the Municipal Council would never get an answer to those questions.

Government in its discretion decided that those questions would be considered. It was at the request of Government that I answered as I did. All the letters of the Municipality on the question were submitted to Government which came to a decision.

The matter of the extension of the limits of the town of Port Louis was discussed in the Executive Council. After the discussion with Government in Executive Council, I considered that there was no necessity for me to discuss the matter with the Municipality.

10 By Court. Government examined all the points and afterwards directed me to answer to the Municipality as I did.

By Sir André Nairac, Q. C.

I am afraid it is not true to say that the Government had reached the decision to extend the town limits irrespective of what might be the views of the Municipality.

The Municipal Councillors should have studied the matter instead of resigning.

The Municipality by its questions was using delaying tactics. I was always polite when I wrote to the Municipality.

20 Q. What did you mean by saying: "it has not been possible to meet the wishes of the Municipality"?

A. It was obvious to Government that the Municipality was against any extension of the town.

It was Government's decision.

It was an answer from Government through my Ministry.

Q. I put it to you that the words: "It has not been possible to meet the wishes of the Municipality" refer to the lack of reply to the questions put by the Municipality and not to the desire of the Municipality not to extend the boundaries of the town?

A. I cannot answer that question. I claim privilege.

30 No re-examination.

No. 18

JUDGMENT OF THE COURT

9th December, 1963

No. 18

Judgment of Their
 Lordships Sir Rampersad
 Neerunjun Chief Justice,
 Michel Rivalland, Senior
 Puisne Judge and J.G. Harold
 Glover, Judge.

9th December, 1963

10 This is an action directed against the Attorney
 General in order to test the validity of a Proclamation
 (No. 12 of 1963) issued by the Governor in Council altering
 the boundaries of the Town of Port Louis in virtue of the
 power conferred upon him by subsection (1) of section 73
 of the Local Government Ordinance, 1962 (Ordinance No. 16
 of 1962).

Before the year 1960 the boundaries of the town of
 Port Louis could only be altered by direct legislative action.
 The Municipality (Amendment) Ordinance, 1960, (Ordinance
 No. 10 of 1960) delegated this power to the Governor in Coun-
 cil who could only act on the recommendation of the Municipal
 Council. The Local Government Ordinance, 1962, intituled -
 "An Ordinance to consolidate and amend the law relating to
 Local Government" - provides as follows in subsection (1)
 of section 73:

20 " The Governor in Council may by Proclamation
 alter the boundaries of any town, district or village,
 after consultation with the local authority concerned. "

The principle regarding the alteration of the boundaries
 of any town was thus set down by the legislature and the imple-
 mentation of that principle was left to the Governor in Council
 in the exercise of his executive authority. After an exchange of
 correspondence between the Municipality of Port Louis and the
 Minister of Local Government who was acting on behalf and on
 the directions of the Governor in Council, Proclamation No. 12
 30 of 1963 dated the 14th August, 1963, was issued which, inter alia,
 extended the boundaries of the local government area of the town
 of Port Louis to coincide with the limits of the district of Port
 Louis. The latter part of the preamble to this Proclamation
 recites:

" AND WHEREAS it has been decided, after consul-
 ting the local authorities concerned, that the boundaries
 of the towns of Port Louis, Curepipe, Beau Bassin - Rose
 Hill and Quatre Bornes as defined in the first schedule
 to the Local Government Ordinance, 1962, be altered. "

40 The plaintiffs seek a declaratory judgment to the effect
 that Proclamation No. 12 of 1963 is ultra vires and null and
 void to all intents and purposes in so far as it relates to the extension

of the boundaries of the town of Port Louis for the reasons averred in paragraphs 21 and 22 of the statement of claim, namely, that they were not given sufficient time and a reasonable opportunity to express their views on the proposal communicated to them by the Governor in Council regarding the extension of the boundaries of the town of Port Louis and that there had been no "consultation with the local authority concerned as provided by law". The defendant denied those averments and added that the Municipal Council could in the circumstances have given an affirmative, a
 10 negative or a qualified reply to the proposal, and traversed the allegation that there had been no consultation as required by law.

The history of the events which led to the issue of Proclamation No. 12 of 1963 is briefly the following: On the 2nd May, 1963, the Ministry of Local Government wrote to the Town Clerk of the Municipality informing him that Government proposed to alter the boundaries of the town of Port Louis and requested the Municipal Council to submit their views to the Minister on the Government proposal by the 13th of May. A map of Port Louis showing the proposed alterations was attached to the letter. This matter, clearly,
 20 was considered by the Government to be of some urgency. The letter had for effect that 11 out of the 16 Municipal Councillors resigned their membership on the 11th May, 1963, leaving the Municipal Council without a quorum for the transaction of business. The Court was told by the Mayor of Port Louis, a member of the majority party, the same political party to which belonged the 11 councillors who resigned, that his colleagues resigned because they thought that they had no mandate from the electorate to decide upon the major issue involved in the proposed extension of the boundaries and that the decision to resign was arrived at before the
 30 11th of May. It must be observed here, in fairness to the Mayor, that although he himself thought that he had no such mandate from the electorate yet, he agreed, as had been previously decided, to stay in office in order to carry on the day to day business. He gave in evidence the following explanation of the attitude he took later: "when I saw that by passing a law with retrospective effect and thus preventing the anticipated election or referendum and that Government was proceeding with the proposal to alter the boundaries of the town of Port Louis, I felt it my duty to do my best after looking at all the facts of the question to try to express my views on the
 40 matter. Even though I have no mandate, I consider it my civic duty as Mayor of Port Louis to study the question."

On the 13th May the Town Clerk informed the Ministry that he was unable to give the views of the Municipal Council as the matter could not be discussed before the 11th of May date on which the 11 councillors resigned. On the 11th June the Governor acting in the exercise of the powers conferred upon him by section 46 of the Local Government Ordinance, 1962, as amended by the Local Government (Transitional Provisions) Ordinance, 1963, appointed 6 Municipal Councillors to fill 6 of the 11 vacancies,
 50 thereby restoring the quorum of the Council. On the 18th June a

further letter from the Ministry was addressed to the Municipal Council referring to the discrepancy which had occurred in the letter of the 2nd May by the omission of two areas which it was proposed to include in the new boundaries of the town of Port Louis in accordance with the intention of the Government to make the new boundaries of the town coincide with those of the district of Port Louis, and requesting an expression of views by the 6th July. An amended map was enclosed. After the receipt of the second letter, the Town Clerk prepared a number of notes on the procedure obtaining in the United Kingdom for the alteration of local government areas and it is evident that these notes inspired the Mayor in the guidance he gave to his colleagues regarding the proper procedure which should be adopted when considering the proposal of the Governor in Council as conveyed in the letter of the Ministry. On the 3rd July, a committee of the whole Council discussed the Minister's letters and, as a result, the Mayor wrote to the Minister and quoted an extract from the United Kingdom Local Government Commission Regulations, 1958, which he said, could help to give the Minister an idea of what is considered in the United Kingdom to be a normal and responsible approach to the important question of local Government administrative areas. He listed what he considered to be the main points on which the Municipal Council would wish to be enlightened before being in a position to consider the proposal. The list covered fifty-four items on multifarious subjects connected with the administration of the township and also included questions relating to the policy of the Government, ending with an enquiry whether the Government intended to set up a Commission of Enquiry to ascertain the wishes of the inhabitants. On the 13th July the Ministry called the attention of the Municipal Council to the fact that their views had not been submitted by the 6th of July and asked for their early submission with an intimation that it would not be possible to wait later than the 18th July. This letter must however have crossed the letter of the Municipal Council asking for further information as on the 11th July, the Ministry wrote again to the Mayor to request that the views of the Municipal Council be submitted adding that the points raised in the Mayor's letter of the 3rd July would be considered by the Government. In a letter dated the 15th July addressed to the Minister, the Mayor maintained that the Municipal Council could not express their views unless they were given the information already asked for. On the 19th July the Minister informed the Mayor in writing that no further extension of the delay could be granted and by a letter dated the 29th July the Mayor on behalf of the Council recorded their strong objection to any action being taken by Government before the Municipal Council had expressed their views and again urged the Minister to supply the information required. Eventually on the 13th August the Minister informed the Mayor that the Governor in Council, after careful consideration, had decided to issue a Proclamation extending the boundaries of the town of Port Louis. As mentioned earlier the Proclamation now impugned was issued on August, 14th, 1963.

Before the hearing I intimated to counsel that the Court wished to be enlightened on certain points i. e. the jurisdiction of the Court to give "a declaratory judgment", its power to decide on the validity of an act of the Executive and its discretion, if any, to make or refuse to make a declaration. The Court is indebted to learned counsel on both sides for their assistance and for their exhaustive researches in the case law on the various points raised. I may mention here that they are agreed that this court has the power in its judicious discretion to give declaratory judgments. This is the

10 first application made to the Supreme Court of this Colony for a "declaratory judgment" and two important questions of principle are involved: the first relates to the right of the subject to apply to the Court for relief against alleged executive aggression where no specific provision exists for judicial control; the second is whether in cases where there is no cause of action recourse can be had to the procedure traced out in Order 25 Rule 5 of the English Rules of the Supreme Court, as our own Rules are silent on the point, and if so, within what limits, bearing in mind that it could conceivably lead to an abuse of the process in the Court.

20 If Order 25 Rule 5 is entirely procedural would it conflict with the substantive and fundamental provisions of Art. 4 of the Civil Code? If the first part of the rule confers a jurisdiction derived from the Chancery Act of 1852, is this Court invested with the same power in view of section 16 of the Courts Ordinance which, it might conceivably be argued, conferred on this Court the equitable powers possessed by the High Court of Justice at the time the Courts Ordinance was originally enacted? All these questions are not free from difficulty and are left open. Having regard to the nature and importance of the issue raised in this case on the merits, the likeli-

30 hood that at some future and foreseeable time the same issue could be competently mooted before this Court in an action directed against the plaintiffs for failure to comply with the obligations arising from consequential provisions of the Proclamation impugned, and the attitude of the parties on the questions regarding the judicial control of executive action, the Court has deemed it proper to dispose of this matter finally, so far as it is concerned.

The question I have to decide is this: Is the Proclamation (No. 12 of 1963) invalid for the reason that the Governor in Council was not authorised to exercise the power conferred by s. 73(1) of the

40 Local Government Ordinance, 1962, unless he had complied with the condition precedent therein laid down, namely that the power could only be exercised after consultation, as understood by law, with the Municipal Council?

Mr. A. Raffray, Q.C., for the plaintiffs submitted that, in the circumstances of this case, there had been no consultation as understood by law, that consultation meant that "on the one hand, sufficient information must be supplied to the local authority to enable them to tender advice, and, on the other hand, a sufficient

opportunity must be given to the local authority to tender that advice". Learned counsel contended that the consultation required should have been of a nature and extent comparable with that which took place in the cases of *Fletcher and others v. Minister of Town and Country Planning*, 1947 2 All E.R. 496; *Rollo and anor. v. Minister of Town and Country Planning*, 1948 1 All E.R. 13; and *In re. Union of Benefices of Whippingham and East Cowes*, 1954 A.C. 245.

10 In the first two cases the Minister of Town and Country Planning had taken action under s. 1(1) of the New Towns Act, 1946, which empowered him "after consultation with any local authorities who appear to him to be concerned" to order that an area of land should be developed as a new town. Mr. Raffray drew our attention to the nature of the "consultation" which had taken place in those cases, and observed that: (a) there had been a full enquiry; (b) the Minister had held a meeting with the local authorities concerned and outlined the main factors which related to the choice of the site of a new town; (c) the local authorities had been informed of the
20 general nature of the proposal and what the Minister intended to bring about; (d) discussion had been invited and a number of questions put had been answered by the Minister; (e) that a Press notice had been issued stating what had happened; (f) a second meeting had been held between the representatives of the Minister and the local authorities at the latter's request to explain the considerations which the Minister had in mind in arriving at the boundaries of the area. Learned counsel finally said that it was on those facts that the Court held that there had been consultation. In the third case the question arose whether there had been sufficient consul-
30 tation in compliance with section 3(1) of the Pastoral Reorganisation Measure Act, 1949, which provided that recommendations relating to the diocese could be made "after consultation as far as is practicable" by the Pastoral Committee with the parochial church councils concerned. The facts of the case show that a full enquiry was made and it was on those facts that the Court held that there had been sufficient consultation.

The contention of Mr. Raffray that the requirement as to consultation in section 73(1) of the Local Government Ordinance, 1962, meant a full investigation to an extent comparable with the consultation which took place in the cases above cited is open to
40 several objections: Firstly, the nature of the consultation required by section 73(1) of the Ordinance must be determined with reference to its context and according to the intention of the legislator in enacting the Ordinance. "It is axiomatic that, to follow the words used by Lord Radcliffe in *A.G. for Canada v. Hallet and Carey Ltd.*, 1952 A.C. p. 449, the paramount rule remains that every statute is to be expounded according to its manifest or expressed intention. It is no less axiomatic that the application of that rule may result in identic phrases receiving quite different interpretations according to the tenor of the legislation under consideration. As an apt

illustration of such a result it is not necessary to go further than *Liveridge v. Anderson*, 1942 A.C. 206, and *Nakkuda Ali v. M.F. de S. Jayaratne*, 1951 A.C. 206, in which cases the words "reasonable cause to believe" and "reasonable grounds to believe" received quite different interpretations" (per Sachs J. in *Commissioners of Customs v. Cure & Deeley*, 1961 3 All E.R. p. 657). The decision in the cases of *Fletcher and Rollo* (*Supra*) made it clear that the extent of the consultation was such as was required by the particular section of the law imposing that requirement. The same observation applies to the *Whippingham* case. Secondly the context of the New Towns Act, 1946, as well as that of the Pastoral Reorganisation Measure Act, 1949, gives a sufficient indication of the extent of consultation required since it specified the various steps in the procedure, and matters which should be taken into consideration. The New Towns Act, 1946, for example, contains in the First Schedule certain provisions relating to the preparation of a draft order, to a statement by the Minister on the proposal, to the publication of the draft in the Press, to a public enquiry in case of objections made to the proposal, and to other matters, giving clear indication of the ambit of the investigation required before the making of the order. Thirdly there is no right of appeal against an order made by the Governor in Council under section 73(1) of the Local Government Ordinance, 1962, whereas a specific right of appeal to the High Court is given to any person aggrieved by an order made under the New Towns Act 1946 (Appendix to New Towns Act 1946, s. 16 Halsbury - Statutes Vol. 25 p. 457) and there is a specific right of appeal to the Privy Council from an order made under the Pastoral Reorganisation Measure Act 1949 (The Privy Council Appeals Act 1832 - Halsbury Statutes - Vol. 2 p. 174). On a question put by the Court, Mr. Raffray submitted that the absence of a right of appeal in the present matter did not affect the main issue as the right of appeal related only to a procedural matter as to how the court could take cognizance of this case and decide on the validity of the executive act in question. In my view, the existence of a right of appeal against a decision of the Executive Authority has much more import and is not a matter of mere procedure. In the first place, where a right of appeal is given against an order, the Court has more latitude to enquire into the reasonableness of the executive act and to examine the material on which the justification for the act is based. In the second place, it also affects the question of discretion, for if there is no right of appeal the control of the Court is restricted to the question whether the Executive has acted within the four corners of the enabling power. In this connection we quote the following from D. L. Keir F. H. Lawson - *Cases in Constitutional Law* - 4th ed., 1954 - District control of Public Authorities, p. 262:

" Any person or body exercising a jurisdiction - and all authorities exercising discretionary powers are considered to exercise a jurisdiction - must first decide for himself

whether he possesses the jurisdiction he is about to exercise. In other words, he has jurisdiction to determine the limits of his jurisdiction: it could hardly be otherwise. Moreover, if his decision generally is subject to appeal, his decision on the limits of his jurisdiction is subject to appeal also. The really difficult and important question is whether his decision to assume or decline jurisdiction is subject to control if he is subject to no appellate jurisdiction. Suppose he is given a discretion to be exercised in a certain kind of situation of fact, and he finds erroneously, whether by mistake or by design, that the necessary facts do or do not exist. Can his finding of "jurisdictional fact" be reviewed by the Courts? Similarly, if while finding the facts correctly he is wrongly led to assume or decline jurisdiction because he has mistaken the law applicable to the facts, can his finding of "jurisdictional law" be reviewed?

The answer to these two questions, which cannot easily be separated in practice, turns on the construction of the enactment, conferring the power. The enactment may have given the person or body an uncontrolled discretion, not merely to decide the case but also to decide the limits of its discretion. "

We also read from Justice and Administrative Law by W. A. Robson, 1951, 3rd ed., p. 529:

"There is an immense difference between the limited scope and effectiveness of the supervisory jurisdiction and a statutory right of appeal to a higher tribunal. A statutory right of appeal confers a right to a rehearing of the whole dispute, and the appellate tribunal are not confined to the reasons which have been given by the court below as the ground of their decision. They can consider the controversy entirely afresh, both as regards the facts and the law. They can substitute their own opinion for the decision taken by the lower judicial body. "

For a proper appreciation of the problem before the Court it is essential to understand the nature of the condition to be fulfilled before the Governor in Council exercises the power to issue a Proclamation altering the boundaries of a local government area. The decision to alter the area is conferred on the Governor in Council, and the time as well as the expediency for doing so is to be determined by him and not by the local authorities concerned. What the law requires as a condition precedent is that such authority be consulted. No procedure is laid down for such consultation and no other conditions are laid down for the exercise of the power. The law as it stood in 1960 left the initiative, as far as Port Louis is concerned, to the Municipal Council without whose recommendation the boundaries of the town could not be altered. The law as it stands

after the enactment of the Local Government Ordinance, 1962, does not require the Governor in Council to act in accordance with the wishes of the Municipal Council. Even if the Council had been given all the time and opportunity that they claimed they were entitled to and had then made serious objections to the proposal, the Governor in Council would still have been at liberty to disregard the views of the Municipal Council. As the Governor in Council is not precluded from enquiring from other sources then a situation might even arise where being fully informed as to the merits of the case for extending a local government
 10 area, his obligation to consult the local government authority concerned would become a mere formality.

The case before us is not that there has been no consultation at all but that there has been no sufficient consultation, in other words, that the Governor in Council did not make a sufficient enquiry from the Municipal Council regarding the proposal to extend the limits of the town of Port Louis. The rule of law as regards the validity of the exercise of powers delegated by the Legislature is enunciated in Hart's - Introduction to the law of Local Government and Administration - 6th ed. , p. 307 in these words:

20 " The exercise of a power to make rules, regulations, or orders may be ultra vires in either of two ways. First, the rules, etc. , may in themselves go beyond the power under which they purport to be made, as where they attempt to deal with a different subject-matter or to create rights or impose duties which are not authorised by the power from which they must be derived.

Secondly, the Act conferring the power may make its exercise subject to a prescribed procedure being followed or a condition precedent being satisfied. In such cases the
 30 power is really conditional, and only becomes exercisable when the specified procedure or condition has been observed. But care must be taken to ascertain that a power is thus conditional; if a statute provides that when a specified event happens, a Minister may make regulations, the power is conditional and no regulations can validly be made until the event has occurred. But if the Act declares that a Minister may make regulations when he is of opinion, or is satisfied that a certain state of affairs exists, it is imposing no true condition upon the exercise of the power of delegated legisla-
 40 tion, since it is impossible for the courts to attempt to substitute their own opinion for that of the Minister or to inquire further into whether he held the required opinion when he made the regulations. "

(See also Craies on Statute Law - 5th ed. , p. 277 et seq). This statement of the law is supported by a number of decided cases the most important of which is that of Robinson and others v. Minister of Town and Country Planning, 1947 1 All E.R. 851. In

that case the Minister of Town and Country Planning after complying with certain procedural requirements made an order under s. 1(1) of the Town and Country Planning Act, 1944, declaring that land in an area of extensive war damage should be subject to compulsory purchase. The question arose whether the Minister before making the order had made a sufficient enquiry and had before him sufficient material on which to take a decision. The court decided that it had no power to control the executive decision of the Minister. We reproduce below somewhat extensively a number of observations from the judgment of Lord Greene M.R. which may equally well be made regarding the matter before us:

" I will now explain as best I can the reasons put forward on behalf of the applicants for saying that the order was invalid. Under sub s. (1) of s. 1 of the Act, it was said, the Minister's power to make an order only arises when he is "satisfied" that for the purpose stated it is "requisite" that the area comprised in the order should be laid out afresh and redeveloped as a whole."

But with regard to the other requirements specified in the sub-section it is said that the Minister can only be "satisfied" if at the time of the order he has before him evidence sufficient in law to entitle him to be so "satisfied."

The first thing to notice is that the order of the Minister under sub s. (1) is in no respect an order approving or confirming any proposals of the local planning authority as to fresh layout or redevelopment. The approval or confirmation of such proposals is not in any sense the issue submitted to him. Whether he approves or disapproves of any such proposals in whole or in part he may still make an order since the only thing of which the sub-section requires him to be satisfied is the requisiteness of laying out afresh and redeveloping as a whole an area of war damaged land (with or without contiguous or adjacent land) for the purpose of dealing satisfactorily with extensive war damage. He may well be satisfied as to this whatever the planning authority may propose as being its actual plans at the time of the application.

It is true that by sub s. (6) of s. 1 the planning authority must indicate the manner in which it intends to lay out the land and the manner in which it is intended that it shall be used, but this indication is not for the purpose of obtaining the approval of those intentions. It can only be for assisting the Minister in coming to the conclusion which

sub-s. (1) requires him to come to before making an order, viz. , the requisiteness of laying out afresh and redeveloping the land for the purpose of dealing satisfactorily with extensive war damage, or, to quote the language of sub-s.(7) 'for enabling the expediency of the making of an order to be properly considered' . "

.....

10 I do not mean that it is not competent to the Minister to change his mind as the result of matters ascertained in the course of dealing with the application and objections thereto. Theoretically, he could, no doubt, do so, although it is for obvious reasons highly improbable that he would, since it is not to be expected that he would lightly have allowed himself to be satisfied in respect of an area when in his position as Minister he must clearly have been able to procure for himself all relevant material and command all necessary expert advice. The point, however, is not whether theoretically he might change his mind, but whether he would be bound to do so, or rather, whether the court 20 would be bound as a matter of law, as the applicants say, to treat him as not having been satisfied for the purposes of sub-s. (1) unless he was prepared to disclose to the Court his reasons for being satisfied, with the consequence that the Court would be left to judge whether in those reasons was to be found sufficient evidence to support the order.

.....

30 In making his decision, he may obviously be guided by his own views as to what is "expedient" for the purpose of dealing "satisfactorily" with extensive war damage, assisted, of course, by any advice which he may obtain from his own staff or from outside advisers, but the decision and the principles and policy which lead him to it are such as commend themselves to him. This cannot be affected by the fact that he decides to order a public inquiry. The object of such an inquiry under sched. 1 can only be to elucidate matters upon which he desires to be better informed. Nothing that is said or done at it can bind his discretion although it may have some bearing on the question of bona fides. In exercising his discretion he cannot be confined to the evidence given at the inquiry. Such matters form only part of the considerations which he is entitled to take into account. 40 He may have and is entitled to have present to his mind his own views as to general policy as well as material acquired in a purely executive capacity, such as reports and opinions obtained from sources within or outside the Ministry.

.....

Further, the suggestion that in such a case as the present the Minister is bound to fail before the Court unless he leads evidence as to the materials which he has before him over and above those used or given in evidence at the inquiry is, in my opinion, quite inadmissible.

.....

I am speaking, of course, of the meaning and effect of this particular statute, but the proposition is in general true that a Minister cannot be compelled to disclose to the court material which has come to him in his executive capacity. If this were not so, consequences most detrimental to the public interest would ensue as was pointed out by LORD SHAW in Local Government Board v. Arlidge ((1915) A.C.137). The argument in the present case is, in effect, that, unless the Minister satisfies the Court that he had sufficient material dehors the inquiry to justify his satisfaction, he must inevitably fail, which amounts to saying that he must choose between disclosing at least the general nature of what it might be most detrimental to the public interest to disclose and losing his case.

.....

The inquiry is only a step in the process which leads to that result, and there is, in my opinion, no justification for saying that executive decision to make the order can be controlled by the courts by reference to the evidence or lack of evidence at the inquiry which is here relied on. Such a theory treats the executive act as though it were a judicial decision (or, if the phrase is preferred, a quasi-judicial decision) which it most emphatically is not. How can this Minister, who is entrusted by Parliament with the power to make or not to make an executive order according to his judgment and acts bona fide (as he must be assumed to do in the absence of evidence to the contrary), be called on to justify his decision by proving that he had before him materials sufficient to support it? Such justification, if it is to be called for, must be called for by Parliament and not by the courts, and I can see no ground in the language of the Act, in principle or in authority, for thinking otherwise. As I have already indicated earlier in this judgment, the argument on behalf of the applicants necessarily involves in the last resort substituting the opinion of the court for that of the Minister. Different considerations, of course, apply in a case where a Minister can be shown to have overstepped the limits of his statutory powers, as, e. g., where the conditions in which they may be exercised are laid down in the statute and he purports to act in a case where those conditions do not exist. The applicants' attempt to bring the present case into that category fails, as I have said, on the true construction of the statutory powers conferred. "

The expression "after consultation with the local authority" in section 73(1) of the Local Government Ordinance, 1962, must be read subject to the assumption that the local authority concerned is ready and willing to co-operate in such consultation. As it happened, the Mayor and eleven councillors, all belonging to the same majority party in the Municipal Council had, in my view, already decided to evade the issue. The Minister told the court that he had good reason to believe that all of them were, in any event, opposed to any extension of boundaries. The resignation of the eleven councillors and the attitude taken by the Mayor at the time, on the plea that they had no mandate from the electorate, can only be construed as a most emphatic "no" as reply to the proposal for the extension of boundaries. The Governor in Council was as a consequence fully entitled to proceed with the issue of the Proclamation, for in the circumstances the "condition precedent" had been complied with. Mr. Raffray conceded that "if someone has to be consulted but refuses to answer in spite of the pressing request of the consultant then the consulted has nothing to complain of and that is an end of the matter." The Governor in Council having thus acquired the right to proceed, any further enquiry which he considered necessary was therefore, in my view, within his discretion. It was in his discretion to repeat his request to the Council whatever may have been his reasons for doing so. I must assume that the Governor in Council acted bona fide - and there is no evidence to prove the contrary - when he offered the Municipal Council another opportunity to make such comments or express such views as they might have been prepared to do.

I have already mentioned that in the second episode the Town Clerk and subsequently the Mayor studied the English procedure for the alteration of local government areas. It is this exercise which led in the end to the preparation of the "questionnaire" sent to the Minister. Their effort was no doubt laudable but it proceeded from a misconception of the law, for the legislator in enacting the Local Government Ordinance, 1962, provided a far simpler procedure for the alteration of local government areas than the elaborate system obtaining in the United Kingdom. Recourse therefore to English procedure in order to determine how a consultation should be effected involved a laborious task which our legislator had neither commanded nor envisaged. That "questionnaire" has however the merit that it imparted to the Central Government the difficulties which could, in the opinion of the Council, arise in the event of an extension of boundaries. As a matter of fact the Mayor stated in his evidence when referring to the multifarious questions put to the Minister:

" My purpose was to point out to Government the difficulties the Municipality would have to face in administering the additional areas. Those difficulties might weigh for or against the matter raised by Government after taking every relevant factor into consideration. "

The object aimed at by the Mayor had in fact been achieved, for

the Governor in Council, after leaving it for some time still open to the Municipal Council to express their views, must then have studied, as he stated he would do, all the points raised by the Mayor, and must have been satisfied "after careful consideration", that no further enquiry was needed from the Municipal Council. The Governor in Council had reached the conclusion that there had been sufficient consultation. Evidence of the sufficiency of this consultation is also contained in the preamble to the Proclamation which recited "after consulting the local authorities concerned." In view of the legal principles I have examined earlier I must hold that this court has no power to decide on the sufficiency of the consultation which had in fact taken place on two occasions and I have to add the following remarks based on the judgments of Lord Greene M. R. in the Johnson case (supra), and in the case of Point of Ayr Collieries Ltd. v. Lloyd George, 1943 2 All E. R. 546: It was for the Governor in Council and not for the Municipal Council to decide on whether a situation had arisen for extending the boundaries and on the urgency of the alteration. The extent of the consultation with the Municipal Council was within the discretion of the Governor in Council as was the question whether, at any particular time further consultation was necessary. The Governor in Council was not limited to investigation from the Municipal Council and he was not precluded from enquiring from other sources, so that the enquiry from the Municipal Council could only be such as the Governor in Council deemed necessary. The Governor in Council was not bound to act on the views of the Municipal Council or to require their prior approval. The sufficiency of the consultation was for the Governor in Council to decide and, in my view, this cannot be controlled by the Court the more so that he cannot be asked to reveal the material obtained from other sources and which may have influenced him in coming to his decision. It is for the legislature and not for the court to question the sufficiency of information on which the Governor in Council acted.

There is one final comment I wish to make. The question whether or not the Mayor and his colleagues had a mandate from the electorate to decide on the proposal put to them by the Governor in Council, as stated by Mr. Raffray, is irrelevant to the issue under consideration and is no concern of this Court. What is important is that the legislature had accepted the principle that alterations of boundaries of local government areas might be necessary and had left the decision to the Governor in Council and not to the Municipal Council. Reference may usefully be made here to the case of Thorneloe & Clarkson Ltd. and others v. Board of Trade, 1950 2 All E. R. 245 where the Board of Trade had to consult a substantial number of persons engaged in the Clothing Industry before making a development order under s. 1 of the Industrial Organisation and Development Act, 1947. The Court declined to review the order, and Sellers J. referred to the case of Robinson v. Minister of Town and Country Planning (supra), and quoted the following passage from the judgment of Lord Greene M. R. in Point of Ayr Collieries Ltd. v. Lloyd George (Supra):

" If one thing is settled beyond the possibility of dispute, it is

10 that, in construing regulations of this character expressed in this particular form of language, it is for the competent authority, whatever Ministry that may be, to decide as to whether or nor a case for the exercise of the power had arisen. It is for the competent authority to judge of the credibility of that evidence. It is for the competent authority to judge whether or not it is desirable or necessary to make further investigations before taking action. It is for the competent authority to decide whether the situation requires an immediate step, or whether some delay may be allowed for further investigation and perhaps negotiation. All those matters are placed by Parliament in the hands of the Minister in the belief that the Minister will exercise his powers properly, and in the knowledge that, if he does not do so, he is liable to the criticism of Parliament. One thing is certain, and that is that those matters are not within the competence of this Court. It is the competent authority that is selected by Parliament to come to the decision, and, if that decision is come to in good faith, this court has no power to interfere, provided, of course, that the action is one which is within the four corners
20 of the authority delegated to the Minister. "

(See also Commissioners of Customs and Excise v. Cure and Deeley, 1961 3 All E. R. 641).

In all the circumstances of this case I hold that there was sufficient compliance with the law by the Governor in Council before he exercised his power to extend the limits of the Town of Port Louis by Proclamation No. 12 of 1963 which is accordingly valid.

For the above reasons I would dismiss the action with costs.

(s) Rampersad Neerunjun
Chief Justice

30 I agree with the judgment which has just been read by His Lordship the Chief Justice and there is nothing I could usefully add.

(s) Michel Rivalland
Senior Puisne Judge

I also agree.

(s) J. G. Harold Glover
Judge

9th December, 1963.

No. 19

No. 19

Minutes of Proceedings in Court

9th December, 1963

MINUTES OF PROCEEDINGS IN COURT

On 9th December, 1963

Before the Honourable Sir Rampersad Neerunjun, C. J.,
M. Rivalland, Senior Puisne Judge and H. Glover, Judge.

A. Raffray, Q.C., (Sir André Nairac Q.C. with him) appears
for plaintiffs.

M. Latour-Adrien, Solicitor General, appears for defendant.

10 The Honourable the Chief Justice reads out his judgment
dismissing the action with costs.

The Honourable the Senior Puisne Judge and the Honourable
Glover both concurring, the action is dismissed with costs.

The judgment is filed of record.

(s) Frank Mosses
for Master and Registrar

PART IIAPPLICATION FOR LEAVE TO APPEAL TO THE
PRIVY COUNCILNo. 1

20

NOTICE OF MOTION

27th December, 1963

(OMITTED)

No. 1Notice of
Motion27th December,
1963No. 2.

MOTION PAPER

27th December, 1963

No. 2

Motion Paper

27th December,
1963

Counsel is instructed to move this Honourable Court for
leave to appeal to Her Majesty The Queen, Her Heirs and Successors
in Her or Their Privy Council against the Judgment delivered in the
above matter by the above Court on the 9th of December, 1963, the

said applicants being ready and willing to fulfill all the formalities which the Court may direct them to fulfill for the due prosecution of the said appeal.

Under all legal reservations.

Dated at Port Louis, this 27th day of December, 1963

(s) R. Humbert, Applicants' Attorney

(s) A. Raffray, Counsel for Applicants

No. 3.

Affidavit of

Paul Joseph Raymond
Hein

No. 3

27th December,
1963

AFFIDAVIT OF PAUL JOSEPH RAYMOND HEIN

10 I, Paul Joseph Raymond Hein, of Curepipe, Barrister at Law, make oath and say as follows:-

1. That I am the Mayor of Port Louis for the year 1963.
2. That the Applicants entered an action against the Respondent on the 23rd of September, 1963 before this Honourable Court praying for a declaration that Proclamation No. 12 of 1963 issued by the Governor in Council, altering the boundaries of the Town of Port Louis, with consequential and supplemental administrative arrangements, was "ultra vires" and null and void to all intents and purposes in so far as it related to the extension of the said
20 Town of Port Louis.
3. That the ground on which the said prayer was based was that there had been no "consultation with the local authority concerned" as provided by section 73(1) of Ordinance No. 12 of 1962.
4. That on the 9th of December, 1963, this Honourable Court delivered a judgment holding that the said Proclamation was valid to all intents and purposes and dismissing the said action with costs.
5. That at a meeting of the Municipal Council held on this day, the 27th of December, 1963, the Applicants, being dissatisfied with the said judgment, resolved to move this Honourable Court for
30 leave to appeal from the said judgment to Her Majesty in Council.
6. That I am advised that the question involved in the appeal is one which, by reason of its general or public importance or otherwise ought to be submitted to Her Majesty in Council for decision.

7. That I am advised that an appeal to Her Majesty in Council lies, at the discretion of the Court, under clause 3(b) of the Order in Council of the 15th of February, 1909.

Sworn by the abovenamed deponent at Chambers, Court House, Port Louis, this 27th day of December, 1963. (s) P. J. Raymond Hein. Before me, (s) France Vallet, Master and Registrar, Supreme Court. Registered at Mauritius on the twenty seventh day of December, one thousand nine hundred and sixty three Reg. A 353 No. 2174 Received Rupee one. (s) E. Cupidon.

10

No. 4

No. 4

Minutes of Proceedings
in Court

30th December, 1963

MINUTES OF PROCEEDINGS IN COURT

30th December, 1963

Before the Honourable Michel Rivalland, Senior Puisne Judge, and the Honourable Harold Glover, Judge.

A. Raffray, Q.C., moves in terms of the motion paper and puts in the motion paper, the affidavit sworn by P. J. R. Hein on 27.12.63 in support thereof (Reg. A. 353 No. 2174) and notice of motion served on the Honourable the Attorney General.

20 M. Latour-Adrien states that he does not resist the motion as the question involved is one of general public importance.

The Court gives an oral judgment (vide shorthand transcript note) granting to the applicants leave to appeal under para. (b) of Clause 3 of the Order in Council of the 15th February, 1909, upon condition as required by Clause 6:-

30 (i) that the applicants shall within six weeks from the date of this judgment enter into good and sufficient security to the satisfaction of the Master and Registrar in the sum of Rs 5000- for the due prosecution of the appeal and for payment of all such costs as may become payable to the respondent in the event of the applicants not obtaining an Order granting them final leave to appeal, or the appeal being dismissed for non-prosecution; or of Her Majesty in Council ordering the applicants to pay the respondent's costs of the appeal as the case may be, and

(ii) that the applicants shall procure the preparation of the record and the despatch thereof to England within three months from the date of this judgment.

The Court further orders that the costs of the present application to be costs in the cause.

(s) S. Moosun
for Master and Registrar

No. 5

Judgment of
Court

30th December,
1963

No. 5

JUDGMENT

30th December, 1963

We are of opinion that the question involved in this appeal is one which by reason of its public importance ought to be submitted to Her Majesty in Council and we accordingly grant the applicants leave to appeal under paragraph (b) of Clause 3 of the Order in Council of the 15th February, 1909 upon condition as required by Clause 6:-

- (i) that the applicants shall within six weeks from the date of this judgment enter into good and sufficient security to the satisfaction of the Master and Registrar in the sum of Rs 5000. - for the due prosecution of the appeal and for payment of all such costs as may become payable to the respondent in the event of the applicants not obtaining an Order granting them final leave to appeal, or the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the applicants to pay the respondent's costs of the appeal as the case may be, and
- (ii) that the applicants shall procure the preparation of the record and the despatch thereof to England within three months from the date of this judgment.

Costs of the present application to be costs in the cause.

(s) Michel Rivalland
Senior Puisne Judge

(s) J. G. Harold Glover
Judge

30th December, 1963

No. 6
SECURITY BOND
27th January, 1964

No. 6

Security Bond

27th January,
1964

(OMITTED)

PART III

No. 1

Exhibit 1

2nd May, 1963

EXHIBIT I (mentioned at page 38)

MLG/22

Ministry of Local Government
& Co-operative Development,

Port Louis,

10

2nd May, 1963

Sir,

I am directed to inform you that it is proposed to alter the existing boundaries of your town, by the addition of the following areas as indicated on the attached map:-

	Tonnelier Island	80 acres shaded Mauve
	Roche Bois Village Council Area	678 acres shaded Orange
	Ste. Croix Village Council Area	1396 acres shaded Blue
20	Vallée des Pretres Village Council Area	2480 acres shaded Yellow
	Tranquebar V/Council Area	1400 acres shaded Green
	Part of Grand River N. W. V/C. Area (within the district of P/Louis)	752 acres shaded Brown
	Cassis Village Council Area	294 acres shaded Blue
30	Fort William & Barkly Island	8 acres shaded Black
	<hr style="width: 10%; margin: 0 auto;"/>	
	TOTAL	7088 acres =====

2. I am to ask you to let me have your views on the proposed alteration by the 13th May.

I am,
Sir,
Your obedient servant.

(sd) F. M. Lassemillante,
Principal Assistant Secretary.

10 The Town Clerk,
Municipality,
Port Louis.

Certified a true copy.

5.11.63. (s) S. Bhuckory,
Town Clerk.

I A

Map annexed to Exhibit 1

No. 2.
Exhibit 2
13th May, 1963

EXHIBIT 2 (mentioned at page 38)

13th May, 1963

2843/TC63/693

Sir,

20 I acknowledge receipt of your letter No. MLG/22 of the 2nd instant on the proposed alteration of boundaries, I regret for being unable to give you the views of my Council on the matter as it could not be discussed before the eleven councillors resigned on the 11th instant.

I am,
Sir,
Your obedient servant.

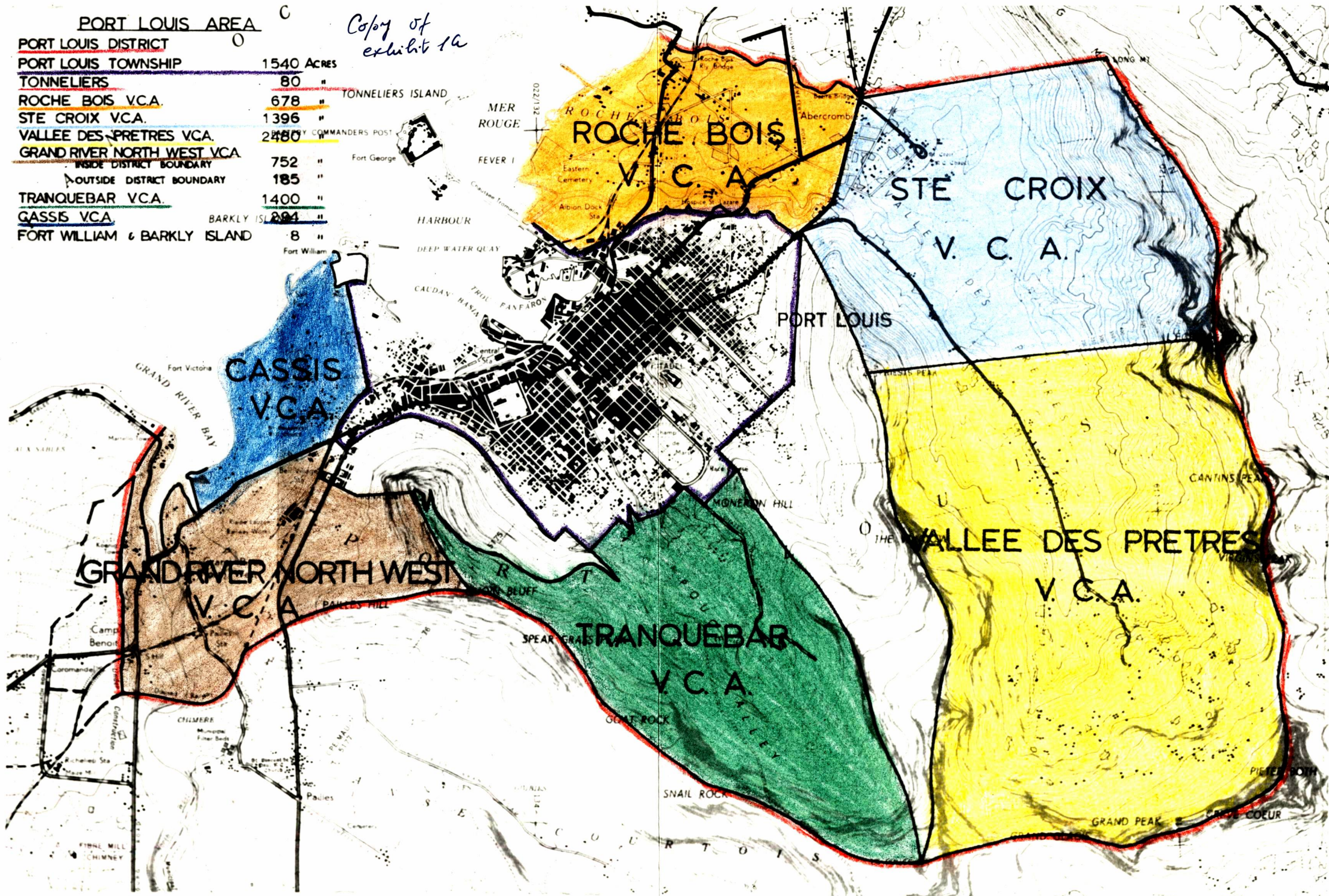
(sd) S. Bhuckory,
Town Clerk.

30 The Principal Assistant Secretary,
Ministry of Local Government & Co-operative Development,
Port Louis

PORT LOUIS AREA

Copy of exhibit 1a

PORT LOUIS DISTRICT	
PORT LOUIS TOWNSHIP	1540 ACRES
TONNELIERS	80 "
ROCHE BOIS V.C.A.	678 "
STE CROIX V.C.A.	1396 "
VALLEE DES PRETRES V.C.A.	2480 "
GRAND RIVER NORTH WEST V.C.A.	752 "
INSIDE DISTRICT BOUNDARY	
OUTSIDE DISTRICT BOUNDARY	
TRANQUEBAR V.C.A.	1400 "
CASSIS V.C.A.	294 "
FORT WILLIAM & BARKLY ISLAND	8 "



Certified a true copy.

5. 11. 63

(s) S. Bhuckory,
Town Clerk.

EXHIBIT 3 (mentioned at page 38)

No. 3.
Exhibit 3
18th June, 1963

MLG/22/V. 2

Ministry of Local Government
& Co-operative Development,

Port Louis,

18th June, 1963.

10 Sir,

With reference to my letter (MLG/22) of the 2nd May, about a proposal to alter the boundaries of your town, it is regretted that the map accompanying the letter contained a few inaccuracies and that it was not stated that consideration was also being given to the advisability of including Vallée Pitot and Bell Village area within the boundaries of the town of Port Louis. As my Minister said in the Legislative Council on the 17th May, the proposal, as far as your town is concerned, is to make its limits coincide with those of Port Louis District. Another map is enclosed for your information.

20 2. I should be grateful if you would let me have a reply to my above-quoted letter on or before the 6th July.

I am,
Sir,
Your obedient servant.

(sd) F. M. Lassemillante,
Principal Assistant Secretary.

The Town Clerk,
Municipality,
Port Louis.

30 Certified a true copy.

(sd) S. Bhuckory,
Town Clerk.

3A

Map annexed to Exhibit 3

No. 4.

Exhibit 4

8th July, 1963

EXHIBIT 4 (mentioned at page 40)

8th July, 1963

TC63/982

The Honourable,
The Minister of Local Government & Co-operative Development,
Port Louis.

Sir,

10 I have the honour to refer to correspondence resting with letter MLG/22 V. 2 of the 18th June, 1963 from your Principal Assistant Secretary concerning the proposed alteration of the boundaries of the town of Port Louis. The matter was considered by the Committee of the whole Council which expressed the opinion that in view of the importance of the Government's proposal and the fact that it involves many major points of policy, the discussion should be held at the highest possible level. I propose therefore as Chairman of the Municipal Council to correspond direct with you on this matter and I hope you will agree to this procedure.

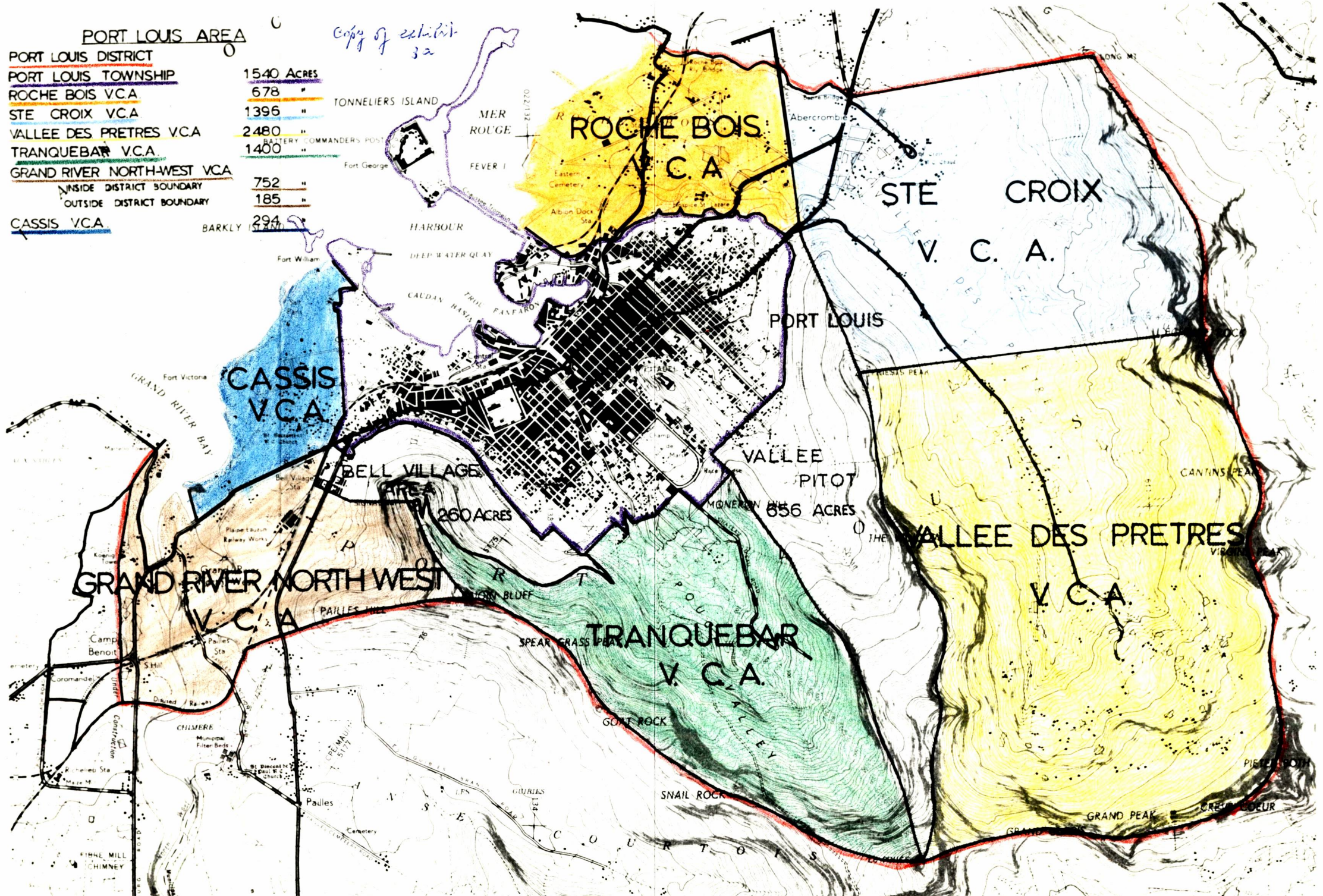
20 I must, first of all, take strong objection to the procedure followed by your Ministry in this matter especially as regards the time limit imposed on the Municipal Council. Matters of far greater urgency and of far lesser complexity have taken months to be dealt with by the Government without having in the end been given adequate and complete consideration. Here are a few instances to substantiate this.

- (i) Maintenance of streams and canals in Port Louis - overflow of sewerage - serious threats of epidemic: immediate attention of Government drawn in July 1962; up to now no action at all had been taken.
- 30 (ii) Future of Municipal Water Undertaking: letter from Municipality in February 1962. Final negative reply from Government: June, 1963.
- (iii) Approval of Municipal Estimates for $\frac{1}{2}$ year 1963: letter from Municipality 5th November, 1962; up to now no reply from your Ministry.
- (iv) Exemption from certain fees - Application made through Association of Urban Authorities on 4th September 1961 - application approved in principle in August 1962. Up to

PORT LOUIS AREA

PORT LOUIS DISTRICT	1540 ACRES
PORT LOUIS TOWNSHIP	678 "
ROCHE BOIS V.C.A.	1396 "
STE CROIX V.C.A.	2480 "
VALLEE DES PRETRES V.C.A.	1400 "
TRANQUEBAR V.C.A.	752 "
GRAND RIVER NORTH-WEST V.C.A.	185 "
INSIDE DISTRICT BOUNDARY	294 "
OUTSIDE DISTRICT BOUNDARY	1400 "
CASSIS V.C.A.	260 "

Copy of exhibit 32



now no final action taken by Government to give effect to its decision.

It is, first of all, I submit, a question of elementary courtesy towards the Municipal Council and secondly a question of administrative responsibility. Further, to expect the Municipal Council to express its views on a proposal to increase by more than five times the superficial area of the town of Port Louis within a fortnight implies that, had the circumstances so required the Ministry would have been in a position to do so. I fear I cannot, by any stretch of imagination, fancy the Ministry producing a report on this question within the prescribed delay. Indeed the problem is so vast and complex, that it would be well nigh impossible for the whole of the Government machinery to produce a comprehensive appreciation of the various problems involved by the Ministry's proposal within a fortnight. If one has the faintest knowledge of alteration of administrative areas in local Government and its far reaching implications one can only conclude that it is sheer irresponsibility on the part of the Ministry to expect the Municipal Council to express its views on the proposal within so short a time. I want to be very clear on one point. The Municipal Council is not prepared to treat such a vital problem lightly and hastily. We have an open mind on the Ministry's proposal as a whole and we are quite willing to give it due and careful consideration. To that end we will carefully analyse all the implications of the proposed extension of boundaries and in due course submit our views thereon to you. In that connection I regret to say that there are clear indications that the whole matter has been dealt with superficially by your Ministry with the result inter alia that six weeks after the original proposal had been made we are informed that "a few inaccuracies" had cropped in. Indeed, I am in a position to say that your revised proposal still contains inaccuracies. I must say that the Municipal Council cannot accept to be party to such a parody of administrative responsibility.

The following extract from the United Kingdom Local Government Commission Regulations 1958 may help to give you an idea of what is considered in the United Kingdom to be a normal and responsible approach to the always important question of alteration of local government administrative areas:

MATTERS TO WHICH THE COMMISSION ARE TO HAVE REGARD
IN ALL AREAS IN GENERAL

3. The Commission's examination of a review area shall be directed (regard being had also to the circumstances and needs of related review areas) to effective and convenient Local government throughout the whole of the review area and not merely in individual areas of local government.
4. The circumstances taken into account shall include not only those existing at the time of examination but also those which in the

Commission's opinion are likely to come into existence within such period as they think it right to consider in the circumstances of the particular area.

5. In assessing the effectiveness of any local government organisation of a review area the Commission shall have regard to, inter alia, the extent to which the size and distribution of population and rateable value and the boundaries of, and administration of the various local services provide adequate resources and allow adequate scope for the efficient and economic discharge, over suitable areas, of all the functions exercisable by the local authorities concerned.
6. In assessing the convenience of any local government organisation of a review area the commission shall have regard to, inter alia, the number, size, shape and boundaries of the areas of local government, the travelling facilities within and between them, and the way in which these may affect the administration of local services and the access of council members and the general public to their local and ministrative centres.
7. The following (placed in alphabetical order) are to be included among the factors taken into account by the Commission on the holding of a review:
 - (a) community of interest;
 - (b) development and expected development;
 - (c) economic and industrial characteristics;
 - (d) financial resources measured in relation to financial need;
 - (e) physical features, including suitable boundaries, means of communications and accessibility to administrative centres and centres of business and social life;
 - (f) population - size, distribution and characteristics;
 - (g) record of administration of the local authorities concerned;
 - (h) size and shape of the areas of local Government;
 - (i) wishes of the inhabitants.

With the help of our technical advisers we have in the very short time we have had at our disposal, listed out the main points on which we want to be enlightened before being in a position to start giving to your proposal the unbiased, comprehensive and thorough study which it calls for. We hope that your Ministry will be in a position in due course to supply us with the required information.

GENERAL

1. It is assumed that your Ministry has strong reasons in support of its proposal. It would be much appreciated if the proposal could be fully substantiated and the Municipality informed of the reasons

which have prompted the proposal.

2. It is noted that the Ministry would wish the proposal to be treated with extreme urgency. Could the Municipality be given full details concerning the urgency of the matter so as to be in a better position to appreciate the point of view of the Ministry and eventually to cope with the situation.

ADMINISTRATION

3. The Municipal Council is now working on a Committee System basis and it has been found out that this system facilitates administration considerably. With the present town limits Councillors are very often called upon to attend Committee meetings three times a week or even more. Is it the intention of the Government to increase the number of Councillors for the town of Port Louis? If so, by how many?

STAFF

- 4(a) If the Government's proposal as outlined in the Ministry's letter is implemented the Town Engineer's department, inter alia, will have to be considerably enlarged and qualified technical staff employed. The Municipal Council has met with enormous difficulties to recruit such staff (and is still at a loss to do so). If the proposed extension of town limits is to be given effect to within a fairly short time will the Government agree to cede to the Municipality on a full time basis and for a period of four to six years the services of:

- (i) two fully qualified engineers;
- (ii) one architect;
- (iii) five competent works superintendents.

- If the answer is in the affirmative what proportion of these officers' salaries will the Government be prepared to pay as grants-in-aid during such time as these officers will be at the service of the Municipality.

- (b) Assessment of properties requires qualified competent and reliable personnel. The Municipality is already submerged by the enormous amount of assessment, re-assessment, division, etc. of properties within the present town limits. What is the technical assistance which the Government is prepared to give to the Municipality to ensure that the fantastic amount of assessment work which will fall upon the Municipality as a result of the proposed extension will be adequately met.

TOWN PLANNING

5. Port Louis has been declared Town Planning Area. Is it the intention of the Government to declare the whole of the proposed new urban areas, town planning area and to apply thereto Town Planning principles as will be advocated by the Town Planning Committee?

HOUSING

6. What will the policy of Government as far as the housing problem in the proposed new urban areas is concerned? Will the Municipality be given the means to deal with the problem or will it be left to the Central Housing Authority?

SLUM CLEARANCE

7. Does Government intend introducing slum clearance legislation and give to the Municipality the legal, administrative and financial means of clearing slum areas and replacing them by decent housing estates? If so, will full details be given on the Government intention and the planning of the slum clearance scheme?

LEGISLATION

- 20 8(a) Is it the intention of the Government to have at any time any law applicable to the existing urban areas and not applicable to the proposed new localities? If so, will the Ministry give instances when such distinct legislation will apply and justify it?
- (b) Will the Government expect the Municipality to apply all Municipal Regulations to the new areas without any exception whatever as soon as they are given urban status? If not, will the Ministry set out in full the Regulations which will not be applied in the new localities and give in each case the reasons of the intended differentiation?
- 30

SANITATION

9. What is the present frequency of
- (i) the house refuse collection
 - (ii) the street cleansing
 - (iii) the weeding
- of each of the proposed new areas?
10. What is the mileage of streams to be cleaned in each of the proposed new areas?

11. What is the frequency of the night soil service, if any, and the number of pail latrines in each of these areas?
12. Is the Sewerage Reticulation System covering the proposed new areas? What are the exact areas, if any, which are not covered? What steps will be taken by the Government to extend the reticulation system so as to cover the whole of the proposed new urban areas? Will the Government give an undertaking that the Ministry of Works will extend the sewerage service to the new localities as promptly as the Municipality will be expected to attend all its services to these localities?

10

WATER

13. The present law makes it an obligation on the Municipality to supply water to the inhabitants of the town of Port Louis who apply for same and leaves it to the Municipality to decide on such supplies for extra-urban applicants. Will the Government expect the Municipality to meet all the applications for water supply in the proposed new urban areas?

If this is to be done then the Municipality will have to extend considerably its water distribution network and find ways and means of increasing the volume of water entering the district of Port Louis. This will involve extensive capital works worth many millions of rupees and the recruitment of qualified personnel.

20

What is the financial assistance which the Government is prepared to give to the Municipal Water Undertaking to that end? Will the Government agree to cede to the Municipality the services of

- (i) one qualified water engineer;
 (ii) two senior competent water works superintendents.

30

What proportion of these officers' salaries is the Government prepared to pay to the Municipality as grants-in-aid ?

14. How many Mare aux Vacoas Consumers are there in each area and what has been their consumption of water for the last two quarters?
15. How many public fountains are there in each area and where are they located?

PLANNING

(for each area separately)

16. What is the area of river and mountain reserves?

17. What is the area of undeveloped land? (Including land under culture)
18. What is the area of developed land?
19. What is the mileage of asphalted and non-asphalted proclaimed roads?
20. What is the mileage of existing surface water drains (earth, concrete or masonry)?
21. What is the mileage of existing footways?
22. What is the number of existing street lighting points?
- 10 23. During the past three years what has been the mileage of
 - (i) roads constructed
 - (ii) footways constructed
 - (iii) drains constructed

REVENUE AND EXPENDITURE AND GRANTS-IN-AID

(for each area separately)

24. What is the population?
25. What is the cadastral value of existing privately owned buildings?
26. What is the cadastral value of existing Government buildings?
- 20 27. What is the number of licences issued in each category of trade carried out in each area?
28. What has been the recurrent expenditure on roads for the past three years?
29. What has been the recurrent expenditure on drains for the past three years?
30. What has been the recurrent expenditure on footways for the past three years?
31. What has been the recurrent expenditure on House Refuse collection and disposal for the past three years?
- 30 32. What has been the recurrent expenditure on street cleaning for the past three years?

33. What has been the recurrent expenditure on weeding for the past three years?
34. What has been the recurrent expenditure on street lighting (fittings and energy separately) for the past three years?
35. What has been the recurrent expenditure on cleaning and maintenance of streams for the past three years?
36. What has been the capital expenditure on roads for the past three years?
- 10 37. What has been the capital expenditure on drains for the past three years?
38. What has been the capital expenditure on footways for the past three years?
39. What has been the capital expenditure on house refuse collection and disposal for the past three years?
40. What has been the capital expenditure on street cleansing for the past three years?
41. What has been the capital expenditure on street lighting for the past three years?
- 20 42. What has been the recurrent expenditure on administration on all services in the proposed new areas for the past three years?
43. The specific grants of the Government's grants-in-aid are strictly limited to recurrent expenditure and all works of a capital nature do not rank at all for grants. In view of the enormous amount of capital works which would have to be undertaken in the proposed new urban areas what grants is the Government prepared to give to the Municipality to carry out such works?
- 30 44. What is the estimated amount of grants-in-aid based on the present system, should each area be annexed within the Town Limits?

RATING

- 45(a) As from what date is the Ministry envisaging to cause the proposed extension of town limits to become operative? Does the Ministry foresee that all rates, taxes and generally all charges levied in the town presently will be levied in the new localities as from the date the extension becomes operative? Does the Ministry undertake to give the Municipality the technical, financial and administrative assistance required to

ensure that claims would be made as soon as the extension becomes operative?

- (b) How many of the house owners of the new localities are likely to be exempted from the payment of house rate on grounds of poverty?

SALE OF MEAT

- 10 46. Is the Government envisaging to introduce legislation to become operative on the same day as the extension of town limits to close down all butchers shops in the new localities? If the answer is in the negative, will not the control exercised by the Municipality on the sale of fresh meat in the town be jeopardised by the existence of butchers' shops? If the answer is in the affirmative, what steps is the Government envisaging to take to avoid causing undue hardship to the inhabitants of the proposed new urban areas?

INDUSTRY

47. Is there any industry already set up in these localities? Please enumerate.

EDUCATION

- 20 48. How many schools primary and secondary are there in each locality? What is the number of children attending these schools?
49. What has Government done so far in the field of Adult Education for the inhabitants of these localities?

TRANSPORT

50. What are the transport facilities already existing from each of the localities concerned to the centre of the town?
- 30 What are the steps which the Government is envisaging to take to improve the transport facilities and to extend the various inter-urban bus route to cover adequately the whole of the proposed new urban areas?

SHOPS AND RESTAURANTS

51. How many shops and restaurants are there in each locality?

SUNDRY SERVICES

52. How many of the following services are there in each of the localities concerned?
- (i) Public markets
(ii) Cemeteries
(iii) Public libraries
(iv) Day nurseries
(v) Public conveniences
(vi) Children's playground
(vii) Public gardens
- 10
53. Is the Government prepared to lease to the Municipality at very nominal prices vast extents of Crown Lands in each of the new localities to be converted into gardens, playing fields, etc. ?
54. Does the Government intend to set up a Commission of Enquiry to ascertain the wishes of the inhabitants?

Thanking you in anticipation.

Yours faithfully,

(sd) J. Raymond Hein,
Mayor of Port Louis.

20

Certified a true copy.

(sd) S. Bhuckory,
Town Clerk.

5.11.63

EXHIBIT 5 (mentioned at page 44)

MLG/22 V. 2

No. 5
Exhibit 5
10th July,
1963

Ministry of Local Government
& Co-operative Development,

Port Louis,

10th July, 1963.

Sir,

- 30 I am directed to refer to my letter of the 18th June in which I requested the views of the Municipal Council of alterations to the boundaries of the town of Port Louis. My request was that those views should be submitted by the 6th July, 1963. So far, I have not

been favoured with such views and I shall be grateful if they could be submitted early for consideration by the Governor in Council. It will not be possible to wait later than the 18th July, 1963, and I accordingly request that the views of your Council be submitted by that date at latest.

I am,
Sir,
Your obedient servant.

10 (sd) F. M. Lassemillante,
Principal Assistant Secretary.

The Town Clerk,
Municipality,
Port Louis.

Certified a true copy.

5. 11. 63 (sd) S. Bhuckory,
Town Clerk.

No. 6
Exhibit 6
11th July, 1963

EXHIBIT 6 (mentioned at page 44)

20 Ministry of Local Government and
Co-operative Development,
Port Louis,

MLG/22 V. 2

11th July, 1963

Sir,

I am directed to refer to your letter TC63/982 of the 8th July concerning the proposal to alter the boundaries of the town of Port Louis and to inform you that it is requested that the views of the Municipal Council on the proposed alteration of the boundaries be submitted. In this connection, I would refer you to my letter of even number of yesterday's date on the subject.

30 2. As to the points raised in your above mentioned letter, they will be considered by Government.

I am,
Sir,
Your obedient servant.

(sd) F. M. Lassemillante,
Principal Assistant Secretary.

His Worship the Mayor of Port Louis,
Port Louis.

Certified a true copy.

(sd) S. Bhuckory,
Town Clerk.

5.11.63

EXHIBIT 7 (mentioned at page 44)

No. 7
Exhibit 7
15th July, 1963

3980/TC63/1017

15th July, 1963

Dear Sir,

Re. Extension of Town Boundaries

10 I have the honour to refer to letter MLG/22 V. 2 dated
July, 11th from your Principal Assistant Secretary and addressed
to me and to the previous correspondence on the subject.

I cannot but express regret that in spite of the wish expressed
by the Municipal Committee, you have not thought it proper to reply
personally to my letter and that you have chosen to "direct" your
Principal Assistant Secretary to do so on your behalf. In view of
the fact that this procedure is no less than disrespectful and consti-
tutes a breach of administrative etiquette, I would, in ordinary
circumstances, have returned the letter of your Principal Assistant
20 Secretary to your Ministry without any comment. But being given
the importance of the point at issue, I have preferred to refrain from
so doing.

I thought my letter made it very clear - but in case it does not
I am going to repeat - that the Committee of the whole Council, at
its meeting of July the 3rd last, decided that, before being in a posi-
tion to express its views on the matter of the extension of the Muni-
cipal boundaries, it was essential that it should have the information I
have listed in pages 3 to 9 of my letter TC63/982 of July, 8th last.

30 I am therefore looking forward to receiving that information
at your earliest convenience to convey it to the Committee.

Yours faithfully,

(sd) J. Raymond Hein,
Mayor of Port Louis

The Honourable,
The Minister of Local Government and Co-operative Development,
Port Louis

Certified a true copy.

5.11.63. (sd) S. Bhuckory,
Town Clerk.

No. 8
Exhibit 8
19th July, 1963

EXHIBIT 8 (mentioned at page 44)

Ministry of Local Government
and Co-operative Development,
Port Louis,
19th July, 1963

MLG/22 V. 2

Dear Sir,

10 I am directed to refer to your letter (TC63/1017) of the
15th July about the proposal to alter the boundaries of the town
of Port Louis and to inform you that it is regretted that no further
extension of time can be given.

I am,
Sir,
Your obedient servant.

(sd) F. M. Lassemillante,
Principal Assistant Secretary.

20 His Worship the Mayor of Port Louis,
Port Louis.

Certified a true copy.

5.11.63 (sd) S. Bhuckory,
Town Clerk.

No. 9
Exhibit 9
29th July,
1963 TC63/1100

EXHIBIT 9 (mentioned at page 44)

29th July, 1963

Dear Sir,

Extension of Town Boundaries

30 With reference to letter MLG/22 V. 2 of the 19th instant
from your Principal Assistant Secretary on the above subject
I beg to inform you that, having been requested by the Committee
of the whole Council to correspond with you, on the matter, I
feel it my duty to record my strong objection to any action being

taken by Government in connection with the proposed extension of town limits before the Municipal Council has expressed its views on the proposal, I therefore urge you to supply us with the information asked for in my letter TC63/982 of the 8th instant so that a comprehensive study of your proposal can be started as early as possible.

Yours faithfully,

(sd) J. Raymond Hein,
Mayor of Port Louis.

10 The Honourable,
The Minister of Local Government & Co-operative Development,
Port Louis.

Certified a true copy.

(sd) S. Bhuckory,
5. 11. 63 Town Clerk.

EXHIBIT 10 (mentioned at page 44)

MLG/22

Ministry of Local Government &
Co-operative Development,
Port Louis, Mauritius. '

No. 10

Exhibit 10
13th August,
1963

20

13th August, 1963

Sir,

Further to my letter MLG/22 of the 11th July relating to the extension of the boundaries of the town of Port Louis, I am directed to inform you that, after careful consideration, the Governor in Council has decided to issue a Proclamation in this respect. I enclose an advance copy of the Proclamation which will be published in the Government Gazette of the 14th August, 1963.

30

2. It has not been possible to meet the wishes of the Municipal Council but every effort has been made to reach a comprehensive solution satisfactory as a whole to the population of Mauritius.

I am,
Sir,
Your obedient servant.

(sd) Lassemillante,
Principal Assistant Secretary.

The Town Clerk,
Municipality of Port Louis,
Port Louis.

Certified a true copy.

5. 11. 63 (sd) S. Bhuckory,
Town Clerk.

No. 11

Exhibit II

EXHIBIT II (mentioned at page 38)

Extract from Minutes of General Purposes Committee
held on Wednesday 3rd July, 1963 at 3. 30 p. m.

10 PRESENT: H. W. the Mayor(Chairman), the Deputy Mayor,
Messrs Gasetta, Moollan, Donat, Murat, Empeigne,
Fareed and Hermann-Louis.

Absent: Messrs Abba Sakoor and Chang Kye.

236. EXTENSION OF TOWN LIMITS (M. P. 3207/59)

The Committee considered letters dated 2nd and 18th June, 1963, from the Ministry of Local Government and Co-operative Development, in connection with the extension of town limits.

20 The Chairman drew a parallel between the local and English laws concerning the alteration of Local Government areas, and enumerated the factors which were taken into account in England to assess the convenience of reviewing Local Government areas.

After discussion, it was agreed that prior to the Committee submitting a recommendation one way or the other in connection with the proposed extension of Port Louis, the Ministry be approached with a view to obtaining information on the lines directed by the Committee.

30 (sd) J. Raymond Hein,
Mayor.

Certified a true copy.

Port Louis (sd) S. Bhuckory,
Town Clerk.

GENERAL PURPOSES COMMITTEE 3.7.63EXTENSION OF TOWN LIMITSGENERAL REMARKSb. THE LAW

The law concerning the alteration of existing areas of local government is contained in s. 73 of the Local Government Ordinance, 1962, subsection one of which reads as follows:

10 " The Governor in Council may by Proclamation alter the boundaries of any town, district or village after consultation with the local authority concerned. "

2o. GOVERNMENT PROPOSALS

The Ministry of Local Government has written two letters to us, dated 2nd May and 18th June, respectively.

The proposals contained in both letters amount to turning the District of Port Louis into the Town of Port Louis. The net result in terms of acres is the following:

	Town of Port Louis	1540 acres
	Tonneliers Island	80 acres
20	Roche Bois V. C. area	678 acres
	Ste. Croix V. C. area	1396 acres
	Vallée des Pretres	2480 acres
	Vallée Pitot	656 acres
	Tranquebar	1400 acres
	Bell Village	260 acres
	G. R. N. W. (within limits)	752 acres
	Cassis	294 acres
	Fort William & Barkly Island	8 acres
	TOTAL=	<u>9544 acres</u> =====

30 It will be observed that the proposed area is nearly six times the present one.

3o. ENGLISH PROCEDURE

In England the law concerning the alteration in local government areas and status is governed by the Local Government Act 1958. Broadly speaking, the Act provides for a review of the organisation of local government in England and Wales (excluding the metropolitan area) by two commissions , one for England and the other

for Wales and for the review of county districts by County Councils. The commissions have been assigned the task to make proposals for change "in the interests of effective and convenient local government" and the county Councils have to do so in respect of county districts. Finally the Minister may give effect to the proposals made by the Commissions or county councils, with or without modification, by means of an order but due publicity is given first to the reports and proposals submitted and in case of objections public inquiries are held.

40. LOCAL GOVERNMENT COMMISSION REGULATION, 1958

- 10 In carrying out their duty to review the organisation of local government the Commissions must have the general object of promoting effective and convenient local government. To guide them in this task the Minister is empowered to make regulations. This he has done and in them prescribed the factors which the Commission must take into account in general, and in relation to the creation and extension of county boroughs, and in reviewing local government structure in a special review area.

Attached are extracts from the Regulations.

20 Town Hall,
2nd July, 1963.

Certified a true copy.

(sd) S. Bhuckory,
Town Clerk.

LOCAL GOVERNMENT COMMISSION REGULATIONS, 1958

MATTERS TO WHICH THE COMMISSION ARE TO
HAVE REGARD IN ALL AREAS

GENERAL

- 30 3. The Commission's examination of a review area shall be directed (regard being had also the circumstances and needs of related review area) to effective and convenient local government throughout the whole of the review area and not merely in individual areas of local government.

40. The circumstances taken into account shall include not only those existing at the time of examination but also those which in the Commission's opinion are likely to come into existence within such period as they think it right to consider in the circumstances of the particular area,

50. In assessing the effectiveness of any local government organisation of a review area the commission shall have regard to, inter alia, the extent to which the size and distribution of population and rateable value and the boundaries of, and administration of the various local services provide adequate resources and allow adequate scope for the efficient and economical discharge, over suitable areas, of all the functions exercisable by the local authorities concerned.

10 60. In assessing the convenience of any local government organisation of a review area the Commission shall have regard to, inter alia, the number, size, shape and boundaries of the areas of local government, the travelling facilities within and between them, and the way in which these may affect the administration of local services and the access of council members and the general public to their local and administrative centres.

70. The following (placed in alphabetical order) are to be included among the factors taken into account by the Commission on the holding of a review:

- 20 (a) Community of interest;
 (b) Development and expected development;
 (c) Economic and industrial characteristics;
 (d) Financial resources measured in relation to financial need;
 (e) Physical features, including suitable boundaries, means of communications and accessibility to administrative centres and centres of business and social life;
 (f) Population-size, distribution and characteristics;
 (g) Record of administration of the local authorities concerned;
 30 (h) Size and shape of the areas of local government;
 (i) Wishes of the inhabitants.

Certified a true copy.

(sd) S. Bhuckory)
 Town Clerk.

EXHIBIT 13 (mentioned at page 39)

No. 13
 Exhibit 13

PER RESPECTIVE VILLAGE COUNCIL AREA

I. PLANNING

- 40 (a) Area of river and mountain reserves
 (b) Area of undeveloped land (including land under culture)
 (c) Area of developed land

- (d) Mileage of asphalted and non-asphalted proclaimed roads
- (e) Mileage of existing surface water drains (earth, concrete or masonry).
- (f) Mileage of existing footways.
- (g) Number of existing street lighting points
- (h) Number of M.O.W. water consumers
- (i) Number and location of public fountains.

II. SANITATION

- 10 (a) Frequency of house refuse collection
- (b) Mileage of streams to be cleaned
- (c) Number of pail latrines and frequency of service.

III. REVENUE AND EXPENDITURE (for the past three years)

- (a) Cadastral value of existing private buildings
- (b) Cadastral value of existing government buildings
- (c) Recurrent and Capital Expenditure on roads, drains and footways.
- (d) Recurrent and Capital Expenditure on street lighting
- 20 (e) Recurrent and Capital Expenditure on house refuse collection and disposal
- (f) Recurrent and Capital Expenditure on cleaning and maintenance of streams
- (g) Recurrent expenditure on administration of all services in the areas to be incorporated in the town.

Certified a true copy.

(sd) S. Bhuckory,
Town Clerk.

No. 14

Exhibit 14

EXHIBIT 14 (mentioned at page 39)

30 INFORMATION REQUIRED TO MAKE AN ESTIMATE
OF YEARLY REVENUE AND EXPENDITURE AND A PROGRAMME
OF CAPITAL EXPENDITURE IN CONNECTION WITH THE PRO-
POSED EXTENSION OF TOWN LIMITS

THIS INFORMATION IS REQUIRED "PER EACH VILLAGE
COUNCIL AREA" PROPOSED TO BE ANNEXED TO THE PRESENT
TOWN OF PORT LOUIS

REVENUE

- (a) Population
- (b) Cadastral value of existing privately owned buildings

- (c) Cadastral value of existing government buildings
- (d) Number of licences issued in each category of trade carried in each area.
- (e) Number of prises of water supplied by Mare aux Vacoas
- (f) Area of land not built up excluding rivers and mountain reserves.

EXPENDITURE

- (a) Mileage of tarred roads
- (b) Mileage of untarred roads
- (c) Mileage of streams
- 10 (d) Number of public fountains
- (e) Number of electric points in streets
- (f) Number of pail latrines
- (g) Other services which the Corporation may have to take over.

FINANCE

- (a) Possibility of grants to finance the first 5 years of expenditure in these areas.
- (b) Possibility of loans to finance the Capital Expenditure Programme in these areas.
- (c) Terms of these loans.

20 3rd July, 1963.

Certified a true copy.

(sd) S. Bhuckory,
Town Clerk.

EXHIBIT 15 (Mentioned at page 45)

No. 15

Exhibit 15

COPY - PLAINES WILHEMS - BLACK RIVER DISTRICT COUNCIL

16th August, 1963
Reference C.G. 58/1/23

Sir,

30 In virtue of Proclamation No. 12 of 1963 I have the honour to inform you that I am at your disposal to hand over assets and liabilities of the Village Councils which since the 14th instant have vested in the Municipality.

In that connection I shall be pleased to discuss with you the

most convenient time and date for such handing over.

I am,
Sir,
Your obedient servant.

(sd) E. D. Pontre
Secretary-Treasurer, The Plains Wilhems
Black River District Council.

The Town Clerk,
Municipality of Port Louis,
Port Louis.

10

No. 16
Exhibit 16

EXHIBIT 16 (mentioned at page 45)

COPY

Pamplemousses - Rivière du Rempart District Council

Ref. DC/91

20th August, 1963

Dear Sir,

In virtue of Proclamation No. 12 of 1963 I have the honour to inform you that I am at your disposal to hand over Assets and Liabilities of the Village Councils of Roche Bois, Ste. Croix, and Vallée des Pretres, which, since the 14th August, 1963, have vested in the Municipality of Port Louis.

20

In that connection, I shall be happy to discuss with you the most convenient time and date for the handing over.

Yours sincerely,

(sd) L. Appadoo
Secretary D/Council

The Town Clerk,
Municipality of Port Louis.

No. 17
Exhibit 17

Copy EXHIBIT 17 (mentioned at page 45)

4683/TC63/1405

28th August, 1963

30

Sir,

With reference to your letter CG58/1/23 dated the 16th instant, I am directed by the Mayor to inform you that the matter is

receiving consideration.

A further communication will be addressed to you as soon as possible.

I am,
Sir,
Your obedient servant.

(sd) F. Appassamy
Deputy Town Clerk.

10 The Secretary - Treasurer,
The Plains Wilhems - Black River District Council,
Rose Hill.

Copy

EXHIBIT 18 (mentioned at page 45)

No. 18
Exhibit 18

4744/TC63/1406

28th August, 1963

Sir,

With reference to your letter DC/91 dated the 20th instant, I am directed by the Mayor to inform you that the matter is receiving consideration.

A further communication will be addressed to you as soon as possible.

20

I am,
Sir,
Your obedient servant.

(sd) F. Appassamy
Deputy Town Clerk.

The Secretary,
Pamplemousses - Rivière du Rempart District Council,
Mapou.

EXHIBIT 19 (mentioned at page 45)

No. 19
Exhibit 19

30 EXTRACT FROM MINUTES OF GENERAL PURPOSES
COMMITTEE HELD ON WEDNESDAY 4TH SEPTEMBER, 1963,
at 3.30 p.m.

PRESENT: H. W. the Mayor(Chairman), the Deputy Mayor,

Messrs Gasetta, Donat, Fareed, Hermann-Louis,
Empeigne and Murat.

ABSENT: Messrs Chang Kye, Abba Sakoor and Moollan.

310. EXTENSION OF TOWN BOUNDARIES (M. P. 3207/59)

The Committee considered the decision of Government, to extend the boundaries of the town of Port Louis and the Legal Adviser's opinion thereon.

On the light of the opinion of the Legal Adviser the Committee

10 RECOMMENDED that the Municipality should challenge the validity of the said extension by means of an action before the Supreme Court, on the ground that there had been no "consultation" with the Municipality within the meaning of section 73(1) of the Local Government Ordinance, 1962.

RECOMMENDED FURTHER that all matters arising as a result of the extension of the town boundaries be left in abeyance pending the decision of the Court.

(sd) J. Raymond Hein,
Mayor.

20 Certified a true copy.

(sd) S. Bhuckory,
Town Clerk.

Port Louis

No. 20

Exhibit 20

EXHIBIT 20 (mentioned at page 48)

Extract from Minutes of Proceedings of the Municipal Council of Port Louis, at a Special Meeting held at the Town Hall on Friday 28th June, 1963 at 4 p. m.

MUNICIPAL COUNCIL OF PORT LOUIS

No. 8 of 1963

PRESENT

30 P. J. Raymond Hein Esq. Mayor
 Joseph Laval Lan Fat Po Esq. Deputy Mayor
 Roger Herman Louis Esq.

Rex Donat	Esq.
Hadee Sheik Fareed	Esq.
Allymamode Gaseta	Esq.
Mamode Adam Moollan	Esq.
Henry Lionel Murat	Esq.
Alex Empeigne	Esq.

ABSENT

	J. E. Chang Kye	Esq.
	Aboo Bakar Noormahomed	
10	Abba Sakoor	Esq.

232. TO RECEIVE COMMUNICATIONS FROM THE MAYOR

(lii) Extension of Town Limits (M. P. 3207/59)

The Mayor informed the Council that a letter dated 18th June, 1963, had been received from the Ministry in connection with the Extension of the Town of Port Louis and particularly regarding the inclusion of Vallée Pitot and Bell Village within the limits of the town.

20 A reply from the Municipality on the question of Extension of Town Limits was requested by the Ministry on or before the 6th July, 1963.

The Mayor informed the Council that the question was to be considered by the Committee of the whole Council on 3rd July, 1963.

.....

(sd) J. Raymond Hein
Mayor

Certified a true copy.

Port Louis

(sd) S. Bhuckory,
Town Clerk.

EXHIBIT 21 (mentioned at page 58)

No. 21
Exhibit 21

30 MLG/22

Ministry of Local Government &
Co-operative Development,
Port Louis, Mauritius.
11th May, 1960

Sir,

As you are aware, the Municipal Council has passed a

resolution to the effect that the present limits of the Municipal area should be extended. In order to enable this Ministry fully to assess the financial implications of the proposal, I should be grateful if you would supply, as early as possible, the following information in respect of the areas which it is proposed to include within the Municipal limits:-

- 10 (i) Estimated additional yearly revenue, including Government contributions;
 (ii) Estimated additional yearly expenditure on public works, sanitation, scavenging, street maintenance, lighting, etc.

2. The Municipality has already been requested to supply the above information (telephone conversation Hossenbux - Appassamy refers).

I am,
 Sir,
 Your obedient servant.

(sd) ?
 for Principal Assistant Secretary.

20 The Town Clerk,
 Municipality,
 Port Louis.

PART IV

No. 1.

No. 1.

EXTRACTS FROM SHORT TRANSCRIPT OF THE 12. 11. 62

Authorities and Cases Quoted

Ordinance No. 16 of 1962

Sections 3(i) and (2) (a); Sections 14, 16, 17, 18, 73, 116 to 119; sections 171 to 173; sections 181 to 183.

Ordinance No. 6 of 1954

Proclamation No. 12 of 1963

30 Ordinance No. 23 of 1903

Section 2 of Ordinance No. 10 of 1960

Government Notice No. 51 of 1955

Ordinance No. 16 of 1963

Rollo v. Minister of Town and Country Planning (1947) 2 A. E. R. ,
p. 488 & (1948) 1 A. E. R. p. 13.

Union of Beneficiaries of Sweeping Gas and East Durham & anor. v.
Church Commissioners of East England (1954) 2 A. E. R., p. 22

Order 25 Rule 5

Maurel v. Muller; M. R. 1891, p. 59

Koenig v. Nundoosing: M. R. 1927, p. 1

Ramtoola & Co. , v. Ramtoola and Ahmed

10 Ibrahim & Co. , Ex parte Ahmed Ibrahim

M. R. 1934, p. . 236

Issimdar v. Edun, M. R. 1948, p. 96

Carpenen v. Rosun & anor ; M. R. 1957, p. 35

Hossen v. Cecil; M. R. 1957, p. 326

Ramsamy v. Paruit; M. R. 1959, p. 312 & p. 319

Rule 77 of the Supreme Court

Crown Proceedings Ordinance of 1953

Ball Crown Proceedings pages 148, & 149, No. 60 and page 133

Lalouette v. Colonial Government; M. R. 1932, p. 217

20 Amurdalingum v. Ramsamy & ors; M. R. 1949 p. 135

Annual Practice 1963, Order 25, Rule 5, pages 578 & following,
pages 578, 579, 580 particularly p. 580

Halsbury, Vol. 22, Vo. Judgments & Orders, pages 746 to 752,
Notes 1610 to 1612

Halsbury, Vo. II, Vo. Crown Proceedings p. 11, No. 15

Butterworth, Annotated Legislature Service Supplements No. 47
pages 16 and 17

Dyson v. Attorney General (1911) 1 K. B. p. 410

Dyson v. Attorney General (1912) 1 Chancery p. 158

- Bhurges v. Attorney General (1912) 1 Chancery 173
- Bowles v. Attorney General (1912) 1 Chancery 123
- Whig v. Attorney General, Irish Free State, 1927 Appeal Cases, p. 674
- Barnato Jo v. Sanges - Chancery Div. p. 258
- Underhill & anor v. Ministry of Food (1950) A.E.R. p. 591
- De Verteuil v. Knaggs & anor (1918) Appeal Cases, 557
- Halsbury, Vol. 22, note 1612
-Appeal Cases (1915), 2 K.B. 536 -
- 10 Abber v. Gasworth 88 L.T.K. p. 549
- Smeeton v. Attorney General (1920) 1 Chancery p. 85
- Water Works v. The Urban District Council (1898) 2 Chancery Div. p. 331
- North Eastern Marine Engineering Co. v. Leeds Forge Co. (1906) 1. Chancery p. 324
- Homer v. Equitable Life Assurance Society of the United States (1900) 1. Chancery 852
- Guarantee Trust Company of New York v. Hannay (1915) 2 K.B. 536 at pp. 536, 559, 562
- 20 Gray v. Spyer 1922, 2 Chancery page 22, pp 27 to 30
- Thomson Bros & Co. v. Amis 1917, 2 Chancery p. 211
- Hansan v. Radcliffe Urban District Council (1922) 2 Chancery p. 490
- Halsbury, Vol. 5 Verbo Commonwealth and Dependencies Note 1259 pp 587 & 588, Note 1209 pp 558 & 559
- Interpretation and General Clauses Ordinance No. 44 of 1957
- Cameron v. Kite, reported in 3 Knapp p. 322
rather English Report Vo. 12 Privy Council pp 678
682, para. 343
- 30 Musgrave v. Pulido (1879) 5 Appeal Cases p. 102 & p. 111

Sprigg v. Sigcau, Privy Council (1897) Appeal Cases pp 238, 247
& 248

Commercial Cable Company v. Government of Newfoundland (1916)
2 Appeal Cases, p. 610

Queen v. Clarke Privy Council Cases (1877) All E.R. Vol. 13, p. 808

De Verteuil v. Knaggs & anor, also reported in Law
Journal Privy Council 1918 Vol. 87 p. 128 of the Privy Council
Cases

10 Eshugbagi Eleko v. Officer Administering the Colony of Nigeria (1931)
Appeal Cases pp 662, 668, 669, 670 & 671

Oke Lampe Laoye & ors. v. Amo Oyetunta (1944) Appeal Cases p. 170

Empire Digest Vol. 8 title "Commonwealth and Dependencies" p. 689,
691, 692, 694

CERTIFICATE OF THE MASTER AND REGISTRAR

I hereby certify that the foregoing is a true and correct copy
of all proceedings, judgments, decrees and orders had and made,
of all exhibits received or given in the above matter(except the
merely formal documents stated as omitted in the hereunto annexed
index).

20 Given under my hand and the Seal of the Supreme Court of the
Island of Mauritius this twenty first day of February, 1964.

France Vallet
Master and Registrar
