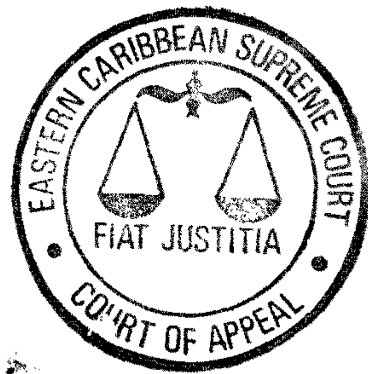

[illegible] OF APPEAL

DOMINICA

Civil Appeal No. 5 of 1969

Between: SCULLY LESTRADE — Plaintiff/Appellant

and

ROSEAU TOWN COUNCIL
and
FREDERICK E. DEGAZON — Defendants/Respondents

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice P. Cecil Lewis
The Honourable Mr. Justice St. Bernard (Ag.)

Miss M. E. Charles for the Appellant
Miss Vanya Dupigny with J. Armour for the Respondents

1970, July 7 and 8

JUDGMENT

CECIL LEWIS, J.A.

The first named respondent is a body corporate established by the Roseau Town Council Ordinance Cap. 189 (hereinafter referred to as "the Ordinance") for the government of the town of Roseau in Dominica. By section 3 of the Ordinance it is provided that "the said body corporate shall bear the name of the 'Roseau Town Council' ", (hereinafter referred to as "the Council"), that it "shall have an office in the town and an official seal, shall be entitled to make contracts and to sue and be sued in its name, and to acquire, hold, mortgage and dispose of all property real and personal."

By a notice (Exhibit A) published in the Dominica Herald of July 10th, 1965, the Council invited applications "from suitably qualified persons for the post of Town Clerk in the service of the Municipality of Roseau."

The Council is authorised by s. 20(1) of the Ordinance to appoint certain officers of the Council. This subsection

/reads as

reads as follows:-

> "20. (1) The council may, with the prior approval of the Administrator in Council -
>
> (a) appoint fit and proper persons to be town clerk, chief sanitary inspector, assistant town clerk and town overseer of Roseau respectively;
>
> (b) from time to time fix or alter the salaries to be paid to such officers; and
>
> (c) suspend or dismiss any of the said officers.

The following information (inter alia) was contained in the notice in relation to the post of town clerk: (a) the post is pensionable and carries the salary of $3,372 by annual increments of $144 to $3,948 and that it is governed by Colonial Regulations, General Orders in force in Dominica and by other rules in that island affecting the civil service; (b) the duties of the town clerk were specified in the notice which substantially reproduced the provisions of section 21 of the Ordinance wherein these duties are set out. This section reads:-

> "21. (1) The town clerk shall be the chief executive officer of the council; he shall have all such powers and perform all such duties as are or may be conferred or imposed upon him by this or any other Act or Ordinance or by any regulation, by-law, or order of the council and shall collect the rates, dues and fees payable to the council under the by-laws.
>
> (2) The town clerk shall attend the meetings of the council and of every committee, and shall keep minutes of the proceedings at every such meeting."

(c) The notice also stated that leave would be granted to the town clerk according to leave regulations in force in Dominica, and (d) that the appointment to the post of town clerk is subject to the approval of the Administrator in Council.

By a letter from the acting town clerk dated October 11th, 1965, (Exhibit B) the appellant was informed that his application for the post of town clerk had been successful and that the approval of the Administrator in Council for his appointment for a probationary period of six months had been received and he was asked to make arrangements to take up his post on November 1st, 1965.

The appellant duly entered the service of the Council and assumed the duties of his post, but, unfortunately, relations between him and the Council became rather strained in early 1969.

/Very many

Very many documents have been referred to in the appeal record, and it would perhaps be convenient to mention them in their chronological order, although not all of them are exhibits to the record.

The first documents to which reference will be made are letters dated 8th and 10th January, 1969, from the chairman of the Council to the appellant. These are not exhibited to the record and their contents can only be guessed at by virtue of a resolution moved by Councillor R.O.P. Armour which appeared as part of the minutes of an emergency meeting of the Council (Exhibit E) held on the 19th May, 1969. In this resolution Mr. Armour made reference to the fact that past chairmen of the Council had expressed their dissatisfaction with the non-attendance at work of the town clerk, and the non-performance of his functions on several occasions. He also mentioned that the chairman had in these letters requested the appellant to furnish explanations to certain queries and that the only reply which had been received was that contained in a letter of the 14th May written by the appellant to the chairman of the Council. Mr. Armour sought by his resolution to persuade the Council to obtain the approval of the Governor in Council for the suspension of the appellant, "pending a decision by Cabinet to approve his dismissal", and he suggested that copies of the relevant correspondence should be submitted to the Government "to afford them the opportunity of considering the matter." Another member of the Council moved an amendment to Mr. Armour's resolution and this amendment was carried.

The minutes of this meeting are by no means clear, but it was apparently decided by a majority that the appellant should be informed that he would be granted leave pending a reply from the Government. It also appears that Mr. Armour's substantive motion for the suspension of the appellant was not proceeded with, for the minutes record that "Councillor Armour was excused for the rest of the meeting" and there is no evidence that his resolution was even seconded before he was granted permission to leave the meeting.

The next document to which reference should be made is a letter of 28th May, 1969, written by the chairman of the Council to the Premier. This letter also is not on record, but it apparently conveyed to the Premier the decision of the Council at its meeting of 19th May. In the Premier's reply

/(Exhibit J)

(Exhibit J) to the chairman of the Council the Premier stated that the procedure "in this case could with advantage be based on that obtaining in the civil service," and he went on to say that it was usual for charges to be drawn up to which the appellant should be asked to reply, and that if the Council did not consider his reply satisfactory he should be so informed and also told that the matter would be sent to the Government with a recommendation for his dismissal.

A circular letter dated 28th June, 1969, (Exhibit G) was sent by the chairman of the Council to the members, and they were asked to record their decisions as to what should be done in respect of the laying of formal charges against the appellant. To this letter was attached a copy of the chairman's letter to the Premier dated 18th May, 1969, and of the Premier's reply thereto, and members were asked to signify whether they would approve of the chairman of the Council writing to the Premier requesting the services of an officer of the central government to assist the Council in the drafting of such charges as might be necessary. The Council by a majority approved the chairman's suggestion that the assistance of the central government should be obtained.

On the 8th of July, 1969, another emergency meeting of the Council was held and in the minutes of this meeting (Exhibit D) under the heading "Purpose of the meeting" the following appears:

> "The Chairman read the notice convening the meeting and reiterated on (sic) the points made in various correspondence dealing with the Town Clerk. He invited discussion on suggested procedure in correspondence with government and the Town Clerk."

After some discussion, Councillor Armour moved the following resolution:

> "That the Council request Government to approve of the suspension of Mr. Scully Lestrade as town clerk and he be placed on half pay pending the charges laid against him and that the chairman be empowered to send off the draft letter exhibited, to Mr. Lestrade."

The motion was carried. This, then, was the effective motion for the suspension of the town clerk.

On the 9th July a letter (Exhibit H) was written by the chairman of the Council to the Premier. In the chairman's letter he enclosed for the Premier's approval a draft of the letter which it was proposed to send to the appellant, and he stated that the procedure outlined in the letter had been

/approved by

approved by a majority of the members of the Council at a meeting held on the 8th of July in accordance with a resolution passed at that meeting. Paragraphs 3 and 4 of this letter are important and they read as follows:

> "3. It will be observed that it was intended that he (that is the appellant) should be suspended on half of his salary and approval is specially requested for this action.
>
> 4. It is recommended that the proposed inquiry into the charges against Mr. Lestrade should be conducted by Mr. F. E. Degazon, O.B.E., L.LB."

These paragraphs, and, indeed, the whole of the letter of 9th July, 1969, from the chairman of the Council to the Premier will be the subject of comment at a later stage.

The next document in chronological order is a letter dated 19th July, 1969, addressed by the chairman of the Council to the appellant. This letter is Exhibit C in the record and reads as follows:-

> "Office of the Roseau Town Council,
> Roseau,
> Dominica.
> 19th July, 1969.
>
> Dear Sir,
>
> I have to inform you that your reply of the 14th May, 1969 in answer to the letters of the 8th January, 1969, and the 10th January, 1969 and the subsequent reminders thereon, addressed by me to you has been considered unsatisfactory by the Council and that it is proposed to dismiss you from the service and employment of the Council on the grounds set out at paragraphs 1-to 9 of the 8th January, and that of the 10th January, 1969.
>
> Mr. F.E. Degazon, O.B.E., has been appointed to hear the charges against you.
>
> In the meantime approval has been obtained to suspend you from the service of the Council with effect from 21st July, 1969. You shall be placed on half pay until the determination of this matter.
>
> You will be informed of the date of the hearing of the charges against you.
>
> For ease of reference a copy of each is attached.
>
> Yours faithfully,
>
> (Sgd) B. J. Cools Lartigue
>
> Mr. S.S. Lestrade
> Town Clerk."

It will be observed that in this letter the appellant is being informed that it is intended to dismiss him from the service of the Council and that Mr. Degazon has been appointed to hear the charges against him.

Apparently, Mr. Degazon sat on 22nd September 1969 in pursuance of his purported appointment to inquire into the charges against the appellant. However, the inquiry was adjourned at the request of the chairman of the Council and was not proceeded with on that day. At the adjourned sitting on the 16th October, 1969, counsel for the appellant took the points - (a) "that the Board of Inquiry was not properly constituted because it had not been appointed by the Roseau Town Council notwithstanding allegations to the contrary contained in the letter dated 21st July 1969", and (b) "disciplinary proceedings against the appellant are governed by Colonial Regulations and General Orders in force in Dominica, and the Board of Inquiry was not appointed in accordance with the said regulations and orders." Mr. Degazon ruled against both of these submissions, and counsel for the appellant withdrew from the proceedings. In the event, however, the inquiry was not proceeded with because on that same day, October 16th, 1969, an originating summons was taken out on behalf of the appellant for the determination of certain questions and for obtaining the relief mentioned therein.

The questions which it was sought to have determined were contained in certain declarations which the appellant desired to have made. These were -

"A declaration that:

(1) the conditions of appointment of the Plaintiff are governed by Colonial Regulations and General Orders;

(2) the procedure followed in appointing a Board of Inquiry with a view to the dismissal of the Plaintiff is not in accordance with Colonial Regulations and General Orders in force in Dominica;

(3) the purported appointment of F.E. Degazon as a Board of Inquiry by the Roseau Town Council is invalid."

By way of relief the appellant sought an order that he be recalled to duty and be paid all arrears of salary due to him, such further and other relief as the Court may deem fit and payment of the costs of the application by the respondents.

In his affidavit sworn on 16th October, 1969, in support of the originating summons, the appellant admitted that he received a letter dated 10th January, 1969, from the chairman of the Council in which certain queries were addressed to him, and that he replied to these queries on the 20th May. He stated in paragraph 4 of his affidavit that he was informed

/by letter

by letter of the 19th July that Mr. F. E. Degazon, the second named respondent, had been appointed a Board of Inquiry "to investigate the said queries (now called charges)."

In paragraph 5 he alleged that there was no indication as to who had made the appointment. He further alleged in paragraph 6 of his affidavit "that at a sitting of the purported Board of Inquiry" held on the 16th October, 1969, he had heard a letter read which was dated the 21st of July 1969 in which the chairman of the Council had informed Mr. Degazon that he had been appointed by the Council to hear the charges against him. The appellant stated in paragraph 7 of his affidavit that he had searched the minutes of all the meetings of the Council between 8th January and 21st July, 1969, and had found no reference to the appointment by the Council of Mr. Degazon as a Board to inquire into any charges which may have been made against him. He stated in paragraph 12 of his affidavit that his counsel withdrew from the inquiry after making the objection to Mr. Degazon's jurisdiction to which I previously referred, and he gave as his reason for taking out the originating summons that there was every indication that the purported Board of Inquiry intended to continue the hearing.

The appellant's evidence at the hearing of the originating summons was substantially to the same effect but he made no reference to his allegation that Mr. Degazon's appointment was contrary to Colonial Regulations, nor did he adduce any evidence in support thereof. This comment is of importance, in the light of the declaration sought by the appellant in paragraph 2(b) of that portion of his notice of appeal in which he is claiming a declaration that "the procedure followed in appointing a Board of Inquiry with a view to the dismissal of the plaintiff is not in accordance with Colonial Regulations and General Orders in force in Dominica."

An affidavit in reply sworn by Theodore Walter Norris acting town clerk stated in paragraphs 2 and 3 that certain minutes of the emergency meeting of the Town Council held on 8th July 1969 (Exhibit D) which were exhibited to his affidavit showed that the second named respondent, F.E. Degazon, "was properly appointed to inquire into the charges presented against the plaintiff", (i.e. the appellant). This witness did not even refer to this allegation in his examination in chief and when asked about it in cross examination he gave evidence completely at variance with that mentioned in his affidavit.

/The originating

The originating summons came on for hearing before Berridge, J. on the 21st November, 1969, and was dismissed. The appellant appealed against his order on the following grounds:-

"(1) The learned Judge misdirected himself in holding that Colonial Regulations and General Orders and other rules affecting the Civil Service are not applicable to the Plaintiff/Appellant's contract of service.

(2) The learned Judge is wrong in law in holding that any attempt by the first defendant/respondent to make Colonial Regulations, General Orders and other rules affecting the Civil Service applicable to the Plaintiff/Appellant is ultra vires and without effect.

(3) The learned Judge is wrong in law in holding that any approval of appointment by the Governor-in-Council is incompatible with appointments which are subject to Colonial Regulations, General Orders and other rules affecting the Civil Service.

(4) The learned judge erred in law and in fact in applying the maxim omina praesumuntur rite esse acta as the evidence disclosed that the Premier within whose portfolio the department of Local Government falls had not approved the procedure to be adopted.

(5) The learned judge erred in law in finding that the official record of meetings of the Roseau Town Council could be amended by the evidence of the acting town clerk.

(6) The learned judge erred in law in finding that there was no irregularity in view of grounds (1) to (5) supra."

The relief sought in the notice of appeal was as follows:-

"(1) That the decision of the learned judge be set aside.

(2) That the following declarations be made:

(a) The conditions of appointment of the plaintiff are governed by Colonial Regulations and General Orders.

(b) The procedure followed in appointing a Board of Inquiry with a view to the dismissal of the plaintiff is not in accordance with Colonial Regulations and General Orders in force in Dominica.

(c) The purported appointment of F.E. Degazon as a Board of Inquiry by the Roseau Town Council is invalid.

(3) Such further and other relief as the Court may deem fit.

(4) Costs of this appeal and of the Court below."

/The substantial

The substantial questions which fall to be decided in this appeal are these:

(a) Do Colonial Regulations, General Orders and other rules affecting the civil service apply to the appellant's contract of service?

(b) Was the appellant's suspension by the Council valid, and

(c) Was Mr. Degazon ever appointed by the Council to inquire into the charges against the appellant?

In regard to (a) above, the trial judge said as follows:

> "In my view the Town Clerk is not a 'public officer' within the meaning of that term and Colonial Regulations, and General Orders and other rules affecting the civil service are not applicable to him.
>
> Any attempt purporting to make these regulations, rules and orders part of his conditions of service is in my view ultra vires and without effect and, in any event would be subject to the provisions of the Ordinance. Further, approval of appointment by the Governor in Council is incompatible with appointments which are subject to Colonial Regulations, General Orders and other rules affecting the civil service."

He reached this conclusion after consideration of s.3(1) of the Existing Laws (Adaptation) Ordinance No. 5 of 1967; section 55(1) of the Dominica Constitution Order 1967 (hereinafter referred to as "the Constitution") and the terms "public office", "public officer" and "public service" as defined in s.110 of the Constitution.

I agree with the trial judge that the appellant is not a "public officer" within the meaning of that term as defined in the Constitution, but I do not agree that Colonial Regulations, General Orders and other rules affecting the civil service are not applicable to him. The appellant is not a public officer but an employee of the Council. The notice published by the Council in the Dominica Herald in which applications were invited for the post of town clerk, made it abundantly clear that this was a post "in the service of the Municipality of Roseau." Section 20 subsection (1) (a) of the Ordinance gives specific power to the Council to appoint "fit and proper persons to be town clerk, chief sanitary inspector, assistant town clerk and town overseer of Roseau, respectively." In paragraph (b) of subsection (1) of this section these persons are referred to as "such officers", and in paragraph (c) power is given to suspend or dismiss any of "the said officers."

/The words

The words "such officers" and "the said officers" in this section obviously refer to the persons whose appointments are authorised by the section and mean that they are to be regarded as officers of the Council. Moreover, s.21 of the Ordinance states that "the town clerk shall be the chief executive officer of the Council." There can be no doubt therefore that the appellant is not an officer in the service of the Government of Dominica but rather an employee of the Council.

Counsel for the appellant submitted that the fact that the appellant was not a public officer was no ground for contending that Colonial Regulations and General Orders did not apply to his contract of service, for it was made clear in the advertisement that the post was subject to these regulations and there was nothing in law to prevent the Council making the regulations part of the terms and conditions of the appellant's employment. She further contended that the Council under s.3 of the Ordinance had power to enter into contracts and that this power was not restricted in any way. Counsel for the respondents, while not denying that the advertisement did indicate that the conditions attaching to the post made it subject to Colonial Regulations, contended that Colonial Regulations related to different categories of officers and as it was not known into what category the appellant fell, the conditions under which the appellant was employed were so vague as to render his contract void for uncertainty. The short answer to this submission is that the validity of the appellant's contract was never an issue in the Court below nor was this question ever argued, and it is now not open to the respondents to raise this question on appeal. When the Council advertised for applicants for the post of town clerk, it stated in its advertisement that the post was governed by Colonial Regulations, General Orders and other rules affecting the civil service in Dominica. There was nothing in law to prevent the Council laying this down as one of the conditions relating to the post which it desired to fill. The appellant accepted this condition and was appointed on that basis. Colonial Regulations and General Orders therefore became part of the appellant's contract of service on his acceptance of the post and his appointment thereto. I am accordingly of the opinion that the trial judge was wrong when he held that these Regulations and General Orders are not applicable to the appellant.

/Once it is

Once it is appreciated that the "prior approval" mentioned in s. 20(1) of the Ordinance must be obtained as a necessary pre-requisite to proceedings for the suspension or dismissal of the appellant, then the Council must apply Colonial Regulations if it takes any such proceedings, for the Ordinance is silent as to the details of the procedure to be adopted for suspension or dismissal thereunder.

As to the second question whether the appellant's suspension by the Council was valid it becomes necessary to consider the authority under which the Council acted when it purported to suspend the appellant and the machinery which it adopted in so doing. It was contended by counsel for the respondents that s. 53 of the Constitution enabled the Premier to approve the appellant's suspension in view of the fact that he held the portfolio of local government. This section reads as follows:-

> "53. The Governor, acting in accordance with the advice of the Premier, may, by directions in writing assign to the Premier or any other Minister responsibility for any business of the Government of Dominica, including the administration of any department of Government."

All this section does is to give the Governor power, with the advice of the Premier, to allocate portfolios to Ministers and nothing more. It has no connection whatever with the exercise by the Governor of any statutory powers which may be conferred on him.

Section 20 (1) of the Ordinance empowers the Council "with the prior approval of the Administrator in Council" to suspend the town clerk. This section being part of an "existing law" as defined in Section 101 (5) of the Constitution must be construed "with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution." The Legislature on February 23rd, 1967, enacted the Existing Laws (Adaptation) Ordinance No. 5 of 1967, the object of which is to provide for the adaptation of the existing laws of Dominica to conform with the provisions of the Dominica Constitution. By virtue of s. 3(1) of this Ordinance, the reference to "Administrator in Council" in s. 20(1) of the Ordinance must therefore be read and construed as a reference to the Governor. Section 3(1) reads as follows:-

/"3. (1) Subject

> "3. (1) Subject to this Ordinance and the Constitution a reference in any existing law to the Administrator (meaning thereby an Administrator of the former Colony of Dominica) including a reference to the Administrator in Council or the Administrator in Executive Council shall be read and construed as a reference to the Governor."

It is the Governor, therefore, who is to approve the appellant's suspension, but he cannot do so in his own discretion for he is bound to act in accordance with the advice of the Cabinet in the exercise of his functions. This is provided for in s. 55(1) of the Constitution which reads as follows:-

> "55. (1) In the exercise of his functions the Governor shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet or in his own deliberate judgment."

It is indisputable that there is no document on record which shows that the Governor ever conveyed to the Council his approval for the suspension of the appellant from the post of town clerk. In fact a letter of 18th July, 1969, signed by the Cabinet Secretary which conveyed the authority for the appellant's suspension does not indicate whose approval was obtained. This letter (Exhibit F) reads as follows:-

> "I am directed to refer to your letter reference No. 157/81 of the 9th July and to state that approval has been given for suspension on half pay of Mr. Scully Lestrade, Town Clerk."

Apart from being vague, this letter which emanated from the Premier's office is a reply to the letter of July 9th, 1969, (Exhibit H), sent by the chairman of the Council to the Premier in which the chairman specifically asked for approval of the appellant's suspension and in this context it leads inescapably to the conclusion that the approval referred to in Exhibit F was given by the Premier. All the correspondence on record relating to the town clerk and containing recommendations for his suspension passed between the chairman of the Council and the Premier and _vice versa_, and nowhere is there any mention that the Governor's approval should be obtained or was necessary, save in the abortive resolution moved by Councillor Armour at the meeting of the Council held on 19th May, 1969, nor is there anything in the record to show that the Governor was ever consulted.

/In my view

In my view in order for the approval of the appellant's suspension to be valid it must be given by the Governor acting in accordance with the provisions of s. 55(1) of the Constitution and this clearly was never done. Certainly the letter of 18th July which is being relied upon by the Council as the authority for the appellant's suspension, gave no indication that the Governor's approval had been obtained. I would therefore hold that a vital pre-requisite for the appellant's suspension, namely, the approval of the Governor acting in accordance with the advice of his Cabinet, had not been obtained, and on this ground I hold that the appellant's suspension was invalid.

As to the third question raised in this appeal, whether Mr. Degazon was appointed by the Town Council, it will be appropriate at this stage to mention that the relief sought by the appellant in paragraph 2 (b) of his reasons for appeal, viz. a declaration "that the procedure followed in appointing a Board of Inquiry with a view to the dismissal of the plaintiff is not in accordance with Colonial Regulations and General Orders in force in Dominica" was abandoned by the appellant after it was pointed out that no evidence in support of this allegation had been adduced at the trial. However the following paragraph, 2 (c), which reads "the purported employment of Mr. Degazon as a Board of Inquiry by the Roseau Town Council is invalid" was proceeded with, and the Court was asked to declare that his appointment was invalid on the ground that he had not been appointed by the Council.

The Council by its servant the acting town clerk Theodore Walter Norris, is contending that Mr. Degazon was appointed at its meeting of the 8th July, 1969, to inquire into the charges against the appellant. This is alleged in paragraphs 2 and 3 of Mr. Norris' affidavit sworn on 31st October, 1969, but when he gave evidence at the hearing of the originating summons he made no mention of this in his examination in chief - a fact I consider ratner unusual. It was only when he was cross-examined that he mentioned that Mr. Degazon had been appointed by the Council at its meeting of 8th July, 1969, and this is what he said:-

> "On 8/7/69 the Council discussed the appointment of Mr. Degazon. It was not definitely stated by me in the minutes but the correspondence dealing with the appointment of Mr. Degazon was agreed to and accepted.
> The Council did take a decision to appoint Mr. Degazon - I was present when it was taken. It was referred to in the matters relative to 'correspondence'."

/Counsel for

Counsel for the appellant contended that this evidence was not admissible, and in support she relied on s. 17(1) and (3) of the Ordinance. Section 17(1) reads:-

> "17. (1) A minute of the proceedings at a meeting of the council, or of a committee, signed at the same or next ensuing meeting by the chairman, or by a member of the committee describing himself as or appearing to be chairman of the committee, shall be received in evidence without further proof in all Courts of Justice and for all other purposes whatsoever."

Section 17(3) reads:-

> "17. (3) The minutes of every meeting of the council, or of a committee, certified by the chairman, shall, within three days after confirmation, be forwarded by the town clerk to the Administrator and shall be published in the Gazette."

As regards subsection (1), it was submitted that the minutes when confirmed and signed by the chairman constituted an official written record of the proceedings, that this record was the best evidence available and could not on principle be altered by the town clerk by oral evidence. Counsel referred to the case of Regina v. Inhabitants of Pembridge (1841) Carrington and Marshman's Reports 157 at p. 161 where the following appears:

> "The resolution of a vestry meeting held on the 12th April, 1821 was read; and it purported to allow Mr. Davies a sum of £50.
>
> W. J. Alexander proposed to ask what was said by persons present at the meeting.
>
> Talfourd, Serjt., objected.
>
> Coleridge J. Here is a vestry meeting, which comes to a resolution to allow Mr. Davies £50; whatever a persons says, whenever he enters into a written agreement, might be given in evidence if parol evidence may here be given, in addition to this written resolution.
>
> W. J. Alexander - What is said is explanatory of the resolution.
>
> Coleridge - I am very clearly of opinion, it is not evidence. If the meeting meant to guard the resolution by anything in addition to the terms of it, they should have entered it as part of the resolution."

The learned judge thus rejected the oral evidence sought to be given to explain the written resolution.

Counsel for the respondents however contended that minutes prepared by virtue of s. 17 are not the only method

/of proving

of proving what takes place at meetings, and if the Ordinance wished to say that proceedings at meetings were to be proved exclusively by this means it would have said so. Therefore he contended it was open to the Court to receive oral evidence from the town clerk as to what took place at the meeting of the 8th July, 1969.

Subsection (1) of s. 17 prescribes the manner in which events which take place at meetings of the Council must be proved. It says in effect, that if a written record of these events signed by the chairman is produced and the chairman's signature is proved, then, if this record is offered in evidence in a court of law it must be received and this is sufficient proof of the transactions which took place at the meeting.

It is the Council which desired to prove the events of the meeting of the 8th July, 1969, for it is contending that one of these events was the appointment of Mr. Degazon and it wished to use the minutes of this meeting to support its contention. The minutes of the Council were, of course, in its possession and all the Council needed to do was to produce them, and if they were signed, prove the signature of the chairman and the Court was bound to accept them. This was the proper, and in my opinion, the only way in which proof of the proceedings of the meeting could have been given by the Council as this was the manner of proof laid down in the Ordinance. The Council did not follow the prescribed statutory method of proof because it was aware that the written record of the proceedings of the meeting in question did not support its claim. It was allowed instead to give oral evidence through the acting town clerk which was inconsistent with the written record. Such evidence was a method of proof not permitted by the Ordinance. Moreover, the rule of evidence that "when a transaction has been reduced to or recorded in writing either by a requirement of law or agreement of the parties extrinsic evidence is in general inadmissible to contradict, vary, add to or subtract from the terms of the document" is in my opinion directly applicable to the circumstances of this case.

Section 17 obviously requires the record of the proceedings to be in writing because it speaks of the record as being "signed" by the chairman. In these circumstances "to admit inferior evidence when the law requires superior

/would be to

would be to nullify the rule." The acting town clerk's oral evidence was in this case inferior to the evidence of the written record itself and as the effect of the admission of his evidence would be to add to the written minute it was inadmissible.

I would accordingly allow the appeal with costs here and in the court below, set aside the trial judge's order and enter judgment for the appellant. In addition I would make the following declarations:

> (a) Subject to the provisions of section 20 of the Ordinance the appointment of the appellant is governed by Colonial Regulations, General Orders and other rules applying to the civil service in Dominica;
>
> (b) the purported appointment of Mr. F.E. Degazon as a Board of Inquiry by the Roseau Town Council is invalid.

(P. Cecil Lewis)
Justice of Appeal

GORDON, C.J. (Ag.)

I agree with the reasons given in the judgment just delivered and I concur with this judgment and the order therein.

(K. L. Gordon)
Acting Chief Justice

ST. BERNARD, J.A. (Ag.) I agree with the judgment just delivered. I would allow the appeal and concur with the order made.

(E. L. St. Bernard)
Justice of Appeal (Ag.)