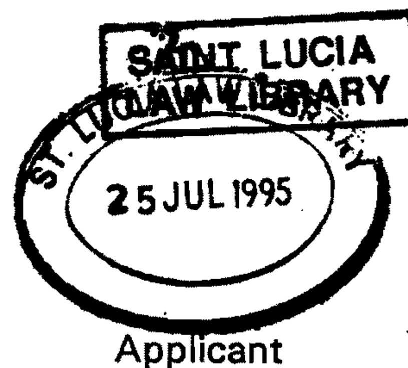
#022



SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995

Suit No.357 of 1995

BETWEEN:

AUGUSTIN LIONEL

Applicant

and

THE HONOURABLE ATTORNEY-GENERAL

Respondent

Mr. C. Rambally and Mr. M. Francois for the Applicant.
Mr. E. Thomas, Solicitor-General, for the Respondent.

1995: May 19 and 25.

JUDGMENT

MATTHEW J.

Pleadings

On May 17, 1995 the Applicant filed a notice of motion for an order to prohibit the Respondent from holding a commission of inquiry to look into the alleged misappropriation of United Nations funds and other funds by certain commissioners appointed by the Respondent. The document was incomplete for it stated that the motion was pursuant to the leave of the Court given on a blank date. So at the time the motion was filed there was no leave granted to the Applicant

as required by **Rule 1(1) of Order 44 of the Rules of the Supreme Court.**

The purported motion was accompanied by a statement in support of application for leave to apply for an order of prohibition as well as an affidavit of the Applicant, Augustin Lionel. The affidavit purported to exhibit page 196 of a book, *Caribbean Life and Culture,* by *Sir Fred Phillips*. I say the affidavit purported to do so because it did not comply with **Rule 11 of Order 41 of the Rules of the Supreme Court.**

In his affidavit the Applicant stated that he is a citizen of Saint Lucia and a person lawfully entitled to vote and also a person lawfully required to pay income and other taxes to the State. He said he is a public-spirited citizen and as such has been closely observing and following recent revelations in relation to the alleged misappropriation of United Nations funds and other funds by the Government of Saint Lucia. He said he believes the matters to be of grave public importance that it was of utmost public importance that a fair and impartial tribunal be instituted to look into the matter.

He further deposed that he has been informed that three eminent persons have been appointed by the Respondent as Commissioners to conduct the said inquiry, and he gave the names of the three persons

as Sir Fred Phillips, Rex McKay and Reginald Dumas.

He then stated that he has been informed and verily believes that the Commissioners are and have been close friends of the Right Honourable Prime Minister of Saint Lucia, one of the persons allegedly implicated in the said misappropriation, and therefore the rules of natural justice will be infringed.

On May 18, 1995 the Applicant's Counsel went before a Judge in Chambers who considered his application for leave and granted leave and at the same time setting down Friday, May 19, 1995 at 11.00 a.m. to hear the motion in open Court.

On May 19, 1995, the Honourable Attorney-General filed an affidavit in opposition asking to dismiss the motion and to award costs to the Respondent. In her affidavit the Attorney-General deposed that she had been improperly named as the Respondent in this matter and she stated that the fact that the Applicant was a voter, tax-payer or public-spirited person was an insufficient basis for the purposes of the application for the relief sought by the Applicant.

She deposed that the Commissioners were duly appointed by His Excellency the Governor-General in accordance with the Constitution

of Saint Lucia and the **Commissions of Inquiry Ordinance, Chapter 5 of the Laws of Saint Lucia.**

She further stated that a mere allegation of friendship between any or all of the Commissioners and the Right Honourable Prime Minister is insufficient to establish bias on the part of the said Commissioner or any of them.

Evidence

Despite the affidavit of the Applicant already referred to, Mr. Rambally for the Applicant chose to lead evidence. Only the Applicant gave evidence in which he reiterated much of what he had said in his affidavit.

On examination in chief he stated that he lived at Babonneau in Castries and he is a building contractor, a citizen of Saint Lucia by birth and 53 years old. He said he was a person required to pay income tax and N.I.S. contributions.

He stated that as a St. Lucian he followed what was happening and there was going on these days a United Nations scandal. He said he understood that to be, that some money was misused by the Government of Saint Lucia.

He said he knows that the Government has set up an inquiry to be convened by Sir Fred Phillips and Rex McKay and he heard these people are to investigate the Government of Saint Lucia.

He said he did not know Sir Fred personally but he had read in a book belonging to one of his daughters that Sir Fred is a close friend of the Prime Minister and therefore he was not happy with the composition of the commission of inquiry. He said Sir Fred will have compassion on the Prime Minister as his friend.

When he was asked by Mr. Rambally about Sir Fred's book he said the book was about "some Caribbean". He said he did not recall what was said in the book but it said the Prime Minister was a colleague and close friend of the writer.

He was shown a copy of the book and he said he was familiar with it and that it was on page 126 that reference was being made to the friendship between the Prime Minister and Sir Fred. Mr. Rambally then asked him if he was sure that was the page. He then referred to a paper which was not produced in evidence and then said it was page 196. The Solicitor-General quite rightly at the time stood up in objection and asked him what was he referring to.

He then concluded his examination in chief thus -

> "I am asking the Court if there should be some inquiry there should be changes. I am asking that the Judge issue an order of prohibition to prohibit the Commission from sitting. Apart from Sir Fred I have no objection to the other two commissioners sitting."

A copy of the book "*Caribbean Life and Culture*" was tendered in evidence and marked **A.L.1**.

When he was cross-examined he said he did not know where the United Nations fund came from but he just knows it is a U.N. scandal. He said he is interested for he was hearing things about his country. He said the basis for his saying Sir Fred and the Right Honourable Prime Minister are good friends is what he read at page 196 of the book. The learned Solicitor-General asked him to read the passage to which he was referring. He replied:

> "I cannot read the passage for I am nervous".

The Solicitor-General told him he will have to get over his nervousness and read what he said bothered him. He insisted he could not read it for he was nervous. The Court asked the Clerk to read the relevant part of **page 196** of the book. The Applicant then continued under cross-examination and said that he would say the words "*colleague*" and "*friend*" mean the same thing. He said he agreed the word

"*friend*" is not used in the book. He said he has not heard of people of a particular profession being referred to as colleagues.

At the conclusion of his examination by Counsel when he still had the book in his hands, the Court asked him when was the book written. He looked all over it and could not say. The information that it was written in 1991 was supplied by Counsel at the bar table. In answer to a second question by the Court he replied:

> "I am saying the Committee who appointed the Commissioners should make the changes."

Submissions by the Applicant

This part of the Applicant's case was put forward by Mr. Francois. Learned Counsel submitted that what is before the Court is not the source of the U.N. funds but what is important is that an application is before the Court alleging that a member of the Commission should not have been appointed because there is a relationship between that member of the Commission and one person who is subject of the inquiry and that is what bothers the Applicant.

Counsel submitted that the application for judicial review is made under the authority of **Order 44 of the Rules of the Supreme Court** and

the authority to move against the Respondent is the **Crown Proceedings Act, Vol. 1, Chapter 13, section 13.**

Counsel submitted that because it is an application for judicial review *locus standi* is derived by being a citizen of the State in a matter of public interest.

Counsel stated that there was a long line of cases which were the subject of judicial review before the English Courts and in one such case, **Ridge v Baldwin 1964 A.C. 40**, it was held that anybody with a legitimate expectation has the right to apply to the Court for judicial review. Counsel could not direct the Court to the particular passage in the decision which elaborated the principle.

On the question of bias which was quite correctly stated was the main thrust of the application Counsel referred to the following cases:

1. **The King v Justices of Sunderland 1901 2 K.B. 357;**
2. **The King v Sussex Justices 1924 1 K.B. 256;**
3. **Frome United Breweries v Keepers of the Peace and Justices for County Borough of Bath 1926 A.C. 586;**
4. **Cottle v Cottle 1939 2 A.E.R. 535;**
5. **Sadovnik v Kellman Ltd (1960) 3 W.I.R. 119**; and
6. **Holmes v Nelson 1979 Tasmanian Reports 89.**

Counsel submitted that the question is not whether or not the person will be biased. The law does not require that; but it is whether the Applicant is of reasonable apprehension of bias.

Counsel submitted that the **Sussex Justices case** cited above falls closely to the present case.

When Counsel replied to the submissions made by the Solicitor-General on *locus standi* he referred the Court to **R v Greater London Council, ex parte Blackburn**, page 185, letter (c). In answer to the default in not complying with the Rules of the Court learned Counsel said it was because of the urgency of the situation the procedure set down by **Order 44** was not followed.

Submissions by the Respondent

The learned Solicitor-General submitted that there are two basic issues in this case:

1. Whether the Commissioners were validly appointed pursuant to the Constitution and the Commissions of Inquiry Ordinance, Chapter 5; and

2. Whether the stated close relationship as colleagues between Sir Fred Phillips and the Right Honourable Prime Minister per se is sufficient to give rise to bias so as to disqualify Sir Fred from sitting.

On a preliminary issue Counsel observed that the Applicant after obtaining leave of the Court had failed to comply with **Order 44 Rule 3(1)** in its entirety in that the application to the Court has not been

made by original motion. He agreed he might have taken that point in limine.

Counsel then submitted that the Attorney-General is not properly named as Respondent as there was nothing to show that the matter was being brought pursuant to **section 13(2) of the Crown Proceedings Act** and as the action stands it looks like an action against the Attorney-General herself.

Counsel then challenged the *locus standi* of the Applicant. In that context he referred to the following:

1. **Administrative Law by H.W.R. Wade, 6th Ed.** pages 694-695;
2. **Judicial Review of Administrative Action by S.A. de Smith 4th Ed.** pages 416-417;
3. **R v Greater London Council, ex parte Blackburn 1976 3 A.E.R.**; and
4. **R v Sir Louis Mbanefo, Moses, Marshall, ex parte Pierre (1966) 10 W.I.R. 368.**

On the question of the validity of the appointment of the Commissioners by the Governor-General of Saint Lucia, Counsel referred to the **Commissions of Inquiry Ordinance**, section 2 and the **Constitution of Saint Lucia**, in particular **sub-paragraphs 2(1) and 2(5) of Schedule 2 to the Constitution Order.** He also tendered a copy of the **St.Lucia Gazette** published on **Wednesday, May 10, 1995** which

indicated that His Excellency the Governor-General had appointed as Commissioners the following three persons:

1. Sir Fred Albert Phillips;
2. Rex Herbert McKay; and
3. John Reginald Phelps Dumas.

When he went on to deal with what he called the most important part of the matter he referred to paragraphs 4, 5 and 6 of the affidavit of the Attorney-General.

He referred to the two applicable tests for bias as being:

1. real likelihood of bias test; and
2. reasonable suspicion of bias test.

He, like Mr. Francois, stated that the Court is not concerned with actual bias but should look at the circumstances. He said in this case there was only a line in a book that was the subject of the challenge.

Counsel submitted that life would be totally impossible if colleagues were going to challenge one another or be challenged if one is sitting as an arbitrator and the other as a litigant. Counsel referred to the imminent appointment of **Mr. Michael de la Bastide** as Chief Justice of Trinidad and Tobago and asked whether his colleagues at the Bar with him for over 20-30 years will be debarred from appearing before him or he will be debarred from sitting as Chief Justice in cases

in which they appear. He submitted that the word "*colleague*" had a special connotation and the fact that people are colleagues per se does not give rise to bias.

The Solicitor-General referred to passages from the works of **Professors Wade** and **de Smith** and **Geoffrey Flick** with respect to personal friendship.

He submitted that a reasonable man having seen what Sir Fred said in his book could not come to the conclusion that he cannot be impartial.

Conclusions

Order 44 of the Rules of the Supreme Court (1970) states the procedure for applications for orders of *mandamus, certiorari* and prohibition.

Rule 1(1) states that no application for an order of prohibition shall be made unless leave has been granted. The Applicant was duly granted leave the day after he filed his documents in Court. But after he obtained leave the Applicant was to approach the Court by motion. He failed in this regard.

Order 44 Rule 3(1) states:

> "When leave has been granted to apply for an order of prohibition, the application for such order must be made to the Court by originating motion".

I underlined the word "must" to highlight the fact that it is obligatory. Learned Counsel for the Applicant has prayed in aid of his default the urgency of the situation. This is not good enough and if the objection was taken at the beginning of the proceedings the application might well not even be heard. The rules of Court must be complied with at all times.

Was the Attorney-General correctly named as a Party? The learned Solicitor-General began his submissions by stating that there are two basic issues in this case one of which being whether the Commissioners were validly appointed. I do not think that is a basic issue in the case in the sense that the case can be determined on whether or not the Commissioners were validly appointed. But it may be necessary to clear the air on the appointment since it has a connection to the Attorney-General being named as a Respondent.

Section 13(2) of the Crown Proceedings Act, Chapter 13 states:

> "Civil proceedings against the Crown shall be instituted against the Crown Attorney."

But as the learned Solicitor-General has said no where in his pleadings has the Applicant referred to this legislation or showed that he is suing a certain person as representative of the Crown or a certain servant of the Crown and is using the name of the Attorney General, which is the officer who has replaced the Crown Attorney, for that purpose.

The pleadings appear to be saying that the Applicant wants a prohibition order against the Attorney-General to prohibit her from allowing the Commissioners to sit. This conclusion is supported by paragraph 5 of the Applicant's affidavit where he deposes that the Commissioners were appointed by the Attorney-General, the Respondent.

But the truth of the matter is that it was the Governor-General who appointed the Commissioners. This is stated in the issue of the **Gazette** referred to above. **Section 2** of the **Commissions of Inquiry Ordinance** gives the Governor-General the power to appoint commissioners whenever he shall deem it advisable. But that provision has to be read in the light of the Constitution of Saint Lucia.

That law, the **Commissions of Inquiry Ordinance**, being an "existing law" in accordance with **paragraph 2(5) of Schedule 2** to the **Saint Lucia Constitution Order, No. 1901 of 1978**, has to be construed

with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution in accordance with paragraph 2(1) of the said Schedule.

Section 64 of the Constitution provides for the exercise of the Governor-General's functions. **Section 64(1)** states:

> "In the exercise of his functions the Governor-General 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, or after consultation with, any person or authority other than the Cabinet."

The section goes on to state the limited areas where the Governor-General is permitted to act in his own deliberate judgment.

It follows that under the **Commissions of Inquiry Act** the Governor-General in the exercise of his functions must act on the advice of the Cabinet or a Minister acting under the general authority of the Cabinet. That is the law of Saint Lucia.

It also follows that there is no room for the allegation that it was the Attorney-General who appointed the Commissioners as the pleadings of the Applicant imply.

So the application should either be directed at the Governor-General to prohibit him from continuning to allow the Commissioners

to sit or perhaps at the Commissioners themselves to prevent them from sitting. In the former case it is conceivable that the proceedings against the Governor-General could be instituted against the Attorney-General by virtue of the **Crown Proceedings Ordinance** but the document would or ought to indicate that was the position.

I say the proceedings could have been brought against the Governor-General or the Commissioners themselves and I only want to cite two authorities in this regard. In **Suit No.41 of 1988** originating in the **British Virgin Islands** between **Omar Wallace Hodge** as Plaintiff and **John Mark Ambrose Herdman and Hamilton Lavity Stoutt** as First and Second Defendants respectively, experienced Counsel for the Plaintiff asked me to declare that an instrument of appointment issued by the First Defendant purporting to appoint Charles A. Ross, ex High Court Judge, as a Commissioner of Inquiry was unconstitutional, illegal, void and of no effect. The Plaintiff was the Deputy Chief Minister at the time, the Second Defendant was the Chief Minister and the First Defendant was the British Colonial Governor.

Again in **R v Sir Louis Mbanefo, Moses, Marshall ex parte Pierre** when Mr. Pierre, a Solicitor, wanted to challenge the report of the Commissioners and applied for an order of *certiorari* to remove the

report into the High Court for the purpose of having it quashed, he proceeded directly against the Commissioners who were legally represented. There is also the **Trinidad case, Sir Solomon Hochoy v N.U.G.E. 1966-9 C.A. 19, Trinidad & Tobago** where certain suits were brought directly against the Governor-General.

I am of the view that the application in its present form is therefore defective for it does not evince a proper party as the Respondent. For that reason too the Applicant might have had to cross some turbulent waters if a preliminary objection was taken. Despite these shortcomings the matter was proceeded with on the merits.

The Solicitor-General sought to put another hurdle in the way of the Applicant. He submitted that the Applicant had no *locus standi*. He conceded that if the monies in question had come from the Consolidated Fund of Saint Lucia, and that incidentally is provided for in **section 77 of the Constitution**, the Applicant would have an interest but the funds here involved were from a source which the Applicant himself could not identify.

I think that is putting it too narrow. At pages **694-695** of his book **Professor Wade** stated:

> "Every citizen has standing to invite the Court to prevent some abuse of power, and in doing so he may claim to be regarded not as a meddlesome busy body but as a public benefactor. *Parker L.J.* thus stated the law as to *certiorari* - 'Anybody can apply for it - a member of the public who has been inconvenienced or a particular party or person who has a particular grievance of his own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies *ex debito justitiae'*."

And **Professor de Smith** states at **pages 416-417**:

> "The rules governing *locus standi* in relation to prohibition are said to be as follows. If a defect of jurisdiction is apparent on the face of the proceedings, the application for prohibition may be brought not only by a party aggrieved but also by a 'stranger' to the proceedings, and the Court is obliged to allow the application and is not entitled to have regard to the conduct of the applicant. If the defect of jurisdiction is not patent, the Court has a discretion to refuse to award prohibition to the applicant, but whereas it will incline towards exercising its discretion in favour of a party aggrieved, it will refuse an application made by a 'stranger' unless he makes out a very strong case.

In R v Greater London Council, ex parte Blackburn 1976 3 A.E.R. 184 Mr. Blackburn applied for an order of prohibition to prevent the Greater London Council from acting *ultra vires* by delegating their powers of censorship to the British Board of Film Censors and by allowing, contrary to law, the exhibition of films which were indecent. On the question of his *locus standi, Lord Denning M.R.* had this to say:

> "It was suggested that Mr. Blackburn has no sufficient interest to bring these proceedings against the GLC. It is a point which was taken against him by the Commissioner of Police and against the late Mr. McWhirter of courageous memory by the Independent Broadcasting Authority. On this point, I would ask: who then can bring proceedings when a public authority is guilty of a misuse of power? Mr. Blackburn is

a citizen of London. His wife is a ratepayer. He has children who may be harmed by the exhibition of pornographic films. If he has no sufficient interest, no other citizen has. I think he comes within the principle which I stated in *Attorney-General (on the relation of McWhirter) v Independent Broadcasting Authority*, which I would recast today so as to read: 'I regard it as a matter of high constitutional principle that, if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate'

The applications by Mr. Blackburn and Mr. McWhirter did much good. They show how desirable such a principle is. One remedy which is always open, by leave of the court, is to apply for a prerogative writ, such as certiorari, mandamus or prohibition. These provide a discretionary remedy and the discretion of the court extends to permitting an application to be made by any member of the public".

I am persuaded by what the learned Master of the Rolls has said above and to the extent that I have a discretion in the matter or otherwise I rule that the Applicant has the authority to bring this action.

I would distinguish **R v Sir Louis Mbanefo, Moses, Marshall ex parte Pierre** in that context.

In his work on **Natural Justice, 2nd Ed. Paul Jackson** states that the test for bias has been variously described as involving "a real likelihood of bias" or "a reasonable suspicion of bias". He concludes that there is only one test which has been expressed in a confusing variety of ways. He states at page 48:

"Whatever the test which must be satisfied before a decision can be set aside on the ground of bias it is clear that a decision will not be set aside on the mere vague suspicions of whimsical, capricious and

unreasonable people .... mere flimsy elusive morbid suspicions should not be permitted to form a ground of decision."

And he referred to a passage by *Lord Denning M.R* in **Metropolitan Properties v Lannon 1969 1 Q.B. 577** where he said:

> "There must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable man would think it likely or probable that the justice or chairman as the case may be would, or did, favour one side unfairly at the expense of the other. The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people think he did."

It is now necessary to refer to the portion of the book which has given rise to this action. It is found at **page 196** and I set out the full paragraph in which the reference to John Compton is made. It is as follows:

> "In *Tortola*, BVI, it was always a pleasure to meet the three Chief Ministers who have held office since 1969: Lavity Stoutt, Willard Wheatley and Cyril Romney. In *Montserrat*, Willie Bramble and his son - who were both Chief Ministers - as well as John Osborne, were well known to me. In *Antigua* I was on very good terms with V.C.Bird, Snr and all his Ministers. Likewise in *Dominica* with Frank Baron, Edward LeBlanc, Patrick John and especially Eugenia Charles - a person of outstanding gifts who had served as the local solicitor to the company before she became Prime Minister. John Compton, Son Mitchell and Herbert Blaize, Prime Ministers respectively of *St.Lucia, St.Vincent* and *Grenada* were also close long-time colleagues with whom it was always a pleasure to work, Milton Cato, retired Prime Minister of St.Vincent, was also well known to me from school days. Insofar as *Barbados* is concerned, I was fortunate when I first came to Barbados in 1962 to have as the Prime Minister, Errol Barrow, who served in this office from 1961 until 1976 and as from May 1986 assumed the mantle again, only to die after serving but one year. My relations with Tom Adams and Bernard St.John (Prime Ministers between 1976 and 1986) as well as Erskine Sandiford were no less harmonious; but I hope I can be forgiven for using this opportunity to pay special tributes to Prime Ministers Barrow and Blaize whom I knew very well indeed and who shared the same fate of dying in office."

I must now focus some attention on the cases on which the Applicant relied in support of his application.

In the **King v Justices of Sunderland 1901 2 K.B. 357** certain justices of a Borough were also members of the Borough Council. They took part in the deliberations of the Council to enter into a certain agreement between the Corporation and a company. The company applied for a liquor licence to give effect to the agreement. These justices sat and approved the licence. There was need to confirm the grant of the licence to the company. The same justices sat again to hear the application which was granted.

On an application for *certiorari* to bring up and quash the order confirming the grant of the licence the Court of Appeal held that there being a real likelihood of bias on the part of the justices with regard to the subject matter of the application to the confirming authority, the writ of *certiorari* must be issued.

In **Frome United Breweries v Keepers of the Peace and Justices for County Borough of Bath 1926 A.C. 586** three licensing justices of a Borough had been parties to a resolution of the licensing justices that a certain application should be forwarded to the Compensating Authority and at a further meeting they resolved to appoint a solicitor to oppose the renewal on their behalf before the

Compensating Authority. Three of the same justices sat and voted as members of the Compensating Authority.

Held, the three justices were disqualified from sitting on the Compensating Authority on the ground of bias and that the decision of the tribunal must be set aside.

In **Cottle v Cottle 1939 2 A.E.R. 535** on a summons before a bench of justices alleging desertion by the husband it appeared that the Chairman was a friend of the wife's mother. At the commencement of the hearing the husband who was unrepresented took objection to the Court presided over by the Chairman. The Chairman overruled the objection. The trial proceeded and the husband cross-examined the wife and it was proved that she had said she would set down the summons before the particular Chairman. It was contended that the proceedings be set aside.

The Divisional Court held that it was not necessary to show the Chairman was in fact biased and there was here sufficient evidence upon which the husband might reasonable have formed the impression that this justice would not give the case an unbiased hearing.

At **page 539** of the judgment *Sir Boyd Merriman* stated:

"I hope it goes without saying, if some attempt was made technically to argue this point, that, because of the mere fact that some sort of acquaintance exists between a justice and parties, or even the fact that they have discussed business matters entirely unconnected with the case, it would be a preposterous thing if a suggestion were to be made that there was bias, or a possibility of bias. If we were to put any such exacting test upon the right of justices to sit, it might very well be that the whole structure of summary jurisdiction would be upset. The whole essence of the local administration of justice and the great value of the functions of justices are that they do administer justice amongst people with whom they are acquainted, and of whose lives and family history they know something. I must not be taken for a moment to be suggesting that anything of that kind could possibly be regarded as a disqualification. In this case, however, the suggestion is that the acquaintance was much closer than that, and,indeed, in another affidavit, sworn by the sister of the husband, there occurs the following passage:

'In March, 1938, my sister-in-law [the wife] called to see my mother and me and informed us that a quarrel had arisen between her and her husband. We arranged to go down with her to see my brother and I walked down with her. On the way down we met my sister-in-law's mother who approached us and spoke to us. My sister-in-law then told her mother about the trouble stating that her husband had objected to the interference from his mother-in-law. My sister-in-law's mother then said:'Don't stand any messing about like this. Go down and see Mr.Browning. You know he is a friend of mine. He will have him on the bench and put him through it.'".

In the editorial note to this case the editor writes:

"Here, however, one of the Parties is alleging that her acquaintance with the justice is such that he will be inclined in her favour. Without any suggestion that the justice would be so inclined, that is sufficient to establish bias in the legal sense, since the necessity is not to prove actual bias, but to prove that the position is such that the other party cannot reasonably form the impression that his case may not be given an unbiased hearing."

In the case it is clear that the bias was built on something more than mere friendship.

In the two cases before **Cottle** referred to above the bias was based on the Justices acting in their own cause. There is the well known principle: *Nemo Judex in Causa Sua*.

In **Sadovnik and Another v Kellman Ltd (1960) 3 W.I.R. 119** the male Appellant was a Hebrew and the Chairman of the Rent Assessment Board used the word "Hebrew" in a derogatory sense. It was a case where the Respondent who was a tenant of the Appellants went to the Rent Assessment Board to have the standard rent determined. The Court of Appeal of Trinidad and Tobago held that whether the test was how a reasonable man would view what was said or whether what was said reasonably gave the Appellant the impression that he had not had a fair trial the case satisfied both tests. The derogatory remark here was obvious.

In **Holmes v Nelson 1979 Tasmanian Reports 89** the Appellant was convicted of an offence of drunken driving. He pleaded guilty. Before passing sentence on the Appellant the Magistrate remarked that he was a personal friend of the Appellant's father.

On an appeal to the Supreme Court of Tasmania the Court held, among other things, that the Magistrate should have disqualified himself and not passed sentence.

In his final case which learned Counsel for the Applicant submitted is closest to the facts of this case, **The King v Sussex Justices 1924 1 K.B. 256** a motor car collision occurred between M and W. The police brought a charge of dangerous driving against M. The matter was heard before a bench of justices. The acting clerk to the justices was a member of a firm of solicitors who were acting for W in a claim for damages for personal injuries against M.

At the conclusion of the police case the justices retired with the clerk to consider their decision. The clerk who was a lawyer retired with them in case they should desire to be advised on any point of law. The justices convicted the appellant. It was stated in an affidavit that they came to the conclusion without consulting the acting clerk who in fact abstained from referring to the case.

Held, that the conviction must be quashed, as it was improper for the acting clerk, having regard to the firm's relation to the case to be present with the justices when they were considering their decision.

Thus again it was an obvious circumstance that could give rise to bias and I fail to see its resemblance to the facts of the case under review.

At the end of the day I must still take the different tests of bias

and apply them to the facts of the present case. In his book on Natural Justice, *Dr. Geoffrey A. Flick* speaking of personal involvement stated at **page 118** that allegations of bias founded upon a personal involvement will only result in disqualification where there is a real likelihood that a hearing will not be fair. He was citing **Professor de Smith** in that context.

De Smith himself at pages **266-267** of the **4th Ed.** of his book on **Judicial Review of Administrative Action** stated:

> "On principle, close personal friendship should be regarded as a disqualification, provided that it gives rise to a real likelihood of bias. The English reports are almost wholly destitute of decisions on the point, but there is no reason to doubt that such a rule exists."

And **Professor Wade** in his **6th Ed.** at **page 489** stated:

> "Among other obvious cases of prejudice are personal friendship or hostility and family relationship. A justice was disqualified where he was a friend of the mother of one of the parties and that party had let it be known that the justice would be on her side; [**Cottle v Cottle**] but the Court distinguished this sharply from cases of mere acquaintances or business contact. This type of bias is rarely alleged and authorities are scanty."

I look at the circumstances under which Sir Fred wrote at **page 196** of his book with reference to Prime Minister John Compton. In the particular chapter the author was reminiscing about what he

described as his public service in the private sector. He was referring to his service as Chief Legal Adviser of Cable and Wireless in the Caribbean. In the paragraph under review he began speaking about his relationship with three heads of Government in Tortola and then the Heads of Government in Montserrat, Antigua and Dominica. Then he grouped the Heads of Government of Saint Lucia, St.Vincent and Grenada in one sentence namely:

> *"John Compton, Son Mitchell and Herbert Blaze, Prime Ministers respectively of St.Lucia, St.Vincent and Grenada were also close long-time colleagues with whom it was always a pleasure to work."*

He then went on to commend Milton Cato, retired Prime Minister of St.Vincent, Errol Barrow, Tom Adams, Bernard St.John and Erskine Sandiford of Barbados before paying special tribute to Prime Ministers Barrow and Blaize who both died in office.

It is clear from the passage cited above and the general context that Sir Fred Phillips was referring to his association with Prime Minister Compton in a working relationship. He said so himself that it was a pleasure to work with the Prime Minister. This was not the kind of friendship as was evident in the **Cottle case** or the **Tasmanian case.**

When one reads the passage more carefully and with a knowledge of some of the personalities mentioned Sir Fred is giving an account of a relationship with Heads of Government of different political persuasions. He was well known to the Brambles as well as to John Osborne of Montserrat. He was on good terms with Frank Baron and Eugenia Charles of Dominica who were opponents of the Labour Party to which Edward LeBlanc and Patrick John were closely associated. In St.Vincent he was friendly with Milton Cato as well as Son Mitchell; and in Barbados his relationship with Tom Adams and Bernard St.John was as harmonious as that with Errol Barrow and Erskine Sandiford of the opposite camp. Sir Fred Phillips seems to be advocating in this paragraph that he was a friend of all and enemy of none.

In the circumstances of this case it is not possible for me to say that a reasonable person would have a real likelihood of bias if Sir Fred Phillips acted as Chairman of the Commission of Inquiry set up by His Excellency the Governor-General as published in the Official Gazette of Wednesday, 10th May 1995.

It appears to me that the nature of the Applicant's concern would more aptly be described as a mere vague suspicion of a whimsical,

capricious and unreasonable kind.

But I go further. I have to consider the effect of the words of the passage on the Applicant, Augustin Lionel. It is his case. He is the person who came forward with this action and as stated previously when he was cross-examined by the learned Solicitor-General he said that the basis for him saying Sir Fred and the Right Honourable Prime Minister are good friends are on **page 196** of the book. Leaving aside for the time being that the passage did not any where say that the gentlemen were "good friends", when the Applicant was asked to read the words in the book which bothered him he said he could not do so for he was nervous. When he was further pressed that he should try to get out of his nervousness to read the passage he reiterated his nervousness. There was an impasse and the Court sought to relieve him from his embarrassment by asking the Clerk to read the passage.

I am of the undoubted view that this Applicant was anything but nervous on the witness stand. I am not going to say he is unable to read but he certainly did not demonstrate in the witness box that he read the book at any time. But that is not all. He had the book in his hand in the witness stand and could not find the passage that bothered him. He had to resort wrongly to a bit of paper from which he gave

the page number. The Applicant had the book in his hands and was again not able to tell the Court in which year it was written or published. For all these reasons the Court finds that the printed matter in Sir Fred's book did not, and could not, have any effect on the mind of the Applicant.

The application is refused.

In her affidavit the Attorney-General has asked that the application be dismissed with costs and the learned Solicitor-General endorsed that application at the end of his submissions. I have found that the Applicant had *locus standi* to bring the action and I do not wish to discourage public-spirited citizens of St. Lucia from approaching the Courts on matters of national importance in the public interest. I therefore make no order as to costs.

A.N.J. MATTHEW
Puisne Judge