ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIV. APP. NO.20A OF 1997

BETWEEN:

BALDWIN SPENCER

Appellant

and

THE ATTORNEY-GENERAL OF ANTIGUA AND BARBUDA

First Respondent

LESTER BRYANT BIRD

Second Respondent

ASIAN VILLAGE ANTIGUA LIMITED

Third Respondent

Before:	The Hon. Mr. C. M. Dennis Byron	Chief Justice [Ag.]
	The Hon. Mr. Satrohan Singh	Justice of Appeal
	The Hon. Mr. Albert Redhead	Justice of Appeal

Appearances:

Dr. Fenton Ramsahoye, Q.C.; Mr. Cosmos Phillips, Q.C.
Mr. Colin Derrick and Mr. Harold Lovell for the Appellant
Mr. David Turner-Samuels, Q.C. and Mr. Anthony Astaphan
for the first Respondent
Mr. Karl Hudson Phillips, Q.C. and Mr. Anthony Astaphan
for the second Respondent
Mr. Donald Halstead for the third Respondent

1998: March 9; 10;11; 12; 13;
April 8.

Civil Practice and Procedure – Administrative law – Challenge by Opposition leader to legality of certain actions/courses taken by the Government – Principles governing summarily striking out actions – **A-G of Duchy of Lancaster v London and North Western Railway Co.** [1892] 3 Ch 279; **Dyson v A-G** [1911] 1 K.B. 410; **Wenlock v Moloney** [1965] 2 AER 871 considered; **Williams and Humbert v W and H Trademarks** [1986] 1 AC 368 applied – Whether a cause of action was disclosed on allegation of constitutional violations, fraud, conspiracy and the commission of various torts of public mischief committed by the government – Cross-appeal on the issue of locus standi and on the failure to award costs – Meaning ascribed to 'discrimination' as used in the constitution – **Nielson v Barker** [1982] 32 WIR 254 applied – Whether the action taken by the Government was for a 'public purpose' – **Hamabai Framjee Petit v Secretary of State for India** [1914] LR P.C. applied – **Clunies-Ross v Commonwealth of Australia** [1985] LRC [Const.] 292; **Williams v Government of St. Lucia** [1969] 14 WIR 177 applied – Whether a public purpose can be achieved through private enterprise at the instance of a private entrepreneur whose sole aim may be to make a

profit – **Narayan Singh v Bihar** [1978] AIR 136 applied – Whether the issue of whether an acquisition is made for a public purpose is rendered non-justiciable by section 3[1], Land Acquisition Act – Interpretation of the Constitution Order and section 9 of the Constitution – **Wijeyesekera v Festing** [1919] AC 646 P.C., and others referred to – **Windward Properties v Government of St. Vincent** [1996] 1 WLR 279 P.C. applied – Determination of what issues were political, rather than justiciable, and therefore not for the Court's interference – **Kenilores v A-G** [1986] LRC [Const.] 126 applied – Interpretation and contrast of sections 18[1] and 119[1] of the Constitution – Whether, once Parliament had [subsequently] enacted necessary legislation, the agreement in issue could still be considered invalid – On the issue of whether the Opposition leader had locus standi in the proceedings, **Frank v A-G** [Antigua]; **Blake v Byron** [St. Kitts]; **A-G v Lawrence**; **A-G v Payne**; **Richard and James v G-G and A-G** [St. Vincent]; **Gordon v Minister of Finance** [St. Lucia] considered. Appeal dismissed. Cross-appeal allowed.

JUDGMENT

BYRON, C.J. [AG.]

This is an appeal against the decision of Saunders J delivered on 21st November 1997 striking out the Statements of Claim of the appellant in two consolidated actions.

The Proceedings

The appellant is the leader of the opposition in the House of Representatives in Antigua and Barbuda. He initiated two actions on behalf of himself and all other members of his political party the United Progressive Party.

In the first action which commenced on 23rd September,1997 he sought a declaration that an agreement, dated 18th February 1997 between the Government of Antigua and Barbuda and Asian Village Antigua Limited for the development of an area on the west coast of Antigua, was unconstitutional, illegal null and void and damages for fraud and conspiracy and misdemeanour in public office and other relief, the said damages to be paid to him for the benefit of the people of Antigua and Barbuda. The defendants to the action were the Attorney General, sued "both officially as representing the Government and personally as a member of the Cabinet"; the Prime Minister sued "as representing himself and all other Cabinet ministers personally and in their official capacity"; and Asian Village.

In the second Action which commenced on 23rd October 1997 he sought declarations that a bill the Asian Village Development Act 1997 was

ultra vires the powers of the Legislature and that the Governor General was not entitled to assent to it and other reliefs.

The defendants applied to have both writs and Statements of Claim struck out as disclosing no cause of action and being frivolous, vexatious and an abuse of the process of the court.

The matters were consolidated and came on for hearing on 5th November 1997.

The Judgment

In a lengthy and closely reasoned judgment the learned trial Judge considered the statements of claim and concluded that the allegations did not disclose any cause of action under the Constitution, but that the appellant had locus standi to bring the action.

He also concluded that no particulars of the essential ingredients of fraud, conspiracy and misdemeanour in public office were pleaded and consequently the allegations pleaded could not to disclose any cause of action for those torts.

Accordingly he dismissed both cases, but made no order as to costs.

Background

On 18th February 1997 the Government of Antigua and Barbuda entered into an agreement with Asian Village Antigua Limited (Asian Village) for the development of an area on the west coast of Antigua. The Government was to acquire Guiana Island and other lands and transfer them to Asian Village for $15.5 million dollars spread over a 10 year period. Asian Village would construct a massive project which would include resort accommodation of approximately 1000 rooms; casino; golf course; retail shops; residential developments; and other resort, commercial and hotel related projects and facilities. The agreement was characterised by promises of very extensive fiscal and other incentives which included exemptions from taxes, privileges, special arrangements for construction of infrastructure and many others. There was political controversy about it, the appellant's political party opposing the project. The Government introduced a resolution in Parliament to have both houses consider and affirm the agreement and to obtain authorisation for the acquisition of the lands which were the subject matter of the agreement.

On 4th July 1997 the House of Representatives approved the agreement and authorised the acquisition of the lands for the public purpose of "the promotion and development of tourism and supporting tourist related activities". The Appellant and four of his Opposition Parliamentary colleagues absented themselves from the House when the resolution was moved and passed. On 6th August 1997 a similar resolution was passed in the Senate and the opposition Senators similarly absented themselves.

On the 7th, 21st and 28th August 1997 declarations acquiring the lands identified in the agreement were published in the Gazette in accordance with the provisions of section 3 of the Land Acquisition Act.

On 18th September 1997 an order paper was circulated to all members of the House of Representatives in respect of a meeting to be convened on 23rd September. Item 14(a) was a Motion by the Hon Prime Minister to move the first reading of the Asian Village Development Act, 1997.

On 6th October 1997 the Bill was taken through all its stages in the House of representatives, and was amended at committee stage to be The Asian Village Resort (Incentives) Act. On 20th October the Senate passed the Bill.

At the time of the trial the Governor General had not assented to the Bill and it was not yet enacted. Since the trial, the Governor assented to the Act on 9th December 1997, and to an amendment thereto on 29th January 1998.

The Appeal

The appellant advanced several grounds of appeal. In effect these challenged the application of the principles of summarily striking out actions, and the conclusion that no cause of action was disclosed on the allegations of constitutional violations and the commission of various torts of public mischief. The respondent cross appealed on the issue of locus standi and on the failure to award costs.

The third respondent challenged the decision to join him as party but as the whole action had been dismissed this became an academic issue, only relevant to the question of costs.

The Principles of Striking out Pleadings

Order 18 rule 19 of the Rules of the Supreme Court empowers the Court to strike out any pleading on the ground that it discloses no reasonable cause of action or is frivolous or vexatious is otherwise an abuse of the process of the court. The principles upon which this jurisdiction is exercised are well settled and counsel for the appellant indicated that he had no quarrel with the principles which the learned trial Judge enunciated. He argued that they were wrongly applied. In brief the court is empowered to dismiss an action in a summary way without a trial where the statement of claim discloses no cause of action, or is shown to be frivolous or vexatious or is otherwise an abuse of the process of the court. This summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. In one of the cases from Canada on which reliance was placed the standard was expressed in terms that the claim should not be struck out if there is even a scintilla of a cause of action (Operation Dismantle v the Queen (1986) LRC (Const.) 421.

This was the stringent standard which the learned trial Judge applied to the statements of claim in concluding that they should be summarily struck out and the actions dismissed.

Counsel for the appellant submitted that the test was wrongly applied because the learned trial Judge attempted to assess the appellant's chances of success in the action and that was a task which could only be effectively performed after evidence had been adduced. He submitted that the circumstance that the argument before the learned trial Judge took five days, and before us lasted about the same length of time demonstrated that there were difficult and important points of law and that it was not a clear and obvious matter. I must comment, however, that we felt that too much time was spent in arguing this case, and it was out of deference to the learned counsel, who appeared for the appellant and the public nature of and interest in the matter, that we did not guillotine the arguments even when we thought they were irrelevant or unnecessarily prolonged.

A number of cases were cited to us on this as on all aspects of the case. Counsel for the Appellant relied on A..G. of Duchy of Lancaster v London and North Western Railway Co. (1892) 3 Ch 279 to show that the

length of argument could be a factor in the decision. In rejecting an application to strike out pleadings for want of jurisdiction, Lindley L.J said:

> "it appears to me that the object of the rule is to stop cases which ought not to be launched – cases which are obviously frivolous or vexatious, or obviously unsustainable; and if it will take a long time, as is suggested, to satisfy the Court by historical research or otherwise that the County Palantine has no jurisdiction, I am clearly of opinion that such a motion as this ought not to be made."

The case of Dyson v Attorney General (1911) 1K.B. 410 was relied on to show that the extent and quality of research necessary to determine the matter could also be a factor as Cozens-Hardy M.R. said at 414:

> "(the order) ought not to be applied to an action involving serious investigation of ancient law and questions of general importance, and on this ground alone I think the plaintiff is entitled to have the action proceed to trial in the usual way".

The principle that the summary process should not take the place of a trial was demonstrated in Wenlock v Moloney (1965) 2 All E.R.871. In that case there was statement of claim, defence and 10 affidavits. On hearing to strike out the Master concluded that the case was unlikely to succeed and struck it out. The Court of Appeal set aside the order and characterised what occurred as a preliminary trial in chambers without full discovery, oral evidence or cross-examination and as an improper exercise of the court's discretion. Sellers LJ disapproved the practice and declared that it is not the practice in the civil administration of our courts to have a preliminary hearing as in crime.

The appellant also emphasised the well-established point, that it was incumbent on the defendant to show that there was no possibility of a cause of action. (Goodson v Grierson (1908) 1K.B.761).

The respondents also referred to a number of references which included the reminder of Lord Edmund-Davies in Farrell v Secretary of State (1980) 1 All E.R. 166 at 173 of the essential importance of proper pleadings in civil actions: the necessity to particularise and plead alleged violations of the Constitution (Operation Dismantle v The Queen, *supra;* the Guyanese case of Ameerally v A.G. (1978) 25 WIR 272.): the necessity to particularise allegations of fraud, malice, negligence or misconduct (Mariner v Bishop of Bath And Wells (1893) P 145; Saunders v Jones (1887) Ch D 435; Belmont Finance v Williams Furniture (1979) 2 QB 250): the duty of counsel not to enter a plea of fraud unless he has clear

evidence to support it (Assoc Leisure v Assoc Newspapers (1970) 2 QB 450.

He submitted that the case ought to have been dismissed as an abuse of the process of the court as it had an ulterior political motive, referring to Windward Properties Limited v Williams, 1988 (unreported) St.Vincent and the Grenadines Civil Appeal No. 4/88 confirming the dismissal of a constitutional motion as an abuse of process, per Moe J.A. at p.10:

> "the court has an inherent jurisdiction to put an end summarily to proceedings which divert the court from its proper purpose and use it with some ulterior motive: See Mitchell v D.P.P (1987)LRC 127. In my view on the basis of the material before the learned Judge dismissal of the motion in exercise of his power on the ground of Abuse of Process was clearly warranted."

The modern practice, which in my view is not inconsistent with the long standing principles, is explained by Lord Templeman in Williams & Humbert v W.& H. Trademarks (1986)1 A..C. 368 at 435:

> "My Lords, if an application to strike out involves a prolonged and serious argument the Judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubts about the soundness of the pleading but, in addition, is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of preparing for a trial or the burden of the trial itself. In the present case, the general rule would seem to require a refusal by the Judge to embark on the problems of international law involved in the present appeal, leaving those problems to be solved at the trial if they became material. If at the trial the appellants were cleared of any impropriety in their management of the affairs of the Rumasa group, then the problems of international law would not arise. Moreover, even if those problems did arise I do not believe that the length of time, namely seven days, occupied by the Judge in deciding to strike out the pleadings would have been added to the time required to decide other issues. But there are special circumstances which, in my view, made it right for the Judge to proceed and to make the order which he made. If the appellants' pleadings and particulars had not been struck out, the appellants would have proceeded to demand discovery before trial to lead evidence at the trial, harassing to the plaintiffs and embarrassing to the court and designed to support the allegations and insinuations of oppression and bad faith on the part of the Spanish authorities which appear in the amended defences and particulars. These allegations are irrelevant to the trade marks action and the bank's action and are inadmissible as a matter of law and comity and were rightly disposed of at the first opportunity."

It is clear from any reading of the judgment and from the arguments made before us that the special circumstances which so impressed Lord Templeman are present in the case. Striking out the cases resulted from the Judge's conviction that they were not viable and effectively obviated the

necessity for the trial, with all the attendant costs and other burdens. In his reasons the learned trial Judge categorised the pleading as containing conclusions expressed in the most pejorative terms and unparticularised allegations, or insinuations of fraud or colourable exercise of power, which did not establish any grounds on which a court of law could adjudicate. There is no doubt that the proceedings are political and the risk of harassing discovery was high. There is also the question of the length and expense of the proceedings to the litigants as well as to the administration of justice. I would consider that the learned trial Judge exercised his discretion properly in disposing of this matter at the first opportunity.

In determining this appeal, the same principles should guide us. Regardless of the length or difficulty of the argument, which has already been concluded the operative issue for determination must be whether there is "even a scintilla of a cause of action". If the pleadings disclose any viable issue for trial then we should order the trial to proceed but if there is no cause of action we should be equally resolute in making that declaration and dismissing the appeal.

The Pleadings

I propose to go through the allegations in the statement of claim seriatim and consider whether there is any allegation which would support judicial intervention. In this way, all the grounds of appeal will be considered without overlapping. The first Suit is an attack on the Agreement and the ability of the Executive Branch to make such a contract.

The relevant paragraphs are 10 to 18. The others are merely formal and give background information.

Para 10

Alleges that the proposed development is harmful to the ecology and "is contrary to common law principles which protect the environment". This paragraph does not identify the common law principles to which it refers nor were any advanced or particularised by counsel in agreement. Even learned Counsel Cosmos Phillips Q.C. conceded that he could not identify a cause of action raised in this paragraph. (See for example R v Secretary of State for the Environment, ex. Greenpeace (1994) 4 A.E.R. 352 at 376). I agree

with the learned trial Judge that there is no scintilla of a cause of action herein.

Para 11

Alleges that the agreement is a device to give property of the state under the guise of a public purpose to a private developer for his own profit; that the cost to the government of providing the land will exceed the consideration to be paid by Asian Village; that it is contrary to public policy, is illegal, and void, and amounts to a public mischief.

Apart from the use of the words "guise" and "device" which suggest fraudulence no indication of the wrong alleged is indicated. This paragraph offends the rule requiring particularisation, and in particular the allegations did not include the essential ingredients of the tort of misfeasance in public office. The learned trial Judge referred to the cases of Calveley v Chief Constable of the Merseyside (1989) 2 WLR 624 and Dunlop v Woollahra Municipal Council (1981) 1 AER 1202 and explained that the failure to allege, and give particulars of malice ran foul of Order 18 rule 12(1)(b) of the Rules of the Supreme Court. He concluded that the allegations pleaded could not support a cause of action on the tort referred to. No appeal was made against that finding of the learned trial Judge that there was no cause of action in this paragraph.

Para 12

Alleges that the agreement is discriminatory against the people of Antigua and Barbuda in that it treats the development and persons concerned with it as a separate class and community by committing the government to grant special exemptions from laws regulating taxation and good government for its own convenience and profit thereby discriminating against the people of Antigua and Barbuda contrary to section 14 of the Constitution.

In effect the learned trial Judge decided that this paragraph did not give rise to a cause of action because the agreement was inchoate in the sense that it did not affect any rights – it merely evidenced the intention of the parties; and in any event no allegation of discrimination was made in the sense in which the Constitution described the term.

It is not necessary to consider the inchoate point at this time, and I will deal with this issue when I come to discuss the effect of section 119(1) of the Constitution in relation to the second Suit.

No Category of Discrimination Alleged

Counsel for the appellant addressed the issue of discrimination extensively.

In my opinion the matter could summarily resolved as being clear and obvious by any reference to section 14(3) of the Constitution.

It would therefore be instructive to set out the meaning ascribed to discrimination in section 14(3) of the Constitution:

> "In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description."

There was no allegation that the different treatment alleged in the Statement of Claim was attributable to race, place of origin, political opinions or affiliations, colour, creed, or sex. In the final analysis the resolution of this issue must be based on the interpretation of the constitutional provision. In my view, the words are clear and unequivocal and there is no difficulty in giving them their plain and ordinary meaning. The idea was well expressed in Nielson v Barker (1982) 32 WIR by 254 Massiah J.A. at 280:

> "What I am endeavouring to develop is the notion that it is a misconception to think that the Constitution is panacean in character, capacitated for the eventual solution of all legal problems. This process of magnification has led to attempts being made to fit a variety of rights into the framework of fundamental rights and freedoms, although the former often lacked the attributes essential for such categorisation…
>
> The word "discriminatory" in article 149 does not bear the wide meaning assigned to it in a dictionary. It has a precise and limited connotation. Although it contains the elemental constituent of favouritism, or differentiation in treatment, its application is confined only to favouritism or differentiation based on "race, place of origin, political opinions, colour or creed". No other kind of favouritism or differentiation is "discriminatory" within the narrow constitutional definition of that word in article 149(2). It is to be profoundly in error to think that there has been a contravention of a person's fundamental rights under article 149 where the alleged discrimination is based on some ground other than those referred to above, no matter how reprehensible such grounds may appear to be. Such a situation

> clearly does not come within the purview of the constitutional guarantee, although there may well be other means for its investigation and for securing redress."

As wide ranging and interesting as counsel's argument was, he was unable to demonstrate any alleged discrimination in the statement of claim that was based on a ground referred to in section 14(3) of the Constitution.

The cases which he presented in support of his arguments did not assist him. Inze v Austria (1988) 10 E.H.R.R. 394 a case decided by the European Court of Human Rights, relief was given for discrimination on the ground of illegitimate birth, the brother of the appellant, being a legitimate child, was given precedence under Austrian law of intestacy in the attribution of their mother's farm, contrary to Art. 14 of the European Convention of Human Rights.

The category of discrimination was `sex'. A claim such as this would be arisen under section 14(3) because there is jurisprudence on the issue that discrimination on the ground of sex may arise where the marital status of women affects the rights and status of their children.

Eldridge v British Columbia (1997) unreported Canadian Supreme Court case decided on 9th October 1997. It concerned an application by deaf applicants for a declaration that failure to provide sign language interpreters as an insured benefit under the Medicare scheme violates the constitutional guarantees of equal treatment under the law. In that case the constitutional guarantees against discrimination are in section 15(1) of the Canadian Charter as follows:

> "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age mental or physical disability."

The Canadian Charter specifically makes "physical disability" a ground upon which discrimination is prohibited. In the Constitution of Antigua and Barbuda "physical disability" seems to lie outside the parametric limitations inherent in section 14(3). Our court is not a super legislature and does not have the power to expand the rights given in the Constitution, making such a claim untenable under section 14 of the Constitution.

Egan v Canada (1995) 124 D.L.R.(4th) 609 another Canadian case in which the court dismissed the application of a homosexual couple, who had been living together since 1948, claiming pension and spouses allowance

under the Old Age Security Act, basically on the ground that the relationship did not meet the definition of "spouse" which required opposite sex relationships. The constitutional challenge on the ground of discrimination was unsuccessful, but the case concerned a recognised category of discrimination namely "sex".

Baloro v University of Bophuthatswana(1996) 1LRC 12, a South African case established that the constitutional guarantees of equality before the law included any "person" and was not limited to citizens. The ground of discrimination in this case was the "place of origin" which is a category of discrimination recognised in section 14(3) of the Antigua and Barbuda Constitution.

In Shelley v Kraemer (1947)334 US 1. the US Supreme Court held that restrictive covenants denying ownership or occupancy of property on the basis of colour or race violated the constitutional guarantees of equality before the law. Again the well-established category of discrimination was "race".

The basic and insurmountable hurdle of the appellant in his Statement of Claim was that there was no allegation in the statement of claim of a ground of discrimination that was inherent in section 14(3) of the Constitution. On that basis alone there could be no cause of action under section 14 of the Constitution.

Para 13 alleges that the scheme is prejudicial to property, revenue and good government and is the result of a conspiracy between Cabinet, Asian and persons unknown, and of a misdemeanor in public office on the part of the Cabinet and all other persons in public office who support and intend to act in the performance of the obligations of the government.

Para 14 alleges that the divestment of publicly owned property without consideration is a fraud on the Government and people by the Cabinet and Asian and persons unknown.

The learned trial Judge found that the Statement of Claim did not allege particulars of the essential ingredients of the torts mentioned in these paragraphs. The point is clear and obvious, no serious effort was made by the appellant to have this finding overturned. In any event, I agree with the learned trial Judge and there was no appeal against this aspect of his decision.

Para 15

The Public Purpose Point

Para 15 alleges that the acquisition of property to be divested to Asian is not for public use and is therefore unconstitutional by contravening section 9 of the Constitution.

The Judge ruled that the allegations failed to show any cause of action for these reasons: first that the stated purpose of "the promotion of and development of tourism and supporting tourist related activities" is a sufficient expression of a public purpose; and secondly that in any event the question as to whether an acquisition is or is not made for a public purpose is non-justiciable, unless there is a viable allegation that the declaration has been made fraudulently. The appellant challenged these rulings vigorously.

Public Purpose

The jurisdiction of the court on the constitutionality of compulsory acquisition is determined by section 9 of the Constitution and also the Land Acquisition Act Cap.233. For ease of reference I will set out the provisions relevant to our decision.

Section 9(1) of the Constitution provides:

> "No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and the payment of fair compensation within a reasonable time."

Public use is defined in section 9(6) of the Constitution:

> "For the purposes of this section, "use" is "public" if it is intended to result or results in a benefit or advantage to the public and, without prejudice to its generality, includes any use affecting the physical, economic, social or aesthetic well-being of the public."

The acquisition of land is regulated by the Land Acquisition Act Cap 233, which defines public purpose. Section 2 states as follows:

> "public purpose" means a purpose determined to be a public purpose in accordance with the provisions of section 3."

And section 3 reads:

> "(1) If the Cabinet considers that any land should be acquired for a public purpose they may, with the approval of the Legislature, cause a declaration to that effect to be made by the Secretary to the Cabinet in the manner provided by this

> section and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose."

The meaning and effect of these constitutional and statutory provisions, with all due respect to the lengthy and interesting argument of counsel, is already well settled by highest judicial authority, and cannot be considered a difficult question.

The appellant invested great effort in submitting that section 9 of the Constitution of Antigua was contravened by the fact that the Government intended to acquire property for the purpose of transferring it to a private developer who would use it for his own profit and that could not be a "public purpose" and was an unconstitutional use of the taxpayer's money.

The root decision on the meaning of public purpose can be found in the Privy Council decision of Hamabai Framjee Petit v Secretary of State for India (1914) L.R. Vol. XLII Indian Appeals 44 where Lord Dunedin said at p.47:

> "The argument of the appellants is really rested upon the view that there cannot be a "public purpose" in taking land if that land when taken is not in some way or other made available to the public at large. Their Lordships do not agree with this view. They think the true view is well expressed by Batchelor, J. in the first case, when he says: "General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase `public purposes' in the least; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

Counsel for the appellant relied on two old US Supreme Court cases to demonstrate violations of the Constitution by (i) compulsory taking for private benefit as opposed to a public purpose and (ii) contracting for private objects to be paid for by taxes.

Missouri PAC. RL. CO. v State of Nebraski (1896) SCR 17 130 at p.135 per Gray J.:

> "The petitioners were merely private individuals voluntarily associated together for their own benefit. They do not appear to have been incorporated by the state for any public purpose whatever, or to have themselves intended to establish an elevator for the use of the public……
> To require the railroad company to grant to the petitioners a location on its right of way for the erection of an elevator for the specified purpose of storing from time to time the grain of the petitioners and of neighboring farmers, is to compel the railroad company, against its will, to transfer an estate in part of the land which it owns and holds,

> under its charter, as its private property and for a public use, to an association of private individuals, for the purpose of erecting and maintaining a building thereon for storing grain for their own benefit, without reserving any control of the use of such land, or of the building to be erected thereon, to the railroad company, for the accommodation of its own business, or for the convenience of the public.

The distinction between the facts is that the land in Missouri was for the private use of the petitioners and no public purpose was alleged or stated, whereas in Asian a public purpose namely the "development of tourism" was the stated purpose. Cole v City of La Grande (1884) SCR 5 416 at p.418 per Gray J.:

> "The general grant of legislative power in the Constitution of a state does not enable the legislature, in the exercise either of the right of eminent domain or of the right of taxation, to take private property, without the owner's consent, for any but a public object. Nor can the legislature authorize countries, cities, or towns to contract, for private objects, debts which must be paid by taxes. It cannot, therefore, authorize them to issue bonds to assist merchants or manufacturers, whether natural persons or corporations, in their private business. These limits of the legislative power are now too firmly established by judicial decisions to require extended argument upon the subject."

Similarly, in this case the factual premise on which the principles were expressed was that the objects were the relief of private objects and debts. No public purpose was alleged; as in the instant case. Both cases therefore turned on their particular facts.

In the Australian case of Clunies-Ross v Commonwealth of Australia (1985) LRC (Const.) 292 more modern American cases were considered. Passages from the judgment demonstrate that in both Australia and America the courts employ principles of interpretation of which require a broad and generous interpretation the phrase "public purpose". At page 302 per Murphy J.:

> "There is no warrant for a gloss on the Australian Act that public purpose is confined to some planned use, application, or preservation of the land or buildings. Even if "public purpose" should be read as "public use", the U.S. cases show that acquisition for public use extends to spiritual and aesthetic as well as material purposes…[reference to Berman v Parker (1954) 348 US 26, a unanimous judgment of the Supreme Court] …
>
> It runs against generally accepted principles of interpretation to read narrowly a wide phrase such as "for a public purpose". Acquisition of land round an airport or a defence installation, not to use, but so that no one may use it, is for a public purpose. Acquisition of a derelict site, not to use it, but to remove an eyesore or to prevent danger, is

> for a public purpose. Acquisition of a wilderness area, specifically so no one should use and therefore despoil it, is for a public purpose."

When one applies the principles to the instant case not only is it abundantly clear that the stated purpose of the "development of tourism in Antigua and Barbuda" is a public purpose but the principle has already received judicial approval.

In Williams v Gov't of St Lucia (1969) 14 W.I.R. 177 at p.180 Sir Garfield Barwick giving the Judgment of the Privy Council said:

> "That the promotion of tourism can be a public purpose in the Island of Saint Lucia can scarcely be denied…No doubt, the expression "the development of tourism" has a degree of vagueness but what is called for by the Ordinance is the statement of a public purpose, which necessarily must be in very general terms… The expression "the development of tourism" does state a purpose which is a public purpose."

The other criticism that attaining the proposed tourist development through a private entrepreneur whose motive is personal profit and gain cannot be a public purpose, is not only logically untenable but has also been judicially rejected.

A public purpose may be achieved through private enterprise at the instance of a private entrepreneur whose sole aim may be to make profit. The matter was well expressed in the Indian case of Narayan Singh v Bihar (1978) A.I.R. 136 at p.138 by S.K. Jha J.:

> "Para 6: …The objective test applied from case to case, which was since been judicially recognised, is that whatever furthers the general interests of the community as opposed to the particular interests of the individuals must be regarded as a public purpose. Public purpose may be achieved through private enterprise as well as through any public agency. There is no provision in the Act precluding the acquisition at the instance of a private agency so long as the purpose for acquisition is a public purpose. If the acquisition is for a public purpose, the consideration that the State has undertaken the task at the instance of a private entrepreneur or agency or a private institution is not germane. It is well settled that even though the acquisition of land is for a private concern whose sole aim may be to make profit, if the intended acquisition of land could materially help the national economy or the promotion of public health or the furtherance of general welfare of the community or something of the like, the acquisition will be deemed to be for a public purpose."

The Non-justiciable Issue

The main objection to the prolonged argument on this issue is that it is well settled law that the effect of section 3(1) of the Land Acquisition Act Cap233 (*supra)* makes the determination of the question as to whether an

acquisition is made for a public purpose non-justiciable, in the absence of fraud. The issue of fraud is no longer an issue because the learned trial Judge ruled there were no particulars capable of grounding adjudication on that issue and no appeal has been made against that ruling. The rationale of non-justiciability is based on the Constitution Order paragraph 3:

> "the Constitution of Antigua and Barbuda set out in Schedule 1 to this Order shall come into effect in Antigua and Barbuda on 1st November 1981 subject to the transitional provisions set out in Schedule 2 to this Order."

The Schedule 2 states in paragraph 9:

> "Nothing in section 9 of the Constitution shall effect the operation of any law in force immediately before 27th February 1967 or any law made after that date that alters a law in force immediately before that date and does not –
>
> [a] add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
> [b] make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or having an interest in the property; or
> [c] deprive any person of such right as is mentioned in subsection (2) of that section."

The plain fact is that the Land Acquisition Act Cap 233 was in operation before 27th February 1967. The meaning of the paragraph is plain, clear and unambiguous. Section 9 of the Constitution shall not effect the operation of the Land Acquisition Act Cap.233. The principle has been judicially affirmed for over a century in several cases.

Lots of cases were quoted to us which I have perused. However I shall refer briefly to an old Privy Council case from Ceylon which demonstrates that the concept of the non-justiciablity of the executive decision as to what is a public purpose is a long standing one. In Wijeyesekera v Festing (1919) A.C. 646 at p.647 Lord Finlay said:

> "This appeal raises a short point upon the construction of the Ceylon Ordinance No.3 of 1876….
> The whole point in the case is whether the decision of the Governor in Council is conclusive on the point that the land is wanted for a public purpose. It is now contended that it is open to the person whose land is affected to challenge the decision of the Governor in Council upon this point, as embodied in the order directing the Government Agent to take order for the acquisition of the land….
> The whole case is decided, in the opinion of their Lordships, in the last three lines of s.6 of the Ordinance: "And upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government agent to take order for

> the acquisition of the land." When you have an enactment of that kind it shows that it was intended that the decision of the Governor in Executive Council on the point should be binding."

There have been a number of recent cases in the Eastern Caribbean which have applied and emphatically settled the point.

There is the Privy Council case of Blomquist v Attorney General of Dominica (1987) A.C. 489 applying the principle to similar provisions in the Constitution of Dominica.

There is the Eastern Caribbean Supreme Court decision Mills v Attorney-General of St. Christopher (1993) 45 W.I.R. 125. In the leading judgment Liverpool J.A. demonstrated that the principle applied to similar provisions in the Constitution of St.Kitts and Nevis.

The most recent expression of the principle was in the Privy Council case of Windward Properties v Gov't of St.Vincent (1996) 1 WLR 279 the principle was applied to similar provisions in the Constitution of St.Vincent and the Grenadines. at p.283 Sir Michael Hardy Boys said:

> "As counsel pointed out, the Court of Appeal did not have its attention drawn to paragraph 11 of the transitional provisions in Schedule 2 which states:
>
> > "Nothing in section 6 of the Constitution shall affect the operation of any law in force immediately before 27 October 1969 or any law made on or after that date that alters a law in force immediately before that date and that does not – (a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired; (b) make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or having an interest in the property; or (c) deprive any person of any such right as is mentioned in subsection (2) of that section."
>
> In their Lordships' view, the two categories of law which are excluded by this paragraph from the effect of section 6 of the Constitution are first, any law in force immediately before 27 October 1969 (when the Constitution became operative), and secondly any subsequent amendment that does not do any of the things described in sub-paragraphs (a), (b) and (c). The Land Acquisition Act is within the first category and consequently is not affected by section 6 of the Constitution. Accordingly section 19(a) is to be applied as it stands."

On careful perusal of the wording of the relevant provisions in the Constitution there is no ambiguity, no uncertainty of the meaning of the provisions. In these circumstances the court cannot indulge in rewriting the Constitution, to borrow the words of the learned trial Judge. The effect is that the declaration made by the Secretary of the Cabinet with the approval of the Legislature to the effect that the land was acquired for a public purpose, is

conclusive evidence that the land to which it relates is required for a public purpose. There is absolutely no basis therefore on which a court could find otherwise. I therefore conclude that the learned trial Judge was correct in ruling that this paragraph did not disclose any cause of action.

Para 16 alleges that

The agreement made provision for extensive fiscal concessions from duties and taxes. In addition it made provision for the developer to undertake certain works, on terms which would enable the developer to set of the costs incurred from taxes due up to $5,000,000.00, the said sums to be held in a special account for that purpose. The provision included a requirement that these terms would only come into effect on the passage of enabling legislation.

Despite the substantial argument advanced that this arrangement contravened the Constitution by providing for monies to be paid into a fund other than the consolidated fund, and the managing of Government Revenues by non-public servant. In my view, however, the specific provision in section 90 of the Constitution which are sufficiently clear and unambiguous to speak for themselves made those arguments untenable:

> "All revenues or other monies raised or received by Antigua and Barbuda (not being revenues or other monies that are payable under any law for time being in force in Antigua and Barbuda, into a specific fund established for a specific purpose) shall be paid into and form part of a consolidated Fund."

In addition, the agreement did not purport to grant any exemptions nor to make any remissions. It evidenced the agreement of the Government to seek passage of legislation giving effect to the proposed concessions and remissions. Legislation of such nature is specifically permitted by the constitution sections 53(2) (a) (iv); 56 (1); 90 and 93. I agree with the learned trial Judge's conclusion that no cause of action was disclosed in this paragraph of the Statement of Claim.

Para 17 and 18 complain that the cost to the government and the people of Antigua exceeds the returns from Asian. In my view these are political rather than justiciable questions which involve a vision of and prophesy for the economic and social future of the State. Many evaluations are required and it is possible that political controversy is inevitable.

The undesirability and reluctance of the courts to become embroiled in these matters has often been stated. In this case the position is more

acute because the case is brought by the leader of the Parliamentary Opposition, who did not participate in the debate on the agreement and the bill in the House but has sought to have the matter become the subject of investigation in the courts. We were referred to cases making the point such as Bilston Corp. v Wolverhampton Corp. (1942) 1 Ch 391; Blackburn v Attorney-General (1971) 1W.L.R. 1037; Eastgate v Rozzoli (1990) 20 NSWR 188. The trial Judge was impressed by the eloquent exposition of Connolly J.A. in the case of Kenilores v Attorney-General (1986) LRC (Const) 126 from the Solomon Islands and I could no better than to adopt them:

> "I think, however, it is important the Courts should exert great care to avoid giving any impression that they have become some sort of extension to the floor of Parliament, where politicians may continue to press their opposition to legislation. Any appearance of political involvement is obviously undesirable……there is clear division between the legislative, executive and judicial under the Solomon Islands Constitution and the Court should be chary indeed of any procedure which may lead to a blurring of those divisions."

I agree that this paragraph did not disclose any cause of action.

Suit No.2 against the Attorney General

The other action in the consolidated hearing was instituted against the Attorney-General and the Statement of Claim attacked the bill for the Asian Village Development Act. In this Statement of Claim the paragraphs which purported to make allegations against the respondent were paragraphs 5 to 11. The main allegations dealt with discrimination under section 14 and the public purpose under section 9 of the Constitution and the issues and legal solution are identical with the issues under the other Statement of Claim and do not need repetition.

As I mentioned at the beginning of my judgment, the fact that the Bill has now become law, has removed the necessity of dealing with the submissions of counsel relating to the jurisdiction of the court to make rulings on the constitutionality of legislation before the legislative process has been completed.

The Substate Point

This leaves me to deal with the submission relating to sections 46, 70 and 71 of the Constitution.

The allegation that the bill by granting privileges, concessions and exemptions was creating a separate or substate seemed illogical. Section 46 of the Constitution reads:

> "Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Antigua and Barbuda."

This section of the Constitution has been judicially examined in several cases to many of which we were referred. These words do not define the power to legislate. In effect, they establish that Parliament has wide powers. The limitations, necessary to restrain tyranny and preserve democracy do not allow that choices of policy should be justiciable. The matters raised under this argument which in my view do not require detailed attention are based on two divergent theories of economic and social development. The position adopted by the respondent, that is granting incentives is a common feature in the legislation of our times. The respondent referred to an extensive list of legislation, from Antigua and Barbuda and other parts of the Caribbean, based on a similar political theory of stimulating development by granting concessions of various types. It is unnecessary to recite these because they are in fact common throughout our region. In my judgment the questions raised by the appellant under this submission have to do with political choices. I agreed with the learned trial Judge that nothing in the statement of claim came close to raising an issue as to any breach of section 46 of the Constitution.

The allegations of breaches of section 70 and 74 seemed almost facetious. These sections establish the Cabinet and allocation of portfolios to the Ministers. The appellants contended that the granting of exemptions and remissions tended to usurp the powers of the Ministers of Government and vest them in Asian Village.

In my view, I also agree with the learned trial Judge on this issue.

Section 119 Jurisdiction

The appellant conceded that this action was not brought under section 18(1) and contended that the actions were brought under section 119 of the Constitution:

> "119(1) – Subject to the provisions of sections 25(2), 47(8)(b), 56(4), 65(5), 123(7)(b) and 124 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

The jurisdiction under section 119(1) must be contrasted with the power to institute proceedings under section 18 of the Constitution, to draw attention to two important differences.

> "18(1)-If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress."

The first is that action under section 119 only relates to allegations that any provision "has been or is being contravened". It does not refer to the likelihood of future breaches, whereas actions under section 18(1) can relate to allegations that any provision "has been, or is being or is likely to be contravened" (the inchoate point). The second is that under section 18(1) the only person who can bring an action is a person who can allege that the contravention relates to him (except in the case of a detained person) and under section 119(1) the only person is a person who has a relevant interest (the locus standi point).

The Inchoate Point

The appellant challenged the learned trial Judge's conclusion that the Agreement and the Bill were inchoate and that the action was premature because they did no more than evidence an intention to cause future breaches of the Constitution. In my view the definition of completion in the agreement itself which required effective legislation to transfer title and enact the proposed concessions and privileges, licences and permits make the issue rhetorical. It is equally so with regard to a Bill which essentially does not have the force of law.

I think that a necessary consequence of the wording of section 119(1) is that unconstitutionality cannot be based on the entry into an agreement nor a bill prior to the passage of the enabling legislation. There could be no allegation that a provision of the Constitution has been or is being contravened as is required under section 119(1). The allegation would of necessity be that a provision is likely to be contravened. As I have demonstrated, it is only in matters falling under the jurisdiction of section 18 of the Constitution that such an allegation could give rise to a justiciable issue. In the premises, I support the conclusion of the learned trial Judge. Invalidity could only arise if effect was given to the agreement before

Parliament had enacted the necessary legislation. See New South Wales v Bardolph (1933-34) 52 C.L.R. 455.

The Locus Standi Point

Counsel for the respondent took issue with several implications inherent in the opinion of the learned trial Judge, that the appellant had locus standi in these proceedings and submitted that the court should give a definitive ruling on the matter.

In my opinion however, there is a short point which is decisive and it derives from the finding that the appellant did not have any cause of action under the Constitution, in effect, there was no sustainable allegation that there was any contravention of the Constitution which affected his interests.

The learned trial Judge did refer to this principle during his judgment:

> "In my view a litigant invoking the provisions of section 119 should show on the face of the pleadings the nature of the alleged violation or contravention that is being asserted. The allegations grounding this violation must be serious. The trial judge must then assess whether in light of the allegations made and the degree to which they affect the litigant, whether personally or as a mere member of the general public, locus standi should be accorded."

Had he applied this principle his finding that the pleadings did not contain allegations grounding any contravention of the Constitution would have been decisive. But seemingly, he got carried away into considering whether the appellant's interests would have been affected if there were viable allegations.

The approach which our courts have adopted has recognised the principle that in these public law cases, the court first determines the nature of the alleged violation of the Constitution, and only a sustainable allegation of there is such a violation does it consider whether the applicant has a relevant interest.

We were referred to a collection of Eastern Caribbean Supreme Court authorities on locus standi, among many others.

From Antigua and Barbuda there was the case of Frank v Attorney-General Civil Appeal No.1 of 1990. In that case the court considered the issue of locus standi as a preliminary issue. In the decision given by Sir Vincent Floissac it was clear that the approach taken by the court was to examine the meritoriousness of the application. In circumstances which were not dissimilar to this case he expressed himself thus:

> "This is an admission by the parliamentary and professed juridical representative of the inhabitants of Barbuda that the proprietary rights and interests claimed on behalf of those inhabitants have not yet been legally established. The appellant wishes the Court to prescribe those rights and interests or to grant relief which amounts to legislation in regard to those rights and interests. This is not the function of a Court of law. The Court can only declare and protect legally established rights and interests. Except in the case of a judicial review of the decision or action of a public authority, it is a precondition of such declaration or protection that there was a previous infringement or threatened infringement of or dispute in regard to those established rights and interests. That precondition was not satisfied in this case. The result is that the appellant had no locus standi to claim the relief demanded in the Motion."

From St.Kitts that was the position adopted by Sir Vincent Floissac in Blake v Byron where he said at p.10:

> "having elected to decide this appeal on the merits of the application and on the conclusion that the application itself is unmeritorious, it is unnecessary to decide whether the appellant has locus standi either by way of a sufficient interest or by way of a relevant interest in the subject matter of the application."

In Attorney General v Lawrence (1983) 31 W.I.R. 176. In that case the decision of the court was given by Sir Neville Peterkin. He adopted the same approach some several years later. He considered the merits of the case and it was only after he concluded that the learned trial Judge was right to in deciding that such deprivations as Lawrence had alleged fell within the purview of section 6 of the constitution that he turned to the question of locus standi. He established the principle:

> "I turn now to the second aspect, namely did Lawrence have a locus standi in the constitutionality of the impugned Act? It is submitted not. To make out a case as alleged, it is incumbent upon Lawrence to establish not merely that the law affects his fundamental rights guaranteed by the Constitution then on, but also that it is beyond the competence of the legislature. No-one but one whose rights are directly affected by a law can raise the question of the constitutionality of that law."

In Attorney-General v Payne (1982) 30 WIR 88. Robotham C.J. put it at p.98:

> "Whether or not a person has a relevant interest can only be determined after the facts have been heard, and not as a preliminary issue. On the conclusion, it then becomes a matter for the judge to decide whether a relevant interest has been established or not, in granting or refusing the application."

Dominica

In the Application of Kareem Abdulgani (1985) LRC(Const) 425 Singh J. adopted the same approach. He first considered the merits and concluded that the Minister of Home Affairs refusal to register the applicant as a citizen was a contravention of section 100(1) of the constitution. It was only then he considered the issue of relevant interest and concluded in favour of the applicant on the ground that the contravention occurred in his application for to be registered as a citizen.

St.Vincent

In Richard and James v Governor-General and Attorney-General of St. Vincent and the Grenadines Suit no. 484 of 1989 and 570 of 1989 Singh J considered substantial arguments and submissions on locus standi and considered much authorities.

He concluded:

> "any person in St.Vincent and the Grenadines, can invoke the jurisdiction of this Court under S96(1) of the Constitution provided he alleges a contravention, seeks a declaration or some form of relief and, by admissible evidence, show that the contravention alleged has affected or is affecting his interest. Provided he satisfies these requirements, the Court will accord him standing. Interest there must mean his personal interest, even though shared by the populace at large and, is not limited t pecuniary interests. It will be a matter for Court in each particular case to say whether the interest allegedly affected in each case falls within the framework and intendment of this provision to the Constitution."

St.Lucia

In Gordon v Minister of Finance (1968) 12 WIR 416 a nominated member of the House of Assembly sought a declaration that the procedure employed in reading an Appropriation Bill contravened the constitution. In explaining why he ruled against locus standi. Bishop J. said at p. 420:

> "His arguments if I understood them correctly, were confined almost exclusively to the moral concept. They referred to a moral duty and in they meant that members of the House of Assembly; or taxpayers or electors were interested in the sense of being concerned over the events in and the decisions of the legislature. I do not agree that the moral concept can be applied to the word "interests" in the definition of a person with a relevant interest. In my view the mere thought or expectation of to pay money will not suffice. This is too vague and too unsubstantial. Rather, I am of the view that there ought to be involved a right, or a duty, or a liability which can be established by a court. It may be of the nature of a pecuniary or proprietary interest which affects the applicant himself - not sentimentally, not academically, not remotely."

In my view the common premise on which all these decisions seem to have been based was that before any question of locus standi can arise, there must be a sustainable allegation that a provision of the constitution has been or is being contravened, and that the alleged contravention affects the interests of the applicant. . On my reading of section 119(5) it says exactly the same thing. The limitation contained therein effectively makes locus standi a question of statutory interpretation. In my view it is essential that the two requirements of the alleged contravention of the constitution and a resultant affect on the interest of the applicant must both exist.

In this case the finding of the learned trial Judge that there was no allegation of any infringement of any provision of the Constitution of which the Court could take cognisance is conclusive. The appellant therefore failed the test established by section 119(5) of the Constitution. I therefore conclude, that the learned trial Judge was wrong to find that the appellant had locus standi.

Costs

The respondents have appealed against the order of the learned trial Judge not to order costs against the appellant in the court below and have asked to make an order for costs in their favour in the appeal. Several cases were cited but I do not think it is necessary to refer to them in detail. It is accepted that the general principle which we have been applying is not to order costs against a private citizen seeking to enforce his Constitutional rights.

However, this is not such a case. The appellant has not alleged that any fundamental rights of his were being invaded. The learned trial Judge and our court are ad idem in concluding that there is no scintilla of a cause of action in relation to any breach of any provision of the constitution. The matters raised related to policy decisions of the executive and legislature. The appellant who is a member of the said legislature did not take part in debates in the House of Representatives but instituted these proceedings,

seemingly substituting the court for Parliamentary debate. In my opinion, therefore, this is not a case of a citizen seeking to enforce his constitutional rights.

The content of the statement of claim includes unparticularised allegations, in pejorative terms of a scandalous nature, namely of fraud, illegality, public mischief and conspiracy. The Prime Minister and the Attorney-General were sued in their personal as well as representative

capacities. The investor Asian Village was made a party to the suit, and included in the pejorative and scandalous allegations, although no particulars of any misconduct were alleged against them. This circumstance by itself warrants the conclusion that the proceedings were an abuse of the process of the Court.

The matter, is taken further because the appellant sued on "behalf of himself and all other members of the Opposition United Progressive Party". There is no doubt that the motivation for the litigation was political. The statement of claim contained the vexatious and frivolous prayer that damages awarded against the Cabinet Ministers "personally and in their official capacity" be paid to the appellant "for the benefit of the Government and people of Antigua and Barbuda". The documents were more in the form of a political document than a judicial pleading, the view that the appellant had an ulterior political motive in bringing these proceedings is irresistible.

Further the undue length of the argument was unnecessary, and embarrassed the court and increased the cost to the respondents. For all these reasons I would order that the appellant pay the costs of the respondents in the court below and in the appeal.

The Order

I would therefore dismiss the appeal and allow the cross appeal. I would order that the appellant pay the costs of the respondents in the Court below and in the Court of Appeal.

DENNIS BYRON
Chief Justice [Ag.]

I Concur.

SATROHAN SINGH
Justice of Appeal

I Concur.

ALBERT REDHEAD
Justice of Appeal