SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HIGH COURT CIVIL APPEAL NO.1 OF 2004

IN THE MATTER of the Constitution of Saint Vincent and the Grenadines

AND

IN THE MATTER of an Application by Randolph Trueman Toussaint
for Redress Pursuant to Section 16 of the Said Constitution
for Contraventions of Sections 6,9,10 and 13 thereof in Relation to Him

BETWEEN:

RANDOLPH TRUEMAN TOUSSAINT

Claimant/Appellant

AND

THE ATTORNEY GENERAL
OF SAINT VINCENT AND THE GRENADINES

Defendant/Respondent

Before:

The Hon. Mr. Brian Alleyne, SC — Justice of Appeal
The Hon. Mr. Michael Gordon, QC — Justice of Appeal
The Hon. Mr. Hugh A. Rawlins — Justice of Appeal [Ag.]

Appearances:

Mr. Ramesh Lawrence Maharaj, SC, with him Dr. Godwin Friday for the Claimant/Appellant
Mr. Anthony Astaphan, SC, with him Ms. Sasha Seudath-Singh and
Ms. Mishka Jacobs, both Crown Counsel, for the Defendant/Respondent

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2005: January 26;
March 14.

JUDGMENT

[1] RAWLINS, J.A. [AG.]: The Claimant/Appellant, Mr. Toussaint, appealed against a decision of Blenman J, which she gave on 25th May 2004. In that decision, the learned Judge struck out paragraphs 13-15 of the fixed date claim form by which Mr. Toussaint instituted his claim. The learned Judge also struck out paragraphs 19-20 and a portion of paragraph 22 of the Affidavit that supports the claim and Exhibit "R.T. 11" thereto. She struck out these impugned parts on the ground that the statements that they seek to bring into evidence enjoy the protection of parliamentary privilege and are therefore not admissible in Court.

[2] The impugned parts refer to statements that the Honourable Prime Minister of St. Vincent and the Grenadines made during a debate in the House of Assembly on 5th December 2002. The statements relate to the acquisition of a parcel of land that Mr. Toussaint held in fee simple at Canouan in the Grenadines, which the Government compulsorily acquired. The notice of the acquisition is dated 5th December 2002. It appears in the Government Gazette for Tuesday 10th December 2002.

[3] In his claim, Mr. Toussaint seeks redress pursuant to section 16 of the Constitution of St. Vincent and the Grenadines, Cap. 2 of the Laws of St. Vincent and the Grenadines, Revised Edition, 1990 ("the Constitution"). He alleges that when the Government purported to acquire his land, compulsorily, it contravened sections 6, 9, 10 and 13 of the Constitution in relation to him. These are fundamental rights provisions.

[4] Section 6 confers upon a person the right to hold and enjoy property. The section protects a person from being deprived of property except for a public purpose. Where a person is deprived of his or her property for a public purpose, that person must be paid adequate compensation within a reasonable time. Sections 9 and 10 confer the right to freedom of conscience and freedom of expression, respectively. They protect a person from being hindered in the enjoyment of these rights. Section 13 protects a person from discrimination.

[5] Mr. Toussaint seeks declarations that the acquisition of his land contravenes his right to enjoyment of property; the right not to be hindered in the enjoyment of his freedom of expression and conscience, including his right and freedom to hold opinions without interference; and the right not to be discriminated against or to be accorded different treatment on grounds of his political opinions.

[6] In her decision, the learned Judge struck out the impugned parts of the affidavit and the exhibit pursuant to Part 30.3(3) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 ("the Rules"). This provision confers discretion upon the Court to strike from an affidavit any scandalous, irrelevant or otherwise oppressive matter.

[7] It appears from Paragraph 36 of the judgment that the paragraphs were struck from the fixed date claim under Parts 26.3(1)(b) and (c) of the Rules. Part 26.3(1)(b) empowers the Court to strike out a part of a statement of case if it appears that the impugned part does not disclose any reasonable ground for bringing the claim. Part 26.3(1)(c) provides that the Court may strike out a part of a statement of case if it is an abuse of the process of the Court, or if it is likely to obstruct a just disposal of the proceedings. These provisions are consistent with the overriding objective stated in Part 1 of the Rules, which require the Court to deal with cases justly. Part 25.1 of the Rules enjoins the Court to further the overriding objective by actively managing cases.

[8] In her decision, the learned Judge found that the conjoint effect of sections 4 and 16 of the House of Assembly (Privileges, Immunities and Powers) Act, Cap. 3 of the Laws of St. Vincent and the Grenadines, Revised Edition, 1990 ("the Act".) and section 46 of the Constitution is that the statements that the Prime Minister made in the debate in the House on 5th December 2002, concerning the acquisition of his land, are not admissible in Court because they are protected by privilege. On this finding, Mr. Toussaint will not be able to rely on those statements to assist him to prove his claim.

The Issues Raised by this Appeal

[9] At the outset I shall put to rest the question whether the High Court has jurisdiction to review the actions of the executive for unconstitutionality. Mr. Maharaj, SC, learned Counsel for Mr. Toussaint, raised it at the commencement of his submissions.

[10] It is well settled that the High Court, which the Constitution established and upon which it confers original jurisdiction in constitutional matters, is the guardian of the Constitution. It is entrusted with the purview to review and strike down any contravention of the Constitution. This is premised upon the supremacy of the constitution and constitutional interpretation. It is also premised on the jurisprudential imperative of the rule of law, which Albert Venn Dicey referred to as the idea of legal equality before the ordinary Courts. This idea posits that no person shall be above the law in that every person is subject to the law of the land and amenable to the jurisdiction of the Court. The High Court has therefore reviewed legislation and the actions of the judiciary to ensure that they are in conformity with the Constitution. It has also exercised jurisdiction over the decisions by the executive branch of Government in order to ensure that those decisions were within constitutional remit. (See, for example, John Benjamin and Others v Minister of Information and Broadcasting and the Attorney General of Anguilla, [2001] 1 WLR 1040 (PC).

[11] Basically, 3 main grounds can be distilled from this appeal that raise live issues. I state them here in the order in which I propose to consider them. The first is a purely procedural point. Mr. Toussaint complains that the learned Judge erred when she struck out the impugned parts on a point *in limine*. His second contention is that the learned Judge did not appreciate or properly construe the applicable constitutional and statutory provisions that relate to parliamentary privileges and immunities. Mr. Toussaint complains by this that the Judge failed to hold that the statements that the Prime Minister made in Parliament are not cloaked in privilege. The third issue is whether the learned Judge erred because she failed to hold that the Speaker waived the privilege and gave permission for Court to admit the evidence.

The Procedural Point

[12] Mr. Toussaint complains that the learned Judge erred when she struck out the impugned parts on a point *in limine*, because the application to strike out was not a point that was preliminary to the jurisdiction of the Court to hear the claim. According to him, the Judge should have deferred ruling on the application and proceeded to hear the entire matter. She should then have ruled on the application when she ruled on the substantive issues. In his view, this would have avoided costs and delay because, in the event of an appeal, the ruling on both matters would have come before the Court of Appeal together.

[13] Sir Dennis Byron CJ answered a similar question in Capital Bank International Limited v Eastern Caribbean Central Bank and Another, Civil Appeal Nos. 13 & 14 of 2002 (10th March 2003.). The question arose in that appeal in similar circumstances. The Chief Justice stated, at paragraph 4 of the judgment, that the Judge in that case properly exercised his discretion pursuant to his case management powers under Part 26.1(2)(d) of the Rules when he struck out portions of documents on a preliminary issue. This provides a partial answer to the appeal on this issue. However, in the circumstances of the present case, I feel constrained to pursue the issue in its true perspective inasmuch as this action was instituted under Part 56 of the Rules.

[14] In a trial, a Judge rules on admissibility when permission is sought to tender evidence. The trial then proceeds to conclusion whether the evidence is admitted or not. The decision is then given on the substantive issues. In that process, it is not usual to object to admissibility as a preliminary point. In our present case, however, the application goes to striking out parts of the originating claim and related portions of affidavit evidence.

[15] Part 56 of the Rules govern the practice and procedure of the High Court in relation to the jurisdiction and power conferred upon the Court for constitutional redress. Sections 16(6) and 96(4) of the Constitution empower him to do this. Part 56.7 provides the procedure for making an application for an administrative order, which includes orders for constitutional redress. Under this rule, applications should be by fixed date claim form.

[16] Part 56.7(8) of the Rules stipulates the time within which there should be a first hearing on an application. This should be within 4 weeks after the claim is issued. Part 56.9 lays down stringent time requirements for service of the claim and related activities. Part 56.11 requires a Judge to give directions at a first hearing to ensure the expeditious and just trial of the claim.

[17] Part 56 of the Rules is intended to ensure that applications for administrative orders are heard urgently. Fixed date claim proceedings, with the provisions for hearing on affidavits, should facilitate this. The first hearing in these proceedings would usually be in the nature of a case management conference, pursuant to Part 27.2(2) of the Rules. Parts 25 to 27 therefore apply. Under Part 26(2)(i), the Court could consider applications and give directions for hearing preliminary issues at the first hearing. At this stage, the Court could exercise its powers, under Parts 26.3, 26.4, and 30.3, to strike statements from pleadings and affidavits. The learned Judge proceeded in accordance with these provisions when she heard the application and struck out the impugned parts.

[18] The evidence that would eventually be considered in this case is contained in the pleadings and affidavits. The case management rules permitted the Judge to consider the application during the case management process. She gave directions and heard the parties. In my view, she correctly considered the issue of admissibility at that time. This ground of appeal therefore fails.

Are the Statements Protected by Privilege?

[19] Mr. Toussaint insists that the statements that the Prime Minister made in the House are not protected by any privilege or immunity that the House or any Member enjoys. I shall summarize the contending positions of the parties on this issue, out of deference to Counsel, whose submissions were full and helpful. I shall then briefly consider the privilege and the legal principles that are applicable on this ground of appeal.

The contending positions

[20] In summary, the appeal on this ground states that the learned Judge did not appreciate the exact purport of the constitutional and statutory provisions regarding the privileges and immunities of Members of the House. In particular, she did not appreciate that these provisions are intended to protect individual Members of the House from civil and criminal proceedings that might be brought against them, personally, for statements that they make in the House.

[21] Mr. Maharaj contended that the privileges and immunities are not intended to provide immunity to the State against the Court's scrutiny of actions by the State for unconstitutionality. Therefore, he said that in cases in which a person alleges that the State has contravened his or her fundamental rights, the High Court has jurisdiction to admit statements that Members of the House make in proceedings in the House. In his view, this is concomitant with the Court's duty to protect individuals against unconstitutional actions by the executive arm of the State.

[22] Mr. Maharaj insisted that inasmuch as the claim is not against the Prime Minister in his personal capacity, but against the State, the constitutional and statutory immunities and privileges do not apply to render the impugned parts inadmissible. According to his submissions, the claim alleges that the executive arm of the State contravened the Constitution. The learned Judge therefore rightly found that the Attorney General was the correct Respondent, but failed to appreciate that the constitutional and statutory immunities do not apply to exclude the jurisdiction of the Court to admit the statements. Mr. Maharaj further insisted that the statements are admissible because the Prime Minister thereby announced the decision that the government made to acquire Mr. Toussaint's land and stated the reasons for the acquisition.

[23] Mr. Maharaj submitted, further, that the learned Judge erred because she did not appreciate that section 2 of Schedule 2 to the Constitution requires the Court to construe the relevant statutory provisions with such modifications, adaptations,

qualifications and exceptions as are necessary to bring them into conformity with the Constitution. In any event, he said, the Court should have construed the statutory provisions to give effect to the fundamental rights provisions of the Constitution.

[24] On the other hand, Mr. Astaphan insisted that the provisions of the Act and section 46 of the Constitution prohibit the Court from considering or examining the statements that the Prime Minister made in the House. He insisted that these provisions are part of the Constitutional framework for regulating the distribution and exercise of powers between the 3 branches of the Government. He noted that section 37 of the Constitution, which confers constitutional power on Parliament to make laws, circumscribes that power by the opening words "subject to the provision of this constitution". He concluded that these words were deliberately omitted from section 46 of the Constitution in order to preserve and afford constitutional recognition of the power of Parliament to control its powers, privileges and immunities and those of its Members.

[25] Mr. Astaphan contended, further, that the constitutional and statutory provisions that relate to the privileges and immunities do not limit them to private actions. He insisted that there is nothing that precludes the House or Members of the House from the protection of these provisions in constitutional or public law proceedings. He cited as authority C. O. Williams Construction Ltd. v Blackman and the Attorney General (1989) 41 W.I.R. 31 (Williams, CJ.); [1995] 1 WLR. 102 (PC.). I agree with this submission.

[26] Mr. Astaphan urged this Court to follow the approach of the High Court of Barbados in the C. O. Williams Construction Co. Ltd. case. He insisted that the Prime Minister's statements are inadmissible in the present case on the ground of privilege just as the statements that were made in the House in Barbados were inadmissible in the C. O. Williams case. I shall consider this privilege that precludes the production and admission of statements made in the House in court against a brief perspective.

The privilege

[27] Parliamentary privileges and immunities had their genesis in England, as a part of the common law as *lex et consuetudo parliamenti*. The collective privileges and immunities of the Houses of the British Parliament were designed to facilitate the smooth functioning of the legislature, and to extend personal privileges and immunities to the Members. Their purpose is to uphold the dignity of the Houses as well as that of the Members. The collective privileges are usually exercised through the Speaker of the House. At common law, they include the right of the Houses to determine questions of membership, regulate their own procedures and to make rules for the orderly conduct of their own proceedings. They also encompass the power of the Houses to protect their own privileges and to punish persons who violate them.

[28] In St. Vincent and the Grenadines, some of the privileges and immunities that evolved in England now have constitutional and statutory expression. Thus, for example, the personal privilege that protects Members of the House from civil or criminal liability for statements made in the House is provided for in section 4 of the Act. Section 16 of the Act precludes the Court from admitting statements that are made in the House without the permission of the Speaker. Section 45 of the Constitution confers power upon the House to regulate its own internal procedures and to make rules for the orderly conduct of its proceedings. Section 46 of the Constitution confers the personal privilege that protects a Member from civil or criminal liability for statements made in the House. Does the High Court have jurisdiction to adjudicate on the privileges and immunities?

Jurisdiction

[29] The question of jurisdiction is important because it is one theme that resonates in the submissions that Mr. Astaphan made. It states that the separation of powers doctrine should preclude the Court from enquiring into the exercise of parliamentary privileges and immunities. Additionally, section 3 of the Act seeks to oust the jurisdiction of the Court. It provides that neither the Speaker nor any officer of the House shall be subject to the

jurisdiction of any court in relation to the exercise of any power conferred or vested in them under the Constitution, the Act itself or an Order of the House. This provision seems to lend support to the submission based on the separation of powers doctrine. However, it is clear principle that neither section 3 nor the separation of powers doctrine would preclude the Court from assuming jurisdiction where a privilege or immunity is inconsistent or incompatible with the Constitution, or where the Speaker or anyone does not act in accordance with the provisions of the Act that confer the privilege.

[30] In Hubert Sabaroche v The Speaker and the Attorney General, Dominica Civil Appeal No. 20 of 1997 (25th May 1999), Mr. Astaphan submitted that if the Speaker or the House suspends a Member for a breach of a privilege that does not exist, or suspends a Member without regard for the rules of the House, the Court would intervene and afford the appropriate relief to the Member. This Court agreed with that submission. Redhead JA, who delivered the judgment stated, at page 15 of the Judgment:

> "I shall go further and say that the constitution of the Commonwealth of Dominica is the supreme law of the land. The House of Assembly gets its authority from the Constitution; the court being the sentinel of the constitution must act and has a duty to act when any authority acts in non conformity with any rules or laws which it derives under the very constitution."

He cited as authority statements that the Privy Council and the High Court of Cape Province, South Africa, made, respectively, in Rediffusion (Hong Kong) Ltd. v The Attorney General of Hong Kong [1970] A.C. 1136, and Delille and Another v Speaker of the National Assembly (1998) 3 S.A. 430 (c); 7 BCLR 916. The foregoing statement is as applicable to privileges conferred by statute as it is to those that are provided in the Constitution.

[31] In Sabaroche, this Court noted that in Delille, the High Court of South Africa considered section 57(1)(a) of the Constitution of South Africa, which empowers the House to regulate its own procedure and to make rules for the orderly conduct of its own proceedings. It is in similar terms to section 45(1) of the Constitution of St. Vincent and the Grenadines. The Court set aside a Resolution of the National Assembly that conflicted with the constitutional provision. The Court stated that the provision does not

mean that the House can act in a manner that is inconsistent with the Constitution. The rationale is that the power remains subject to the Constitution and subject to constitutional review by the Court. The Supreme Court of South Africa upheld this approach in the Speaker v Delille (1998) C.A. Case No. 297/1998.

[32] The decision of the Supreme Court of Mauritius in Attorney General of Mauritius v Ramgoolam [1993] 3 LRC 82 exemplifies this approach. That Court stated that it would be wrong to invoke the sovereignty of Parliament to prevent the High Court from scrutinizing the privileges and immunities of the House. It felt that this would paralyse the effective exercise of the Court's constitutional jurisdiction. It held that although it was within the purview of the Speaker to decide whether Parliament should be recalled, it was for the Court to decide whether Parliament was recalled in circumstances that were constitutionally valid.

[33] The approach of our High Courts has been generally similar. This is evidenced, for example, in David Carty v Leroy Rogers, Anguilla High Court Suit No. 83 of 1994, (Neville Smith J, Ruling 27th February 1995, Judgment 18th December 1995) and Hubert Benjamin Hughes v Leroy Rogers, Anguilla High Court Suit Nos. 99 and 101 of 1999 (Saunders J, as he then was, 12th January 2000.). These cases confirm that when an issue that relates to a privilege or immunity arises, the Court shall construe the relevant provisions and thereby determine the legality of any decision or action that is challenged.

[34] In the present case, the learned Judge construed the provisions to which Counsel for the parties referred. Did she err when she found that the statements that the Prime Minister made are inadmissible because they are privileged?

Construing the relevant provisions

[35] Section 4 of the Act is of no moment in this appeal. It merely protects individual Members from civil and criminal proceedings for any utterances made in the House. In this case, Mr. Toussaint is not seeking to use the statements that the Prime Minister made

in the House in an action against him. Section 4 would have prohibited such an action. This section does not speak to the admissibility of statements that are made in the House where a person institutes a case against the State for the infringement of his or her fundamental rights. The Act came into force on 12th April 1966, prior to the promulgation of the Constitution in 1979. The effect of Section 2 of the Second Schedule to the Constitution is that the fundamental rights provisions of the Constitution cannot be diminished by the parliamentary privileges and immunities.

[36] Section 46 of the Constitution is in similar terms to section 4 of the Act. It states:

> "Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of the House and its committees, or the privileges and immunities of the members and officers of the House and of other persons concerned in the business of the House or its committees, no civil or criminal proceedings may be instituted against any member of the House for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise."

This provision is unhelpful in the present case just as section 4 is, and for the same reasons.

[37] On the other hand, section 16 of the Act is quite relevant because it speaks directly to the issue of the admissibility of statements made in the House as evidence in a case. It provides that such statements cannot be admitted in proceedings unless the Court or a person who is authorized to take the evidence is satisfied that the Speaker has given permission for it to be admitted. It states:

> "No evidence relating to any of the following matters, that is to say –
>
> (a) debates or proceedings in the House;
>
> (b) the contents of the minutes of evidence taken or any document laid before the House or a committee or any proceedings of or before, or any examination had before the House or any such committee,
>
> Shall be admissible in any proceedings before a court or person authorized by law to take evidence, unless the court or such last mentioned person is satisfied that permission has been given by the Speaker for such evidence to be given."

It is clear from this provision that the Speaker can waive the privilege and permit the statements that the Prime Minister made to be adduced in evidence in this case. It is therefore necessary to determine whether the Speaker gave permission.

Did the Speaker grant permission?

[38] Section 16 of the Act confers discretion upon the Court to be satisfied that the Speaker has given permission for statements that are made in the House to be admitted in evidence. This discretion is to be exercised objectively on the evidence.

[39] On 27th November 2003, Dr. Friday wrote a letter to the Speaker. He requested the Speaker's permission to use the Hansard of 5th December 2002 and, in particular, the speech that the Prime Minister made, as evidence in Mr. Toussaint's claim. There is a letter dated 3rd December 2003, under the letterhead of the Office of the Speaker, which was addressed to Dr. Friday. The letter informed Dr. Friday that permission was granted for the use of Hansard as he requested. It further informed him that a copy of the Hansard could be collected at the Office of the Clerk of the House. There then followed another letter to Dr. Friday. It was dated 12th December 2003. In that letter, the Speaker informed Dr. Friday that the letter of 3rd December 2003 was an unauthorized letter that the Acting Clerk of the House sent. He stated that he (the Speaker) had not authorized the Clerk to give permission for the use of the Hansard. The Speaker refused to grant permission.

[40] There is no evidence before us that contradicts the Speaker's assertion that he did not authorize the Clerk to write the letter of 3rd December 2003. The Speaker did not sign it. It was signed on his behalf. The Clerk could not have acted for the Speaker without the latter's authorization. The *Carltona principle*, which came out of Carltona Ltd. v Commissioner of Works and Others [1943] 2 All E.R. 560 presents a special rule by which government officials may act on behalf of their Ministers and exercise certain administrative powers that the Ministers have, without any formal delegation. This principle is not applicable in the present case because it is limited to Departments of the

central government. There is no evidence on which the High Court or this Court could be satisfied that the Speaker gave permission to Mr. Toussaint to use Hansard.

Constructive permission

[41] Mr. Maharaj made another submission, which, if accepted, would mean that section 16 permits what would be constructive permission. He submitted that section 16 was satisfied because the Speaker waived privilege in relation to the statements by permitting them to be carried live on the electronic media. Mr. Maharaj is of the opinion that the statements were thereby published to the world at large with the result that they are now admissible because the Speaker had, by this means, given his consent and approval for the words to be published abroad.

[42] This submission is ingenious and intriguing. The novel and changing circumstances that the march of time brings do often call for creativity. When the Act came into force in 1966, I doubt that the influence that the broadcast media has today in the wide dissemination of information was foreseen. The media is now an integral medium for the realization of the constitutional imperative of freedom of expression and the relatively recent notion of freedom of information. These are veritable pillars of democratic society and governance.

[43] I must however, consider Mr. Maharaj's submission in the light of the wording of section 16 of the Act. In my view, by permitting the broadcast of the debate in the House, the Speaker did nothing from which the Court could be satisfied that he gave permission for the debate to be admitted as evidence in this case. He merely gave permission for the debate to be disseminated for the benefit of the public.

[44] It is necessary, however, to consider another statutory provision, which also speaks to the admissibility of Hansard in evidence. It was not raised before the learned trial Judge. This court drew section 40 of the Evidence Act, Cap.158 of the Laws of St. Vincent and the Grenadines, Revised Edition, 1990 to the attention of Counsel during the hearing of this appeal.

Section 40 of the Evidence Act

[45] This section states:

> "All documents purporting to be copies of the debates and proceedings of the House of Assembly, if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof in all courts."

A review of this section leads me to consider closely C. O. Williams Construction Ltd., which Mr. Astaphan raised.

C. O. Williams Construction Ltd.

[46] This case came on an application for judicial review. The application sought review of a decision by the Cabinet to award a contract to construct a highway to Rayside construction firm, rather than to the claimant. The possible illegality of the decision of the Cabinet only surfaced when the Defendant/Respondent Minister made a statement in Parliament. He stated the reasons why the Cabinet awarded the contract to Rayside. The claimant sought to rely on the Minister's statements in Court. The admissibility of the statements was at issue because the defendants insisted that they were protected by parliamentary privilege.

[47] The High Court of Barbados struck out the portions of the affidavits of the claimant and of one Peter Scott that related to the statement that the Minister made in Parliament. The Court said that the statements were inadmissible because they were covered by the privilege provided by section 15 of the Parliament (Privileges, Immunities and Powers) Act, Cap. 9 of the Laws of Barbados. The Court also struck out the Minister as a party on the ground that the statutory power to award the contract resided in the Cabinet and not in the Minister. There was therefore no power vested in him that was reviewable. Section 15 is in terms that are similar to section 16 of the Act of St. Vincent and the Grenadines.

[48] C. O. Williams is also important in the present case because, in addition to section 15, the High Court of Barbados considered section 18 of the Barbados Act. Section 18 states:

> "Upon any inquiry touching the privileges, immunities and powers of either House or any member, any copy of the minutes or proceedings of the House published in the Official Gazette shall be admitted as evidence of such minutes or proceedings in all courts and places."

[49] In C. O. Williams, Williams CJ noted that in Husbands v Advocate Co. Ltd. (1968) 12 WIR 454, Douglas CJ reconciled sections 15 and 18. He held that section 15 related to admissibility of evidence, and said that statements that are made during debates in the House could not be admitted except with the permission of the Speaker. He said, on the other hand, that section 18 related to the manner of proof. Williams CJ accepted this interpretation. It was in those premises that he struck from the affidavits any reference to the statements that the Minister made in the House. When the Privy Council restored the Order of Williams CJ, their Lordships impliedly accepted this interpretation.

[50] However, C. O. Williams is distinguishable from the present case because the wording of Section 18 of the Barbados Act is not identical to the wording of section 40 of the Evidence Act, neither are they similar in terms. While the Barbados provision relates to the manner of proof, section 40 of the Evidence Act states, quite clearly, that any document that is purportedly a copy of the debates and proceedings of the House shall on mere production be admitted in all Courts. The only requirement is that the Court should be satisfied that the document that is so produced appears to have been printed by the Government Printer.

[51] Sections 42 and 43 of the Evidence Act provide further guidance to a party who wishes to produce a document of such proceedings and to the Court that might admit it in evidence. They provide particulars to guide the Court on practical aspects relating to the acceptance of the copies. Section 42 provides that the mere production of a paper purporting to be a copy of the Gazette shall be evidence that the paper is the Gazette or copy of it and was published on the date it bears. Section 43 provides that the mere production of a paper purporting to be printed by the Government Printer or by authority of the Government shall be evidence that the paper was so printed.

[52] The Act came into effect in 1966. When therefore the Evidence Act came into effect on 24th April 1989 the House was aware of the terms of section 16 of the Act, which expresses a privilege that belonged to the House. When the House enacted section 40 of the Evidence Act in the clear and explicit terms that they did, the Members thereby provided a means by which statements made in the House may be admitted in evidence on their mere production, without the permission of the Speaker.

[53] In the premises, the appeal will succeed because the statements that the Prime Minister made in the House could be produced in evidence provided that Mr. Toussaint satisfies the criteria of section 40 of the Evidence Act and related provisions. If he satisfies the criteria the trial Judge should admit the statements and then determine the purpose for which the statements could be used in accordance with principle. In the result, the portions of the claim form and the affidavit that the learned Judge struck out are restored.

Conclusion

[54] In conclusion, the learned Judge did not err when she heard the application to strike out on a point *in limine*. The case management procedures that are subsumed under Part 56 of the Rules contemplate this procedure.

[55] In St. Vincent and the Grenadines, parliamentary privileges and immunities are provided in the main by the Constitution and by the House of Assembly (Privileges, Immunities and Powers) Act. It is within the purview of the Court to construe the provisions that relate to a particular privilege. Parliamentary privileges and immunities are not intended to provide the State with an overall immunity against the Court's scrutiny of actions by the State for unconstitutionality.

[56] Mr. Toussaint seeks to use statements that the Prime Minister made in the House to assist him to prove his claim that his constitutional rights under the Constitution were contravened when the State acquired his land. Under section 16 of the Act, the statements may only be produced if the Court is satisfied that the Speaker granted

permission for them to be admitted in evidence. This discretion must be exercised objectively on the evidence. The Clerk of the House informed Mr. Toussaint, by letter, that the Speaker gave permission. The Clerk could not have acted on behalf of the Speaker without his authorization. The Speaker subsequently stated that he did not authorize the Clerk to grant permission. This has not been disputed. The Speaker has denied permission. There was therefore no evidence upon which the Court could be satisfied that the Speaker granted permission for the purposes of section 16 of the Act.

[57] However, section 40 of the Evidence Act provides another means by which evidence of statements in the House could be produced and admitted in Court without the permission of the Speaker. If Mr. Toussaint satisfies the requirement of this section and related provisions and produces Hansard or such other document as these provisions permit him to produce, the document should be admitted in evidence. The trial Judge would then determine the purpose for which it could be used.

Costs

[58] The High Court directed that the costs on the hearing of the application to strike out shall be costs in the cause, notwithstanding that the Attorney General prevailed on the application to strike out. Part 56.13(4) of the Rules permits the Court to make any order as to costs as appears just. Part 56.13(6) of the Rules states that no order as to costs may be made against an applicant unless the Court thinks that the applicant acted unreasonably in making the application or in the conduct of the proceedings. In Martinus Francois v The Attorney General of St. Lucia, Civil Appeal No. 37 of 2003, I indicated that this mirrors the prior practice observed by our Courts where a person seeks constitutional redress.

[59] This practice is not intended to facilitate the pursuit of matters that constitute an abuse of the process of the Court, or matters that are scandalous or otherwise spurious. I do not think that either party in this case acted so unreasonably in making and defending the application to strike out that it took the case outside of the general rule stated in Part

56.13(6) of the Rules. The direction that costs shall be costs in the cause will therefore be set aside. It would be replaced by a direction that there is no order as to costs in the High Court. For the same reason, there will be no order as to costs on this appeal.

Order

[60] In the foregoing premises, the appeal is allowed and the Order of the High Court is set aside. There is no order as to costs in the High Court or on this appeal. This case shall be scheduled immediately, and, in any event, within 14 days of today's date, for new trial directions to be issued by the High Court, with a view to an urgent hearing.

Hugh A. Rawlins
Justice of Appeal [Ag.]

I concur.

Brian Alleyne, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal [Ag.]