THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 202 of 2015

BETWEEN

LAURON BAPTISTE

PETITIONER

and

VIL DAVIS

Returning Officer

and

VERONICA JOHN

Presiding Officer

and

MONTGOMERY DANIEL

and

SYLVIA FINDLAY-SCRUBS

Supervisor of Elections

RESPONDENTS

-AND-

CLAIM NO. 203 of 2015

BETWEEN

BENJAMIN EXETER

PETITIONER

and

WINSTON GAYMES

Returning Officer

and

KATHLEEN JEFFERS

Presiding Officer

and

SIR LOUIS STRAKER

and

SYLVIA FINDLAY-SCRUBB

Supervisor of Elections

and

THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

RESPONDENTS

Appearances - Claim No. 202 of 2015:

Mrs. Kay Bacchus Baptiste, Mr. Keith Scotland (absent), Mrs. Zhinga Horne-Edwards, Mr. Andreas Coombs, instructed by Ms. Shirlan Barnwell and Ms. Maia Eustace for the petitioner.

Mr. Anthony Astaphan S.C. and Mr. Richard Williams for the 1st, 2ndand 4th respondents.

Mr. Grahame Ballers and Mr. Carlos James for the 3rd respondent.

Appearances - Claim No. 203 of 2015:

Mr. Stanley John Q.C., Mrs. Zhinga Horne-Edwards and Mr. Andreas Coombs instructed by Ms. Shirlan Barnwell and Ms. Maia Eustace for the petitioner.

Mr. Anthony Astaphan S.C. and Mr. Richard Williams, for the 1st, 2nd, 4th and 5th respondents. Mr. Grahame Ballers and Mr. Carlos James for the 3rd respondent.

2017: May 2, 4 & 5

Jun.30

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** St. Vincent and the Grenadines held its most recent general elections on 9th December, 2015. The incumbent Unity Labour Party ('ULP') was declared the winner with the main opposition National Democratic Party's ('NOP') securing the other seats. Mr. Montgomery Daniel was returned and declared duly elected in the North Windward constituency, while Sir Louis Straker was declared the winner in the constituency of Central Leeward. Mr. Lauron Baptiste and Mr. Benjamin Exeter were fielded by the NOP respectively in those constituencies. They filed petitions challenging the results. They have alleged that there were serious irregularities in the polls which invalidated the outcome and they sought orders among other things declaring that Mr. Montgomery Daniel and Sir Louis Straker were not duly elected or returned and that those elections were void.

[2] The Honourable Attorney General is a respondent to the petition brought by Mr. Benjamin Exeter. The Supervisor of Elections, the presiding officers and returning officers for the embattled constituencies were joined as respondents to the petitions along with the successful candidates Mr. Montgomery Daniel and Sir Louis Straker. They deny any irregularities and filed notices of application1 to strike out the petitions on the ground that among other things Mr. Baptiste and Mr. Exeter have not provided security for costs in accordance with section 58 (1) (b) and (c) of the Representation of People Act ('RPA') and rule 9 of the House of Assembly (Election Petition) Rule 2014 ('EPR').

[3] Following a hearing in chambers, the learned trial judge who considered the applications ruled that they were premature and that the court had no jurisdiction to entertain them in

chambers, as interlocutory applications. No final determination was made on those applications and they have not been withdrawn. The respondents subsequently filed motions2 for the petitions to be struck out pursuant to section 58 of the RPA and rule 9 of the EPR. The high court upheld the motions and

1 Filed on 1st February, 2016.

2 Filed on 14th April, 2016.

the petitions were struck out as being null and void. The petitioners appealed. The Court of Appeal set aside the orders and remitted the petitions and motions to strike for determination by this court.

[4] The respondents contend that the petitions are bad in law because the recognizances supplied on behalf of Mr. Baptiste and Mr. Exeter are defective and not lawful or proper security. They submitted that the securities for costs are invalid since:

1. the petitioners Mr. Baptiste and Mr. Exeter respectively and not the sureties, were the persons who:

(a) acknowledged the obligation and liability to pay the costs and pledged property as security in the event of default;

(b) entered into and signed the recognizances; and

2. a petitioner is not, cannot be and has never been a surety:

(a) under the laws of Saint Vincent and the Grenadines; or

(b) according to the practice of Saint Vincent and the Grenadines in election petitions following previous elections.

[5] Mr. Baptiste and Mr. Exeter argued that the recognizances satisfy the regulatory and statutory requirements of the law and are valid. They submitted that the motions must be struck out because the notices of applications are still subsisting on the record. They reasoned that it is an abuse of the process of the court to allow concurrent proceedings to ensue on the same cause of action or grounds. They contended further that the motions were not filed within the time stipulated in law and should therefore be struck out and that the petitions ought to proceed to trial.

BACKGROUND

[6] Chief Justice Sir Hugh Rawlins famously remarked in the case of**Ezechiel Joseph v Alvina Reynolds 3:**

'... there is a high public interest in promoting democracy by ensuring that election cases are

determined on their merits. I agree that the constitutional guaranteed right to access and fairness should be facilitated by our courts.'

3 HCVAP 2012/0014

[7] Some years before, in the case of **Ethelyn Smith v Delores Peters,** he adopted observations of the Privy Council from the judgment rendered in **Nair v Teik.** Rawlins J. said then:

'[22] The Privy Council made two observations for the strict construction of the law that relates to election petitions that bear repeating here. First, their Lordships emphasized the need for a speedy determination of the controversy in election petitions, in the public interest, the rationale is that persons who are returned as legislators should know quickly whether they have been lawfully elected. The country needs to know whom the elected representatives are with certainty.

[23) Election challenges should be mounted before a new legislature sits and begins its work, or as soon as possible thereafter, in order that the legislature might be lawfully constituted. The laws with respect to election petitions and their interpretation by the courts are intended to facilitate this.'

[8] Those observations are equally apt in the instant case. All parties are entitled to fully ventilate their respective positions in such matters in furtherance of the rule of law and the advancement of democracy. The ability to do so in a civilized manner is a hallmark of a working democratic society which should be fostered by all involved in accordance with the applicable laws.

[9] At this juncture, it is useful to summarize some of the salient surrounding circumstances from which the present dispute arises. The petitioners were required to provide security for costs and related expenses. They arranged for their legal practitioners to liaise with the learned registrar to make the necessary arrangement.s The lawyers prepared the recognizances and the petitioners accompanied the proposed sureties to the registry for execution. Hon Daniel Cummings, Mr Monty Roberts and Mr Curtis Bowman were the proposed sureties.

[10] They each attended before the Registrar to sign the Recognisances after which they were filed and served on the petitioners. The respondents subsequently filed the Notices of Motion on 14th April 2016. They are similar in content. They seek orders striking out the petitions and costs. They contained 5 grounds each. The substance of ground 1 in both motions was essentially the same. They are set out in tabular format for completeness.

Ground 1 - Motion relating to Lauran Baptiste	Ground 1 - Motion relating to Benjamin Exeter
'The Petitioner filed an election Petition on the 31st day of December 2015 against the Respondents seeking the following reliefs: (1) It may be determined and (sic) the said Montgomery Daniel The 3rd Named Respondent was not duly elected or returned, and that the election was void, or (2) That the Petitioner the said Lauran Baptiste was duly elected and ought to have been returned. (3) An Order for scrutiny and recount of all defective ballots etc...'	'The Petitioner filed an election Petition on the 31st day of December 2015 against the Respondents seeking the following reliefs: (1) It may be determined and (sic) the said Sir Louis Straker The 3rd Named Respondent was not duly elected or returned, and that the election was void, or (2) That the Petitioner the said Benjamin Exeter was duly elected and ought to have been returned. (3) An Order for scrutiny and recount of the defective ballots to which objections were made by the Petitioner or is representatives/agents including but not restricted to the following namely:- (a) Two hundred and twenty two (222) ballots in respect of Polling Station CLF and ninety nine (99) in respect of CLF 1 which ballots appeared defective and or willfully mutilated; (b) Ballots which bore the official mark and the presiding officers initials below the perforated line including Two hundred and thirty eight (238) at Polling Station CLB and two hundred and 1Oat Polling Station CLB1 respectively. 4. That the Petitioner may have further or other relief as the court thinks just. 5. Costs'

[11] The second to the fifth grounds of the motions were identical and are as follows:

'2. By virtue of S 58 (1) (b) and (C) of the **Representation of the People Act** the Petitioner was mandated to comply or ensure compliance with the following: ...4

4 Note: Section 58 (1) and (2) of the RPA were then set out. I have omitted them at this stage as they are later outlined fulsomely.

3. By virtue of S 9 of the House of Assembly (Election Petition) Rules 2014 the Petitioner was mandated to

1) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the petitioner -

i. to any person summoned as a witness on his or her behalf; or

ii. to the member whose election or return is complained of; or

iii. to any other person named as a respondent in the petition, shall be given by the petitioner.

2) The security shall not exceed five thousand dollars and shall be given by one or more recognizance to be entered into by any number of sureties approved by the Registrar, not exceeding four or by deposit of money in the Court, or partly in one way and partly in the other to the satisfaction of the Registrar.

3) The recognizance shall contain the name and usual place of abode of each surety with sufficient description as shall enable him or her to be found or ascertained.

4) Within three days after the giving of security as required by this Rule, notice of the nature of the security given shall be served by the petitioner on the respondent.'

4. The provisions of**Representation of the People Act** and**House of Assembly (Election Petition) Rules** requiring the provision of security are mandatory and therefore any failure to strictly comply with these provisions renders the Petition void.

5. The Petition has failed to provide the security for costs as required by law. More specifically the purported document filed on behalf of the Petitioner on the 5th day of January 2016 captioned "Recognisance giving security for Cost under Rule 9 of the **House of Assembly (Election Petition) Rules,** is defective and not lawful or proper security mandated and required by the **Representation of the People Act** and **House of Assembly (Election Petition) Rules** because

i. The purported recognizance shows on its face that the Petitioner acknowledged the

obligation and liability to pay the debt of any costs and pledged his property for execution in the event of his own default in the payment of costs;

..

ii. The purported recognizance was entered into and signed by the Petitioner and not the

sureties;

iii. The Petitioner is not, cannot be, and has never been a surety under the laws of Saint Vincent and the Grenadines or the practice of the Saint Vincent & the Grenadines in election petitions following previous elections, and therefore

iv. The Petition is bad in law.'

[12] Learned senior counsel Mr. Anthony Astaphan was the lead counsel for the respondents Vil Davis, Winston Gaymes, Veronica John, Kathleen Jeffers and Sylvia Findlay-Scrubb, while Mr. Grahame Sollers was the lead lawyer for Mr. Montgomery Daniel and Sir Louis Straker. Learned counsel Mr. Sollers adopted the submissions made by learned senior counsel Mr. Astaphan.

[13] In like manner, Mrs. Kay Bacchus-Baptiste who led the legal team for Mr. Lauran Baptiste fully adopted the submissions made by learned Queens Counsel Mr. Stanley John on behalf of Mr. Benjamin Exeter.

She supplemented them with additional arguments. Accordingly, the submissions made by learned senior counsel Mr. Astaphan will be attributed to all respondents and those made by learned Queens Counsel Mr. Stanley John will in similar fashion be referred to as the petitioners' contentions. Where necessary, submissions made by individual parties will be referenced accordingly.

[14] The respondents contended that there are 2 main issues and several corollary ones before the court for determinatio,nnamely:

1. Whether High Court has jurisdiction (statutory or inherent) at this stage to strike out the Petitions prior to directions for trial or trial;

2. Whether the recognizances provided by the Petitioners as security for costs in these cases contravene the relevant provisions of the **Representation of the People Act** and Form 3 and the following corollary issues:

(a) Whether the Petitioners were required to comply strictly with the provisions of the

Representation of the People Act, and provide recognizances in accordance with the strict terms and language of Form 3 prescribed by The House of Assembly (Election Petition) Rules 2014 (the substantive law provisions);

(b) Whether the presentation of the prescribed recognizances is a condition precedent to a lawful or perfected petition and trial of a petition;

(c) Whether the Petitioners, being the sole Petitioner in the respective Petitions, can lawfully be sureties or provide recognizances for themselves under the Representation of the People Act and **Form 3;** and

(d) Whether in view of the Petitioners' failure to provide the prescribed recognizances as required by law and **Form 3,** the High Court ought to dismiss the Petitions.

[15] Mr. Baptiste and Mr. Exeter submitted that 5 issues arise for consideration:-

1. Whether the court has jurisdiction to hear the respondents' motions to strike out the petition and if so, is it an abuse of the court's process?

2. Whether it was the petitioners or the 'sureties' who gave the security for costs:

(a) on a proper construction of the recognizance within the context of section 58 (1) (b) of the RPA and rule 9 (1) and (2) of the EPR; and

(b) the background against which they were signed.

3. Whether the respondents' objections were out of time?

4. Whether or not the legislative intention that a recognizance provided pursuant to section 58 (1) of the RPA even if:

(a) insufficient; or

(b) not duly acknowledged;

should not vitiate the security but instead be objected to under rule 9 (5) of the EPR within 10 days of service, is inconsistent with section 58 (1) of the RPA.

5. Whether section 58 (1) of the RPA is unconstitutional and violates the petitioners' rights under section 8 (8) of the Constitution, if the sole permissible interpretation of section 58 (1) of the RPA is that non-compliance with its provisions would vitiate the recognizance?

ISSUES

[16] The foregoing formulation of the issues by the parties may conveniently be captured under four broad headings or issues out of which several sub-issues arise. The main issues for consideration are accordingly framed as:

1. Whether the court has jurisdiction to hear the motions to strike out the petitions at this stage?

2. Whether the motions should be struck out as being an abuse of the process of the court?

3. Whether the recognizances are invalid or insufficient?

4. Were the motions filed out of time?

5. Whether section 58 (1) of the RPA is unconstitutional and violates the petitioners rights?

6. Whether the petitions should be struck out?

[17] When the hearing re-opened before this court on May 2nd 2017 the petitioners and respondents were invited to make representations regarding the next steps in the proceedings. After considering their representations this court ordered:

'1. The court will first proceed to hear and determine the applications filed on 1st February, 2016, to strike out the Petitions.

2. All ancillary issues or contentions which arise on the Petitioners' Lauran Baptiste and Benjamin Exeter's pre-trial memorandum and submissions will also be considered concurrently.'

[18] As it turned out, the term 'motion to strike' was used interchangeably with 'applications to strike' in that judgment. At the end of the respondents/applicants submissions, learned Queen's Counsel Mr. Stanley John quite correctly pointed out that the order referenced 'applications to strike filed on 1st February, 2016' ('the applications') and not 'motions'. Learned Senior Counsel Mr. Anthony Astaphan and Mr. Ballers indicated at that point that their submissions addressed the motions to strike and not the applications.

[19] Learned Queens Counsel Mr. John then indicated that he would make his submissions on the understanding that the court was dealing with the motions and not the applications. At that juncture, the court ruled that the current proceedings concerned the motions to strike and not the applications. The matter proceeded on that basis with the acquiescence of all parties.

LAW AND ANALYSIS

Issue 1 - Does this court**have jurisdiction to hear** the motions to **strike** out the **petitions at** this stage?

[20] The parties made submissions on this matter before the court proceeded to entertain arguments on the other issues. The ruling is a matter of record. For completeness and public

interest considerations, the submissions of the respective parties are outlined in this part of the judgment.

[21] The petitioners submitted that since the RPA expressly provides that the trial of the Petitions ought to take place in the same manner as a suit commenced by writ of summons; the trial ought to proceed in accordance with CPR 39. They argued that:

1. The provisions of sections 57 to 61 of the RPA are empowered under section 36(1) of the SAINT VINCENT AND THE GRENADINES Constitution which confers jurisdiction on the High Court to hear and determine any question, whether any person has been validly elected a representative of the House of Assembly.5

2. These provisions are substantive and mandatory and must be complied with, since it is well established that the election statute and rules made there under are to be interpreted stringently unless the court can find that the failure goes to form.

3. The Chief Justice made rules concerning the deposit of security; the practice and procedure for service, and for the practice and procedure for the hearing of election petitions pursuant to section 58(2) of the RPA.

[22] The petitioners submitted that in **Joseph v Reynolds 6** the Court of Appeal ruled that *'Hearing'* refers to practice and procedure during the trial process; and that the Election Petition Rules made by the Chief Justice in 2014, provides by Rule 28 that in any matter not provided for by the Act or by these Rules, the practice and procedure set out in the Eastern Caribbean Supreme Court Civil Procedure

5 Section 36(1) of the Saint Vincent and the Grenadines Constitution.

6 Ezekiel Joseph v Alvina Reynolds at para [83] & para [96]

Rules 2000, relating to the service of documents other than the election·petition, and the conduct of a civil trial may be applied, if a judge so directs.7

[23] They contended that under section 2 of the ECSC Act CAP 24 'suit' is defined as including "action" which is defined as meaning "a civil proceeding commenced by writ or such other manner as may be prescribed by rules of court, but does not include a criminal proceeding by the Crown." They argued that the conduct of writs of summons was regulated by the Rules of the Supreme Court (Revision) 1970 which have since May 2001 been repealed and replaced by the CPR 2000.

[24] The petitioners submitted that CPR 38 now regulates the conduct of a trial in civil proceedings in the High Court by which directions are to be given as to the conduct of the tria,l in order to ensure the fair, expeditious and economic trial of issues as specified therein and by CPR 39 via which the claimant is required to prepare and file a Trial Bundle containing all documents which the parties wish to be used at the trial as specified thereunder.

[25] The petitioners contended further that contrary to the respondents' assertions, the court's inherent jurisdiction to manage election petition cases cannot be properly engaged by adopting a procedure otherwise than as prescribed under the statutory/regulatory framework which has application in Saint Vincent and the Grenadines. They argued that it is done by way of a motion or taking a preliminary point in open court, and in either case this must be done at the hearing of the petition after the appointment and publication of a trial date. They submitted that this is so because the Court of Appeal has pronounced that the court ought not to import interlocutory procedures pursuant to the CPR 2000 in the conduct of election petition proceedings, save and except where same is expressly provided for by the statute.

[26] The respondents submitted that in the exercise of its election jurisdiction, the High Court has inherent jurisdiction or case management power to strike out the petitions at this stage for any failure to strictly comply with the mandatory provisions of the election law including those concerning the prescribed security for costs and recognizance.sThey cited **Arzu v Arthurs, Nair**

7 Rule 28, House of Assembly (Election Petition) Rules 2014

v. **Teik8, Lindsay Fitz-Patrick Grant v. Phillip9** and **Ezechiel Joseph v. Reynolds10** in support and quoted certain passages from the decisions.

[27] In this regard, they relied on pronouncements by Lord Upjohn where he said:

'The election judge must, however, have an inherent power to cleanse his list by striking out or better by dismissing those petitions which have become nullities by failure to serve the petition within the time prescribed by the rules'.8

and the statement by Madame Justice Hariprasad that:

'The applications to strike out the election petition were made pursuant to the statutory and inherent jurisdiction of the court.'

[28] The respondents argued that the petitioners consistently relied on **Ezechiel Joseph** v. **Reynolds**

as authority for the proposition that there is no jurisdiction to strike until directions and date for a trial are given. They countered that this is an inaccurate representation of and reliance on **Ezechiel Joseph** *v.* **Reynolds.** Learned senior counsel Mr. Astaphan submitted that the matter of the High Court's jurisdiction to strike was never an issue in the cases stated that were submitted by consent to the Court of Appeal in that case.

[29] Learned senior counsel added that in **Ezechiel Joseph** v. **Reynolds,** Sir Hugh signaled that the court may entertain such motions to strike when he discussed the statutory framework and inapplicability of the CPR 2000 and observed:

'[101) Provisions that are made prescribing the time for the doing of specific acts and taking specific steps in the Elections Act are substantive, conditions precedent and peremptory, unless they go to form. If those provisions are not complied with, a petition is rendered a nullity and is

subject to be struck out as such. CPR 2000 cannot be relied upon in election petition proceedings to import an interlocutory

8 (1967)2 AC 31.

9 SKBHCV2010/602

10 HCVAP 2012/0014

process, particularly in the pre-trial stages of the proceedings. This because the Parliament of Saint Lucia has not provided for this pursuant to its power to regulate election petition proceedings pursuant to section 39 of the Constitution. Additionally, Parliament has only conferred upon the Chief Justice the power to make rules for the limited purposes of the deposit of security; the practice and procedure for service, and for the practice and procedure for the hearing of election petitions and matters related to this. Parliament has not given the Chief Justice or any other authority power to make rules to amend or vary the substantive procedures and other requirements that Parliament made for election petition proceedings in the Elections Act. The rules made by the Chief Justice therefore cannot be relied upon to vary or amend any provision made in the Elections Act.'11

[104) The exception would be matters that go to form. In my view, the signing of a form, document or pleading filed in election petition proceedings by a person who is not authorized to do so by the statutes does not go to form. It is non-compliance with the statutory requirement. However, it is my view that where the person who is authorized to sign a form has not done so, this goes to form. The court may, in its discretion, permit the person to sign the document so long as the document was filed within the stipulated time. The discretion should only be exercised where court is satisfied, on affidavit evidence supporting the necessary application, that there were good and sufficient reasons that militated against the person signing the document. This is similar to the well-known practice in the commercial court where affidavits, for example, are sometimes filed without the signature of the maker who is not within the jurisdiction, on an explanation coupled with a promise by counsel that the signed document will be signed and filed as soon as it is convenient. **This does not import an interlocutory process from CPR 2000. It is a part of the court's inherent case management power, which is always to be exercised in election petition proceedings to guide a case to the hearing of strike out applications or to**

eventual trial by providing the necessary directions at an early stage. '12(bold added)

[30] Mr. Astaphan submitted further that there should be no dispute that by the words at *"an early stage"* especially when preceded by the disjunctive*"or to eventual trial by providing the necessary directions"* He concluded that there ought to be no question that the High Court of St Vincent & the Grenadines is bound by the authority of Arzu v Arthurs andDevan **Nair** v. Yong Kuan Teik and **Ezechiel** Joseph v. Reynolds and that consequently, the High Court of St Vincent & The Grenadines is in the exercise of its election jurisdiction vested with the peculiar or inherent jurisdiction, or case management powers, to strike out petitions at *'an early stage'.*

[31] In ruling that the court could entertain the motions before the start of the trial, this court incorrectly found that the Chief Justice was authorized to and did make rules governing 'all matters of court procedure and matters incidental thereto' including the adoption of aspects of the CPR in the conduct of election petitions cases.

[32] That decision overlooked and ignored the provisions of section 58 (2) of the RPA which limits the Chief Justice's rule making powers to matters relating to security for costs, pursuant to which the EPR was made. The case of **Ezechiel Joseph v. Reynolds** established that the rule making powers conferred by section 36 (7) of the Constitution of Saint Vincent and the Grenadines and section 58 (2) of the RPA are limited as mentioned before. Suffice it to say that, that decision is binding on this court. I now proceed to examine the petitioner'scomplaint that the motions are an abuse of the court's process.

Issue 2 · Should the motions to strike be struck out as being an abuse of the process of the court?

[33] Mr. Benjamin Exeter and Mr. Lauran Baptiste contended that the motions to strike out the petitions are an abuse of the process of the court. They submitted that the Notices of Application to strike out on similar grounds are still subsisting on the record and have not been concluded by judgment, withdrawal, dismissal or striking out. They argued that 'it is well settled that where proceedings are in existence based upon a certain cause of action, it is an abuse of process to bring new proceedings founded upon that same cause of action. They submitted that in such circumstances the second action will be struck out.

[34] Messieurs Exeter and Baptiste submitted further that the referenced Notices of Application which were filed on 1st February, 2016 are still subsisting on the record of these proceedings. They contended that 'given the Learned Judge's ruling that it was premature' and in view of his refusal to strike out at that stage, those applications have not been concluded by judgment, withdrawal, or dismissal, nor have they been struck out.

[35] They contended that the bringing of multiple actions upon the same issue is a well-recognized category of abuse. They submitted that the court has 'an inherent power to prevent misuse of its procedures in a way which, although not inconsistent with the literal application of its procedural rules,' would:

(a) 'be manifestly unfair to a party to litigation before it, or'

(b) 'otherwise bring the administration of justice into disrepute among right-thinking people.'

[36] Mr. Exeter and Mr. Baptiste relied on decisions in the cases of **Buckland v Palmer13** and **Turner v. Grovit 14** as authority for their submissions. In the **Buckland v Palmer** case the court held that it is an abuse of the process of the court to bring two actions in respect of the same cause of action. It ruled further that where there has been no judgment in _the first such action it can be revived and amended, in appropriate circumstances to facilitate an adjudication of the claimant's full case.

[37] Sir John Donaldson M. R. opined that: 'The public interest in avoiding the possibility of two courts reaching inconsistent decisions on the same issue' is part of the rationale for that position. He added that the public interest requires that there be finality in litigation and in protecting citizens from being 'vexed' more than once by the same claim. He explained that another relevant consideration is the countervailing public interest in seeing that justice is done. He surmised that in

13 [1984] 1 W. L.R. 1109; at pages 1110 E & 1113 Bet seq.

reconciling those competing interests, the court will make its determination based on the differing facts of particular cases.

[38] Similarly, Griffiths L. J. explained 15 that the rule against multiplicity of proceedings in respect of a single cause of action is soundly based on public policy considerations which are designed to prevent the harassment of litigants by exposing them to the anxiety and expense of unnecessary legal proceedings. He reasoned that no exception should be made in that case since the claimant could benefit from a procedure which would allow it to proceed with the first claim and suffer no injustice.

[39] In **Turner and Grovit,** the court stated that the bringing of multiple actions on the same issue is a well-recognised category of abuse. It opined that the court has an inherent and 'at large' right and duty to prevent abuse. It held that in the circumstances of that case where the parties, the subject matter and the cause of actions were essentially the same, the second action was abusive of the court's process. That court accordingly granted an injunction to prevent the continuation of the second set of proceedings in another jurisdiction.

[40] Mr. Exeter and Mr. Baptiste submitted that abuse of process may arise in various ways. They submitted further that identical principles were applied by the High Court of Antigua and Barbuda in the case of **Lester Bird v AG of Antigua and Barbuda** [16] and by the Privy Council in **Jaroo v** Attorney General of Trinidad and Tobago [17].

[41] In the **Bird** case, Thomas J. said: 'The notion of abuse of the court's process is part of the antiquity of the common law.' He referred approvingly to dicta from the cases of **Metropolitan Bank v Pooley** [18]**, Connely v Director of Public Prosecutions** [19],**Bhola Nania! v The State** [20] and

15 Buckland v Palmer

16 **ANUHCV2009/0444.**

17 [2002] 1 AC 871 at para 39.

18 [1885] LR 10 App. Cas. 210.

19 [1964] AC 1254.

Mills v Cooper 21 which highlighted the court's inherent jurisdiction to decline to hear proceedings which it considers oppressive or an abuse of its process.

[42] In the **Jaroo case,** the Privy Council opined that the applicant was required to consider a number of matters before initiating action to ensure that he followed the correct procedure. The Board emphasized the need for him to have regard to:

1. the nature of the right allegedly contravened;

2. whether some other procedure under the common law or statute might have been more conveniently invoked, in light of all the prevailing circumstances;

3. whether resorting to another procedure (originating motion) would be inappropriate and an abuse of the process of the court; and

4. whether it is appropriate to take steps to withdraw an inappropriate proceeding before the high court, after it becomes clear that continuing with it would be an abuse of the court's process.

[43] The respondents in the case at bar, countered that the Notices of Application are 'for all practical purposes dead.' They submitted that Cottle J. said that he had no jurisdiction to hear them at that stage, and they were therefore 'in substance determined or stayed on procedural grounds, and not on the merits.' They reasoned that there is no possibility that those applications will be brought before the high court again.

[44] The respondents argued further that the **Lester Bird** case is distinguishable for several reasons including that concerned the existence of an alternative remedy under the Constitution and there were pending proceedings against Mr. Bird for misfeasance and commission of crimes. Mr. Exeter and Mr. Baptiste countered that while the facts might be dissimilar to the instant case, the principles on which the court acted are relevant.

20 Cr. App. No. 99/1988 (T&T CA)

21 (1967] 2 QB 459.

[45] The foregoing cases establish that the court must take account of all material circumstances when deciding if its process is being abused by a litigant. The court is enjoined to seek a just outcome. In doing so, it is required to weigh the opposing public interest considerations of:

1. protecting a party from vexatious 'double jeopardy' type proceedings and seeking to ensure finality in legal disputes; and

2. its duty to act justly towards all of the litigants.

[46] On the facts of this case, the petitioners were faced with, called upon to and responded to notices of application to strike. No decision was taken on them. They have not been finally determined. Those applications are still pending. In accordance with the usual practice and procedures of the high court they would have to be addressed before this matter is fully resolved and the file closed.

[47] Learned Queens Counsel Mr. Stanley John contended that it was open to the respondents to rectify the proceedings in relation to the applications by making an application for them to be heard in open court. He argued that Mr. Exeter and Mr. Baptiste, each respondent and the court has respectively expended a considerable amount of time, effort and expense in presenting arguments and writing a judgment. He added that they have all been required to conduct a similar exercise for the third time.

[48] He submitted that the petitioners have been put to considerable expense·, spent large amounts of time and have been inconvenienced by yet again addressing identical issues to those raised in the applications. He contended that the court would have been able to entertain an application for costs on an application for the referenced applications to be heard in open court either separately or together with the motions now under consideration. He submitted that the court should adopt the posture of the Board in **Jaroo** and find that the respondents' motions in the circumstances are an abuse of the court's process.

[49] The respondents have not refuted that the applications are still on the record and have not been withdrawn or determined by judgment. This court must decide whether their existence operate prejudicially or oppressively against Mr. Exeter and Mr. Baptiste in the sense that they are and have been required to respond repeatedly and unnecessarily so, to the same allegations. In other words, was an alternative route available to the respondents to proceed with the extant applications without filing motions against Mr. Exeter and Mr. Baptiste on the same issues?

[50] Learned Queens Counsel Mr. John argued that they could have proceeded with the applications in open court or at the very least taken steps to remove them from the record. He contended that the abuse of the court's process was compounded by the fact that the respondents were awarded costs on the first hearing of the motions while the petitioners did not obtain costs at the hearing of the applications, although they were fully engaged throughout in preparing submissions and making full arguments.

[51] It is important to point out that the **Bird** and **Jaroo** cases arose in civil proceedings and not in election petition cases. The decisions in those cases are quite instructive. They signal that in respect of civil proceedings, the court generally acts to prevent the type of abuse which arises where a litigant operates contrary to established norms by initiating two claims in which he seeks identical relief against the same party, in connection with the same subject matter. No election petition proceedings have been referenced where a similar approach was adopted by the court.

[52] However, comments by Sir Hugh Rawlins C.J. in the **Ezechiel Joseph v Alvina Reynolds** [22] case are apt. He opined:

'It is my view that lawyers who wish to practice in our election courts have a solemn duty, obligation and responsibility to be well acquainted with electoral laws and procedures in order to facilitate the right to access, the democratic process and the vindication of electoral rights guaranteed ultimately by the Constitution. Their duty is to ensure that election cases are eventually determined on their merits thus serving these high public interests and ideals.'

[53]Sir Hugh's remarks mirror and summarize the *dicta* of the Board in **Jaroo** which were referenced earlier. It seems to me that the respondents missed a number of opportunities to ensure that the correct procedure was used to lodge their objections. Firstly, when they formulated the notices of

2 2 HCVAP2012/0014

application they should have advised themselves of the legal requirements. After the hearing of the applications they could have amended their applications and arranged for them to be heard in open court. The RPA and rules permit parties to elections proceedings to approach the court by application 23. There was therefore no legal or practical impediment to such an approach.

[54] Secondly, the respondents could have withdrawn or discontinued their applications and replaced them with the motions:

1. before filing the motions;

2. after the determination of the motions before Cottle J.;

3. before and after determination by the Court of Appeal; or

4. before the hearing in the court as presently constituted.

[55] They did not. In this regard, it seems that their legal practitioners did not fully discharge their solemn duty to research and make themselves knowledgeable with the applicable laws and procedures as cautioned by Sir Hugh. En passant, I observe that it is a matter of record that learned Senior Counsel Mr. Anthony Astaphan was one of the legal counsel in that case. They each had a solemn duty as described by Sir Hugh.

[56] The petitioners' suggestion that the respondents could have applied to have the applications heard concurrently with the motions may or may not have been a viable option. It is clear that the respondents failed to advise themselves of the several options open to them to present and have their objections resolved in a manner which did not involve a multiplicity of proceedings on the same issues.

[57] This default has led the parties to present similar arguments before Cottle J. and this court on no less than three occasions. I do not factor the Court of Appeal hearing into the equation as it is quite conceivable that resort might still have been had to that forum irrespective of whether in the first instance, the objections were taken by motion or application in open court.

23 Section 58 (2) and rule 9 of the House of Assembly (Election Petition) Rules 2014, No. 10 of 2014.

[58] The respondents should have realized by:

1. 4th April 2016 when Cottle J. made his first ruling; or

2. at the very latest when they filed their motions on 14th April, 2016;

that the applications were inappropriate and procedurally irregular. They should have taken steps to discontinue or regularize them by then. Their failure to do so has remained unexplained. In the premises, I am satisfied that the petitioners have been unduly prejudiced and that the respondent's motions constitute an abuse of the court's process in the face of the pending notices of applications.

Issue 3 - Are the recognizances invalid or insufficient?

[59] Resolution of this issue necessitates consideration of the circumstances under which the impugned 'recognizances' were executed and the underpinning legislation governing provision of security for costs for petitioners in election petition matters. Little is in dispute in this regard. The documentary evidence - 'the recognizances' reflect that they were signed by the petitioners and the proposed sureties in the presence of the registrar. The text of each is reproduced in this judgment and are evaluated against the applicable provisions the RPA and EPR.

[60] The respondents submitted that the sole substantive issue for determination is whether the recognizances provided by the petitioners are in strict compliance with section 58 of the RPA requiring security on behalf of the Petitioners, and Form 3 of the Rules.

[61] They advanced the definition of 'recognizance' which was adopted and applied by Singh J. in

Esmond St. John v. **Petty,** where he said:

'The word 'recognizance' is defined in Mosely and Whitely's Law Dictionary 9th Edition by John B. Saunders at page 272 as -

'An obligation of record, which a man enters into before some Court of record, or Magistrate duly authorized, binding himself under a penalty to do some particular act; as to appear before the Crown Court, to keep the peace, to pay a debt or the like...'.

It is a serious obligation and in my view when the law says the sureties are to be

approved by the Registrar, there ought to be strict compliance with such a law, and because of the serious consequences that can flow from the execution of such a recognizance ...'24.

[62] This definition accords with the meaning ascribed to the word in the cases relied on by all parties in the present proceedings. It is therefore accepted as a correct interpretation of the term wherever it is used in the impugned provisions of the RPA, EPR and Form 3.

[63] The respondents contended that Form 3 is part of the substantive election laws of St Vincent and The Grenadines. They submitted that it contains the language that must be complied with by any petitioner. They argued that Singh J. in **Esmond St. John v. Petty** made it clear that the provisions concerning the prescribed security for costs must be strictly complied for the reason advanced by him namely - the serious consequences that can flow from the execution of such a recognizance.

[64] They cited the case of **Lynds** v **Turner25** where Allen C. J. said that a defective affidavit by a surety has the same legal consequence as no affidavit at all. They contended that the same principle applies to a defective or ambiguous recognizance. They argued that there must therefore be no error or uncertainty, or deviation from the language of Form 3.

[65] The Respondents submitted that the 2016 recognizances ought to be contrasted with Form 3 and the 1994 recognizances. For illustrative purposes, they reproduced Form 3, the 'recognizances' provided by Mr. Baptiste and Mr. Exeter and one provided by a petitioner in 1994. They are also included in this decision for the same reason. Form 3 as contained in the EPR is as follows:

***'RECOGNIZANCE GIVING SECURITY FOR COSTS UNDER RULE* 9.**

(Title as in the Case of the Petition)

Be it remembered that on the................. day of..........................in the year of Our Lord 20.......... before me (name and description) came A.B of

................................(name and description as above) and acknowledged himself (or severally acknowledged themselves) to owe to Our Sovereign Lady the Queen the sum of

2 4 Suit No. 19 of 1989.

25 (1882) 22 NBR 286

(in words) dollars (or the following sums) (that is to say) the said C.D., the sum of (in words) dollars, the said E.F., the sum of (in words) dollars, and the said G.H., the sum of

...................(in words) dollars to be levied on his (or their respecitve) goods and chattels, lands and tenements to the use of Our said Lady the Queen, Her heirs and successors.

The condition of the said recognizance is that if ....(here insert the named of all petitioners, and if more than one, add, or any of them) shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him (or them) relating to ... .(here insert the name of the electoral district) which shall become payable by the said petitioner under the Legislative Council (Election Petitions) Rules to any person, then this recognizance to be void, otherwise to stand in full force

Petitioner and Sureties.

Taken and acknowledged by the above-named (names of petitioner and sureties) on the................day of................... 20......., before me.

A Justice of the Peace, or person authorised to Administer Oaths.'

[66] The Respondents contended that the language of Form 3 was not complied with in a most substantial and material way in that the recognizances provided only for the petitioners by name and address to acknowledge the debt and liability of their goods etc to levy and forfeiture.

[67] The recognizance provided by Lauran Baptiste as security for costs is in the following terms:

'BE IT REMEMBERED that on the 5th day of January 2016 Before Andrea Young Lewis Registrar/Deputy Registrar of the High Court of Justice Kingstown came LAURON BAPTISTE of Magum Village, St. Vincent and the Grenadines, acknowledged himself to owe to Our Sovereign Lady the Queen the sum of Five Thousand Dollars ($5,000.00) to be levied on his goods and chattels, lands and tenements to the use of Our said lady the Queen, her heirs and successors.

THE CONDITION OF THIS RECOGNISANCE is that if LAURON

BAPTISTE shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him relating to the Constituency of North Windward which shall become payable by the said petitioner under the House of Assembly (Election Petitions) Rules to any person, then this recognizance to be void, otherwise to stand in full force.

Signed by: Lauron Baptiste

SURETY: Curtis L Bowman SVG ID 025023

ADDRESS: Richland Park OCCUPATION: Pharmacist SURETY: Monty Roberts SVG ID 003258

ADDRESS: Cane Garden

PETITIONER SVG ID 003 655

Taken and acknowledged by the above named Petitioner and Sureties on the 5th day of January 2016

Before me Registrar'

[68] The recognizance provided by the Petitioner, Benjamin Exeter as security for costs states:

'BE IT REMEMBERED that on the 5th day of January 2016 Before Andrea Young Lewis Registrar/Deputy Registrar of the High Court of Justice Kingstown came BENJAMIN EXETER of Rutland Vale, Layou, in the Parish of St. Andrew in the State of St. Vincent and the Grenadines, acknowledged himself to owe to Our Sovereign Lady the Queen the sum of Five Thousand Dollars ($5,000.00) to be levied on his goods and chattels, lands and tenements to the use of Our said lady the Queen, her heirs and successors.

THE CONDITION OF THIS RECOGNISANCE is that if BENJAMIN EXETER shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him relating to the Constituency of North Windward which shall become payable by the said petitioner under the House of Assembly (Election Petitions) Rules to any person, then this recognizanceto be void, otherwise to stand in full force.

Signed by: Benjamin Exeter

Benjamin Exeter Petitioner

SVG ID 102 293

Daniel Cummings

Hon . Daniel Cummings SVG ID 047 363

Engineer of Redemption Sharpes, St. George, St. Vincent and the Grenadines

Taken and acknowledged by the above named Benjamin Exeter and Hon. Daniel Cummings on the 5th day of January 2016

Before me Registrar'

[69] The 1994 recognizance filed in relation to in Petition 1994 No. 107 stated 26:

'BETWEEN

DEIDRE CAINE AND

CARLYLE D. DOUGH ORMOND V. ROBERTSON

PETITIONER

RESPONDENTS

BE IT REMEMBERED that on the 15rH day of. March in the Year of Our Lord 1994 before me BRIAN COTTLE Registrar of the High Court came NATHANIEL ASHTON27 of Lowmans Hill and CYPRIAN Z. HYPOLITE28 of Fort Charlotte jointly and severally

26 The footnotes appearing in this document were supplied by the respondents by way of explanation.

27 Surety

28 Surety

acknowledged themselves 29 to owe to Our Sovereign Lady the Queen the sum of FIVE THOUSAND DOLLARS ($5,000.00) to be levied on their respective goods and chattels, lands and tenements to the use of Our said Lady the Queen Her heirs and successors. The Condition of this Recognisance is that if DEIDRE CAINE 30 shall well and truly pay all costs, charges and expenses in respect of the election Petition signed by her relating to the Electoral Constituency of East Kingstown which shall become payable by the said Petitioner under the House of Assembly Election Petition Rules to any person, then this RECOGNIZANCE to be void, otherwise to stand in full force.

[70] The respondents submitted that the language used in the material parts of the recognizances, which concern the acknowledgement and obligations of a surety, is clear and unambiguous. They contended that the evidence is that the recognizances were prepared by the Attorneys for the petitioners, were submitted to the Registrar, signed by the Petitioners, and filed without complaint or change in language. They acknowledged that a date was altered and maintained that there was no attempt to correct or remedy the material paragraphs or parts of the recognizances within the time prescribed by the RPA.

[71] They submitted further that the language of Form 3 is unambiguous; and there is no place for petitioners in the first paragraph or part of Form 3 since the first paragraph or part of Form 3 concerns only sureties and not petitioners.

[72] The respondents submitted that the 1994 recognizances were provided in strict compliance with the precise language and substance with the Form 3 which predated Form 3. They argued that those recognizances from 1994 show that only the sureties, and not the 1994 petitioners, were named as sureties in the first paragraph or part of the 1994 recognizances and that Form 3

and the 1994 recognizances ought to be contrasted with the recognizances of the petitioners Baptiste and Exeter. In this regard, they noted that the only names in the first paragraph or part of the 2016

29 Note the langu,,ge used for joint suretie s.

30 The Petitioner. Import antly, the Petitioner's name is not mentioned in the first part of the recognizance.

recognizances, which is intended only for sureties, are the names and addresses of the petitioners.

[73] They concluded that the recognizances provided by the petitioners are not as prescribed, and are substantially different to the obligations imposed by law, the language and/ or substance of Form 3 and the 1994 recognizances, and the practice in St Vincent & The Grenadines. It is worth noting that the respondents provided one example of a recognizance used in the past. Without more, it is doubtful that this establishes a practice which was adopted in all or most previous instances. I hasten to add that the respondents' observations about placement of the sureties and petitioners' names in the Form 3 is representative of the proper and correct completion of the form.

[74] The respondents argued further that the recognizances were prepared by the Attorneys at Law for the Petitioners. They contended that there is no evidence that the petitioners or persons, who the petitioners say were the intended sureties were infirm, illiterate or not of full understanding of the English language; and that neither the petitioners, persons described as intended sureties, nor Miss Eustace indicates any error existed in the language of the recognizances. They submitted that the petitioners and other persons who the petitioners say were the intended sureties, went to the Registrar accompanied by Attorney at Law Miss Maia Eustace and that the respondents were not present before the Registrar.

[75] The respondents argued too that in an earlier proceeding before Mr. Justice B. Cottle, Mr. Stanley John Q. C. said:

'What is not consistent with what is on the form is that the name of the surety is not up there and that is - and that is a valid complaint.'

They remarked that nevertheless, and notwithstanding his recognition of 'a valid complain,t' Mr. John Q. C. went on to submit that the extrinsic evidence adduced by the petitioners shows there exists an ambiguity in the language of the Baptiste and Exeter recognizances.

[76] He is reported to have said:

'...Because here it is, here it is My Lord, that here it is My Lord, that provisions are made for the sureties to be included to sign as acknowledging, persons name appear purporting to sign and acknowledge before the registrar but their names are not there. That creates and ambiguity in our respectful submission. That creates and ambiguity. One cannot with respect My Lord, dismiss entirely the fact that those names are there, given the context, given the form, given the back

ground context and say well the existence of those names are - is neither here nor there, they absolutely don't exist.'

[77] The Respondents argued that the language of Form 3 and 1994 recognizances repudiate Mr. John's submission that the petitioners' names were properly in the first part of their recognizances. They argued that this is simply not supported by the language of Form 3 or the 1994 recognizances and further that the petitioners' names and addresses were never included in the first part of the 1994 recognizances.

[78] They pointed out correctly that the deponents Daniel Cummins and Curtis Bowman never said they read the recognizances; nor did they say they were told, advised, or informed that they had to acknowledge, and had in fact acknowledged before the Registrar, a debt before the Registrar and that their goods etc were liable to levy, execution, and forfeiture to the Crown in the event of default by the Petitioners.

[79] The respondents submitted that the petitioners, Cummins and Bowman signed the recognizances in the very language prepared by the petitioners' Attorneys. They contended that the petitioners' names and addresses were typed in the first paragraph of the recognizances and they are therefore precluded from denying the recognizances were signed by them in the precise language presented to the Registrar.

[80] They contended that Maia Eustace's affidavit provides no assistance whatsoever. They pointed out that she described part of the surrounding circumstances as follows:

'Both Petitioners attended at my law chambers with their intended sureties at which time I explained to them that they would be required to sign a document called a recognizance, acknowledging their undertaking to become a surety, for the payment of any costs, charges and expenses which may become payable to any of the persons against whom the petitions were brought or to their witnesses. Each of them agreed I agreed to do so.'

[81] The respondents argued that this is wholly inadequate and inadmissible evidence. They cited the decision in **Yang Hsueh Chi Serena and Others** v **Equity Trustee Limited and Others 31** on this score. They submitted that the recognizances, and obligations of a surety under the recognizances, prescribed by law and Form 3 required more than a mere intention or willingness to be a surety to pay costs etc. The respondents contended that what the law required, is the obligation to expressly acknowledge before the Registrar:

1.a debt (a specific sum) owed to Our Sovereign Lady the Queen; and

2. the liability to have one's goods and chattels, lands and tenements levied and forfeited to the use of Our said lady the Queen, Her heirs and successors in the event of default by the petitioners.

[82] They argued further that there is no evidence whatsoever that this was done. They posited that Miss Eustace appeared to be suggesting that the Registrar had approved the recognizances, or that she relied on the Registrar. They submitted that the authorities -**Ethlyn Smith** v.

Christopher and **Ezechiel Joseph** - are clear that the obligation rests solely on the petitioners and their advisers, and they simply cannot rely on anything said or done by the Registrar.

[83] The respondents submitted further that the well settled law election law in the OECS is that a petitioner must strictly comply with the requirements for the presentation and perfection of a petition inclusive of the prescribed costs with the time limits prescribed by the Act as decided in **Devan Nair** v.**Yong Kuan Teik32, Michael R. C. Browne** v. **Yvonne Francis-Gibson et al33,** and **Ethlyn Smith** v. **Delores Christopher** & **Ors.**

[84] The respondents quoted from the **Frampton v Pinard** case where Rawlins J. outlined some general principles including the following:

'The general principles state that time limits set in elections legislation are conditions

3 1 BVIHCMAP2013/0012.

32 (1967) 2 WLR 846.

33 Civil Appeal No.11 of 1994

precedent, mandatory and peremptory. They must be strictly followed. A petitioner must file and perfect the petition within the time limited in the legislation for the presentation of the petition. The petitioner must enter security for costs in the manner and within the time prescribed.'

[85] The petitioners responded that it is noteworthy that in their quiver of authorities in support of this proposition, although the court was required to address disparate non-compliance with time limits and giving of security for costs as prescribed under the various statutory/regulatory provisions, only the New Zealand In **re Lyttleton case** addressed a scenario such as the case being advanced by the respondents, where it is alleged, that the petitioner(s) himself/themselves had signed the recognizance which was complete and given within the time prescribed by the statutory/regulatory provisions. They argued further that the **Lyttelton** case is distinguished.

[86] The petitioners submitted further that accordingly, whilst the cases referred to by the respondents may support the general principle identified in the proposition, none of the referenced authorities support the specific assertion either that the recognizances are invalid or striking out the subject petitions. They reasoned that the distinction is pivotal in the context of applying the doctrine of precedent.

[87] The Respondents submitted that the provisions of section 58 (1) (c) of the RPA make it clear that the security is to be given on behalf of and not by a petitioner. Therefore, and as a matter of construction and law a petitioner cannot lawfully or properly act, sign, or give a recognizance as surety. Accordingly, a recognizance given by the petitioner is bad in law. This they submitted is the position arising from **Pease v Norwood34,** and In **re Lyttlen Election Petition.**

[88] They concluded that as the recognizances are in the name of and bind only the petitioners, they have failed to comply with the provisions of section 58 of RPA and Form 3. They reasoned

that consequently, that the petitioners' failure to comply means that the petitions were not perfected as required by law, are void and there is no basis in law for any further prosecution of the petitions or

34 (1869) CPD 235.

trial. They argued that any further proceedings or trial would be illegal.

[89] The petitioners countered that the Respondents do not deny and implicitly admit that Form 3 makes provision for the said acknowledgement and for the signatures of the sureties where they signed; and the other persons described as sureties signed the recognizances and these acknowledgements at the bottom of the recognizances. The Petitioners also contended that there are sureties provided for in the recognizances. In my opinion, this is a telling fact and relevant to the issue under consideration. It cannot be ignored.

[90] The Respondents further submit that the indisputable fact that recognizances were prepared by the Attorneys at Law for the Petitioners raises two irrefutable legal inferences or consequences. The first is the inference that a deliberate decision was made by the Petitioners to draft the recognizances in the precise language presented to the Registrar. Indeed, this led Mr. Justice B.

Cottle in paragraph [30] of his second judgment to say

"From this document I can only conclude that the Respondents and their legal representatives were fully familiar with the usual format of recognizances giving security for costs in election petitions in St. Vincent and the Grenadines. Their decision to complete the recognizances by the present Respondents in the way that this was done must have been a *deliberate decision."*

[91] The second consequence is that the Petitioners and their attorneys must bear the consequences of holding u,e pen. They drafted, had typed and submitted the recognizances to the Registrar. In**Co operators Life Insurance Company v Gibbens** [2009] 3 SCR 605, the Binnie J of the Supreme Court of Canada in a matter concerning the meaning or construction of an insurance policy and not a recognizance, said 'Whoever holds the pen creates the ambiguity and must live with the consequences.' The Respondents submitted that the dicta of Binnie J. apply with greater force to the recognizances as strict compliance was required by the Petitioners.

[92] They contended further that in **Ezechiel Joseph** Sir Hugh Rawlins repeatedly warned that in this election jurisdiction parties and their Attorneys must properly advise themselves on what needs to be done strictly in compliance with the relevant Act prior to the expiration of the prescribed times.

At paragraph [85] of his judgment the Learned Chief Justice said:

"It is my view that lawyers who wish to practice in our election courts have a *solemn duty, obligation and responsibility to be well acquainted with electoral laws and procedures in order to facilitate the right to access, the democratic process and the vindicationof electoral rights guaranteed ultimately by the constitution. Their duty is to ensure that things are done as*

prescribed by law in order to ensure that elections cases are eventually determined on their merits thus serving these high public interests and ideals. In my view, these interests are not served or promoted by a *plea to the court to permit practice by reference to CPR 2000 in* a *manner that would facilitate the variation of electoral proceedings requireme nt s mandated by Parliament pursuant to section 39 of the Constitut i on . This would also be* a *plea to this court, in my view, to permit a wholesal e application of CPR".*

[93] They pointed out that the petitioners have in their previous submissions relied on the sentences at the bottom of the recognizances to submit that in view of the extrinsic evidence, there existed ambiguitiesin the language of the recognizance.s The sentences are:

"Taken and acknowledged by the above named Petitioner and Sureties on the 5th day of January 2016", and

"Taken and acknowledged by the above-named Benjamin Exeter and Hon. Daniel Cummings on the 5th day of January 2016."

[94] The Respondentssubmitted that there is no ambiguity in the language used in the recognizances and that there can be no ambiguity as the recognziianceshad to be in accordance with section 58 of the Act and the prescribed Form 3.

[95] They further submtited that there is nothing in the language of the recognzi ance s to show that the persons described as sureties in fact acknowledged any debt, and the additional liability of having their goods etc stand liable to be levied and forfeited to the Crown in the event of default by the Petitioners. In fact, it is manifest that the unequivocal language of the recognizances set out in paragraphs 34.1 and 34.2 above contradict the submissions made by the Petitioners that an ambiguity exists. The language is unquestionable clear. For example they pointed out that:

1. The language of the recognizances, which concern the acknowledgement, debt and obligations of the intended surety including acknowledging the liability to have goods etc liable to levy and forfeiture, shows that the only persons who did so were the Petitioners, by name and by address;

2. The acknowledgement and obligations of the surety are in singular terms. This is especially significant with the Lauran Baptiste recognizance. The words *'or severally acknowledged themselves'* and '*... to be levied on their respective goods and chattels, lands and tenements .. .* 'which are prescribed parts of the mandatory language of the recognizance prescribed by Form 3 in the event multiple sureties seek to give a recognizance are not on the recognizance. [See the 1994 recognizances; and

3. In the Benjamin Exeter recognizance, the word 'surety' simply does not appear at all.

[96] The Respondents submitted that the recognizances, which were drafted and concluded by the attorneys of the Petitioners, and handed to the Registrar, show beyond any question that the only persons named in the relevant body of recognizances (the first paragraph) who acknowledged the debt, and pledged their property (goods, and chattels, lands and tenements) for

levy and forfeiture to the Crown in the event of default by the Petitioners, were in fact the Petitioners themselves. No other construction of these substantive paragraphs of the recognizances is possible or reasonable. Accordingyl, the recognizances were not the recognizances required under the RPA and the prescribed Form 3 under EPR.

[97] The foregoing submissions highlight the central issue in these proceedings. It is whether security for costs has been provided on behalf of each petitioner as required by section 58 (1) (b) and (c) of the RPA and rule 9 of the EPR. This is the primary ground on which the motions were launched.

[98] Other grounds were outlined as rehearsed earlier. The language in the motions expressly identifies the legislation which the respondents contend have not been complied with. The respondents subsequently supplemented and fully articulated them in their submissions by making reference to non-compliance with Form 3. The other grounds set out in the motion may be summarized as follows:

1. The petitioners were required to comply with

(a) section 58 of the RPA;

(b) rule 9 of the EPR, and specifically subrules (1), (2), (3) and (4); and they did not.

2.The provisions in the RPA and EPR requiring the provision of security for costs are mandatory and any non-compliance with them renders the petition void.

3. The petitioners entered and signed the purported recognizances and no sureties did so.

4. The petitioner is not, cannot be and has never been a surety under the laws of Saint Vincent and the Grenadines or the practice in Saint Vincent and the Grenadines in previous election petitions.

5.The petition is bad in law for those reasons.

[99] The respondents identified subrules (1), **(2),** (3) and (4) of rule 9 as the ones which were not complied with. On one possible interpretation of the grounds, the respondents appeared to have invoked all of rule 9 in the motion, but placed minimal reliance on the other subrules. They also forcefully argued that the petitioners did not comply with Form 3 of the EPR. That form is prescribed by rule 29 and not rule 9 of the EPR. Rule 29 was not identified in the motions as one of the legislative provisions which was allegedly violated by the petitioners. The petitioners did not object to the respondents' arguments on this basis. However, it seems to the court that it must be addressed in the circumstances.

[100] The petitioners responded that the objections go not to validity but rather to sufficiency of the recognizances. They reasoned that the court may invoke the healing efficacy of rule 10 by directing the petitioners to deposit a sum of money with the court to make the security sufficient. They contended further that the objections are out of time, having been filed outside of the

stipulated mandatory time period for objecting to the sufficiency of a recognizance. They argued that based on strict interpretation and the mandatory and peremptory nature of the timing component of elections laws, this tardiness is a fundamental default that cannot be cured. They reasoned that accordingly the petitions are in issue.

[101] These competing contentions can be resolved only by an examination of the referenced legislative provisions, to determine whether:

1. they are mandatory or directory;

2. they go to validity or insufficiency;

3. the petitioners have complied with them;

4. the healing efficacy can be applied to remove any insufficiency determined to exist;

5. the petitions are void and should be struck out.

[102] The Court of Appeal has provided guidance regarding how to construe election statutes. In this regard, Floissac C.J. stated in **Michael R. C. Browne v. Yvonne Francis-Gibson and Ormand V. Robertson3s:**

'A statutory provision is mandatory if the legislative intention is that the formality which it prescribes should be strictly observed and that any violation of the statutory provision or any non compliance with the statutory formality nullifies the petition. The statutory provision is directory if the legislative intention is that it may be waived or substantially fulfilled and that the petition may be validated by such waiver or substantial fulfillment.

The requisite legislative intention is an inference drawn from the statutory provision interpreted in the light of its statutory context. That statutory context includes the language and legislative object or purpose of the statute or other provisions thereof.'

[103] In that case from this jurisdiction, Floissac C.J. determined that he would do so by examining the relevant statutory provisions to determine if they were mandatory and if so, whether they were strictly observed.

[104] Likewise, several years later, Chief Justice Sir Hugh Rawlins observed in **Ezechiel Joseph v. Alvina Reynolds 36** that:

'A plethora of cases decided over the years in the courts for this jurisdiction, have consistently held that election proceedings invoke a very peculiar and special jurisdiction of the court. According to that jurisprudence, the provisions that are made and the time limits prescribed in elections legislation enacted by Parliament, in particular, provide a comprehensive and exclusive statutory scheme, with mandatory procedural rules for challenging the validity of an election or the return of a candidate as the elected

35 Saint Vincent and the Grenadines Civil Appeal No. 11 of 1994, unreported at page 2.

3 6 SLUHCVAP2012/0014.

representative in an election. Election petitions must therefore be brought strictly in accordance with the requirements of the statutes. Failing this, a petition would be a nullity and would be struck out as such.'5

[105] He added that our courts have done so consistently and have stated that the jurisdiction of the election court is:

'a very peculiar jurisdiction one, which is not the ordinary civil jurisdiction of the court. It is seen essentially as a parliamentary jurisdiction assigned to the judiciary by the various Constitutions and by legislation. It has been stated that it not a jurisdiction to determine mere ordinary civil rights.'5

[106] Sir Hugh allowed for one caveat, namely that such failure or non-compliance will not nullify a petition where the default is one related purely to form. He expressed it thus:

'Our election courts have consistently stated that they have little or no discretion to waive non-compliance with the applicable statutory requirement.sAccordingly, the consistent result is that **failure to comply is fatal to the petition rendering it a nullity, unless the court finds that the failure goes to form .** The jurisprudence in our courts states that **time and other electoral proceedings statutory requirements are conditions precedent to instituting a proper electoral challenge, which are mandatory and peremptory .'(bold** added)

[107] In **Frampton Pinard v Ian Pinard 37** Rawlins J. enunciated certain general principles of law which apply in interpreting elections legislation. He merely echoed and affirmed the court's consistent position through the years. They bear repeating for present purposes. He said:

'The general principles state that time limits set in elections legislation are conditions precedent, mandatory and peremptory. They must be strictly followed. ... The petitioner must enter security for costs in the manner and within the time prescribed.

The rationale for the foregoing statements is that provisions for the litigation of election petitions are a matter of substantive law, and like the Statute of Limitation, cannot be dispensed with by the court. The statutory time limits provide a rigid timetable to ensure that

37 DOMHCV2005/0149, unreported.

everything necessary is done, in a timely manner, to bring these petitions to trial because the public interest requires it. The persons who are returned as legislators should know quickly whether they have been lawfully elected. The country needs to know who the elected representatives are with certainty. Election challenges should be mounted before a new legislature sits and begins to work, or as soon as possible thereafter, in order that the legislature might be definitively lawfully constituted. It goes to the issue of legitimacy. Electoral laws and their interpretation by the courts are intended to facilitate this.'

[108] Applying those principles to the case at bar, I now propose to examine the referenced provisions in similar fashion. However, I first address a contention by the respondents that section 58 (1) {b) of the RPA and rule 9 {1) of the EPR are irreconcilable and the court must of necessity find that the Chief Justice had made in this instance, a rule which derogates from the RPA.

Legislative Framework

[109] There is common ground among the parties that the applicable legislative framework for prosecuting an election petition, necessitates the filing of:

(1) a petition; and

(2) security for costs by one or more sureties on behalf of the petitioner.

They accept that this is circumscribed by section 36 of the Constitution and stipulated by section 58 of the RPA and rule 9 of the EPR.

[110] The respondents contended that the RPA stipulated that security must be provided 'on behalf of the petitioner' by someone other than the petitioner, while the EPR purports to enable the petitioner to personally supply the recognizanc.eThey argued that the EPR's provision is contrary to the RPA. They submitted that Mr. Exeter and Mr. Baptiste personally provided security for costs and failed to arrange for others to provide such recognizances on their behalf. Mr. Exeter and Mr. Baptiste maintained that they complied with the applicable provisions. It is necessary to examine both provisions to determine the legislative intention. It is also imperative that the court considers whether the rules derogates from the RPA.

[111] The relevantstatutory provisions are section 36 (1) (a), (2) and (7) of the Constitution,38section 58 (1) (b) and (c) and (2) of the RPA and rule 9 of the EPR. The referenced constitutional provisions state:

'36 (1) The High Court shall have jurisdiction to hear and determine any question whether

(a) any person has been validly elected as a Representative; ...

(2) An application to the High Court for the determination of any question under subsection (1) (a) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General.

(7) The circumstances and manner in which, and the imposition of conditions upon which, any application may be made to the High Court for the determination of any question under this section and the powers, practice and procedure of the High Court and the Court of Appeal in relation to any such application shall be regulated by such provision as may be made by Parliament.'

[112] Subsection (1) vests the High Court with authority to decide whether someone has been validly elected as a Representative. Subsection (2) authorizes an eligible voter, candidate in an election or the Attorney General to make any such application concerning the validity of the election of a represenattive. Subsection (7) empowers Parliament to make laws governing the circumstances, practice and procedures under which such applications may be brought. Parliament is also empowered to attach conditions it deems appropriate.

[113] Section 58 (1) and (2) of the RPA provides:

'58. Presentation of election petition and security for costs

(1) The following provisions shall apply with respect to the presentation of an election petition -

38 Cap. 10 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

(a) the petition shall be presented within twenty-one days after the return made by the returning officer of the member in respect of whose election the petition relates, ...;

(b) at the time of the presentation of the petition or within three days **afterwards, security** for the payment of all costs, charges and expenses that may become payable by petitioner -

(i) to any person summoned as a witness on his behalf, or

(ii) to the member whose election or return is complained of, or to any other person named as a respondent in the petition,

shall be given on behalf of the petitioner;

(c) **The security** referred to in paragraph (b)**shall be an amount not exceeding five thousand dollars and shall be given by recognizance** to be entered into by any number of sureties not exceeding four approved by the Registrar, or partly in one way and partly in the other.

(2) **Rules, not inconsistent with provisions of this Act or of the Constitution ,** as to the deposit of security and the practice and procedure for the service and hearing of election petitions and matters incidental thereto, may be made by the Chief Justice.' (bold added)

[114] Rule 9 of the EPR states:

'9 *(1)* **At the time of the presentation of the petition, or within three days afterwards, security** for the payment of all costs, charges and expenses that may become payable by the petitioner -

a. to any person summoned as a witness on his or her behalf; or

b. to the member whose election or return is complained of; or

c. to any other person named as a respondent in the petition,

shall be given by the petitioner.

(2) **The security shall not exceed five thousand dollars and shall be given by one or more recognizance to be entered into by any number of sureties** approved by the Registrar, not exceeding four or by deposit of money in the Court, **or partly** in **one way and partly** in **the other** to the satisfaction of the Registrar.

(3) The recognizance shall contain the name and usual place of abode of each surety with sufficient description as shall enable him or her to be found or ascertained.

(4) Within three days after the giving of security as required by this Rule, notice of the nature of the security given shall be served by the petitioner on the respondent.' (bold added)

[115] It is immediately apparent that whereas the RPA provides for the recognizance to be 'given on behalf of the petitioner', the EPR states that it is to be 'given ID'. the petitioner'. The respondents and the petitioners have advanced diametrically opposed submissions regarding the import and effect of section 58 (1) (b) and (c) of the RPA and rule 9 of the EPR. At the centre of their dispute are the documents filed by Mr. Exeter and Mr. Baptiste in furtherance of the security for costs obligations outlined in the referenced legislative provisions.

[116] The respondents argued among other things that the EPR was made by the Chief Justice pursuant to the restrictive power conferred by section 58 (2) of the RPA. They contended that subsection (2) constrained the Chief Justice to make rules which must not be 'inconsistent with the provisions of the Act and the Constitution'. They submitted that if rule 9 (1) (c) of the EPR means that a petitioner may provide security for costs, then those words conflict with the words used in the RPA and Form

3. They submitted further that the RPA cannot be modified or relaxed by the EPR or the interpretation of the latter.

[117] Mr. Exeter and Mr. Baptiste responded that 'rule 9 of the EPR' was endorsed by the Court of Appeal in the case of **Michael Browne v Yvonne Francis-Gibson** as being not inconsistent with section 58(1) of the RPA. They argued that the court in that case held that the rules and the Act are to be read together.

[118] The respondents correctly pointed out that rules made by the Chief Justice pursuant to section 58 (2) of the RPA must be consistent with the Constitution and the RPA. The Interpretation and General Provisions Act ('The Interpretation Act')39 contain several provisions regarding the interpretation of laws in the jurisdiction. They apply to the legislation under consideration. In this regard, section 25 (b) states:

'25 General provisions with respect to power to make subsidiary legislation

39 Cap. 14 of the Revised Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

Where an Act confers power on any authority to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of such subsidiary legislation-

(a) ...

(b) No subsidiary legislation shall be inconsistent with the provisions of any Act;' (underlining added)

[119] This provision mandates that all subsidiary legislation must conform with the parent Act, unless the Act allows otherwise. The RPA contains a similar restriction in relation to rules made by the Chief Justice. Accordingly, if there is any inconsistency between section 58 (1) (b) of the RPA and rule 9 (1) (c), the rule must be applied to achieve conformity with the section.

[120] The respondents maintained that there is a distinction between the two phrases. They submitted that interpretation of these provisions including the words 'on behalf of the petitioner' are clear. They argued that there must be prescribed and valid security for costs provided on behalf of, and not by the petitioner. They submitted further that as a matter of construction and law a petitioner cannot lawfully or properly act, sign, or give a recognizance as surety.

[121] The respondents argued that these are peremptory statutory provisions which must be strictly construed and applied by the High Court. They reasoned that the RPA stands on its own feet, must be interpreted and given effect according to its own language and cannot be modified or relaxed by rules or the interpretation of rules.

[122] Mr. Exeter and Mr. Baptiste argued that there is no inconsistency between the phrases 'shall be given on behalf of the petitioner' and 'shall be given QY the petitioner'. They countered that while the Judge may correctly rule that Rule 9 (1) is to be read so as not to be inconsistent with the Act, until such a ruling is made, to the extent that the petitioners gave security under section 58 (1) of the RPA, in accordance with rule 9 (1), the validity of the recognizances and the security are presumed. In support they cited the decisions in**Hoffmann-La Roche v. Trade Secretary** 40 and

Factortame Ltd et al v Secretary of State for Transport 41 in support.

[123] Mr. Exeter and Mr. Baptiste quoted extensively from Lord Diplock's decision in the **Hoffman-La Roche** case, where he opined:

'... in constitutional law a clear distinction can be drawn between an Act of Parliament and subordinate legislation, even though the latter is contained in an order made by statutory instrument approved by resolutions of both Houses of Parliament. ... I entertain no doubt that the courts have jurisdiction to declare it to be invalid if they are satisfied that in making it the Minister who did so acted outwit the legislative powers conferred upon him by the previous Act of Parliament under which the order purported to be made, and this is so whether the order is ultra vires by reason of its contents (patent defects) or by reason of defects in the procedure followed prior to its being made (latent defects).

... the courts as the judicial arm of government do not act on their own initiative. Their jurisdiction to determine that a statutory instrument is ultra vires does not arise until its validity is challenged in proceedings *inter partes* either brought by one party to enforce the law declared by the instrument against another party or brought by a party whose interests are affected, ... Unless there is such challenge and, if there is, until it has been upheld by a judgment of the court, the validity of the statutory instrument and the legality of acts done pursuant to the law declared by it are presumed.

All that can usefully be said is that the presumption that subordinate legislation is intra vires prevails in the absence of rebuttal, and that it cannot be rebutted except by a party to legal proceedings in a court of competent jurisdiction who has locus standi to challenge the validity of the subordinate legislation in question.'

The legal status ... is aptly stated in the words of Lord Radcliffe in *Smith v. East Elloe Rural District Council* [1956] A.C. 736, 769-770:

'An order, ... is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'[42]

40 [1975] 2 AC 295

41 [1990] 2 AC 85

42 The Hoffman-La Roche case

[124] In that case the House of Lords deliberately refrained from making a pronouncement on the validity of the impugned order as the issue remained alive in the substantive proceedings which had not commenced and were not before the appellate panel. In the **Factortame** case similar pronouncements were made by Lord Bridge where he cautioned:

'It must be borne in mind that an order made under statutory authority is as much the law of the land as an Act of Parliament unless and until it has been found to be ultra vires...'.[43]

[125] Lord Morris of Borth-y-Gest and Lord Diplock expressed similar views saying respectively:

'The order then undoubtedly had the force of law. Obedience to it was just as obligatory as would be obedience to an Act of Parliament.'[44] and,

'Unless there is such challenge and, if there is, until it has been upheld by a judgment of the court, the validity of the statutory instrument and the legality of acts done pursuant to the law declared by it are presumed.'[45]

[126] The principles on which the court construes election legislation were rehearsed in a number of cases including Michael Browne. They are outlined elsewhere in this decision.

[127] I can do no better than to adopt those principles and be guided by them. In the instant case, the words 'on behalf of and 'by' stand to be interpreted. Those words are ordinary, plain words in common use in the English lexicon. Are they mutually exclusive within the context of the entire Act and the rules? I think not.

[128] Within the context of the case at bar 'by' refers to the 'person' charged with ensuring that the security is lodged - the petitioner. 'On behalf of means nothing more than 'for the benefit of. The words 'by' and 'on behalf of convey two different ideas but they are reconcilable if approached in this somewhat legalistic manner. In arriving at Parliament's intention, if the court cannot reconcile the two provisions, it must give effect to the RPA, in accordance with the Constitution, the

43 At page 341.

44 At p. 349, per Lord Morris of Borth-y-Gest.

45 At p. 365 per Lord Diplock.

Interpretation Act and rules of statutory interpretation including relevant presumptions against absurdity. I am satisfied that there is no conflict between the two provisions and will

[129] I have no difficulty finding therefore that the laws of Saint Vincent and the Grenadines requires and stipulates that security for costs must be given by and on the petitioner's behalf. It is not necessary for me to make any finding about the validity of the rule 9 (1) of the EPR. The respondents have brought no action for a declaration to that effect. I therefore make no declaration that it is *ultra vires* the Constitution and/or the RPA.

[130] Section 58 (1) (a) of the RPA provides for presentation of the petition within 21 days after the returning officer makes a return declaring the elected member. It was not invoked by the respondents or the petitioners, so it is not necessary to scrutinize it. Notwithstanding, I have included it in the table below for completeness and context. I next turn to consider section 58 (1) (b) and (c) of the RPA. Rule 9 (1) (b) and (c) bear striking resemblance to section 58 (1) (b) and (c). For this reason and for the sake of convenience they are examined together.

Section 58 (1) (b) and (c) of the RPA and Rule 9 (1) (b) and (c) of the EPR

[131] The comparison is more readily apparent and achieved if the provisions are set out side by side in tabular format. I have chosen that approach. They provide respectively:

Section 58 of the RPA	Rule 9 (1) of the EPR
(1) The following provisions shall apply with respect to the presentation of an election petition- (a) the petition shall be presented within twenty one days after the return made by the returning officer of the member in respect of whose	

election the petition relates, unless it concerns an allegation of any corrupt practice upon the making of the return of election specifically alleging a payment of money or other reward to have been made by any member, or on his account, or with his privity since the time of such return in pursuance or in furtherance of	
such corrupt practice, in which case the petition may be presented at any time within twenty eight days after the date of such payment;	
(b) **At the time of the presentation of the petition, or within three days afterwards, security** for the payment of all costs, charges and expenses that may become payable by the petitioner - i. to any person summoned as a witness on his behalf; or ii. to the member whose election or return is complained of; or to any other person named as a respondent in the petition, **shall be given on behalf of the petitioner.**	*9(1)* **At the time of the presentation of the petition, or within three days afterwards, security** for the payment of all costs, charges and expenses that may become payable by the petitioner - a. to any person summoned as a witness on his or her behalf; or b.to the member whose election or return is complained of; or c.to any other person named as a respondent in the petition, **shall be given by the petitioner .**
(c) The security referred to in paragraph (b) shall be an amount not exceeding five thousand dollars and shall be given by recognizance to be entered into by any number of sureties not exceeding four approved by the Registrar, or partly in one way and partly in the other.	(2) The security shall not exceed five thousand dollars and shall be given by one or more recognizance to be entered into by any number of sureties approved by the Registrar, not exceeding four or by deposit of money in the Court, or partly in one way and partly in the other to the satisfaction of the Registrar.

[132] Section 58 (1) (b) of the RPA and Rule 9 (1) are identical except for the structure of the paragraphs, the use of the words 'on behalf of in the RPA as opposed to the word 'by' in the EPR and the addition in the rule of the words 'by deposit of money into the Court'. These provisions impose an obligation on a petitioner to provide security for costs, charges and expenses that may become payable by the petitioner. It is to be supplied at the time of presentation of the petition or within 3 days of such presentation.

[133] As indicated earlier, this apparent conflict between the RPA and the EPR in relation to the use of 'by' and 'on behalf of is reconcilable by construing the RPA as signifying that the security is for the petitioner's benefit in the event that he fails to make payment of costs to a successful respondent. In such a case the security is forfeited for that purpose. In contrast, the EPR's employment of the words 'by the petitioner' makes the petitioner responsible for lodging the security.

[134] Such interpretation results in a harmonious co-existence of both provisions congruent with the presumption of validity of a law. It also accords with the established norms which require that enactments which create obligations, the breach of which attract penalties or sanctions must identify the person charged with the requisite duty. This is sometimes impossible to achieve where the passive voice is utilized instead of the active voice.

[135] Suffice it to say that in the case of **Ethlyn Smith v Delores Christopher et al** [46] from the British Virgin Islands, Rawlins J. interpreted a provision similar to section 58 (1) and rule 9 (1) as mandatory. Applying the referenced principles of interpretation to the purpose of the provisions as revealed by the context, I harbor no doubt that section 58 (1) (b) and Rule 9 (1) of the EPR are mandatory. I am fortified in this position in light of the use of the mandatory 'shall' in both laws. In this regard, section 3 (6) of the Interpretation and General Provisions Act [47] provides:

'In every written law, the word "shall" shall be read as imperative and the word "may" as permissive and empowering.'

[136] It follows that pursuant to section 58 (1) (b) of the RPA and Rule 9 (1) of the EPR, when the petitioners Lauran Baptiste and Benjamin Exeter filed their petitions, they were obliged to lodge security for costs and related expenses, at the same time or within 3 days after. This was a condition precedent to the hearing of the petitions and failure to provide the security within that time would nullify the petitions.

<u>Section 58 (1) (c) of the RPA and Rule 9 (2) of the EPR</u>

[137] Section !i8 (1) (c) of the RPA and Rule 9 (2) of the EPR are similar in terms. They limit the number of sureties to no more than 4, empower the registrar to approve them and outline the:

1. manner in which the security is to be given, (i.e. by recognizance or payment of the security amount, or a combination of both); and

2. the amount of the security, (up to $5000.00).

46 Claim No. BVIHCV2002/0097, unreported.

47 Cap. 14 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

[138] The arrangement whereby the registrar approves the security has been described as an administrative process. It is not optional but mandatory. The registrar must be satisfied that the proposed surety(ies) has/have demonstrated that he, she or they has/have the means to satisfy the

costs and related expenses (up to the value of the amount of the security) in case of default by the petitione.r The amount is subject to the registrar's discretion. The petitioner decides whether to provide the security by recognizance, payment of money or a combination of both. The registra'rs duty to determine the number of sureties would largely depend on the registrar's assessment of and satisfaction with their pecuniary prowess, I imagine. It is reasonable to infer that the rationale behind the exercise is to seek to ensure as far as possible that sureties are not men of straw.

[139] 'Recognizance' is not defined in the RPA or the EPR. However, as indicated earlier the meaning has been established by usage and precedent. This is the common understanding of the term for the purposes of this law.48 It commends itself to this court and is accordingly adopted for present purposes.

[140] In assessing whether this aspect of section 58 (1)(c) and rule 9 (2) is mandatory, regard must be had to rule 9 (5) and 10 (1). By 'this aspect' I mean the manner of provision of the security (recognizance or deposit of money).

[141] Rule 9 (5) provides:

'(5) When the security is given wholly or partly by recognizance, it is lawful for the respondent within 10 days from the date of service on him or her of the notice to object to the recognizance on the ground that-

(a) one or more of the sureties is insufficient;

(b) a surety is dead;

(c) a surety cannot be found or ascertained for want of sufficient description in the recognizance; or

(d) a person named in the recognizance has not duly acknowledged the same.'

48 Pease v Norwood, per Bovill C. J. at page 249.

[142] This subrule creates an opportunity for a respondent to object to a surety on the grounds that such surety is insufficient, dead, cannot be found or ascertained etc. The expression 'insufficient' was explained in the case of **Pease v Norwood.** In construing a similar UK provision, Byles J. stated that 'insufficiency' must not be read in the sense of being a 'defect in pecuniary ability but as conveying that the sureties are persons who ought not to be sureties; for example, infants, married women ...'.

[143] Addressing this issue, Bovill C.J. stated that the term 'insufficient' does not mean a general incapacity of entering into a suretyship, but insufficiency for the purpose of the act.' Paragraphs {b) and (c) are self-explanatory and do not concern the court in the case at bar. Paragraph (d) permits a respondent to take objection on the ground that a surety did not acknowledge the recognizance. The Justices were all agreed that the subrule in its entirety was concerned with the

'sufficiency' of a recognizance and not with 'invalidity'. The court in **Lyttleton** formed a contrary view and made a different ruling in respect of a somewhat similar provision in that jurisdiction.

[144] Subrule 10 (1) states:

'10. Removal of objection where security declared insufficient

(1) If by order made on the application the security is declared insufficient and the objection is allowed, it is lawful for the petitioner, within a time not exceeding ten days as may be ordered by the judge before whom the application is heard, to remove the objection by depositing with the Court a sum of money as the judge may direct for the purpose of making the security sufficient.'

This latter subrule authorizes the court to make an order to permit a petitioner to 'hea'l an insufficient surety if any objection on that basis is upheld.

Subrules (3) and (4) of the EPR

[145] What of subrules (3) and (4) of the EPR? The former provides:

'The recognizance shall contain the name and usual place of abode of each surety with sufficient description as shall enable him or her to be found or ascertained.'

This provision clearly seeks to ensure that adequate particulars about the surety are documented in the recognizance to facilitate subsequent location of the subject for enforcement purposes if necessary. These essential details are name, address and description. There can be no gainsaying that this provision is mandatory and I so hold.

[146] Subrule (4) states:

Within three days after the giving of security as required by this Rule, notice of the nature of the security given shall be served by the petitioner on the respondent.'

This provision was considered by the Court of Appeal in the **Michael Browne** case. Floissac C.J. said there:

'Subrules (4) and (5) of Rule 9 clearly indicate that the object of service of notice of the nature of the security given is to enable the respondent to exercise his procedural right to object to any security given wholly or partly by recognizance. The petitioner's failure to observe the time prescribed for service of that notice could be prejudicial to the exercise by the respondent of his procedural right to object to the recognizance. For this reason, the statutory provision which prescribes the time for service of notice of the nature of the security given with respect to an election petition has been held to be mandatory with the consequence that failure to observe the prescribed time invalidates the petition.'

[147] The Court held that Rule 9 (4) is mandatory and that 'failure to serve the notice of the nature of the security given with respect to an election petition or to do so within the time

prescribed by the subrule paralyses the petition.' The decision is binding on this court. I therefore hold that rule 9 (4) of the EPR is mandatory in its effect.

[148] Have the petitioners complied with the mandatory provisions of section 58 (1) (b) and (c) of the RPA and rule 9 (1), (2), (3) and (4) of the EPR? The documents which were lodged as recognizances in both instances contained the names of persons who the petitioners describe as their sureties. They also contain particulars regarding their address and identification documentation. In this regard, subrule 9 (3) of the EPR was complied with.

[149] The respondents have acknowledged receipt of the purported recognizances. Accordingly, to the extent that the 'recognizances' was given and served on the respondents, the time period under subrule 9 (4) for doing so was also complied with.

[150] The respondents have expanded their case in their submissions to incorporate reference to Form 3 of the EPR. In doing so, they linked those submissions with their contentions as to the petitioners' alleged non-compliance with of section 58 (1) (b) and (c) of the RPA and rule 9 (1) and (2) of the EPR.

[151] Form 3 is incorporated into the law by virtue of rule 29 of the EPR which states:

'In proceedings regulated by these Rules, the forms contained in the Schedule or forms to like effect shall be used as the documents described by the headings of the forms.'

Neither Form 3 nor Rule 29 were mentioned or allude to in the motions as a ground on which the motions were made. They were therefore not part of the challenge at that stage. No part of 58 (1) (b) and (c) of the RPA and rule 9 (1) and (2) of the EPR provide for use of any particular forms. Neither does section 58 (2) of the RPA.

[152] In the absence of such reference, the respondents are not permitted to invoke them in their submissions. The relevant legal principle was described by Rawlins J. in**Frampton Pinard v Ian Pinard49 .** He described it as trite law stating:

'It is trite principle that party who institutes a case must plead a cause of action that is known to or created by the law which the case is brought. The originating process must disclose sufficient material facts to render the claim viable and permit the ... respondents to know the case which they must meet.'

[153] In any event, rule 29 clearly and unambiguously permits a petitioner to use Form 3 or alternatively one which is to like effect as Form 3 for the purpose of providing the information specified in section !,8 (1) (c) and rule 9 (2) and (3) of the EPR. This latitude comports with my earlier pronouncement that aspects of section 58 (1) (c) of the RPA and rule 9 (2) of the EPR are directory only.

[154] Moreover, the Interpretation Act50 sanctions deviation from forms unless the relevant law forbids such departure, provided that the deviation is not substantive. It states:

49 DOMHCV2005/0149, unreported.

'Deviation from forms

'Save as is expressly provided, whenever any form is prescribed by any written law, an instrument or document which purports to be in such form shall not be void by reason of any deviation therefrom which does not affect the substance of such instrument or document and is not calculated to mislead.'

[155] An examination of the 'recognizances' reveals that in both cases although the words "Taken and acknowledged by the above named:

1. 'petitioner and sureties' (in the case of the Baptiste recognizance); and

2. 'Benjamin Exeter and Hon. Daniel Cummings,' (in the case of the Exeter recognizance);

'on the 5th day of January 2016' were used, they contained no details about what was acknowledged in terms of amount or default. Furthermore, on their face, the specific acknowledgement inherent in the nature of a recognizance, and captured in the form, was not provided by Mr. Daniel Cummings, Mr. Bowman and Mr. Roberts.

[156] As pointed out by learned senior counsel Mr. Astaphan, the Exeter recognizance did not identify or describe anyone as surety. In all of those circumstances I find that although named in the recognizance, Messrs. Cummings, Bowman and Roberts did not acknowledge themselves to be bound to pay the costs and other related charges in the event of default by the respective petitioners. The testimony provided by Ms. Eustace does not assist the court in making such a positive finding. However, I am satisfied that the names, addresses and identification particulars of the proposed sureties appear on the recognizances which they acknowledged and signed, as witnessed by the registrar.

[157] The dispute about whether the subject provisions are concerned with invalidity or sufficiency centred on two major decisions - In **Re Lyttleton** and **Pease v Norwood.** The respondents contended that this court should adopt the position of the court in the former while the petitioners argued for the latter.

50 Section 63.

[158] The respondents contended that the constitutional and legislative framework, practice, and facts in **Pease v Norwood** are very different to those which exist Saint Vincent and The Grenadines. They pointed out that in **Pease v Norwood** there were some twelve Respondents four of whom allegedly signed the recognizances for costs. Therefore, the sole issue for the Court in that case was:

whether a recognizance entered in to by some of a large number of Respondents is a compliance with the act of parliament'51

[159] The respondents contrasted the facts with those in the instant matter of this case where there is one (1) petitioner in each petition. They argued that petitioners gave the acknowledgment and pledges as sureties under the recognizances. They submitted that the Court in **Pease v**

Norwood held that respondents could not properly be sureties. They highlighted Bovill C. J.'s statement that:

'The next question is whether a recognizance entered into by some out of a larger number of respondents is a compliance with the act of parliament, and if not, a further question arises, as to the nature and effect of the objection and whether it can be raised under the 8th or 9th sections of this act, and can be removed by a deposit or whether effect is only to be given to it under the general jurisdiction of the court. I entirely concur with my Brother Willes and other election judges that the security must be by persons other than the respondents themselves. The recognizance to be 'a security given on behalf of the petitioner:' s.6: and there are many clauses in the act which point to the same construction. I am therefore of the opinion that the recognizance in this and all the other cases where it is signed by petitioners is not in compliance with the Act.'

[160] The respondents acknowledged that the Court refused to set aside the security and petitions on the ground t11at the issue before it was one of insufficiency. They argued that in doing so the Judges relied on several reasons namely:

1. The previous legislation and the principles, practice and rules of the Parliament in existence at the time. The respondents argued that this must be contrasted with the constitutional and legislative framework in Saint Vincent and The Grenadines which is very different to the one in existence at the time of **Pease v Norwood.** They contended further that the election jurisdiction created or conferred by the respective Constitutions of Saint Vincent and The Grenadines, and the RPA, are

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in peremptory or mandatory terms. They added that it has been repeatedly held in the Caribbean that strict construction by the High Court, and compliance by respondents, is required at all times; and that the practice in St. Vincent and The Grenadines over many elections and years, as established by the respondents, is that the recognizances for security for costs have always been acknowledged, pledged and signed by sureties and never Respondents.

2. At least two of the Judges, Byles J. and Keating J. relied on 'the importance of giving a wide and liberal construction to the act of parliament...'. They contended that this is not the law in the OECS and Saint Vincent and The Grenadines where Sir Hugh Rawlins, the former Chief Justice of the Court have made it clear that a strict construction of election Acts and Rules is required in a series of cases including **Ethlyn Smith v. Delores Christopher & Ors.** and**Ezechiel Joseph v. Alvina Reynolds .**

3. In **Pease v Norwood** the recognizance looked good on its face. This was because the Court held that the respondents who signed the recognizance could properly be sureties for the other respondents although not for themselves. They contended that in this case, there is only petitioner in each petition, and they and they alone acknowledged the debt and pledged their property for the recognizances.

4. It did not appear to their Lordships with certainty in **Pease v Norwood** that the four persons who signed the recognizance before the Court were in fact four of the Respondents. In this case, there is no doubt that the persons who acknowledged the debt, pledged their property and signed the recognizanceswere the only petitioners.

s. The matter was one of practice only while the practice in St. Vincent and The Grenadines is clear.

6. Most if not all of the Judges in **Pease v Norwood** expressed uncertainty that their decision was correct.

[161] The respondents extracted and quoted the following portions of each judgment. Bovill C. J. said:

'I am by no means certain that the conclusion we have arrived at is the correct one. It is therefore with some hesitation that I express the opinion which I have formed and which seems to me in some measure to solve the difficulty'

Keating J. stated:

'We have already in the course of argument thrown out an intimation of opinion that the Respondents couldn't be sureties within this act. But a security appearing on the face of it to have been regularly entered into, the question is whether, when it is brought to the knowledge of the court that the persons signing the recognizance are principals, the court is not bound to hold it to be no security within the act. I must confess that I have entertained considerable doubts and I cannot say that those doubts are entirely removed. At the same time I feel that the full force of the observations of my Lord and my Brother Byles as to the importance of giving a wide and liberal construction to this act of parliament and therefore I do not press my doubts so far as to dissent from the order made by my Brother Willes;'

and Monteque Smith J. remarked:

'The other objection is certainly to my mind more formidable. The Act requires that the security shall be a deposit of 10001., or a recognizance entered into by sureties. I confess that I have felt during the argument, and I still entertain, considerable doubt whether the recognizance here was a recognizance at all within the meaning of the act of parliament, and whether the objection does not go to its validity altogether and not to its sufficiency. However, as my Lord and my Brother Byles, and the election judges who have considered it, have come to a clear opinion that the objection is one as it its sufficiency only, and may be amended, I have hesitation in coming to a conclusion different from theirs, though I confess I cannot see my way to agree with them, or to comprehend how a principal in any sense be deemed to be a surety for himsel.f After all, the matter is one of practice only, as to which certainty is of the essence of benefit; and, as there is no appeal from this court and my Brother Keating does not dissent, I do not wish to dissent from the judgment of the rest of the court upon this point.'

[162] The respondents contended that **Pease v Norwood** is not authority, and certainly not binding authority on this Court, for the proposition that a recognizance given solely by a petitioner goes only to insufficiency and not to its invalidity. They reasoned that in any event, **Pease v Norwood** is distinguishable from the facts and constitutional and legislative framework in these applications and ought not to be followed by the High Court.

[163] The Respondents relied on **Re Lyttleton Petition** [52]**.** They submitted that the petitioners sought to distinguish it from **Pease v Norwood** but that such an attempt should be rejected by the Court for the following reasons:

1. The Supreme Court of New Zealand held unanimously that if security is given by a bond it must be given by sureties and not the petitioner;

2. The Court was unanimous in their view that the decision in **Pease v Norwood** was unsatisfactory;

3. The criticisms of **Pease v Norwood** especially by Stanton J. were made notwithstanding the legislative provisions in **Pease v Norwood** and

4. The Full Court of New Zealand held that a bond signed by the petitioner was invalid.

[164] The respondents also examined the decision in **Barrett v** Tuckmans3 which addressed the issue of whether a recognizance or bond signed by the petitioner is valid or merely insufficient. The respondents argued that in the course of his judgment in **Barrett** v Tuckman_Lloyd J. referred to **Pease v Norwood** but did not decide the issue. On the other hand, Simon Brown J. made it clear in his judgment that a recognizance signed by a petitioner goes to its invalidity and not its sufficiency, and is therefore bad in law. He said:

"In support of that argument counsel cites the decision of the Divisional Court in Pease v Norwood [1869] LR 4 CP 235, based upon the consideration of what were essentially similar provisions in the earlier election legislation. In that case security was given by way of a recognizance entered into jointly by four out of thirteen Respondents, each in the sum of £250. No statutory objection was taken to the security but rather it was argued by the respondents, as it is before this court, that first the recognizance was no security within the act and second, it was not possible to object that the securities were 'insufficient' so that there was no scope for the petitioner to remove the objection by making a deposit. The argument failed at the second stage.

In my judgment that decision is clear authority for the proposition that none of the securities provided pursuant to s 136(2) must be the petitioner (or indeed any one of the Respondents if

5 2 [1955] NZLR 1159.

53 The Times 5 November 1984

there be more than one). It affords no authority, however, for Mr. Tugendhat's further submissions, albeit he seeks to derive some support from certain obiter dicta in the judgments. He is at pains to emphasise the limited character of his argument. It is not, he stresses, every

invalid recognizance that could properly be characterised as no security, only a recognizance that is plainly ex facie invalid -- namely, as here, a recognizance entered into by the petitioner himself proclaiming that fact on the face of the very document.

The petitioner is not, asserts counsel, a surety. The natural and ordinary meaning of this term is a third party who undertakes a responsibility for another, and in any event this point at least was decided in Pease v Norwood [1869] LR 4 CP 235. The crucial distinction he draws between that case and this on the wider issue as to whether a statutory objection could properly be taken lies in the joint character of the recognizance there provided. In the words of Bovill CJ, 'It seems to be in the nature of a surety'. I do not think he would have made the same comment in respect of the recognizance here provided by the petitioner.

I accept counsel's submission in this narrow form. In my judgment, once it is recognised that the petitioner's recognizance is not that of a surety -- as construction and authority impel -- then (a) it would be inappropriate to object on the statutory basis that the 'suretyis insufficient' and (b) no 'security . . . as required by this section', the language of s 136(8), has been given. Nor should this conclusion in my view promote the technical failure of petitions or otherwise involve injustice. Once the law to the effect that the petitioner cannot himself act as a surety is clearly stated, then no petitioner should henceforth seek to satisfy the stringent security requirements of the Act by entering into his own recognizanc.e

If, of course, there be any other deficiency alleged in a recognizance which has been honestly given, then objection needs to be taken and an opportunity would thereby be given to the petitioner, if the objection prevailed, to deposit cash instead."

[165] The Respondents submitted that Justice Simon Brown is entirely correct, and that his understanding of the law and ruling are entirely consistent with the provisions of section 36 (7) of the Constitution which require strict compliance with the provisions of the RPA.

[166] The Respondents contended that Simon Brown J.'s ruling in **Barrett v Tuckman** is consistent with the fact that the Chief Justice has limited authority to make Rules, and consequently the Chief Justice may not make Rules which are inconsistent with the Act or Constitution. Consequently, if security or a recognizance is not provided on behalf of the petitioners in accordance with the express terms of the Act and Form, they can find no comfort or refuge in Rules made by the Chief Justice or in decisions from ancient times where the framework and facts are fundamentally different. They reasoned that the recognizances were required by the Act to be entered into on behalf of the Respondents by sureties and not the Respondents. This was not done. Consequently, the security is bad in law and the Rules cannot and do not provide any relief for the Respondents.

[167] The respondents submitted that the RPA requires that security for costs shall be given *'on behalf of the Petitioner',* and that the *'security referred to in paragraph (b)* .... shall be given by recognizance to be entered into by any number of sureties not exceeding four approved by the Registrar.' *They stressed that* these are peremptory statutory provisions which must be strictly construed and applied by the High Court and these provisions cannot be modified or relaxed by Rules or the interpretation of Rules. They argued that the RPA stands on its own feet and must

be interpreted and given effect according to its own language. Accordingly, a recognizance given and executed by the petitioner is inconsistent with the provisions of the RPA and on this basis alone, such a recognizance must be declared invalid and cannot be saved on the basis of Rules providing for or dealing with whether a recognizance is sufficient or not.

[168] They submitted that the judgment of Simon Brown J. is also supported by the several subsequent authorities referenced by them which have held that the provisions of the Act which govern the presentation and provision of security for costs are mandatory, and must be strictly complied with by respondents; including **Devan Nair v. Yong Kuan Teik, Michael R.C. Browne v. Yvonne Francis-Gibson et al, Ethlyn Smith v. Delores Christopher & Ors.,** and **Ezechiel Joseph v Alvina Reynolds.**

[169] The petitioners countered that the principles and reasoning to be found in **Pease v Norwood** may be more aptly applied to the facts of the instant case. They contended that the views expressed by members of the court in In **re Lyttelton** which go to whether a recognizance or bond should be considered insufficient or invalid are inapplicable to the instant case.

[170] They contended that they are distinguishable on the basis that the New Zealand statutory and regulatory framework under which Lyttelton Election Petition was decided did not have any provisions for objections to be made to the security within a prescribed time and for the removal of any objections such as those under Rules 9 (5), (6), (7), 10 and 11 of the Election Petition Rules 2014 and sections 8 & 9 of the Parliamentary Elections Act 1868 (UK). They pointed out that **Pease v Norwood** was referred to and distinguished on this basis, in the course of the two substantive judgments which were delivered in Lyttelton Election Petition.

[171] The petitioners submitted that Stanton J. noted that:

'Mr. *Hewitt* also referred to *Pease v. Norwood* ((1860) L.R. 4 C.P. 235) in which it was held that a bond given by four out of thirteen petitioners and with no sureties was not, invalid under the similar English statute, but was insufficient and could be ordered to be replaced or supplemented by the Court. The decision is not a satisfactory one and the doubts expressed by *Keating,* J and the criticism contained in the judgment of *Montague Smith,* J, (two of the members of the Court.), seem well founded. However, for our present purpose, it *is sufficient to* say that the English statute differs materially from ours in relation to this question of security, and the decision cannot be accepted as an authority on the interpretation of our own statute and rules.'

[172] Likewise they referred to Hutchinson J.'s judgment quoting him thus:-

'At this point in the consideration of the case, must be considered the case of *Pease v. Norwood* ((1869) L.R. 4 C.F. 235). The statutory provisions there under consideration, in so far as they were relevant to the question parallel to the one with which I am dealing, are set out in the headnote to the report as follows:

Section 6 of the Parliamentary Elections Act, 1868, enacts that security shall be given by the petitioner for costs to an amount, of *10001,* either by recognizance to be entered into by any

number of sureties not exceeding four, or by a deposit of money, or partly in one way and partly in another.

Section 8. That it shall be lawful for the respondent, where the security is given wholly or partially by recognizance, to object in writing to such recognizanc,eon the ground that the sureties or any of them are insufficient.

Section 9. That, if an objection to the security is allowed, it shall be lawful for the petitioner to remove such objection by a deposit of such sum of money as may be deemed to make the security sufficient.

I have pointed out that the two Judges, whose views decided the case, were of the opinion that the security there given would not have been in compliance with s. 6, had it stood alone; but, on a consideration of s. 8, they arrived at the conclusion set out in the following paragraph of the headnote:

Held also, that the petitioners themselves cannot be sureties: but that the fact of some of them entering into a recognizance as sureties does not render the security *invalid.,* but is an objection to its *sufficiency* under s. 8, and may be amended by a deposit of money pursuant to s. 9.

There are , in our statute , no sections comparable with ss . 8 *an d* 9 . . .. " .

[Emphasis added]

[173] The petitioners submitted further that accordingly , **Lyttelton Election Petition** cannot properly assist as a basis upon which to interpret section 58(1)(c) of the RPA and the EPR, in determining whether or not because a recognizance is signed by a petitioner solely that goes to its invalidity or insufficiency, because the New Zealand court itself, expressly stated that the statutory/regulatory provisions under consideration in that case were different, in so far as they were relevant to the question parallel to the one with which it was dealing and upon which it was decided.

[174] The petitioners also commented on **Barrett v Tuckman** [54]. They observed that it came before Lloyd

J. and Simon Brown J. in the Queen's Bench Division in England and that the relevant provisions of the applicable law are in *pari materia* with section 58(1)(c) of the RPA and the Election Petition Rules 9(5), (6), (7), 10 and 11. They noted that both judges decided the case on a point other than that related to the security issue and both pronounced *dicta* upon the issue as to the validity or insufficiency of a recognizance signed by the petitioner solely.

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[175] The petitioners accused the respondents of erroneously stating that Lloyd J. referred to **Pease v Norwood** but did not decide the issue and that Simon Brown J. on the other hand made it clear that a recognizance signed by a petitioner goes to its invalidity and not its sufficiency, and is therefore bad in law.

[176] They pointed out and correctly so, that Lloyd J stated the issue as follows:

'The point can be *stated* very shortly. Mr. Barrett submits that if the respondent was going to take any objection to his recognizance, he should have done so within five days as required by s 136(4). By 29th August it was too late to raise any objection. The respondent replies: not so. Section 136(4) only applies where there is an objection to the recognizance on the ground of insufficiency of the surety. Here there is no question of insufficiency of any surety; there was no surety at all. Since no security was ever given as required by the section, all further proceedings on the petitions must be stayed by virtue of s 136(8).

Those being the arguments the question comes to this.When s 136(4) refers to anobjection on the ground of insufficiency of any surety, does that include a case **where the objection is that the recognizance was not entered into by a surety at all but by the petitioner himself, contrary to the provisions of s 136(2)? '** *[Emphasis added]*

and ruled later at page **4** that: -

'Mr. Tugendhat sought to distinguish *Pease v Norwood* on the ground that whereas i n that case the persons entering into the recognizance might have been other persons of the same name, here the recognizance is, on its face, entered into by the petitioner himself. I agree that there are passages in Bovill CJ's judgment at p 251 which suggest that it might have made a difference if the recognizance had been bad on its face. There is a similar passage in the judgment of Byles J at pp 153-54. But the thrust of both judgments is **that "insufficiency" is to be given a wide and liberal construction so as to bring within "the healing efficacy" of the Act those who, being principals, cannot be sureties as such but have nevertheless undertaken the full liability of sureties .**

I would myself hold that the healing efficacy of the Act extended to the present case if the security point had stood alone ...." *[Underline added)*

[177] The petitioners also referenced Simon Brown J.'s where he said:

'I agree with my Lord *(referring to Lloyd* J) that for the reasons that he has given both the petitions must be dismissed on the ground that they disclose no cause of action or alternatively are an abuse of the process of the court. Because, however, the respondent's alternative ground namely, that relating to security was also fully argued before the court and because I have the misfortune to differ from my Lord upon the point, I shall briefly deal with it...

Thus, for the reasons I have sought to give, I for my part would have concluded that the respondent's motions should succeed on both grounds.'

[178] Learned Queens Counsel Mr. Stanley John submitted that accordingly, the pronouncements by both of the learned judges in relevant respects were *obiter dicta.* However, when the full court of four judges of the Court of Common Pleas with Bovill C. J. presiding, delivered judgment in **Pease v Norwood,** the principles upon which they did so then, constituted the *ratio decidendi* of that decision, even if two of them expressed some hesitation. Moreover,

that court was sitting and exercising its appellate/supervisory jurisdiction upon an appeal from an election judge sitting in Chambers.

[179] He submitted that Simon-Brown J.'s dicta ought not properly to supersede the *ratio decidendi* of four other judges sitting in the Court of Common Pleas, which post the re-organization of the English Courts System via The Supreme Court of Judicature Act 1873, became merged with the Queen's Bench Courts, the Exchequer Courts and the Chancery Courts, to constitute the High Court of Justice in England and after 1880 the three first named divisions of this consolidated High Court, morphed into one Queen's Bench Division, with the Chief Justice of the former Court of Common Pleas at the head.

[180] Learned Queens Counsel argued that in ***Pease v Norwood*** Bovill C. J. commenced his judgment by stating the objective expressly:

'The questions which we have had to consider arise upon the construction to be put upon some sections of the Parliamentary Elections Act, 1868, 31 & 32 Viet. c. 125.'

and later in the course of his judgment stated:

'The next question is, whether a recognizance entered into by some out of a larger number of petitioners is a compliance with the act of parliament, and, if not, a further question arises, as to the nature and effect of the objection. and whether it can be raised under the 8th or the 9th section of the act, and can be removed by a deposit. or whether effect is only to be given to it under the general jurisdiction of the Court. I entirely concur with my Brother Willes and the other election judges that the security must be by persons other than the petitioners themselves. The recognizance is to be "a security given on behalf of the petitioner:" s. 6: and there are many clauses in the act which point to the same construction. I am therefore of opinion that the recognizance in this and in all the other cases where it was signed by petitioners is not a compli ance with the act. **Then ar i ses the guestion, what is the nature of the objection, and whether it is an objection to the *validity* or to the *sufficiency* of the security ?** *[Underline Added]*

[181] The petition rs submitted that in addressing the later issue, the court considered whether the determination is to be made pursuant to jurisdiction under sections 8 & 9 of the Parliamentary Elections Act 1868 (PEA) or the general jurisdiction. The court construed these statutory provisions, and applied them, even if in doing so it referred to provisions of section 13 of the Election Petitions Act 1848, where he states that in order to answer the question, it will be necessary to refer to the act which regulated rights in this respect, before the passing of the PEA in 1868.

[182] They noted that he then reproduced the provisions under 11 & 12 Viet. c. 98 (The Elections Petition Act 1848) that addressed objections to the security and how they were made under that Act then he continued by stating:

'All these objections under 11 & 12 Viet. c. 98 had to be disposed of by the examiner of recognizances. His decision was final; and there was no power of amendment, except by the substitution of a new surety in the place of one who had died. That being so, when the act of the

last session was passed certain sections were introduced with a view to objections to the recognizance being made upon various grounds: but it is somewhat remarkable that throughout the act there is no provision which expressly defines the mode in which objections to the*validity* of the recognizance are to be determined and in s. 8, which authorizes and requires certain objections to be made, the time at which the objections are to be presented,and their nature, are distinctly stated :-" **It shall be lawful for the respondent, where the security is given wholly or partially by recognizance," within a prescribed time " to ob ject** in **writing to such recognizance, on the ground that the sureties or any of them are *insufficient*, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description** in **the recognizance, or that a person 'named** in the**recognizance has not duly acknowledged the same".** All these objections are included in the second class mentioned in s. 13 of 11 & 12 Viet. c. 93; and I have failed to discover any reason why objections to the *validity* of the recognizance were not included in s. 8 of the late act: and it seems to me that it is only such objections as are mentioned in s. 8 that can be deemed to come within s. 9. (1) **If there had been nothing in the act upon the subject, it mi g ht have been assumed that all objections to the security must be heard and decided, under the general jurisdiction , by the Court, or by a judge sitting as a judge of** the Court, and not as a judge appointed under the act. Now, the language of s. 8 of the

act of last session being similar to part of s. 13 of the act of 1848 (11 & 12 Viet. c. 981!

am disposed to put the same construction upon the former as was put upon the latter :

and, so far as this question is concerned, it will not be necessary to refer to all the grounds of objection enumerated. I will mention only that one included in the first class of s. 13 is a ground of*invalidity,* the other in the second class is a ground of *insufficiency. (emphasis added)*

[183] The petitioners argued that this was a decision arrived at on the basis of interpretation of the statutory provisions substantively, (even if it may have addressed an issue related to practice); and is one which has evidently been adopted by our legislature via Rules made by the Chief Justice under section 58(2) of the RPA which are on all fours with the provisions of sections 8 & 9 of the PEA.

[184] They reasoned that in the final analysis, Bovill C. J. ruled that:

'Here. there was a recognizance in point of fact, and a *valid* one in the sense that it might be enforced by the ordinary remedies. Further, it is a recognizance which is good upon the face of it. It seems to be in the nature of a suretyship. It is further a recognizance which, even looking at it as the recognizance of some of the petitioners, is at all events a security for the other petitioners; and it creates a different degree of liability and constitutes an additional security for the petitioners themselves who sign it. If that be so, can it be said that it is an objection to the validity of the recognizance that the parties to it are principals as well as sureties? or that they are not sureties at all? What meaning is to be given to the word *"insufficient?"* May it include personal *incapacity?* I agree that it does not mean a general incapacity of entering into a suretyship, but insufficiency for the purpose of the act.'

[185] And ultimately held:

'The recognizance is to my mind valid as a recognizance, but liable to be objected to on the ground that the parties who have entered into it are principals as well as sureties. It seems to one that this objection is one which goes only to the *sufficiency* of the sureties; and in that view, it is an objection which fells expressly within s. 8 of 31 & 32 Viet. c. 125. If so, it must equally come within s 9 and then the objection may be removed by making a deposit under that section. This is the view which was taken by my Brother Wiles and the other election judges: and I am of opinion that they were right in so deciding. The consequence is, that a sum of *1000/* having been duly deposited in pursuance of the order, the objection to the recognizance fails and the petition must be allowed to proceed. ' (Emphasis added)

[186] The petitioners argued that the Respondents' attempt to distinguish **Pease v Norwood** on the facts is unsubstantiated. They contended that in the instant case there are present recognizances in point of fact, and *valid* ones in the sense that they might be enforced by the ordinary remedies. Further, they are recognizances which are good upon their faces. They seem to be in the nature of a suretyship in that they are acknowledged and signed by persons other than the Petitioners (granted the Respondents are challenging that they have been properly acknowledged).

[187] They argued further that they are recognizances which create a different degree of liability and constitute an additional security for the petitioners themselves, who signed them. They submitted that neither of the petitioners lacks personal capacity to be sureties generally hence the recognizances are insufficient as security for purposes of section 58(1) (c) of the RPA but not invalid due to the Petitioners' general incapacity.

[188] They submitted that whilst the court in **Pease v Norwood** held it was not certain that the persons who signed as sureties were petitioners or others with similar names, in the instant proceedings, it is evident that persons other than the petitioners signed as acknowledging the contents of the recognizances in addition to the petitioners.

[189] They argued further that it is erroneous to suggest that **Pease v Norwood** is inapplicable because of the constitutional and legislative framework and practice in Saint Vincent and the Grenadines. They submitted that it is incorrect to characterize the method by which Bovill C. J. and the other three justices arrived at the construction given to sections 8 & 9 of the PEA 1868, which are substantially in similar language as Rule 9(4) & (5) and Rules 10 & 11 of the EPR, as having been made on the basis of '*...the previous legislation and the principles, practice and rules of the Parliament ... '*. They contended that rather their decision was based on a construction which the court gave to the language of the statute.

[190] The petitioners submitted that 'in addressing the issue identified for decision, Bovill C. J. considered whether the determination is to be made pursuant to jurisdiction under sections 8 & 9 of the PEA or the general jurisdiction.' They argued further that there is no credible rationale for advancing the proposition that because of the constitutional and legislative framework applicable in Saint Vincent and the Grenadines it is improper to place reliance on the English judges' interpretation of sect 8 of the PEA 1868, even as the propriety for placing reliance on their

interpretation of section 9 of the same Act is asserted in almost the same breath. They submitted that such apparently opportunistic exercise in 'cherry picking' of a convenient statutory interpretation, should not be approved by the election court.

[191] The petitioners cited the case of ***Rogers v Turner & Lewis*** ***55*** a decision of the New Brunswick election court, in the course of which it was deciding whether the recognizance for security for costs is compliant. In that case one recognizance was filed in respect of a petition challenging the return of two respondents in the same proceedings. The respondents contended that there should have been a separate recognizance in respect of each respondent.

[192] The petitioners pointed out that in the course of holding adverse to the respondents, reference was made by Allen C. J. to a proposition similar to that being made by the respondents in the present proceedings, that the judgment in **Pease v Norwood** relied on sect 26 of the PEA of 1868 which provided for the observance of the principles, practice and rules on which Committees of the House of Commons had previously acted, in dealing with election petitions under the PEA. He concluded:

'Although that section undoubtedly had some influence upon the Court, I am inclined to think they would have arrived at the conclusion they did, if no such section had been in the Act of Parliament. The reasoning of the several Judges upon the 22nd section shews this; though they admitted that the section was difficult to construe.

We have; however, to construe our own Act as it is, difficult though it may be, and, as Byles, J., said in *Pease v. Norwood,* take as a guide the general intention of the legislature, so far as we can gather it from the Act itself.' *[Emphasis added]*

[193] The Petitioners submitted that Allen C. J.'s approach is the same as that adopted by the Court of Appeal in construing section 58(1) of the RPA and the Rules made pursuant to section 58(2) of the RPA, by taking as a guide the general intention of the legislature, so far as same can be gathered from these statutory provisions.

55 **1886 26 NBR 14 9,**

[194] They reasoned that the Election jurisdiction created and conferred by the Constitution of Saint Vincent and the Grenadines and the decision of the Court of Appeal in**Browne v Francis-Gibson et al** demonstrate that precedents such as **William v Mayor of Tenby** from which the cannons of interpretation of our elections statute proceed, are the same as those enunciated by the English Court of Common Pleas, in relation to statutory provisions in which similar language was used, such as that which the court interpreted in**Pease v Norwood** and which are in *pari materia* with the relevant provisions of the RPA and the EPR.

[195] They reasoned that the principles enunciated in **Williams v Mayor of Tenby** have been consistently adopted by the election courts of the Eastern Caribbean Supreme Court and the Court of Appeal in numerous decisions, several of which are referred to by the respondents in their skeleton arguments and upon which they rely. They submitted that consequently, the respondents betray contradiction and confusion by their contentions, where they purport to deny applicability of the jurisprudential method by which the Court of Common Pleas interpreted the

relevant provisions of the PEA in **Pease v Norwood;** which was decided on the basis of statutory provisions, that are indistinguishable from those in**William v Mayor of Tenby,** (which they conveniently embrace) and which are the same as the provisions of section 58(1) of the RPA and relevant provisions of the EPR, all of which based on the Court of Appeal's rulings, are to be interpreted via a similar method.

[196] They submitted that both by virtue of Rule 29 and Form 3 of the EPR and the evidence, it is established that the recognizances are to be and have invariably been signed by the petitioners, together with other persons who signed as sureties. They contended that moreover, the decision in **Pease v Norwood** was arrived at by a full Court of Common Pleas on the basis of interpretation of the substantive statutory provisions of sections 8 & 9 of the PEA 1868, which have evidently been adopted by the Saint Vincent and the Grenadines legislature via section 58(1) of the RPA and Rules 9(5), (6), (7) & 8 and Rules 10 & 11 of the EPR made by the Chief Justice under section 58(2) of the RPA and containing provisions which are *in pari materia* with those of sections 8 & 9 of the PEA 1868. The justices in **Pease v Norwood** held that a recognizance given by four petitioners was insufficient and they activated the healing efficacy provided by the corresponding provision in the UK law.

[197] Based on the foregoing, it seems to me that subrules (5) and 10 (1) of rule 9 of the EPR serve to qualify and mute the perceived rigidity of the 'sufficiency' elements of section 58 (1) (c) of the RPA and subrule 9 (2) of the EPR. In this regard, if an insufficient recognizance is provided as demonstrated in **Pease v Norwood** it is not thereby validated but may be cured by order of court directing the payment of a sum to satisfy the deficiency. Like Floissac C. J.56 I consider the decisions of the Justices in the UK Court of Common Pleas to be venerable authority in instances where they are construing statutes which are similar to those from our jurisdiction and where there is no local precedent.

[198] In **Pease v Norwood,** Bovill C.J. stated:

'The recognizance is to my mind valid as a recognizance, but liable to be objected to on the ground that the parties who have entered into it are principals as well as sureties. It seems to one that this objection is one which goes only to the *sufficiency* of the sureties;'

I agree with Learned Queens Counsel's submissions that in the case at bar, the 'recognizances' were signed and contents acknowledged not only by the petitioners but also by the proposed sureties. Surely this cannot be overlooked.

[199] On the authority of the decision in **Pease v Norwood,** I find that the petitioners Benjamin Exeter and Lauran Baptiste provided securities which were insufficient because in the case of:

1.Benjamin Exeter, the person named Daniel Cummings in the recognizance; and

2. Lauran Baptiste the persons named Curtis L. Bowman and Monty Roberts in the recognizance; did not duly acknowledge it and thereby ran afoul of the provisions of rule 9 (5) (d) of the EPR.

[200] They contained the names of persons who the registrar certified had acknowledged and executed them in her presence. The addresses and other identifying information stipulated by rule 9 (3) of the EPR are contained in both recognizances. I am satisfied that the healing efficacy of rule 10 (1)

56 In view of his statement at page 5 of the **Michael Browne** case.

may be appropriately applied to cure the insufficiency in each case. It follows that on a proper construction of rule 9 (3), the positioning of name and address on the form is immaterial if the form substantially supplies all of the valid components of a recognizance. In a situation where the person proposed as surety fails to acknowledge the recognizance, subrules 9 (5) and 10 (1) of the EPR may be activated.

[201] The decision in **Pease v Norwood** demonstrates that all objections made under subrule 9 (5) goes to sufficiency. I am satisfied that although the respondents have not expressly invoked that provision, one of their challenges goes directly to the fact that the proposed sureties did not acknowledge the recognizance. That objection is therefore allowed.

[202] In this regard, I am mindful that the jurisdiction of Saint Vincent and the Grenadines is a former colony and in most areas of law including in the area of elections petitions matters, received much of its legislation and practice from the UK. While no historical background was submitted to the court regarding the laws in the state, which governed the challenges to elected representatives during its period of associated statehood, I cannot ignore the striking similarities in the legislation which the Justices considered and pronounced on in **Pease v. Norwood.** Moreover, it is not insignificant that the legislation which was under consideration in the **Lyttleton** case is so different from the one which obtains in the case at bar.

[203] In summary, it must be noted that in construing the provisions requiring security for costs, while they must each be interpreted separately to extract the intention of Parliament, the court is mandated to do so within the context of the entire legislative framework in the RPA and EPR. It appears to me that there is so much interplay and connectivity among section 58(1) (b) and(c) of the RPA and rule 9 (1), (2), (3), (4), (5), and 10 (1) that none can be ignored for present purposes as illustrated in the authorities considered.

[204] I am satisfied that the form of the recognizance is not set in stone and that a petitioner will be fully compliant if he presents a document which contains all of the particulars in section 58 (1) (c) of the RPA and rule 9 (2) and (3) of the EPR along with an appropriate acknowledgment undertaking to satisfy any default of the petitioner in respect of costs and related expenses up to the amount specified in the recognizance. Furthermore, rule 9 (5) and 10 (1) allows for any insufficiency in the recognizance to be removed by the subsequent deposit of a sum ordered by the court in cases where the recognizance is not fully compliant including:

1. Where a surety is named who has not so acknowledged the liability as in the instant case; or where

2. A surety does not have the requisite legal capacity to contract as in the case of minors.

[205] I am satisfied that the petitioners have provided recognizances which contain the prescribed information specified in section 58 (1) (b) and (c) of the RPA and rule 9 (1), (2) and (3) of the EPR. The acknowledgement clause at the bottom of the recognizances identified Mr. Daniel Cummings, Mr. Curtis Bowman and Mr. Monty Roberts as sureties. They provide their names, addresses and identification particulars. It is therefore clear that they offered themselves as sureties and I so infer. I am also satisfied that the petitioners did not propose themselves as sureties in the case at bar.

[206] I therefore am constrained to conclude that a deficiency in:

1.a recognizance related to the incapacity of a named surety to contract or other similar reasons; or

2. insufficiency in payment of the security sum;

are matters of insufficiency as contemplated by subrule (5), are merely directory and not mandatory as they may be cured by court order if there is substantial compliance with the other aspects of the subrule, such as the execution of the recognizance. I therefore reject the respondents' contention that the referenced principle in **Lynds v Turner** can be extrapolated to mean that no error, uncertainty, or deviation from the language of Form 3 is permissible in the case at bar. In this regard, their insistence for example, that the form was defective because the proposed sureties' names and addresses were not included in the first part of the Form would not in my estimation invalidate it without more.

I find therefore that such default is merely an irregularity and does not invalidate the recognizance. I am satisfied that the healing efficacy prescribed in rule 10 (1) may be applied to remove such insufficiency.

Issue No. 4 . Were the motions filed out of time?

[207] A respondent who wishes to lodge an objection under any of the paragraphs of rule 9 (5) of the EPR must do so within 10 days 'from the date of service on him or her of the notice' of the nature of the security. The evidence is that the respondents were served with the notices of the nature of the security on 7th January 2016. The motions objecting to the recognizances were filed on 14th April, 2016 long after the 10 day deadline for objecting. The authorities from**Williams v Mayor and Mayor of Tenby** up to the recent cases including **Michael Browne** and **Ezechiel Joseph** have established that the timelines in elections statues are mandatory and operate strictly not only against the person depositing the security but also the person objecting. The respondents in this case did not meet the strict timelines. Their motions must therefore fail and be dismissed.

Issue No. 5 - Is section 58 (1) of the RPA unconstitutional and does it violate the petitioners' rights?

[208] The petitioners submitted that giving the RPA the interpretation which is contended for by the respondents, because the names of sureties who signed, are not stated on one part of the

recognizances, would disproportionately deny the petitioners one of their fundamental rights, which is protected under the Constitution of Saint Vincent and the Grenadines. They contended further that it would be unconstitutional for the court to so do.

[209] The petitioners submitted further that if section 58(1)(b) of the RPA is interpreted to mean that recognisances deemed to be given by the petitioners themselves are invalid and consequently the petitions ought not to proceed to a hearing on their merits, then this provision would violate the Constitution, by improperly interfering with the petitioners' right to a fair hearing which is guaranteed by Section 8(8) of the Constitution and their right of access to justice. They contended also that even if the section, given that interpretation, would pursue a legitimate objective, there would be no proportionality between the means employed and the aims it seeks to achieve. They cited the decisions in the cases of **Joseph Parry v Mark Brantley** [57] and George Blaize v Bernard La Mothe [58].

[210] The conclusions arrived at by this court on the issue of 'validity versus insufficiency' makes it unnecessary to explore and make a determination on the constitutional points summarized in the two preceding paragraphs. I therefore refrain from doing so.

Issue No. 6 · Should the petitions be struck out?

[211] The respondents submitted that the authorities especially in the OECS and CARICOM establish that the High Court will strike out a petition on an application, motion to strike out, or preliminary submissions, where a petitioner has failed to perfect the election petition by:

1. failing to file or serve the petition; or

2. provide the prescribed security, within the time prescribed by the mandatory provision of the RPA, and in respect of recognizances, Form 3. They submitted that any such failure renders a petition null and void. They relied on In **re Lyttleton Election Petition59; Arzu** v. **Anthurs60, Stevens** v. **Walwyn; Nair** v. **Teik61; Drew** v. **Hall 6**2 **, Esmond St. John** v. **Petty63, Michael R.C. Browne** v. **Yvonne Francis-Gibson et al64, Ethlyn Smith** v**Christopher and Supervisor of Elections; Prime** v**Nimrod and Others65, Frampton and Others** v **Pinard and Others** [66]**;**

57 HCVAP 2012/003

5s HCVAP 2012/004

59(1955) NZLR 1159

60 (1965) 1 WLR 675,

61 (1967) 2 AC 31.

62 (1983) 33 WIR 97.

63 Suit No. 19 of 1989.

64 Civil Appeal No.11 of 1994.

65 GDVHCV2003/05ti1.

66 DOMHCV2005/0419.

Dean Jonas and others v Jacqui Quinn Leandro and Others; Ezechiel Joseph; and

Bonifacio Mahabir v **Maxie Cuffie.**

[212] Having regard to the findings that the recognizances are not invalid, no legal basis has been established on which to make an order striking out the petitions. Accordingly, I make no such order. In all the circumstances, it is appropriate and just to afford the petitioners an opportunity to remove the objection by depositing a sum equivalent to the amount determined by the registra.r It is therefore ordered that Lauran Baptiste and Benjamin Exeter shall each deposit with the court on or before the 7th day of July, 2017, the sum of $5000.00 for the purpose of making the security sufficient.

Miscellaneous

[213] A number of other arguments were raised in this matters which it was not necessary to consider to arrive at a conclusion. In this regard, the petitioners contended that the recognizances were ambiguous and the respondents rebutted them. Similarly, the respondents referred to the **Legislative Council (Election Petition) Rules** of 1967 which they contended conflict with rule 9 (1) of the EPR. Suffice it to say, that Sir Hugh Rawlins' remarks in the **Ezechiel Joseph** case in relation to the equivalent Saint Lucia Rules provide some comfort and I endorse them. I am convinced and it is self-evident that when the Chief Justice made the 2014 EPR, he had the rule making purposes conferred by the Constitution and Parliament in mind.

ORDER

[214] It is accordingly ordered and declared:

1. The petition filed on 31st December, 2015 by:

(a) Lauran Baptiste; and

(b) Benjamin Exeter; is not invalid.

2. The recognizance provided on behalf of Lauran Baptiste and Benjamin Exeter on 5th January 2016, is insufficient.

3. Lauran Baptiste and Benjamin Exeter shall each deposit with the court on or before the 7th day of July, 2017, the sum of $5000.00 for the purpose of making the security sufficient. If the deposit is not made to the court as directed and within the time specified, the petition shall stand dismissed.

4. In the event that the objections are removed by deposit of money to the court office under paragraph 1 of this order, the registrar in consultation with the parties, is to fix a date for hearing of the petitions.

5. The respondents are to pay costs to the petitioners to be assessed if not agreed. Application for costs to be assessed must be filed and served on or before July 31st, 2017.

[215] I wish to express sincere gratitude to all counsel for their extremely helpful submissions electronic copies of which they graciously provided.

Esco L. Henry

HIGH COURT JUDGE

By the Court

Registrar