**SAINT LUCIA**

**THE EASTERN CARIBBEAN SUPREME COURT**
**IN THE HIGH COURT OF JUSTICE**
**(CIVIL)**

**CLAIM NO. SLUHCV / 2000/0411**

**BETWEEN:**

**KENNY D. ANTHONY**

Claimant

*AND*

**VAUGHN LEWIS**

Defendant

**APPEARANCES:**

Mr. Anthony Astaphan, S.C. and
Mr. Dexter Theodore for Claimant

Dr. Richard Cheltenham, Q.C.
*and* Mr. Kenneth Monplaisir, Q.C.
for the Defendant.

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**2004: July 13, 14**
**2006: January 11**

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# JUDGMENT

***INTRODUCTION***

1. **EDWARDS J:** The Claimant Dr. Kenny Anthony is the leader of the ruling St. Lucia Labour Party, Prime Minister of St. Lucia, and Minister of Finance.

2. The Defendant Dr. Vaughn Lewis is a former Prime Minister of St. Lucia from 1996 – 1997, and the former political leader of the United Workers Party (UWP) from February 2000 to mid 2005.

3. By his Amended Writ and Statement of Claim filed on the 29th June 2000, Dr. Anthony alleged that he was slandered by Dr. Lewis at a public rally held by the UWP at Micoud Village on the 20th February 2000.

4. The offending speech admittedly uttered by Dr. Lewis stated: "**When your country becomes corrupt, and investors know that you have to hand the dollars before they can sign the contract, there will be no investment except investment from the mafia and money launderers, bobolists and so on. We have enough examples in our country. I want to warn you about what is happening in the financial services business. The government of this country gave contracts to those people to set up financial business and in no time the people are handing over two hundred and fifty thousand U.S. dollars to them. They have not told us what side they put that money. If somebody gives you a gift you take it to build a new hospital, to build a new school, to buy some new things for the school. Kenny Anthony just take the money and put it behind his back and nobody knows where it is".**

***BACKGROUND FACTS***

5. The facts are not in controversy. The undisputed evidence discloses that near the beginning of February 2000, at a formal public ceremony under the glare of the media, a representative of International Financial World Investment Centre (IFWIC), handed over a cheque No 95240 to Dr. Anthony. This cheque was made payable to the Accountant General. It was in the sum of US$240,517.37, representing the deposit of US$250,000.00 (less the sum of US$9482.63 paid for duties) under an Agreement with the Government of Saint Lucia.

6. IFWIC is a United Kingdom based company with registered offices in Castries. Its business was to promote the Financial Off Shore Sector in St. Lucia. This Agreement required that the sum of US$250,000.00 be paid in order for the IFWIC to commence its operations here.

7. Subsequent to the publication of the offending speech, the Solicitors of Dr. Anthony by letter dated 8th March 2000, informed Dr. Lewis that he had used words, which were defamatory of Dr. Anthony. This letter requested a full public retraction and apology from Dr. Lewis "**in terms to be approved by us",** and his undertaking not to repeat the allegations made. It also communicated Dr. Anthony's expectations for compensation, and invited Dr. Lewis to make a proposal to compensate Dr. Anthony.

8. By letter dated 12th May 2000, the Solicitors for Dr. Lewis replied. This letter which referred to **"Offer of Apology,"** stated at paragraphs 2 and 3 –

> "**Your letter imputes that the words used were defamatory of your client Dr. Kenny Anthony. No such suggestion was ever intended and our client confirms that he was referring to the fact that there was no**

**designated purpose for the amount, which he was informed and believed, had been received.**

**Our client greatly regrets any distress or embarrassment that these alleged words may have caused to Dr. Anthony and is glad to take this opportunity of disclaiming any such imputation."**

9. By letter dated 29th June 2000, Dr. Anthony's Solicitors communicated to Dr. Lewis' Solicitors that the manner and content of this apology was wholly inadequate.

10. By letter dated 2nd August 2000, Dr. Anthony's Solicitors communicated with Dr. Lewis' Solicitors, indicating the form of apology that Dr. Anthony was prepared to accept, by way of a draft. The letter dated 29th June 2000 had also indicated that this apology "**must be published on the front page of at least one prominent newspaper circulating on the Island and over the electronic media."**

11. Subsequent to the parties' Counsel meeting on the 6th August 2002, by letter dated 7th August 2002, Dr. Anthony's Solicitors gave Dr. Lewis' Solicitors an ultimatum. Dr. Lewis was required to make the public apology in terms of the form of apology mentioned in the letter dated 2nd August, and compensate Dr. Anthony "**before the end of the summer vacation failing which"** they would proceed to trial.

12. Dr. Lewis never issued the requested retraction and apology as prescribed by Dr. Anthony's Solicitors, so this action proceeded to trial.

***THE LAW***

13. Section 10 of the Saint Lucia Constitution Order 1978 protects the freedom of expression by providing that-

> **"(i) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons)…"**

14. However Section 10 (2) of the Constitution states that **"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Section to the extent that the law in question makes provision – (a) … (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons … and**

**except so far as that provision or, as the case may be the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."**

15. The right to freedom of expression therefore, does not include freedom to orally publish defamatory statements about another person without lawful justification or excuse.

16. Articles 985, 989F to 989L, and 989Q to 989S of **The Civil Code of St. Lucia Chapter 242** are the applicable provisions, which deal with libel and slander. Article 917A of the Civil Code requires that I apply the law of England for the time being relating to torts in the absence of conflicting and/or local statutory provisions. I am also required to construe the provisions in Articles 989 to 991 as far as practicable in accordance with the law of England for the time being on torts.

17. At common law, a speaker who utters defamatory words about a claimant in the hearing of a third person, which impute a crime for which the claimant can be physically punished, commits slander which is actionable, without proof of special damages: **(Webb vs. Beavan** (1883) 11Q.B.D 609).

18. Article 989H of the Civil Code of St. Lucia provides that **"In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business."**

19. The offending speech of Dr. Lewis may be found to be slanderous if it conveys a defamatory imputation, tending to lower Dr. Anthony in the estimation of right thinking members of the society generally. If a substantial and respectable proportion of the society might shun or avoid Dr. Anthony in consequence of this offending speech, it is defamatory. If it tends to expose Dr. Anthony to hatred, contempt or ridicule, it will be regarded as defamatory. If from this speech reasonable suggestions or insinuations can be made which are disparaging or injurious to Dr. Anthony in his office as Prime Minister and Minister of Finance, then this offending speech is defamatory: **(Halsbury's Laws of England** (4th ed.) Vol.28, paras. 1, 10,42, 58-60). The law is quite clear that in deciding whether or not this speech of Dr. Lewis is defamatory, I must first consider what meaning the words convey to the ordinary person. Having determined that meaning, the test is whether under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand it in a defamatory sense: (**Halsbury's** (supra) para.43).

***THE PLEADINGS***

20. Dr. Anthony in substance contends that the natural and ordinary meanings of the offending speech are, that in the discharge of his office as Prime Minister and Minister of Finance, he has been dishonest, and is guilty of taking a bribe, fraudulently diverting public funds for his personal benefit, corruption, and a criminal offence punishable by imprisonment in St. Lucia.

21. Dr. Anthony also maintains that the offending speech suggests that he has committed an act of bribery, or some other fraudulent or dishonest act, in connection with a person or persons holding a contract with the St. Lucia Government, to set up financial business, and pay to him the sum of over US$250,000.00.

22. Dr. Anthony further alleges among other things, that Dr. Lewis published the defamatory words maliciously or spitefully, knowing that they were false, and/or with reckless disregard as to whether they were true or false. That he Dr. Anthony has been seriously injured in his character and reputation, and as Prime Minister and Minister of Finance, has been brought into doubt, public scandal, odium and contempt. He has claimed against Dr. Lewis, an injunction, aggravated and/or exemplary damages, interest and costs.

23. Dr. Lewis has denied that his spoken words are capable of the alleged or any defamatory meaning, or that he published these words with malice and gross negligence. He has also denied that Dr. Anthony suffered any injury alleged. He has pleaded that the words were fair comment upon a matter of public interest made without malice and in good faith. Further or in the alternative, Dr. Lewis contends that the occasion of the publication was an occasion of qualified privilege. He has also averred that he was entitled to make the speech pursuant to his guaranteed right to freedom of expression under Section 10 of the Constitution of St. Lucia. By paragraph 11 of his Re-Amended Defence, Dr. Lewis pleaded his intention to rely on the letter of apology dated 12th May 2000 in mitigation of damages.

***THE ISSUES***

24. At the trial, Counsel for Dr. Lewis agreed that there was publication of the words as pleaded. Counsel for both parties therefore requested the Court to focus on the following issues-

    **(i) Whether or not the pleaded offending words published by Dr. Lewis were defamatory?- (See paragraphs 26 to 73)**

    **(ii) Whether or not the Defences of Fair Comment, Qualified Privilege and Constitutional Privilege of Expression are available to Dr. Lewis? - (See paragraphs 74 to 158**

**If yes then –**

**(iii) Whether or not any of those Defences is sustainable?**

**(iv) What damages if any, should be awarded? – (See paragraphs 159 to 175)**

25. I now turn to consider whether the offending words bear a meaning defamatory of Dr. Anthony. I shall deal first with the meanings pleaded at paragraph 6 of the Amended Statement of Claim.

***THE MEANING OF THE WORDS***

26. Learned Senior Counsel, Mr. Astaphan in his submissions described paragraph 6 of the Amended Statement of Claim as setting out innuendos, which flow from the words complained about.

***INNUENDOS***

27. Paragraph 6 alleges – **"Further or in the alternative, the said words were understood to mean that the Plaintiff has committed an act of bribery or some other fraudulent or dishonest act in connection with a person or persons holding a contract with the Government of Saint Lucia to set up financial business and the payment to the Plaintiff of a sum of over … (US$ 250,000.00).**

**PARTICULARS**

**(i) The Plaintiff repeats paragraph 1 hereof [**which states – **"The Plaintiff is the Prime Minister and Minister of Finance in the Government of Saint Lucia and was at all material times the person holding the office of Prime Minister and Minister of Finance of the State of Saint Lucia"] and relies on the fact that the words "mafia" and "money laundering" in the context in which they were published in relation to the Plaintiff and the payment of a sum of … (US$250,000.00) imports that the Plaintiff is corrupt or a person involved in corrupt criminal activities, and/or is involved with corrupt persons, crooks and/or criminals who paid him a bribe in the aforementioned sum in order to obtain a contract with the Government of Saint Lucia.**

**(ii) The Plaintiff relies on the fact that the slang word "bobolists" imports that the plaintiff is corrupt or involved in corruption and/or is involved with corrupt persons who paid him a bribe in order to obtain a contract with the Government of Saint Lucia.**

**(iii) The Plaintiff relies on the fact that the Statement "Kenny Anthony just take money and put it behind his back and nobody knows where it is" imports some corrupt and dishonest act on the part of the Plaintiff or that the Plaintiff took a bribe or improperly converted public funds for his own personal use."**

28. The law concerning innuendos recognizes that apart from the natural and ordinary meaning of the words, "**they may also, or in the alternative, bear a defamatory innuendo. A "true" or "legal" innuendo is a meaning, which is different from the ordinary and natural meaning of the words, and defamatory because of special facts and circumstances known to those to whom the words are published. The ordinary meaning and the innuendo give rise to different causes of action, and, accordingly, must be separately pleaded – Slim vs. Stretch [{1936} 2 All E.R 1237.]":** (per Salmon, L.J. in **Slim vs. Daily Telegraph Ltd**. [1968] 1 All E.R. 497 at page 511 paras. D to E.)

29. The law also recognizes that though a statement of claim may purport to plead an innuendo, what is pleaded as an innuendo may not be a "**legal"** or "**true"** innuendo, but a "**false"** or "**popular"** innuendo.

30. "**If the defamatory meaning arises indirectly by inference or implication from words published without the aid of extrinsic facts, there is said to be a "false" or "popular" innuendo and this does not give rise to a separate cause of action"(Gatley on Libel And Slander**, 10th Edition, paragraph 3.37 at page 84).

31. At paragraph 3.18 in **Gatley** (supra) captioned **"True Innuendo**: **extrinsic facts,"** the author states –**"Such facts have also been referred to as "added," "extraneous" or "special" facts, or "something outside the words. They may, for instance, be the circumstances of publication, any accompanying gestures or expression or tone of voice, possibly slang or technical meaning or the meaning of a foreign language, or some additional fact which would allow those who knew it to read a defamatory meaning into the words published. The key point is that the matter is not merely one of general knowledge."**

32. **"The question of whether a slang expression has become part of ordinary usage is a matter of degree but in all but the plainest cases the plaintiff will be required to plead the defamatory meaning he ascribes to the expression. If the expression has not become part of ordinary usage it may still be defamatory because the meaning was known to those to whom the words were addressed, but in this case it will be an innuendo and the plaintiff will have to prove publication to persons who had knowledge of the meaning of the expression so that they could have understood it in the defamatory sense":** (**Gatley** (supra) at para. 3.26).

33. The need for Dr. Anthony to prove that the facts upon which the pleaded special meanings at paragraph 6 are based, were known to at least one of the persons to

whom the words were published (if they are legal innuendos), is further emphasized at paragraphs 3.14 and 3.17 in **Gatley** (supra). "**It is not proof of a special fact … merely to call a number of people to say that they understood the words in a defamatory sense; they would have to prove some fact known to them which would be sufficient to entitle any reasonable man with such knowledge to interpret the words in a defamatory sense**." (Per Greer L.J in **Tolley vs. Fry** [1930] 1UB467, at 480. Failure to discharge this burden of proof for legal innuendos means that the related cause of action must fail.

34. In addition to this, Part 69.2 (a) of **The Civil Procedure Rules 2000** requires that the Statement of Claim must, if the Claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning- give particulars of the facts and matters relied on in support of such sense.

35. Where the meanings alleged in the pleaded innuendos are no more than the meanings to be implied from or expressed or conveyed by the words themselves, then there is no need for a claimant to plead innuendos. (Per Lord Morris in **Lewis vs. Daily Telegraph Ltd.** [1963] 2 ALL E.R. 151 at page 160 paras. C to D). See also **Blackstone's Civil Practice 2002** page 1813 P.D.53 which supplements CPR PART 53 (U.K.). It contemplates at paras. 2.3(1)(b), and 23(2) only pleadings relating to legal innuendos.

36. Learned Senior Counsel, Mr. Astaphan submitted further that it was not necessary in today's context to give extrinsic evidence as to the meaning of the words **"mafia"** and **money laundering**". Those words, Counsel argued, have notorious and natural and ordinary meanings that are well known to the general public. Mr. Astaphan contended that having regard to the word "**bobolists**", and the rest of the words complained of, it is manifest that Dr. Lewis in fact accused Dr. Anthony of committing a dishonest, criminal and/or corrupt act.

37. It appears to me therefore, from looking carefully at paragraph 6 of the Amended Statement of Claim, the law, and Mr. Astaphan's submissions, that "**false"** or "**popular**" innuendos have been unnecessarily pleaded at paragraph 6. Dr. Anthony has not relied on or proven any extrinsic facts beyond or outside of the words of the offending speech. In my view, I ought to consider whether the allegations at paragraph 6 are really implications and inferences that the ordinary man with general knowledge, ordinary knowledge, and experience of world affairs could possibly infer from the words, having regard to the speech as a whole, the context within which the words were published, and the specific accusations made against Dr. Anthony by Dr. Lewis in this speech.

38. In my opinion, the evidence of Dr. Anthony in support of paragraph 6(ii) of his pleadings, that "**bobolist**" in the local vernacular is a term imputing corruption, this only establishes the ordinary usage of the word, and the general knowledge of St. Lucian's and persons living in St. Lucia as to its meaning.

39. In **Lewis vs. Daily Telegraph Ltd**. (No.1) [1963] 2 ALL E.R. 151, it was held that where an extended defamatory meaning of words admittedly libelous in their ordinary meaning was put forward by a plaintiff, the defendant was entitled to a ruling whether the words were capable of bearing that particular extended meaning. This was a case where the Defendants had published statements to the effect that the City of London Fraud Squad were inquiring into the affairs of the R. Co., and that L was the Chairman of the Company. L and the R. Co. brought actions claiming damages for libel alleging that the statements meant and were understood to mean that L and the Company were guilty of, or were suspected by the police to be guilty of fraud.

40. Included in their Statements of Claim were purported innuendos with particulars which contained no extrinsic facts in support of the innuendos, which passed beyond general knowledge. At the trial no evidence was given of extraneous facts in support of the pleaded innuendos.

41. Upon the conclusion of the evidence, Defendants' counsel in the absence of the jury submitted that the innuendos should be withdrawn from the jury. Apparently, the gravamen of the submissions was not limited to arguments that the particulars did not support the pleaded innuendos, or that the innuendos were not proved, but it extended to the contention that the words themselves in the offending passage were incapable of bearing the meanings set out as innuendos in the Plaintiffs' Statements of Claim.

42. The trial judge having considered that the pleading of innuendoes had really been unnecessary, stated that he did not accept the argument that by pleading an innuendo the plaintiff is necessarily alleging affirmatively that the words in their ordinary and natural meaning mean something other than that which is pleaded in the innuendos. The trial judge refrained from definitively ruling on the application, and proceeded with the trial. The Jury awarded substantial damages to the Plaintiffs. The Court of Appeal ordered new trials on several grounds, which included that the trial judge misdirected the jury; and that the damages were excessive.

43. On Appeal to the House of Lords, Lord Hodson L.J. (at page 166) declared – "**As the Court of Appeal found, and I have no doubt that they are right, the particulars did not show, nor was any evidence given of, extraneous facts in support of the innuendo, and accordingly the innuendo should not have been left to the jury. Although the innuendo was not pleaded in the alternative; yet as the Court of Appeal held, in my opinion quite rightly, this did not prevent the plaintiffs seeking to show, if they could, that the natural and ordinary meaning of the words complained of was to the same effect. To hold otherwise and not permit the jury to impute to the ordinary meaning of the words any part of the failed innuendo would, as Holroyd Pearce L.J.** [[1962] 2 ALL E.R 698 at pages 709, 710] **pointed out, have the effect of**

**removing the jury's decision on whether the words are in their ordinary sense a libel into an unreal technical and artificial sphere.**" (My emphasis)

44. A new trial on the ground of misdirection and also on the issue of damages was ordered by the House of Lords.

45. Guided by this declaration of Lord Hodson, I shall assume that the "**false**" innuendos at paragraph 6 of the Amended Statement of Claim are in the category of the natural and ordinary meanings of the offending words pleaded at paragraph 5 of the Amended Statement of Claim. Upon considering the submissions and law, relating to the natural and ordinary meanings of the words, I will be better able to determine whether any part of the "**false**" innuendos can be imputed to the natural and ordinary meaning of the offending speech.

***NATURAL AND ORDINARY MEANING***

45. At paragraph 5 of the Amended Statement of Claim it was pleaded- "**The said words in the natural and ordinary meaning meant and were understood to mean:**

**(a) that the Plaintiff is guilty of taking a bribe;**
**(b) that the Plaintiff is guilty of fraudulently diverting public funds for his personal benefit contrary to law;**
**(c) that the Plaintiff is guilty of corruption;**
**(d) that the Plaintiff is guilty of a serious criminal offence punishable by imprisonment in St. Lucia;**
**(e) that the Plaintiff if guilty of dishonesty;**

**in the discharge of his office as Prime Minister and Minister of Finance of the State of Saint Lucia."**

46. I must also mention here that Dr. Lewis pleaded the meaning that he ascribed to his offending speech. This meaning forms part of his defence that the said words are fair comment upon a matter of public interest made without malice and in good faith.

48. At paragraphs 3 to 6 of his Witness Statement he testified- **"3 … As Political Leader, the intention of a portion of my remarks at the meeting was to advise the public of my and my party's concern that there should be as much transparency and accountability as possible in Government's conduct of public affairs, and particularly in respect of the financial management of the country. On assuming office, Dr. Anthony promised that he would lead this Government with transparency and free of corruption.**
**4. In that context I sought to instruct those present on the context in which, especially in developing countries, conditions of corruption arise, and to show how through lack of strict attention to the requirements of financial**

**and economic management, unscrupulous persons might seek to take advantage of inexperienced or careless Governments…**
**6…I sought at the Micoud meeting to express my concerns about a certain aspect of the Government's management of the financial services industry in Saint Lucia … (i) … I sought to convey that I did not, and do not, myself believe that it was proper for Government to accept a "gift" or monetary contribution from those whom it had contracted to do work. I believed and sought to convey, that regardless of whether Government believed in the propriety of its intention in doing so, such acceptance could give the impression to others of susceptibility to favours … (ii)… I used that metaphorical language to indicate that money, in the words of the economists, "being fungible," placing the donation in the Consolidated Fund without attribution for a specific public purpose was not an indication of good accountability. That is the context in which I used the metaphor "just take the money and put it behind his back and nobody know where it is" to illustrate the placing of the gift in the Consolidated Fund without attribution… (iii)… The language I used was meant to be simple and culturally comprehensible but at the same time never meant to convey any dishonesty on the part of the Prime Minister."**

49. One of the many authorities relied on by Mr. Astaphan S.C was **Learee Carasco (Aka) Rick Wayne vs. Neville Cenac** (Civil Appeal No. 6 of 1994 St. Lucia, (Unreported Judgment) delivered 30th October 1995 by Byron J.A.) The appellant in this case proffered explanations to show that he did not intend to communicate the meaning of the published articles, which the respondent had inferred from them. Byron J.A. (at page 10) observed that these explanations **"…were legally irrelevant to that issue because the intention of the publisher is not material in determining whether the words are defamatory."** Byron J.A relied on the quotations from leading jurists in **Gatley on Libel and Slanders** at page 45, paragraph 89, to emphasize the well-established Common Law rule that in determining the meaning of words in a defamatory statement the intention and knowledge of the publisher are immaterial. In a more recent edition of **Gatley** at para. 3.12 of the 10th edition, it is stated that the common law rule "**… remains the law on this issue, though there are now a number of statutory provisions which will protect from liability, or mitigate the liability of, a defendant who does not know or has no reason to know the defamatory sense which the words bear. What imputation is conveyed by any particular words is to be determined on an objective test, that is, by the meaning in which the ordinary reasonable person would understand them and is not to be determined by what the defendant intended to convey."**

50. Consequently, I accept Mr. Astaphan's submissions that I should ignore Dr. Lewis's detailed self-serving explanations as to what he intended to convey, in determining this issue.

51. I have been reminded by both Counsel for the parties of the other legal requirements for determining the natural and ordinary meanings of the offending speech. There was no end to the citing of the authorities in this case. They have provided a large number of authorities in support of their well-argued submissions covering all of the issues for determination. I ask their forgiveness where I refrain from dealing with all the arguments and authorities.

52. The law also states that I must take into account the words of Dr. Lewis' offending speech as a whole. I am required to construe the words in this speech in their ordinary, natural meaning. They mean what ordinary persons in the society would say they mean, bearing in mind their different temperaments, and outlook, ranging from the unusually suspicious to the unusually naïve. I am to regard ordinary persons as persons between these two extremes, who are not avid for scandal. Though the judicial statements establishing the rules relate to written defamatory publications in most of the authorities, nevertheless the rules are the same for spoken words. Ordinary listeners or hearers are essentially fair-minded, and reasonable. While I may not assume that the ordinary hearers of Dr. Lewis' offending speech would have jumped to hostile conclusions on flimsy evidence, I must take into account that there may be a certain amount of loose thinking from them, and they may not have heard this speech with cautious analytical and critical care. They may have been prone to making implications and drawing inferences of a derogatory nature much more freely than a legally trained person would: (**Halsbury's Laws of England** 4th edition Volume 28, paragraph 45 **Lewis Daily Telegraph Ltd** [1963] 2 ALL E.R 151, **Morgan vs. Odham Press Ltd** (HL) [1971]/WLR1239 at page 1245 Per Lord Reid, **Gatley** (supra) para.3.23).

53. The language may be defamatory on the face of it, either when the defamatory meaning is the only possible meaning, or when it is the only natural and obvious meaning.

54. The natural and ordinary meaning may include implications and inferences which reasonable listeners or hearers guided by their general knowledge, would draw from the words. "**It is immaterial whether the defamatory imputation is conveyed by words of direct assertion or by suggestion, for insinuation may be as defamatory as an explicit statement and even more mischievous."** (**Gatley** (supra) at para. 3.15).

55. Mr. Astaphan S.C. in his closing submissions, referred to the fact that there was no evidence of any general knowledge in Saint Lucia to delimit or extend the meaning of the words. He submitted that the only evidence before the Court was Dr. Lewis' irrelevant assumptions of what Saint Lucia people know. Dr. Lewis under cross examination was asked- "**Did you not think it right to inform citizens that the cheque was paid into the Consolidated Fund and was in the name of Accountant General?"**

Dr. Lewis answered: "**I assume citizens of St. Lucia have understanding I have. I had no obligation to explain to them that which I know of. I do not need to explain to citizens what I do not have to explain to myself."**
Although Dr. Lewis' assumptions are irrelevant, the law allows me to assume that the ordinary hearers of his offending speech, had general knowledge and ordinary knowledge and experience of the affairs in St. Lucia, and worldly affairs. They will be assumed to know the meaning of the words in Dr. Lewis' speech, including any widely known slang expressions, allusive terms, and catch phrases in common current use in Saint Lucia. (**Gatley** (supra) at para.3.24).

56. Since Dr. Anthony is relying on the natural and ordinary meanings of the words, I cannot take into account his evidence as to what "bobolist" means, since no evidence is admissible concerning the natural and ordinary meaning of the words in the offending speech, or the sense in which these words were used: (**Gatley** (supra) para.32.23). Dr. Anthony has to prove no more than that the words were published. He cannot call witnesses to prove what they understood by the words.

57. On the other hand, Dr. Cheltenham Q.C. contended that within the context of the offending speech, a careless listener would not conceive any linkage between the words 'mafia', 'money launderers' and 'bobolist'. The words "**Kenny Anthony just take the money and put it behind his back and nobody knows where it is**" could only mean an indifference to his obligation of accountability to which the administration of the Government was publicly committed. The words "**put behind his back",** simply meant that no indication was given as to its use or disposition, Counsel argued. It was metaphorically colourful language he said, meaning that Dr. Anthony was silent about the use of the money. It could not mean to the ordinary intelligent fair-minded person that Dr. Anthony had stolen the money, since it was properly paid to the Government, in the usual manner, through the Accountant General. To criticize the Minister of Finance for not declaring a purpose for which he intended to use the payment, is not defamatory Counsel argued. The words regarding getting a gift and spending it for school etc. go to raising the issue of transparency and accountability, he contended, and no defamatory remedy can flow from the use of the word 'gift'.

58. It was further submitted by Dr. Cheltenham Q.C. that a political meeting's function is to educate, criticize, entertain, give exaggerated and outrageous views, and make serious commentary. The people present at such meetings are reasonable average persons who are not naïve, and they understand the political game, they know what to regard as serious, and what is frivolous, Mr. Cheltenham said. For those reasons, he contended, you cannot place a literal approach to colourful expressions used at a political meeting.

59. Mr. Cheltenham submitted further, that since the reasonable man is not a scandalmonger, he would know that a cheque made payable to the Accountant General cannot be stolen by Dr. Anthony. So any interpretation that Dr. Anthony stole it is the interpretation of a man avid for scandal and not a reasonable man,

Mr. Cheltenham rationalized. Counsel for Dr. Lewis said that the meanings of the words as pleaded in paragraphs 5 and 6 of the Amended Statement of Claim in the context of the speech were strained, unrealistic, exaggerated and implausible. That Dr. Anthony's interpretations are scandalous and unreasonable since a person does not receive a bribe in the glare of public scrutiny before the press while broadcasting this to everyone. Finally, he contended that what was conveyed in Dr. Lewis's speech was that if there is no probity, only money launderers, bobolists and mafia will be attracted to St. Lucia.

60. Taking into account the above-stated legal principles, it is evident to me that none of the meanings attributed to the speech by Dr. Anthony as natural and ordinary meanings are strained or unlikely interpretations of the speech.

61. It is noticeable that that Dr. Lewis' speech failed to make it clear to all of his listeners that Dr. Anthony's receipt of the money in a public ceremony was palpably legal and not a gift or present, since it was a term of the contract that IFWIC pay US$250,000.00 to the Government of Saint Lucia to commence operations in St. Lucia. Dr. Lewis also failed to inform his audience that the cheque was payable to the Accountant General and had to be deposited in the Consolidated Fund in accordance with the law. Dr. Lewis testified that he was familiar with Section 7 of the Finance (Administration) Act No.3 of 1997 which states-

> **" (1) Subject to the Constitution and except as otherwise provided in the Act, all revenues and other monies raised or received for the purposes of the Government, not being revenue or other monies which are payable by or under any enactment into some other fund established for a specific purpose, shall be paid into and form part of the Consolidated Fund.**
>
> **(2) For the purposes of subsection (1) monies raised or received includes monies received by way of agent, donation, gift or other like method."**

62. As former Prime Minister, Dr. Lewis can be assumed to be also familiar with Section 8 of the said Act and Sections 77 and 78 of the Constitution, which regulates how payments from the Consolidated Fund shall be paid out, and prescribe the purpose for which such payments shall be made.

63. However, Dr. Lewis failed to inform his audience that there was no legal provision, which required Dr. Anthony as Minister of Finance to disclose to the public how he intended to specifically use this money. Though I agree with Dr. Cheltenham Q.C. that Dr. Lewis was under no obligation to tell his audience about the law, the legal requirements and Dr. Anthony's conduct as Minister of Finance are inextricable bound.

64. There is no evidence that the persons who heard the words- "**Kenny Anthony just take the money and put it behind his back and nobody knows where it is**"- understood those words as colourful expressions not to be interpreted literally. Though the words may have been used by Dr. Lewis as a metaphor and colourful expression, I am of the view that in the context in which they were used they could reasonably be interpreted literally by the ordinary fair-minded listeners who heard this speech, as conveying the truth. **"The tendency and effect of the language, not its form is the criterion and a defendant cannot defame and escape the consequences by dexterity of style."(Gatley)** (supra) para.3.16. page 83.

65. Having put myself in the place of the reasonable fair-minded ordinary listener, in my opinion the words speak for themselves. The cumulative effect of the statement has created defamatory imputations of Dr. Anthony. The manner in which the whole offending speech was structured and presented, the use of the words "mafia", "money launderers" and "bobolists" in the context in which these words were used, and the last sentence of the offending speech, convey inferentially all of the meanings pleaded at paragraph 5 of the Amended Statement of Claim. These meanings represent the natural and ordinary meanings of the offending speech.

66. It appears to me also that committing the criminal act of bribery, cannot be attributed to Dr. Anthony as the natural and ordinary meaning of the offending speech. Consequently, only a part of the false innuendo in paragraph 6 of the Amended Statement of Claim can be imputed to the natural and ordinary meaning of the words, namely- **"…that the plaintiff has committed some other fraudulent or dishonest act in connection with a person or persons holding a contract with the Government of Saint Lucia to set up financial business and the payment to the plaintiff of a sum of over …(US$250,000.00)."**

67. I now move on to consider whether the words are defamatory of Dr. Anthony.

## DEFAMATION

68. I have already alluded to the tests to be applied in determining whether the speech is defamatory (see paragraphs 17 to 19 of the Judgment).

69. Applying these tests to the facts in this case, it appears to me that under the circumstances in which Dr. Lewis published his offending speech, a reasonable listener in Saint Lucia would probably have understood it in a defamatory sense.

70. Dr. Anthony was named in the speech and his Government was also referred to. The reasonable man knows that Dr. Anthony is Prime Minister and Minister of Finance in Saint Lucia. The reasonable man would know that Dr. Anthony taking a bribe and fraudulently diverting public funds for his personal benefit are serious criminal offences punishable with imprisonment in Saint Lucia and which qualify

as corruption and dishonesty. The reasonable man would know that if Dr. Anthony is guilty of these 2 criminal offences and corruption and dishonesty, then he is not fit for public office.

71. This would certainly injure Dr. Anthony's reputation and bring him into doubt as Prime Minister and Minister of Finance in Saint Lucia. It also tends to lower him in the estimation of right thinking members of society generally, and expose Dr. Anthony to hatred, contempt, odium and public scandal.

72. I therefore find that the words in this pleaded offending speech were defamatory of Dr. Anthony personally, and disparaged him in his office as Prime Minister and Minister of Finance.

73. I shall now move on to consider the defence pleaded by Dr. Lewis. It is convenient to deal with the issues stated at paragraph 24 (ii) and (iii) of this judgment together.

***DEFENCE OF FAIR COMMENT***

74. It is necessary to reproduce paragraph 7 of the re-amended defence below

**"7. The said words set out in paragraph 4 [of the Amended Statement of Claim] are fair comment upon a matter of public interest made without malice and in good faith namely:-**

**PARTICULARS OF FACT**

1) **The claimant was Prime Minister and Minister of Finance in that latter capacity his responsibility extended to the manner or purpose for which the funds would be spent.**
2) **The Company making the payment was in a relationship with the Government of Saint Lucia to which it provided a service.**
3) **The cheque was made out to the Accountant General and was handed over to the claimant in a public ceremony.**
4) **The payment of US$250,000.00 was a public matter and a matter of public concern.**
5) **No public statement was made by the claimant either in his capacity as Prime Minister or as Minister of Finance about the use to which the money was to be put.**
6) **The defendant was a political leader of the United Workers Party and as such was entitled to make comments on the receipt of the money and the use to which it was put.**

## SUBJECT MATTER OF THE DEFENDANT'S COMMENTS

**The receipt by the claimant on behalf of the Government of US$250,000.00 to be put to the Consolidated Fund and for which no designated purpose was made known and from a company which was in a relationship with the Government is the subject matter of the comment which the defendant alleges is a matter of public interest and public concern.**

## MEANING WHICH DEFENDANT SEEKS TO ESTABLISH

**The meaning which the defendant seeks to establish is that the objectives of transparency and accountability to which the Government was committed were not met when the money was received by Government for the public treasury and no purpose or use to which it would be put was indicated. And this is what was meant by the words beginning with "they have not told us what they did with that money. Kenny Anthony just take the money and put it behind his back and nobody knows where it is as set out at paragraph 4 of the Statement of Claim."**

75. The law permits Dr. Lewis and every member of the public, to comment fairly, freely, fearlessly, and even harshly on matters of public interest, which may involve strong criticism of the public acts of public people, provided such comments are made without malice, upon facts which truly exist: (**Gatley** (supra) paras. 12.1 to 12.10).

76. A comment is a statement of opinion on facts, which are true, and the burden of proof is on Dr. Lewis to prove that the comments were fair. For this defence, Dr. Anthony must prove that Dr. Lewis is not protected by his plea.

77. Learned Counsel, Mr. Astaphan S.C. strenuously argued that the defamatory statements complained of are all statements of fact and not comment. Mr. Astaphan also submitted that Dr. Lewis had failed to plead any fact to justify the defamatory statements, nor has he identified which of the words in his defamatory speech are alleged statements of fact and which of the words are statements of opinion. This failure, Mr. Astaphan contended is in breach of the well-established principles of law pronounced in the cases he referred to. This failure also violates PARTS 69.3 and 10.5 of the CPR 2000, Mr. Astaphan said. Mr. Astaphan contended further that Dr. Lewis would therefore have to prove that the IFWIC is a "mafia" and "money launderer" investor, and a "bobolist", that the contract was illegal, that the cheque was in the name of Dr. Anthony, and that the money was not placed in the Consolidated Fund.

78. Since all of these things cannot be proven by Dr. Lewis, Mr. Astaphan argued, the particulars of facts should be rejected as irrelevant to the attack on Dr. Anthony, because only comment is protected by the law, and not false statements of fact.

79. The following cases were relied on by Mr. Astaphan in support of his contention: **Learie Carasco (aka) Rick Wayne vs. Neville Cenac** (supra); **Reynolds vs. Times Newspaper Ltd** [2000] E.M.L.R. Issue (H.L.) delivered 28th October 1999; **Tse Wai Chun Paul vs. Albert Chang** [2001] E.M.L.R. 31, 777.

80. In **Learie Carasco**, Byron J.A. at page 19 of his judgment in reviewing the law on fair comment stated: **"To succeed in his defence of fair comment the appellant had to show: (1) that the words are comment and not statement of facts. Since the ancient case of Campbell vs. Spottis Woode [1863] 3B and S749 it has been settled that the defence of fair comment does not extend to misstatements of fact, however bona fide; (2) that there is a basis of fact for the comment contained or referred to in the matter complained of. The question the court must ask was expressed in Kemsley vs. Foot [1952] A.C.345 at 356 by Lord Porter:**

> **"The question, therefore, in all cases is whether there is a sufficient substratum of fact stated or indicated in the words which are the subject matter of the action";**

**(3) that the comment is fair; (4) that the comment is on a matter of public interest."**

81. It cannot be doubted that the offending speech of Dr. Lewis was on a matter of public interest, so I will move on to consider the matters in issue

82. In **Tse Wai Chun Paul,** the Court of Final Appeal, of Hong Kong held that among the five-fold ingredients of the defence of fair comment were – "**…(2) The comment must be recognizable as comment, as distinct from an imputation of fact. (3) The comment must be based on facts which were true or protected by privilege London Artists Ltd vs. Litter …[[1969] 2Q.B. 375] applied. (4) The comment must explicitly or implicitly indicate, at least in general terms, what were the facts on which the comment was being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded (5) The comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views. Furthermore, it must be germane to the subject matter criticized. But a critic need not be mealy-mouthed in denouncing what he disagreed with, he was entitled to dip his pen in gall for the purposes of legitimate criticism. Turner vs. Metro-Goldwyn-Mayer Pictures Ltd [1950] 1All E.R. 449…applied".**

83. In **Reynolds vs. Times Newspapers** (supra) at page 8 of the decision of Lord Nicholls Birkenhead, he observed **–"…Traditionally one of the ingredients of this defence is that the comment must be fair, fairness being judged by the objective standard of whether any fair-minded person could honestly express the opinion in question. Judges have emphasized the latitude to be applied in interpreting this standard. So much so, that the time has come to recognize**

**that in this context the epithet "fair" is now meaningless and misleading. Comment must be relevant to the facts to which it is addressed. It cannot be used as a cloak for mere invective. But the basis of our public life is that the crank, the enthusiast, may say what he honestly thinks as much as the reasonable person who sits on the jury. The true test is whether the opinion, however exaggerated, obstinate or prejudiced, was honestly held by the person expressing it: see Diplock J. in Silkin vs. Beauerbrook Newspaper Ltd. [1958] 1W.L.R. 743 at 747. It is important to keep in mind that this defence is concerned with the protection of comment, not imputations of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere. Further to be within this defence the comment must be recognizable as comment, as distinct from imputation of fact. The comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made: See the discussion in Duncan and Neil on Defamation (2nd ed., 1983), pages 58-62".** (My emphasis).

84. Mr. Astaphan further criticized the particulars of fact in the defence of fair comment as being wholly inadequate and creating a case after the fact and after the words complained of. He described these particulars of facts as crafted by Dr. Lewis to fit his case. Moreover, Mr. Astaphan argued, the law requires Dr. Lewis to prove his particulars of fact to be true.

85. Dr. Cheltenham Q.C. in countering these arguments, submitted that the true facts need not be stated at the time of the expression of the opinion. They may be implied and specified in particulars in the defence. Dr. Lewis, he argued, could make reference to the facts impliedly when making his speech. Dr. Cheltenham cited the following authorities in pressing the case for Dr. Lewis: **Kemsley vs. Foot** [1952] A.C. 345, 1 All E.R. 501; **Vander Zalm vs. Times Publishers, Berman Mc Lintock and Underhill** [1980] 4 WWR 259 (British Columbia C.A.); **London Artists Ltd vs Littler** [1969] 2All E.R. 193; **O'Brian vs Marquis of Salisbury** (1889) 6 T.L.R. 133; **Information Control vs. Genesis One Computer Corp.** 61 Fed.Rep.2d series (1980), 781 at page 783 (US. Court of Appeal Ninth Circuit); **Defamation Law, Procedure and Practice**. (2nd ed) 2001 by David Price page 273 para 28-14.

86. I shall now consider the first case **Kemsley vs. Foot** (supra) which is obviously the leading authority for the defence of fair comment, in light of the questioned pleadings.

87. Lord Porter considered 2 types of circumstances where the plea of fair comment can operate -

(1) in cases where the facts are fully set out in the alleged defamatory publication with the comments; and

(2) in cases where there is a sufficient substratum of fact stated or indicated in the words complained of along with the comments.

This case was concerned with an alleged libel contained in an issue of the "Tribune" dated 10th March 1950 and it is enough to set out its opening paragraph which reads-

> "**Lower than Kemsley By Michael Foot**
> **The prize for the foulest piece of journalism perpetrated in this country for many a long year, and that certainly is saying something, must go to Mr. Herbert Gunn, editor of the 'Evening Standard' and all those associated with him in the publication of an attack on John Strachey last week."**

88. Having first considered what the language of the alleged libel should be held to assert, Lord Porter concluded that: "**It may in my opinion be construed as containing an inference that the Kemsley Press is of a low and undesirable quality and that Lord Kemsley was responsible for its tone."**(at page 504 para D.)

89. The Court had to determine whether the defence of fair comment was available in a case where the facts or some of them, on which the comment was made were not contained or specifically referred to in the article.

90. Lord Porter reviewed that law, and it is important to set out in detail what Lord Porter observed since it is very pertinent to the instant case. Lord Porter declared-

> "**The question therefore, in all cases is whether there is a sufficient substratum of fact stated or indicated in the words which are the subject-matter of the action, and I find my view well expressed in the remarks contained in ODGERS ON LIBEL AND SLANDER (5th ed., 1911) at p.203:**
>
> > **"Sometimes, however, it is difficult to distinguish an allegation of fact from an expression of opinion. It often depends on what is stated in the rest of the article. If the defendant accurately states what some public man has really done, and then asserts that 'such conduct is disgraceful,' this is merely the expression of his opinion, his comment on the plaintiff's conduct. So, if without setting it out, he identifies the conduct on which he comments by a clear reference. In either case, the defendant enables his readers to judge for themselves how far his opinion is well founded. But if he asserts that the plaintiff has been guilty of disgraceful conduct, and does not state what the conduct was, this is an allegation of fact for which there is no defence but privilege or truth. The same considerations apply where a defendant has drawn from certain facts an inference**

> **derogatory to the plaintiff. If he states that bare inference without the facts on which it is based, such inference will be treated as an allegation of fact. But if he sets out the facts correctly, and then gives his inference, stating it as his inference from those facts, such inference will as a rule, be deemed a comment. But even in this case the writer [speaker] must be careful to state the inference as an inference and not to assert it as a new and independent fact; otherwise, his inference will become something more than a comment, and he may be driven to justify it as an allegation of fact."**
>
> **But the question whether an inference is a bare inference in this sense must depend on all the circumstances. Indeed it was ultimately admitted on behalf of the appellant that the facts necessary to justify comment might be implied from the terms of the impugned article, and, therefore the inquiry ceases to be: Can the defendant point to definite assertions of fact in the alleged libel on which the comment is made? and becomes : Is there a subject-matter indicated with sufficient clarity to justify comment made? and whether the comment actually made is such as an honest though prejudiced man might make."** (at page 505 paras. B to G) (My emphasis)

91. Having asked himself the question – Is there in this **Kemsley vs. Foot** case sufficient subject-matter on which to comment?- he answered (at page 506 para.D): **"In the present case, for instance, the substratum of fact on which comment is based is that Lord Kemsley is the active proprietor of and responsible for the Kemsley Press. The criticism is that the press is a low one."**

92. Lord Porter also stated at page 506 paras. B to C: "**In a case where the facts are fully set out in the alleged libel, each fact must be justified and if the defendant fails to justify one, even if it be comparatively unimportant, he fails in his defence. Does the same principle apply where the facts are found, not in the alleged libel, but in the particulars declared in the course of the action? In my opinion, it does not. Where the facts are set out in the alleged libel, those to whom it is published can read them and may regard them as facts derogatory of the plaintiff, but where, as here they are contained only in particulars and are not published to the world at large, they are not the subject-matter of the comment, but facts alleged to justify that comment."**

93. After Lord Porter had identified the substratum of fact (see paragraph 91 above), he continued- "**As I hold, any facts sufficient to justify that statement would entitle the respondents to succeed on a plea of fair comment. Twenty facts might be given in the particulars and only one justified, yet if that one fact was sufficient to support the comment so as to make it fair, a failure to prove the other nineteen would not of necessity defeat the defendant's plea. The protection of the defendant in such a case would be as it often is in cases of**

**the like kind, the effect which an allegation of a number of facts which cannot be substantiated would have on the minds of the jury who would be unlikely to believe that the comment was made on the one fact or was honestly founded on it, and accordingly would find it unfair**

94. Lord Porter also distinguished the observations of Fletcher Moulton L.J. in **Hunt vs. Star Newspaper Co. Ltd** [1908] 2 K B.309. At page 319 of his judgment Fletcher Moulton L.J. had observed that "**…comment in order to be justifiable as fair comment must appear as comment and must not be so mixed up with the facts that the reader [or hearer] cannot distinguish between what is report and what is comment … But if fact and comment be intermingled so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that the injurious statements are based on adequate grounds known to the writer though not necessarily set out by him …"**

95. Lord Porter putting Moulton L.J.'s observations in its true context and perspective stated that Fletcher Moulton L.J "**…was seeking to distinguish facts from comment, and in effect saying that the facts alleged must be such as to warrant an honest man's making the comment complained of. He had not to consider whether the facts were all set out and the only question which the court had to consider was whether, on facts assumed to be truly stated, the comment was honestly made …"** (at page 507).

96. In this same case, Lord Oakley at page 508 observed: "**The forms in which a comment on a matter of public importance may be framed are almost infinitely various, and in my opinion, it is unnecessary that all the facts on which the comment is based should be stated in the libel [or slander] in order to admit the defence of fair comment. It is not … a matter of importance that the reader should be able to see [or listener hear] exactly the grounds of comments. It is sufficient if the subject which ex hypothesis of public importance is sufficiently and not incorrectly or untruthfully stated. A comment based on facts untruly stated cannot be fair. What is meant in cases in which it has been said that comment to be fair must be on facts truly stated is, I think, that the facts, so far as they are stated in the libel [or slander], must not be untruly stated."** (My emphasis). Lord Tucker also stated (at page 508) that "**… where the facts relied on to justify the comment are contained only in particulars, it is not incumbent on the defendant to prove the truth of every fact so stated in order to establish his plea of fair comment, but he must establish sufficient facts to support the comment to the satisfaction of the jury."**

97. Article 989L of The Civil Code Chap.242 mirrors Section 6 of the Defamation Act 1952(U.K), and modifies the reasoning and observations of Lord Porter in **Kemsley vs. Foot** (supra). It provides- "**In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only**

**that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as proved."**

98. Since these classic statements of the law in **Kemsley vs. Foot** (supra), the language used in the judicial statements explaining this decision, in the many authorities referred to by both Mr. Astaphan and Dr. Cheltenham, though varying in style, all indicate an acceptance of the 2 sets of circumstances and forms in which the defence of fair comment may operate.

99. I understand the law to be therefore, as follows on the authority of **Kemsley vs. Foot** (supra) -

1-A Where the facts necessary to justify comment might be implied from the terms of the alleged defamatory publication, a judge may find that a substratum of fact is indicated in the words which are the subject-matter of the action.

1-B In such a case a defendant may plead that the defamatory publication is fair comment, and indicate the subject matter of the comment with sufficient clarity to justify the comment being made.

1-C If the defendant is relying on any facts outside of the implied terms of the alleged defamatory publication, as the basis for his comment, he must give the particulars of the facts on which the comment is based, and plead that the words are fair comment made in good faith upon a matter of public interest. (See also **Gatley** (supra) paras. 27.12 to 27.15)

1-D Such particulars of facts which are facts not expressly mentioned in the defamatory publications are not the subject-matter of the comment but facts alleged to justify that comment.

1-E Where a defendant is able to prove only one of such facts in his particulars of facts, if that fact proven to be true is sufficient to justify the defamatory publication, this would entitle the defendant to succeed on his plea.

1-F Proving the truthfulness of only one of many facts in such particulars of facts may cause the tribunal of fact to conclude that it is unlikely that the comment was made on the one fact or was honestly founded on it, and accordingly find the comments unfair.

1-G It appears to me that PART 69.3 of the CPR 2000 cannot apply in the circumstances mentioned in paragraphs 1-A to 1-D because the form of the defendant's plea is not within the terms of that rule: However, the (U.K.) PD 53 dealing with Defamatory Claims, provides: "**2.6 Where a**

**defendant alleges that the words complained of are fair comment on a matter of public interest he must:**

**(1) specify the defamatory meaning he seeks to defend as fair comment on a matter of public interest; and**

**(2) give details of the matters on which he relies in support of that allegation" (Blackstone's Civil Practice 2002 page 1813).**

2-A A judge is likely to find sufficient substratum of fact where the facts are fully set out in the alleged defamatory publication or referred to, along with the alleged comment.

2-B Sufficient substratum of fact is also likely to be found where the alleged defamatory publication consists partly of allegations of fact and partly of expressions of opinion.

2-C In the case of 2-A and 2-B, the defendant is required to comply with PART 69.3 of the CPR 2000.

2-D PART 69.3 of the CPR states that "**A defendant … who alleges that-**

**(a) in so far as the words complained of consist of statement of facts, they are true in substance and in fact; and**

**(b) in so far as they consist of expression of opinion, they are fair comment on a matter of public interest; or**

**(c) pleads to like effect;**

**must give particulars stating-**

**(i) which of the words complained of are alleged to be statements of fact; and**

**(ii) the facts and matters relied on in support of the allegation that the words are true."**

2-E The defendant need not prove the truthfulness of all of the facts alleged or referred to in the defamatory publication. It is enough if he proves the truthfulness of such of the facts which can sufficiently justify the defamatory publications as comment. Where he does so, he will be entitled to succeed if the expression of opinion is fair comment: **(Article 989 L of The Civil Code Chap. 242).**

3-A In any event, where a defendant pleads that the alleged defamatory publication is fair comment, regardless of whether the defence pleaded is framed as mentioned in 1-B to 1-D or 2-C, PART 10.5 of the CPR 2000 must be complied with (See also in **Blackstones**

**Civil Practice 2002** at page 1813 PD 53 which supplements CPR PART 53 (U.K.) dealing with Defamation Claims, at paras. 2.6 to 2.9). The Court must in any event determine whether there is sufficient substratum of fact stated or indicated in the words which are the subject matter of the action.

3-B Where it is difficult to distinguish an allegation of fact from an expression of opinion, the guidelines referred to by Lord Porter in **Kemsley vs. Foot** (supra) in ODGERS ON LIBEL AND SLANDER (5th ed. 1911) at page 203 (See paragraph 90 of this Judgment) may be useful.

3-C The defendant can only succeed in the defence of fair comment where the criteria referred to by Byron J.A. in the **Learie Carasco** case (supra), (see paragraph 80 of this Judgment) are satisfied.

100. Applying this law to the present pleadings and submissions of Counsel for the parties, I agree with Queen's Counsel Dr. Cheltenham. He submitted that Senior Counsel Mr. Astaphan's submissions, that extrinsic evidence cannot be used to judge the meaning of the words complained of, and that the facts and comments in the defamatory publication must be distinguished and pleaded separately do not reflect fully the law on the matter. In my opinion the pleadings in paragraph 7 of the Amended defence are not incurably bad. I shall not accede to Mr. Astaphan's submissions that I should prevent Dr. Lewis from relying on it. It is evident that Dr. Lewis is battling, using the format of the defence mentioned at 1-A to 1-D in paragraph 99 of this Judgment.

101. It is not my function to comment on the strategy employed by Dr. Lewis' Counsel in presenting this defence. Dr Lewis is entitled to plan and select the basis on which he will defend his case. My only function for now is to consider the effect of the strategy. I shall therefore proceed to consider this defence on its merits.

102. Dr. Cheltenham developed his submissions by contending, that since the facts in the particulars and the law were already before the people, the indirect factual basis was before the listeners. For this reason, he argued, Dr. Lewis could make the comments. His submission that comments may have the appearance of facts though they are statements of conclusions, is not without judicial approval. The case **O'Brien vs. Marquis Salisbury** (1889) 6T.L.R.133 cited by Dr. Cheltenham provides a good authority for this submission. In order to appreciate the context within which the submission can prevail upon a court, it is necessary to state the facts.

103. The plaintiff was a member of the Natural League in Ireland which came into existence after the Land League was dissolved. The plaintiff's speech at a meeting in Tiperary concerning land-grabbers was the subject of comments by the defendant to defendant's political supporters. Defendant had referred to the

plaintiff and the plaintiff's speech in words which the plaintiff complained of as imputing to the plaintiff that he had "**wickedly incited those who heard him to rob and murder the men who took Unlet farms, and to shoot and ill-treat their cattle and devastate their farms."**

104. The defense set up by the defendant was that the words spoken were true in substance and in fact, and that at all events, they were uttered in the exercise of the right of free comment and discussion on matters of public nature, and especially as fair and bona fide comment on the speech of the plaintiff on the occasion alluded to.

105. During the trial the defendant led evidence tending to explain his language, which was legitimate for the purpose of showing that what he alleged were comments, were really comments and justified. Some of this evidence showed that it was notoriously known that upon the commencement of Land League meetings after 1879/1880 in several counties outside of Tiperary, trouble began there. Land-grabbers then became the objects of crimes involving murder, wounding, maiming and killing of cattle, shootings, and destruction of their houses. They were subjected to danger and outrage. There was no evidence that this had happened in Tiperary after the plaintiff's speech, though he was convicted for inciting to boycott persons desirous of taking farms from which others had been evicted.

106. On appeal, the admissibility of such evidence was one of the issues before the court. The Judge Mr. Justice Field, in delivering his judgment (at page 137), having decided that the evidence led by the defendant was admissible, observed- "**If he had not been permitted to prove those facts they might have been taken as non-existent, and his comments therefore baseless. It seems to me … that comment may sometimes consist in the statement of a fact, and may be held to be a comment if the fact so stated appears to be a deduction or conclusion, come to by the speaker from other facts stated or referred to by him, or in the common knowledge of the person speaking and those to whom the words are addressed and from which his conclusions may be reasonably inferred. If a statement in words of a fact stands by itself naked, without reference, either expressed or understood, to other antecedent or surrounding circumstances notorious to the speaker and to those to whom the words are addressed, there would be little, if any, room for the inference that it was understood otherwise than as a bare statement of fact, and then, if untrue there would be no answer to the action; but if although stated as a fact, it is preceded or accompanied by such other facts, and it can be reasonably based upon them, the words may be reasonably regarded as comment, and comment only, and, if honest and fair, excusable; and whether it is to be regarded as fact on comment is a question for the jury to be determined by them upon all the circumstances of the case."**

107 Relying on this authority, Dr. Cheltenham argued that the defamatory publication of Dr. Lewis was a comment having the appearance of facts though the words are statements of conclusions. He argued that the statement that Dr. Anthony had put the gift behind his back, is a critique, an observation, an opinion, deduction, conclusion, a criticism. This was a deduction to be seen in the context of the words that preceded it. He also commended the approach adopted by American Courts in determining whether an alleged libel is a comment or fact. I consider it sufficient to state that I have taken into account the factors mentioned by District Judge Muecke in **Information Control vs. Genesis One Computer Corp.** (supra).

108. Applying the previously considered law to the pleadings, evidence and submissions of both Counsel for the parties, I find that the words in this defamatory speech do not consist only of comments. There is sufficient substratum of fact indicated with clarity in it.

109. These words also contain statements of facts which are not deductions or conclusions arrived at by Dr. Lewis despite Dr. Lewis' evidence.

110. The alleged facts in my opinion are-

(1) "The government of his country gave contracts to those people to set up financial business …"

(2) "…the people are handing over $250,000.00 to them …"

(3) "They have not told as what side they put the money."

(4) "Kenny Anthony just take the money and put it behind his back and nobody knows where it is."

111. The rest of this defamatory speech are expressions of Dr. Lewis' opinion in my view. The alleged facts have not been touched by Dr. Lewis' plea.

112. I regard alleged fact (4) as a bare statement of fact, which has defamatory sting. I have already determined the ordinary and natural meaning of those words.

113. Even if these words could be construed to be an inference drawn from the fact that Dr. Anthony did not disclose the designated use to which the money would have been put, this inference is not only derogatory of Dr. Anthony, but it has been asserted as a new and independent fact in my view. The law permits the drawing of inferences but it does not permit the fabrication of premises.

114. If I was to view it as a fact which is a deduction or conclusion made by Dr. Lewis from the facts stated in his particulars of facts, I find that it is not preceded or accompanied by any pleaded fact that Dr. Anthony and his Government had committed themselves to transparency and accountability. This was pleaded only

as part of the meaning by Dr. Lewis. The facts stated in the Particulars of facts, and other facts stated in the speech, are not capable of reasonably founding a deduction or conclusion that Dr. Anthony had taken the money and put it behind his back and nobody knows where it is.

115. There is no evidence from which I can reasonably infer that Dr. Lewis' listeners had common knowledge of the terms of the contract with IFWIC, the provisions in Section 7 of The Finance ( Administration) Act No.3 of 1997, Sections 77 and 78 of The Constitution, and the fact that the cheque was payable to the Accountant General. The fact that Dr. Lewis found it necessary to be warning his listeners about what is happening in the financial services business propels the conclusion that his listeners had no common knowledge about what was happening.

116. Dr. Lewis has failed to establish the truthfulness of his alleged statement of fact (4) alluded to at paragraph 110 above. He has not justified this allegation of fact, so this defence cannot be sustained.

117. In the event I am wrong, I also find that even if this defamatory speech could be regarded as comment, the comment imputes corrupt and dishonourable motives to Dr. Anthony which are not reasonably warranted by any of the facts in his Particulars of facts. In my view a fair-minded man with knowledge of the facts and law that Dr. Lewis had, would know that the law did not require Dr. Anthony to explain what use the money was to be put to. Such a fair minded man would also know that there is distinction between imputing corrupt and dishonourable motives to Dr. Anthony where he broke the law, as distinct from imputing such motives where he was alleged only to be in breach of his party's manifesto and cannons of good governance.

118. In such circumstances, even if his defamatory speech was a comment, the law would not permit Dr. Lewis to succeed on this plea, since his honest belief is not sufficient.

***QUALIFIED PRIVILEGE***

119. "**The foundation of an action of defamation is malice. If words are used which are defamatory and untrue the law implies malice. That presumption is rebutted if the occasion when the words were used is privileged.":** (Per Lord Hope in **Reynolds vs. Times Newspaper Ltd.** [2000] EMLR, Issue 1 at page 52.

120. "**There are occasions when the person to whom a defamatory statement is made has a special interest in learning the honestly held views of another person, even if those views are defamatory of someone else and cannot be proved to be true. When the interest is of sufficient importance to out-weigh**

**the need to protect reputation, the occasion is regarded as privileged.":** (Per Lord Nicholas of Birkenheed in **Reynolds** (supra) at page 9).

121. At paragraphs 8 and 9 of his Re-amended Defence, Dr. Lewis has pleaded- "**Further and in the alternative the occasion of the publication at the meeting held on 20th February, 2002 was an occasion of qualified privilege.**

**PARTICULARS**

**(a) The Defendant as admitted is the Political Leader of the United Workers Party who was addressing the members of the party at a meeting communication of which they had some legitimate interest in knowing and the defendant a corresponding duty to inform them of the matters pertaining to the proper administration of the country.**

**(b) In the premises the defendant was under a legal and/or moral duty to utter the said words which is only admitted as to the gist of it but not the actual words and the said persons present at that meeting had a duty and/or interest to hear them."**

122. At the commencement of the trial Counsel for Dr. Lewis agreed that Dr. Lewis had published the actual words pleaded at paragraph 4 of the Amended Statement of Claim.

123. For the occasion of the publication to attract qualified privilege, the defamatory words must be fairly and honestly made by the speaker. In **Toogood vs. Sprying** [1824-34] All E.R. Rep. 735, the often quoted passage from the Judgment of Park B. (at page 737 to 738 states – **"In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another (within the well known limits as to verbal slander), and the law considers such publication as malicious unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases the occasion prevents the inference of malice which the law draws from unauthorized communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the rights to make them within any narrow limits."** (My emphasis).

124. Implicit therefore in Dr. Lewis' plea, is an acceptance that he made the defamatory speech, believing that what he was saying was true at the meeting on the 20th February 2002 which was an occasion of qualified privilege. However Dr. Lewis' Counsel has sustained his challenge to the ordinary meaning of the

words for the purposes of this defence. He has not accepted the meaning ascribed to it by this court. Dr. Cheltenham did not accept that it meant that the Prime Minister took a bribe or stole money. I therefore must resolve this issue before proceeding further.

125. In the Case **Bonnick vs. Morris and Others** [2003] 1A.C.300 (P.C.)
Lord Nicholls of Birkenhead in determining the preliminary points presented regarding the defence of qualified privilege, considered the "single meaning" rule adopted in the law of defamation: The text of his observations is worth reproducing- "**The single meaning rule adopted in the law of defamation is in one sense highly artificial, given the range of meanings the impugned words sometimes bear: see the familiar exposition by Diplock L.J in Slim vs. Daily Telegraph Ltd [1968] 2QB. 157, 171-172. The law attributes to the words only one meaning, although different readers are likely to read the words in different senses. In that respect the rule is artificial. Nevertheless, given the ambiguity of language, the rule does represent a fair and workable method of deciding whether the words under consideration should be treated as defamatory. To determine liability by reference to the meaning an ordinary reader would give the words is unexceptionable. At first it might seem appropriate to apply the same principle when Reynolds privilege affords a defence. This might appear to have the merit of consistency. But that would be to apply the "single meaning" principle for a purpose for which it was not designed and for which it was not suitable. It is one matter to apply this principle when deciding whether an article should be regarded as defamatory. Then the question being considered is one of meaning. It would be an altogether different matter to apply the principle when deciding whether a journalist or newspaper acted responsibly. Then the question being considered is one of conduct. Stated shortly, the Reynolds privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals. Maintenance of this standard is in the public interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for privilege. If they can have the benefit of the privilege journalists must exercise due professional skill and care … The court must have regard to practical realities … it would be to introduce unnecessary and undesirable legalism and rigidity if this objective standard, of responsible journalism, had to be applied in all cases exclusively by reference to the "single meaning" of the words. Rather a journalist should not be penalized for making a wrong decision on a question of meaning on which different people might reasonably take different views … If the words are ambiguous to such an extent that they may readily convey a different meaning to an ordinary reasonable reader, a court may properly take this other meaning into account when considering whether Reynolds privilege is available as a defence. In doing so, the court will attribute to this feature of the case**

**whatever weight it considers appropriate in all the circumstances. This should not be pressed too far. When questions of defamation may arise ambiguity is best avoided as much as possible. It should not be a screen behind which a journalist is "willing to wound, and yet afraid to strike." In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give to his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning of the article in question. Questions of degree arise here. The more obvious the defamatory meaning, the less weight will a court attach to other possible meaning when considering a responsible journalist in the circumstances."**

126. Having considered this applicable law, which I hold applies to cases of slander, I do not believe that the words in Dr. Lewis' defamatory speech are ambiguous to such an extent, that they may readily convey a different meaning to an ordinary reasonable reader, other than the meanings I have previously accepted as the natural and ordinary meanings of the words.

127. A close look at the pleadings, discloses that sufficient Particulars of facts have not been pleaded as required by the law. PART 10.7 (1) of the CPR 2000 states that the defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the Court gives him permission. There has been no explanation given for the omission to bring Dr. Lewis under PART 10.7 (3) of the CPR 2000.

128. Mr. Astaphan submitted that this plea is still born, since neither the plea nor the evidence satisfies the litmus test set out by the House of Lords in **Reynolds** (supra). However, at this stage I shall determine the matter on its merits. I will assess whether the defamatory publication should be protected in the public interest in the absence of malice.

129. Dr. Cheltenham contended that the issue Dr. Lewis sought to address in his defamatory speech was a public issue relating to how funds should be spent. This, he said would avail Dr. Lewis of this defence since he had a moral duty to speak to people in Micoud concerning the public expenditure of funds. The people in turn had a corresponding duty to receive this information. This submission sought to address what the law regards as the "duty-interest test" , since the success of the claim to privilege will depend on whether "the duty-interest test" is passed.

130. In **Reynolds** case (supra) the House of Lords considered what requirements should be imposed in respect of qualified privilege within the context of a political speech. It was held that the defence of qualified privilege was available where (1) the publisher was under a legal, moral or social duty to those to whom the material was published (which could be the general public) to publish the

material in question and (2) those to whom the material was published had an interest to receive that material ("the duty-interest test").

131. It was further held that the "duty-interest test" was to be applied, having regard to all the relevant circumstances such as (1) the seriousness of the allegation; (2) the nature of the information and the extent to which the subject-matter was a matter of public concern; (3) the source of the information; (4) the steps taken to verify the information; (5) the status of the information; (6) the urgency of the matter; (7) whether comment was sought from the claimant; (8) whether the article contained the gist of the claimant's side of the story; (9) the tone of the article; (10) the circumstances of the publication, including its timing.

132. Lord Nicholls at page 22 of the Judgment concluded- "**Depending on the circumstance, the matter to be taken into account include the following. The comments are illustrative only.**

1. **The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.**
2. **The nature of the information, and the extent to which the subject-matter is a matter of public concern.**
3. **The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.**
4. **The steps taken to verify the information.**
5. **The status of the information. The allegation may have already been the subject of an investigation which commands respect.**
6. **The urgency of the matter. News is often a perishable commodity.**
7. **Whether comment was sought from the claimant. He may have information others do not posses or have not disclosed. An approach to the claimant will not always be necessary.**
8. **Whether the article contained the gist of the claimant's side of the story.**
9. **The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.**
10. **The circumstances of the publication, including the timing.**

**The list is not exhaustive. The weight to be given to these and any other factors will vary from case to case."**

133. It has been further held in **Loutchansky vs. Times Newspapers Ltd.** [2001] EWCA. Civ.536.[2001] EMLA 26 (Issue 4), 685 – that the legal duty of the defendant to publish the defamatory statements had to exist at the time of publication. The **Reynolds** factors all were to be considered objectively in the light of the information known to the publisher at the time of publication. His decision to publish could neither be judged nor justified by reference to facts of which he was then unaware. It was also held that "**To talk of a public right to**

**know, without more, was facile and misleading. The public had no right to know untrue defamatory matter about which a newspaper made no sufficient inquiry before deciding to publish it …"** I am of the view that these factors apply to cases of slander also.

134. Turning now to consider the matters identified by Lord Nicholls, which are stated at paragraph 132 above, all of the submissions of Learned Senior Counsel Mr. Astaphan relating to these matters find favour with me.

135. The false allegations of criminality, corruption and dishonesty thrown at Dr. Anthony are extremely serious and damaging to the reputation of Dr. Anthony as Prime Minister and Minister of Finance. They were baseless allegations and impossible for Dr. Lewis to substantiate. Dr. Lewis himself had no honest belief in the truthfulness of his defamatory speech. He testified he did not see any reason to write Dr. Anthony on the IFWIC or the Accountant General and request information about the cheque because he knew the procedure involved and he expected that the cheque would be in the appropriate place. He testified he saw nothing wrong or dishonest or corrupt in the Government demanding payment as part of the Agreement to establish financial services. Nowhere in his pleadings has he mentioned Dr. Anthony's canons of Transparency and Manifesto. The receipt of this cheque was not a public issue in my view, although Dr. Lewis sought to make it a public issue.

136. The authorities are legion which state that there is no public interest in , and no duty to publish or broadcast unverified and uninvestigated unsubstantiated charges of criminality generally or specifically to the public: (**Purcell vs. Sowler** (1877) 2L.R.CP.2152 at 215; **Abrahams vs. The Cleaner Co. Ltd. and Dudley Stokes**: C.S. No 98 of 1982 (Jamaica) at page 16 to 18; **Reynolds vs. Times Newspaper Ltd.**(supra) at page 53; **Blackshaw vs. Lord** [1983] 3WLR283 at page 301 para. E.

137. Dr. Lewis must show that the publication was in the public interest, and he does not do this by merely showing that the subject matter was of public interest: (**Reynolds** (supra) at para. 64). Consequently Dr. Lewis had no moral or legal duty to publish this defamatory speech about Dr. Anthony to the public. Neither did his audience have any legitimate interest in receiving the defamatory information about Dr. Anthony.

138. It seems clear from the authorities that the "public interest" which will justify a defence of fair comment on facts truly stated, is different in quality from the "public interest" that may, standing alone, ground privilege for the publication of facts that are in fact untrue.

139. **"There must be a duty to publish to the public at large and an interest in the public at large to receive the publication … The subject matter must be of**

**public interest, its publication must be in the public interest":** (Per Stephenson L.J. in **Blackshaw vs. Lord** [1983] 3 W.L.R 286, 301).

140. The substance of Dr. Cheltenham's submissions, boldly put, is that Dr. Lewis in political matters has a privilege to publish facts which are both defamatory and untrue, put another way he can publish lies masquerading as comments or deductions or inferences if they are of interest to the public or relate to some matter of public interest. Nowhere in the authorities do I understand this to be approved.

141. I agree with Mr. Astaphan, this engineered defence with inadequate evidence "**falls about a thousand miles short of meeting far less satisfying the litmus test in Reynolds and the other authorities referred to."**

142. The pleaded defence of qualified privilege has no merit, it has failed.

## CONSTITUTIONAL PRIVILEGE OF EXPRESSION

143. Dr. Lewis asserts by paragraph 10 of his Re-Amended Defence "**that he was entitled to make the speech which is the subject of complaint … pursuant to the exercise of his rights under Section 10 of the Constitution of Saint Lucia which guarantees him freedom of expression and will rely in support of this plea upon the following facts and matters:-**

**(i) the payment of US$250, 000.00 was a public matter and a matter of public concern upon which all persons were entitled to express their views.**

**(ii) No public statement has been made by the claimant as Prime Minister and Minister of Finance about the use to which the money was to be put;**

**(iii) The defendant as Political Leader was entitled to comment as a matter of public concern upon the receipt of the money and any use to which it might be put;**

**(iv) The speech was made in exercise of the right of the Defendant to speak as Political Leader upon matters of public concern. The payment of US$250,000.00 was such a matter ad the speech was made in pursuance of the democratic process which the Constitution is intended to serve."**

144. In light of my previous findings as to the meaning of Dr. Lewis' defamatory speech, the meaning that was put forward in the skeleton arguments of counsel for Dr. Lewis, cannot be considered within the context of this purported defence.

145. Learned Queen's Counsel Dr. Cheltenham identified in his submissions the tension which exists between protection of reputation and freedom of expression. He referred to the several decisions in the U.S.A. which reflect the recent attitude

of the Courts in the U.S.A. towards managing and reconciling this existing tension, reflected in Section 10(1) and 10(2) of The Constitution (See reproduction of these provisions at paragraph 13 of this Judgment).

146. It was submitted in substance that Dr. Lewis' speech was political criticism concerning the public affairs of Saint Lucia and in the absence of any intention of Dr. Lewis' to destroy Dr. Anthony's reputation, Dr. Lewis is entitled to the full measure of the protection given under Section 10 of the Constitution.

147. In managing and reconciling the tension, Dr. Cheltenham has urged this court to come down on the side of free speech rather than on the side of protecting reputation. The authorities referred to by Dr. Lewis' Counsel were: **Whitney vs. People of the State of California** (1927) 276 US. 357 Brandus J; **Minister of Home Affairs vs. Fisher** (1979) 3 ALLL ER. P.C. 21; **Curtis vs. Butts and Associated Press vs. Walker** (1967) 388 U.S. 130; **Murray vs. Bailey** 613 F Supp. 1276 N.D. **Olman Vs. Evans** 750 F2nd Ed. 970 at 1002 (DC in 1984) Bork J; **Blackhawk Corp. vs. Ewing** 94 Cal App. 3rd Ed. 640; **Law of Defamation Canada** Vol. 2 Raymond Brown (1994) 2nd Ed. At 27-175, 176 **"Political and Public Discourse"**; **Lange vs. Australia Broadcasting Commission**(1997) 189 C.L.R. 520; **Theophenous vs. Herald Weekly Times** (1994) 182 C.L.R. 104, 124; **Lange vs. Atkinson** (2000) 4 LRC at 597.

148. Learned Senior Counsel Mr. Astaphan has submitted that Dr. Lewis' reliance on Section 10 of the Constitution as a defence is misconceived. Section 10 of the Constitution is intended to protect persons against arbitrary conduct, or laws of a State which deny or curtail the fundamental right and freedom of expression guaranteed by the Constitution he argued. It does not confer an additional defence in private litigation between persons. This appears to me to be trite law, not deserving of reference to any authorities as I understand the law, so I must endorse the submission.

149. In my opinion, Section 16 of the Constitution of Saint Lucia which stipulates the procedure for the enforcement of the protective provisions under the Constitution does not contemplate the use of the right to freedom of expression as a defence in civil litigation. This is a defamation case concerning publication of slanderous statements which are not true. This claim is not concerned with freedom of expression and opinion.

150. It has been widely recognized and acknowledged in the authorities that "**It is necessary for a satisfactory law of defamation that there should be privileged occasions. But the existence of privilege involves a balancing of conflict of pressures. On the one hand, there is the need that the press should be able to publish fearlessly what is necessary for the protection of the public. On the other hand, there is the need to protect the individual from falsehood."**: (Fox L.J. in **Blackshaw vs. Lord** (C.A.) [1983] 3 W.L.R. at 316 para.D)

151. The courts from time to time, when determining issues relating to the defence of qualified privilege in defamation cases, have made judicial statements, recognizing this need to balance the right of the individual to his good reputation with the right to freedom of expression protected by the Constitution of the respective country or state, or the English common law, or the Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

152. The right of freedom of expression is a matter of public importance, particularly in relation to public and political matters. "**Developments in regard to recognition of the fundamental right of free speech and to the nature of the electoral process since the end of the nineteenth century have reinforced the arguments in favour of the wider availability of the qualified privilege to those who publish material to the general public on matters of general public interest. There are powerful dicta to the effect that there is no inconsistency between Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the English common Law on freedom of speech: See Attorney-General vs. Guardian Newspaper Ltd (No. 2) [1990] 1A.C.109 at 283 per Lord Goff of Chieveley …" (**Per Lord Hope in **Reynolds vs. Times Newspaper Ltd.** [2000] E.M.L.R. at page 58.

153. In **France and Bryant vs. Simmonds** (1990) 38 W.I.R. 172, 173 para.F, this was a libel case on appeal before the Privy Council. At the trial the defences of fair comment and qualified privilege were pleaded unsuccessfully. Lord Keith of Kinkell dismissively stated that- "**A point was sought to be made under Section 12 of the Constitution of St. Christopher and Nevis, but their Lordships do not consider that that provision adds anything to the requirements of the common law as regards the circumstances under which defamation may be found and which may inhibit freedom of speech."**

154. In a more recent case, the Privy Council re-stated their previously held opinion in a different manner. They held that the common law in relation to qualified privilege was consistent with Section 22 of the Constitution of Jamaica which guarantees freedom of expression. Lord Nicholls of Birkenhead observed that Section 22(2) of the Jamaica Constitution stated that "**Nothing contained in any law, or done under the authority of any law, shall be held to be inconsistent with or in contravention of Section 22 to the extent that the law makes a provision on certain specified matters. One of these matters is a provision "which is reasonably required … for the purpose of protecting the reputations, rights and freedoms of other persons." In Reynolds' case the House of Lords held that the law relating to qualified privilege as declared in that case was consistent with Article 10 of the European Convention for the Protection of Human Rights…(1953) (Cmd 8969). Although the wording of Article 10 is not identical with the wording of Section 22 of the Constitution of Jamaica, their Lordships are of the view that the law relating to qualified privilege as deemed in the Reynolds case is, likewise, consistent with Section**

**22 of the Constitution. The wording of Section 22 is different form Article 10, but in this context its effect is the same."** (**Bonnick vs. Morris** (P.C.) [2003] 1 A.C. 300, at pate 308 para. B to D).

155. Arguments relating to human rights also featured in **Grobbelaar vs. News Group Newspapers** [2001] 2 ALL E.R. 437 and **Grobbelaar vs. News Group Newspapers Ltd and Another** [2002] U.K.H.L. 40 on 24/10/02. This was a libel and slander case in which justification and qualified privilege were pleaded as defences. On appeal to the House of Lords, Lord Bingham of Cornhill at page 29, para. 63 stated: "**Human rights have also been referred to. Article 10 of the Convention is always important. But Article 10 (1) is subject to Article 10 (2) [provision comparable to section 10(1) and 10 (2) of the St. Lucia Constitution] and the English law of defamation gives effect to this and recognizes that other human rights may be engaged as well, as for example under 8(1). The relevant decisions of the E.C.H.R. have been referred to in other cases which have raised points under Article 10, including Reynolds [2001] 2A.C. 127 at 203 – 4 and Ashworth Hospital Authority Vs. MGN Ltd. [2002] U.K.H.L. 29 [2002] 1W.L.R. 2033, and this is not the occasion to go over the ground again. Article 10 is not a licence knowingly to publish untrue statements of fact about another on unprivileged occasions and the proper protection of the person defamed may require that repetition of the untrue statements be restrained. As my noble and learned friend Lord Bingham has said: "The newspaper's important right of free expression is not infringed by restraining re-publication of what the jury has found to be falsehood."**

156. **In Richards vs. The Attorney General of St. Vincent and the Grenadines and the D.P.P.** H.C. 570 of 1989. Satrohan Singh J. had before him an Originating Motion seeking declarations concerning the constitutionality of Section 64 of the Criminal Code of St. Vincent and the Grenadines: The learned Judge chastised Counsel for the plaintiff for certain submissions he had made in the following manner: " **I cannot and will not go along with or sanction Dr. Gonsalves' submissions that "in this country a person has a constitutional right to utter deliberate falsehood." This bold and bald statement coming from Dr, Gonsalves without more could only have been made by him with some oblique gallery motive. It is judicial nonsense and coming from an officer of the court I find it to be unfortunate, irresponsible and a reckless statement."**

157. So it would seem therefore on a review of the jurisprudence that the right to freedom of speech is weighed against the right to reputation by the English Courts in defamation cases, where there is a claim to qualified privilege. It cannot be pleaded as a defence to libel or slander. A Court is not likely to come down in favour of the right to freedom of speech where there is publication of falsehood in circumstances which do not attract the protection of privilege.

158. **"It is important always to remember that it is the communication of information not misinformation which is the subject of this liberty. There is no constitutional right to disseminate information that is not true. No public interest is served by publishing or communicating misinformation. The working of democratic a society depends on the members of that society being informed not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society and should form no part of such society. There is no duty to publish what is not true; there is no interest in being misinformed. These are general propositions going far beyond the mere protection of reputations."**: (Per Lord Hobhouse in **Reynolds vs. Times Newspaper** [2000] E.M.L.R. Issue I at page 63.)

## DAMAGES

159. On the question of damages, I turn now to Dr. Anthony's Amended Statement of Claim. He has claimed damages on the footing of aggravated and/or exemplary damages for this slander.

160. There is no evidence before me that Dr. Anthony has suffered pecuniary loss as a result of this slander. General damage does not have to be pleaded since Dr. Anthony has started off with a presumption of damage operating in his favour. This entitles the Court to award him substantial damages for injury to his reputation although he has not proven any such injury: **(Mc Gregor on Damages** 17th Ed. (2003) para. 39-034; pages 1433 to 1434.

161. Dr. Anthony has offered no evidence of damage at all so he is entitled to nominal damages only: (**Hayward vs. Hayward** (1887) 34 C.L.D. 198).

162. The established law is that compensation is the normal basis for defamation. In determining compensation, there are 2 heads under which I can do so. The consequences of the attitude adopted by others to Dr. Anthony, because of any diminution in their esteem for him, is one basis for awarding damages. Another basis is any grief or annoyance caused to Dr. Anthony because of the slanderous speech, and in this case, damages may be aggravated by the manner in which, or the motives with which Dr. Lewis uttered these slanderous words: **(McCarey vs. Associated Newspaper Ltd.** [1964] 3 ALL E.R. 947, Per Lord Diplock at page 959).

163. Dr. Anthony testified that he was hurt, injured, distressed, embarrassed, disappointed about Dr. Lewis' slanderous speech as he had known Dr. Lewis for a long time. I therefore must take into account the manner in which the speech was made, and the motives with which Dr. Lewis spoke the slanderous words.

164. Dr. Anthony testified that he believes Dr. Lewis spoke those slanderous maliciously, calculating that there was political advantage to be gained as Political

Leader of the UWP which was politically opposed to his Government. That Dr. Lewis was seeking to remove him from office; and that was his reason for the slander. Dr. Lewis has not denied this, but he has testified that he was seeking to instruct his audience about corruption in developing countries and how it arises within the content of what he had observed happening in St. Lucia. His concerns related to the Government's use of commercial monies for non-productive S.T.E.P Programme, the financing arrangements for HYATT HOTEL, and management of the World Bank funded Poverty Reduction Fund. Dr. Lewis is an Economist. It is therefore understandable why Dr. Lewis would wish to instruct his audience.

165. The law requires me to consider the nature of the slander, the mode and extent of the publication, the absence or refusal of any retraction or apology, the standing and position of Dr. Lewis, and his conduct before and after the 20th February 2000: **(Mc Gregor on Damages** (supra) at para. 39-037.

166. Dr. Lewis tendered an apology in terms which Dr. Anthony did not find acceptable. It also appears from the documentary evidence that Dr. Lewis' failure was tantamount to a refusal to apologize in the manner demanded by Dr. Anthony. I therefore must assess the significance of this.

167. Although failure to apologize is not evidence of malice, it seems to me that Dr. Lewis found Dr. Anthony's demand "a bitter pill" to take, and political humiliation, bearing in mind that there would have been pending general elections in the horizon, and which elections took place on the 3rd December 2001.

168. I also formed the view at the trial, having regard to the demeanour of Dr. Lewis, that there was no genuine regret or remorse for the slander.

169. Having regard to Dr. Lewis' testimony I also believe that he uttered the slanderous words recklessly since he did not believe that Dr. Anthony had misappropriated the proceeds of the cheque, but was using language which was a metaphor and colourful expression, "to be simple and culturally comprehensible." according to him.

170. There is no evidence of any malice after the defamation, to prove malice for aggravation of damages in my view. There is no evidence that Dr. Lewis made other derogatory statements or that Dr. Lewis has persisted in the accusations.

171. I also have taken into account the extent of the publication. Dr. Lewis testified that the meeting was small as it was raining, and when he began his speech only a small crowd of about 100 persons were present.

172. Dr. Lewis' slanderous utterances apparently did not have much impact, considering Dr. Anthony's subsequent success at the polls in December 2001. I

do not think therefore that Dr. Anthony's reputation was seriously tarnished because of this slander.

173. However, I find from the nature of the speech, and the other surrounding political circumstances that Dr. Lewis made the slanderous speech calculatedly, to make a profit.

174. In explaining the concept of "profit " within the rule in **Rookes vs. Barnard**, [1964] 1ALL E.R 367, Widgery J. said that "**… If a person who is possessed of material which would be defamatory if published and who does not believe it to be true at all, decides to publish it simply because he reckons any damage he might have to pay would be so small that it would be worth it, then that man is a man against whom an award of exemplary damages can be made.": (Manson vs. Associated Newspaper Ltd.**[1965] 2ALL E.R., 58

175. The law is that exemplary damages should be awarded in cases where there is evidence of conduct, calculated by the defendant to make a profit which may well exceed the compensation payable to the claimant: **Rookes vs. Barnard** (supra)

176. In the absence of submissions from the learned Counsel for the parties regarding Quantum of Damages, I have taken into account the relevant principles, and comparative awards in Defamation Cases in and other jurisdictions. Having taken into account the factors previously discussed the evidence and my findings, in my judgment an award of $60,000.00 as compensatory damages, including aggravated damages and exemplary damages, is reasonable.

177. There is no evidence before me of any circumstances indicating a likelihood that the slanderous words in the speech will be uttered or republished in any manner by Dr. Lewis. In the circumstances there is no need to grant injunctive relief in my opinion.

178. The amount of $16,000.00 is awarded as prescribed costs pursuant to PART 65.5 (2) (b) (ii) of CPR 2000 AND Appendix A.

179. I therefore enter judgment for claimant in the sum of $60,000.00 with costs. $16,000.00 and interest thereon at 6% per annum form the date of this judgment until full and final payment of this Judgment Debt.

**DATED THIS 11TH DAY OF JANUARY 2006.**

**OLA MAE EDWARDS**
**HIGH COURT JUDGE**