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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

1.

IN THE PRIVY COUNCIL

No. 34 of 1958

50877

ON APPEAL FROM
THE SUPREME COURT OF TRINIDAD AND TOBAGO

IN THE MATTER of an APPLICATION by AUGUSTUS
PATTERSON for an Injunction against DR.
PATRICK VINCENT JOSEPH SOLOMON

B E T W E E N:

AUGUSTUS PATTERSON ... (Applicant) Appellant

- and -

10 DR. PATRICK VINCENT JOSEPH SOLOMON
(Respondent) Respondent

CASE FOR THE RESPONDENT

1. This appeal is from a Judgment of the Full Court of the Supreme Court of Trinidad and Tobago, dated the 13th day of November, 1957, dismissing an appeal from a Judgment of the Supreme Court of Trinidad and Tobago, dated the 11th day of June, 1957, dismissing an application by the Appellant for an injunction to restrain the Respondent from claiming to be or in any way acting as -

Record
pp.24-28.
pp.11-21.
pp.5-6.

- (a) Minister of Education and Culture in the Government of Trinidad and Tobago;
- (b) A member of the Executive Council of the Colony of Trinidad and Tobago;
- (c) A member of the Legislative Council of the Colony of Trinidad and Tobago for Port-of-Spain South

and from exercising the rights, privileges and powers of the said offices.

2. The suit was commenced by Notice of Motion dated pp.5-6

Record
pp. 1-4

the 31st day of May, 1957. The grounds upon which the relief is sought, as set out in an Affidavit sworn by the Appellant on the same date, are that the seat of the Respondent in the Legislative Council of the Colony of Trinidad and Tobago has become vacant under the provisions of Section 38(3)(e) of the Trinidad and Tobago (Constitution) Order in Council, 1950, as amended by the Trinidad and Tobago (Constitution) (Amendment) Order-in-Council 1956 by reason of the said Dr. Solomon having become a party to a contract with the Government of the Colony of Trinidad and Tobago for or on account of the public service without first having disclosed to the Legislature his intention of becoming a party to the said contract and without having obtained from the Legislature exemption from the consequences of becoming a party to such a contract. The provisions of the said Section 38(3)(e) are set out in the Annexure hereto. 10

pp. 1-4

3. The Appellant stated in his said Affidavit that he is a Mattress Maker and a registered voter for the electoral constituency of San Fernando West; that the Respondent was duly returned as member for the constituency of Port of Spain South; that he took his seat on the 26th day of October 1956; that on the same day he was elected to be a member of the Executive Council; that he assumed office and that he was charged by the Governor with the administration of the Ministry of Education and Culture; that on the 19th day of December 1956 he executed a mortgage bill of sale which the deponent is advised and verily believes is a contract for or on account of the public service. 20 30

pp. 4-5

4. On the 31st day of May, 1957, in the Supreme Court (cor Blagden J.) the Appellant on an ex parte application was granted leave to issue the said Notice of Motion.

pp. 9-11

5. At the hearing of the Motion (cor Watkin-Williams J.) the Respondent took two preliminary objections, viz:- 40

p.13, 11.3-9
11.36-41

(1) That the procedure taken by the Appellant was not proper in that he applied for an injunction on the footing that the procedure by way of quo warranto has been abolished in the Colony of Trinidad and Tobago; and

(2) That these proceedings are not maintainable because -

Record

(a) The offices held by the Respondent are not subject to an order of the kind sought, whether by way of injunction or by quo warranto; and

(b) The Appellant has not shown any or any sufficient interest.

10 The learned judge over-ruled the first objection and the contention set out in (2)(b) above, but upheld the second objection on the ground set out in (2)(a) above. He therefore dismissed the application with costs.

p.13, 11.10-
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p.13, 1.42-
p.18.
pp.20-21.

6. On appeal, the Full Court of the Supreme Court (Mathieu-Perez, C.J., Camacho Ag. Sr. J. and Archer, J.) upheld the judgment of the Supreme Court on the same ground, and gave no ruling with regard to either of the points which the Supreme Court had decided against the Respondent.

pp.24-28.

20 7. The principal issue which arises for determination on this appeal (if Her Majesty in Council has jurisdiction to decide the issue or to entertain such appeal) is therefore as to whether the Courts below were right in deciding that the proceedings are not maintainable because the offices held by the Respondent are not subject to an order of the kind sought. The Respondent still relies, however, upon his first preliminary objection and upon the alternative ground on which he founded his second preliminary objection (neither of these were abandoned before the Full Court). The Respondent will, therefore, if necessary, seek to uphold the judgments in the Court below on all the grounds upon which he relied at first instance.

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8. The ground upon which the learned trial judge over-ruled the Respondent's first preliminary objection (i.e. that the procedure taken by the Applicant was not proper) was that the Administration of Justice (Miscellaneous Provisions) Act, 1938, Section 9, which abolishes informations in the nature of quo warranto and substitutes in appropriate cases proceedings for injunction, has effect in the Colony of Trinidad and Tobago.

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p.13, 11.10-
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Record
p.13, 1.42 -
p.18.

9. The grounds upon which the learned trial judge upheld the Respondent's second preliminary objection for the first reason put forward (i.e. that the proceedings are not maintainable because the offices held by the Respondent are not subject to an order of the kind sought) were as follows :-

p.13, 1.42

(i) The effect of the relevant provisions of Section 9 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, is to alter the nature of the remedy without affecting the persons to whom it applies. It is, therefore, necessary to go back to the former practice of quo warranto in order to ascertain the persons against whom the procedure was applicable.

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pp.14-15.

(ii) The procedure of quo warranto does not appear to have been applicable to challenge the right of a person to sit as a Member of Parliament. There are two methods of redress in cases in which Members of Parliament are alleged to have usurped a seat - (1) by the House itself appointing a select committee to consider the matter, (2) by a member of the public suing for a penalty under the House of Commons Disqualification Acts.*

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p.15, 1.1

(iii) Next it must be decided whether members of the Legislative Council of Trinidad and Tobago are to be regarded differently from members of the United Kingdom Parliament. For this purpose it is necessary to consider the machinery provided for challenging the qualification of such members to sit, and for the liability of members for sitting when disqualified, and to decide whether the procedure substituted by the 1938 Act for informations in the nature of quo warranto is applicable as an essential part of that machinery.

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p.15, 1.36

p.17.

(iv) The machinery provided for the determination of questions arising as to the right of a member to sit in the Legislative Council is contained in Section 40 of the Trinidad and Tobago (Constitution) Order in Council, 1950, as amended by the Trinidad and Tobago (Constitution) (Amendment) Order in Council, 1956, which provides inter alia that all questions which may arise as to the right of any person

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* Now repealed.

to be or remain an Elected Member of the Legislative Council shall be referred to the Supreme Court of the Colony. Section 67 of the same Order in Council provides for a penalty upon persons who sit in the Legislative Council when disqualified. The said Section 40 and Section 67 are set out in the Judgment of the Supreme Court at page 17 of the Record.

Record

- 10 (v) It therefore appears that the Order in Council has provided complete machinery and that there is no room for the implication that any other mode of proceeding against persons who sit when they are disqualified is applicable. A contention put forward on behalf of the Applicant that present application was a reference under Section 40 was wrong. p.18, 1.1
p.18, 1.5
- 20 10. The ground upon which the learned trial judge rejected the second reason put forward by the Respondent in support of the second preliminary objection (i.e. that the Appellant has not shown any or any sufficient interest) was that, as a member of the Legislative Council is a member of a body which exercises jurisdiction over the whole Colony, and is eligible for election to the Executive Council and to be charged with the Administration of a Government Department, every resident in the Colony would have a sufficient interest if the proceedings were otherwise maintainable. pp.19-20.
p.20, 1.10
- 30 11. The Judgment of the Full Court stated that the learned trial judge construed Section 40 of the Order in Council correctly. The argument that the present application is a reference under the said Section 40 was rejected, and the Court pointed out the distinction between such an application (a lis) and a reference to the Supreme Court under the Section - pp.24-28.
p.28, 1.7
- 40 "On a reference to the Supreme Court by the Legislative Council the Court acts in an advisory capacity, there are no parties before it and there is no determination of a lis for the notion of a reference does not comprehend and is incompatible with the creation of a lis." p.28, 11.1-6
12. By an Order dated the 30th day of July, 1958, Her Majesty in Council granted the Appellant Special pp.29-30

Record

Leave to Appeal.

13. The Respondent respectfully submits that this appeal should be dismissed with costs for the following, amongst other

R E A S O N S

- (1) BECAUSE any question of the right of the Respondent to be or remain an Elected Member of the Legislative Council of Trinidad and Tobago can only be determined by the Supreme Court of the Colony pursuant to Section 40 of the Trinidad and Tobago (Constitution) Order in Council, 1950, as amended by the Trinidad and Tobago (Constitution) (Amendment) Order in Council, 1956, and Her Majesty in Council has no jurisdiction either to determine any such question or to entertain an appeal from the Supreme Court in relation thereto. 10
- (2) BECAUSE the Judgment of the Supreme Court, for the reasons therein stated, is right in upholding the objection that the proceedings are not maintainable as the offices held by the Respondent are not subject to an order of the kind sought. 20
- (3) BECAUSE the Judgment of the Full Court for the reasons therein stated, is right.
- (4) BECAUSE the procedure taken by the Appellant was not proper.
- (5) BECAUSE the proceedings are not maintainable as the Appellant has not shown any or any sufficient interest. 30

DINGLE FOOT

RALPH MILLNER

A N N E X U R E

The Trinidad and Tobago (Constitution)
Order in Council, 1950, as amended by
the Trinidad and Tobago (Constitution)
(Amendment) Order in Council, 1956

Section 38 -

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(3) The seat of a Nominated or Elected Member of the Legislative Council shall become vacant -

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10 (e) if he shall become a party to any contract with the Government of the Colony for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager, shall become a party to any such contract, or if he shall become a partner in a firm, or a director or manager of a company, which is a party to any such contract:

20 Provided that, if in the circumstances it shall appear to him or to them to be just so to do, the Governor, acting in his discretion, may exempt any Nominated Member and the Legislative Council may exempt any Elected Member from vacating his seat under the provisions of this paragraph, if such Member shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or director or manager of a company) disclose to the Governor or to the Legislative Council, as the case may be, the nature of such contract and his interest or the
30 interest of any such firm or company therein; or

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CASE FOR THE RESPONDENT

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