GNA P.C. G.D.

Judgment, 1960

IN THE PRIVY COUNCIL No. 34 of 1958

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 -

DR. PATRICK VINCENT JOSEPH SOLOMON (Respondent) Respondent

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.
Solicitors for the Appellant.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
Artillery Row, S.W.1.
Solicitors for the Respondent.

IN THE PRIVY COUNCIL

No. 34 of 1958

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 -

DR. PATRICK VINCENT JOSEPH SOLOMON (Respondent) Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Documents	Date
Notice of Motion for leave to appeal to Her Majesty in Council	3rd December 1957
Order of Full Court	20th December 1957

IN THE PRIVY COUNCIL No. 34 of 1958

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 -

DR. PATRICK VINCENT JOSEPH SOLOMON (Respondent) Respondent

RECORD OF PROCEEDINGS

No. 1

AFFIDAVIT OF AUGUSTUS PATTERSON

In the Supreme Court.

No. 1

Affidavit of Augustus Patterson. 31st May, 1957.

TRINIDAD:

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

IN THE MATTER of an Application by AUGUSTUS PATTERSON for an Injunction

I, AUGUSTUS PATTERSON, of No.27, Lord Street, in the Town of San Fernando, in the Island of Trinidad, make oath and say as follows:-

1. I am a Mattress Maker and a registered voter for the electoral constituency of San Fernando West.

2. At an election for the return of members to the Legislative Council of Trinidad and Tobago held on the 24th day of September, 1956, Dr.

In the Supreme Court

No. 1

Affidavit of Augustus Patterson.

31st May, 1957 - continued.

Patrick Vincent Joseph Solomon was duly returned as the member for the constituency of Port-of Spain South.

3. On the 26th day of October, 1956, the said Dr. Patrick Vincent Joseph Solomon having duly taken the prescribed oath took his seat in the said Legislative Council of Trinidad and Tobago as member for Port-of-Spain South.

4. On the said 26th day of October, 1956, the said Dr. Patrick Vincent Joseph Solomon was duly elected to be a member of the Executive Council of Trinidad and Tobago.

5. The said Dr. Patrick Vincent Joseph Solomon duly assumed office as a member of the said Executive Council and was charged by the Governor with the Administration of the Ministry of Education and Culture.

6. On the 19th day of December, 1956, the said Dr. Patrick Vincent Joseph Solomon executed a Mortgage Bill of Sale dated the 19th day of December, 1956, registered in the protocol of deeds as No. 15864 of 1956 and made between the said Dr. Patrick Vincent Joseph Solomon Minister of Education and Culture and the Accountant General of the Colony of Trinidad and Tobago acting for and on behalf of the Government of the Colony of Trinidad and Tobago whereby the said Dr. Patrick Vincent Joseph Solomon assigned to the said Accountant General of the Colony of Trinidad and Tobago All and Singular that Opel Kapitan Four-door Sedan 23.4 h.p. 1956 Model, Light Grey on body, Black on top, bearing Chassis Number 210418217 and Engine Number 2.SL-56-29734 registered number PC-466 with seating accommodation for 6 persons (including driver) including all parts and accessories which may from time to time be put on and affixed to the said motor car whether in replacement of worn parts or otherwise to secure the sum of Three thousand Five Hundred Dollars ($3,500.00) lent by the Accountant General of the Colony of Trinidad and Tobago acting for and on behalf of the Government of Trinidad and Tobago to

the said Dr. Patrick Vincent Joseph Solomon, Minister of Education and Culture interest free which said sum was to be repaid by the said Dr.Patrick Vincent Joseph Solomon by a payment of $22.00 on the 31st day of January, 1957, and by instalments of $74.00 to be paid on the last day of each succeeding month.

7. I am advised and verily believe that the said Mortgage Bill of Sale is a contract for or on account of the public service within the meaning of the Trinidad and Tobago (Constitution) Order-in-Council, 1950, as amended by the Trinidad and Tobago (Constitution) (Amendment) Order in Council 1956 Section 38 (3) (e).

8. The said Dr. Patrick Vincent Joseph Solomon did not prior to becoming a party to the said contract disclose to the Legislature his intention of so doing.

9. The said Dr. Patrick Vincent Joseph Solomon was not exempted by the Legislature from the consequences of becoming a party to the said contract.

10 I am advised and verily believe that the seat of the said Dr. Patrick Vincent Joseph Solomon in the Legislative Council of Trinidad and Tobago has become vacant by reason of his having become a party to the said contract in the circumstances stated above.

11. I am advised and verily believe that since the seat of the said Dr. Patrick Vincent Joseph Solomon as a member of the Legislative Council of Trinidad and Tobago has become vacant that he is no longer entitled to be a member of the Executive Council or to act

In the Supreme Court

No. 1

Affidavit of Augustus Patterson.

31st May, 1957 - continued.

as Minister of Education and Culture.

Sworn to at Harris Promenade)
in the Town of San Fernando,) Augustus Patterson.
this 31st day of May, 1957.)

Before me,

W.F.C. Paul

Commissioner of Affidavits.

Filed on Behalf of the Applicant herein.

No. 2

Order of Blagden J.

31st May, 1957.

No. 2

ORDER OF BLAGDEN J.

TRINIDAD:

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 412 of 1957

IN THE MATTER of an Application by AUGUSTUS PATTERSON for an Injunction

---

EX-PARTE.

IN CHAMBERS.

Entered on the 5th day of June, 1957.
Dated the 31st day of May, 1957.
Before the Honourable Mr. Justice J.R. Blagden.

On the ex-parte application of Augustus Patterson by affidavit sworn to on the 31st day of May, 1957, for leave to issue a notice of motion for an injunction to restrain Dr. Patrick Vincent Joseph Solomon from acting as (a) Minister of Education and Culture in the Government of Trinidad

and Tobago (b) a member of the Executive Council of Trinidad and Tobago and (c) a member of the Legislative Council of the Colony of Trinidad and Tobago for the Port-of-Spain South, upon reading the said affidavit filed herein and upon hearing the Solicitor for the applicant

IT IS ORDERED

That leave be and the same is hereby granted to the said applicant, Augustus Patterson, to issue a notice of motion returnable on the 6th day of June, 1957, for an injunction to restrain Dr. Patrick Vincent Joseph Solomon from acting as (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 and (c) a member of the Legislative Council of the Colony of Trinidad and Tobago for Port-of-Spain South.

J.B. McDowell

Ag. Deputy-Registrar.

No. 3

NOTICE OF MOTION

TRINIDAD:

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 412 of 1957

IN THE MATTER of the Application of AUGUSTUS PATTERSON for an Injunction

TAKE NOTICE that pursuant to the leave of the Supreme Court given on the 31st day of May, 1957, the said Court will be moved on Thursday the 6th day of June, 1957, at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard on

In the Supreme Court

No. 3

Notice of Motion.

31st May, 1957 - continued.

behalf of Augustus Patterson for an Injunction restraining Dr. Patrick Vincent Joseph Solomon of 35b Boissiere, Maraval, from claiming to be or in any way acting as:-

(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 upon the grounds set forth in the copy of the Statement and Affidavit delivered herewith used on the application for leave to issue this Notice of Motion, and for an order that the costs of and occasioned by this motion be taxed and be paid by the said Dr. Patrick Vincent Joseph Solomon to the said Augustus Patterson.

AND TAKE NOTICE that upon the hearing of the said Motion the said Augustus Patterson will use the said Affidavit sworn to by him on the 31st day of May, 1957.

Dated this 31st day of May, 1957.

George A. Tsoi-A-Sue

Solicitor for the Applicant.

TO:

Dr. Patrick Vincent Joseph Solomon,
35b Boissiere, Maraval;

AND TO:

The Registrar of the Supreme Court.

No. 4

STATEMENT OF AUGUSTUS PATTERSON

In the Supreme Court

No. 4

Statement of Augustus Patterson.

31st May, 1957.

No. 412 of 1957

IN THE MATTER of an Application by AUGUSTUS PATTERSON for an Injunction

Statement pursuant to the Judicature Ordinance, Chapter 3 No.1, Section 20 and the Rules of Court.

1. The name and description of the Applicant is AUGUSTUS PATTERSON of No.27, Lord Street, in the Town of San Fernando, in the Island of Trinidad. The Applicant is a Mattress Maker and a registered voter in the electoral district of San Fernando West.

2. The relief sought is:-

An injunction restraining Dr. Patrick Vincent Joseph Solomon of 35b, Boissiere, Maraval, in the Island of Trinidad from claiming to be or in any way acting as (a) Minister of Education and Culture of the Government of Trinidad and Tobago, (b) a member of the Executive Council of the Colony of Trinidad and Tobago and (c) a member of the Legislative Council of the Colony of Trinidad and Tobago.

3. The grounds upon which the said relief is claimed are as follows :-

The seat of the said Dr. Patrick Vincent Joseph Solomon 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.Patrick Vincent Joseph 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

In the Supreme Court

No. 4

Statement of Augustus Patterson.

31st May, 1957 - continued.

the said contract and without having first obtained from the Legislature exemption from the consequences of becoming a party to such a contract.

The contract herein referred to is a Mortgage Bill of Sale dated the 19th day of December, 1956, registered in the protocol of deeds as No.15864 of 1956 and made between the said Dr. Patrick Vincent Joseph Solomon, Minister of Education and Culture and the Accountant-General of the Colony of Trinidad and Tobago acting for and on behalf of the Government of the Colony of Trinidad and Tobago whereby the said Dr. Patrick Vincent Joseph Solomon assigned to the said Accountant-General of the Colony of Trinidad and Tobago All and Singular that Opel Kanitan Four-door Sedan 23. 4 h.p. 1956 Model Light Grey on body, Black on top, bearing Chassis Number 210418217 and Engine Number 2.5L-56-29734 registered number PC-466 with seating accommodation for 6 persons (including driver) including all parts and accessories which may from time to time be put on and affixed to the said motor car whether in replacement of worn parts or otherwise to secure the sum of $3,500.00 lent by the Accountant General of the Colony of Trinidad and Tobago acting for and on behalf of the Government of Trinidad and Tobago to the said Dr. Patrick Vincent Joseph Solomon, Minister of Education and Culture, interest free which said sum was to be repaid by the said Dr. Patrick Vincent Joseph Solomon by a payment of $22.00 on the 31st day of January, 1957, and by instalments of $74.00 to be paid on the last day of each succeeding month.

By reason of the seat of the said Dr. Patrick Vincent Joseph Solomon having become vacant as aforesaid, the said Dr. Patrick Vincent Joseph Solomon is no longer entitled to be a member of the Executive Council of the Colony of Trinidad and Tobago or to be Minister of Education and Culture in the Government of the said Colony.

Dated this 31st day of May, 1957.

George A. Tsoi-A-Sue

Solicitor for the Applicant.

No. 5

JUDGE'S NOTES OF ARGUMENTS.

(Title as No.2)

In the Supreme Court

No. 5

Judge's Notes of Arguments.

Georges for the applicant.

Sir Courtenay Hannays Q.C., Malcolm Butt Q.C.,J.A. Wharton and Selby Wooding for the respondent.

Sir Courtenay Hannays:

I take in limine the objections. (1) This is not the proper procedure and (2) these proceedings are not maintainable because(a) offices held by Dr.Solomon are not subject to an order of this kind whether by way of injunction or by quo warranto. (b) that the applicant has not shewn any, or any sufficient interest in this matter.

Quotes s.9 of the Administration of Justice Act, 1939. Ord.59 R.11. Quotes White Book. Ord.59 R.11 note. Judicature Ord. S.19-s.20(1) and (2). Chadee v Richards.

Port of Spain South.

Dr. Solomon holds seat because elected to Port of Spain South. Holds seat in Executive Council by virtue of s.8 of the Order-in-Council 1950. Appointed to Executive Council by Legislature. Holds his office as Minister by virtue of s.20(1) of amending Order-in-Council.

Office attacked must satisfy conditions. See Vol. 11 3rd Ed. Halsbury p.146 para.274.

Solomon holds none of these three offices. Order-in-Council not a statute unless issued in pursuance of an Act of Parliament. Crown's prerogative to legislate at will. Solomon holding office under provisions granted by the Crown. Ref. Forbes v. Samuel 1913 3 Q.B.706. Darley v. Regina.The Queen v. Hampton 6 Bc. S.923 p.931. Regina v.St.Martin's Guardians 17 Q.B.149. Halsbury 3rd Ed. p.150 para. 284. Applicant see para.1. The Queen v. Thirlwin 33 L.J.Q.B.171.10 Jur.N.S.206. Everett v.Griffiths 1924 1 K.B. p.941 at p.959. Must be qualified to vote for the member. Short and Mell or p.188. R. v.Speyer and Cassel 1916 1 K.B.595 - 114 L.T.463. 464.476.

In the Supreme Court

No. 5

Judge's Notes of Arguments - continued.

R.v. Briggs 11 L.T.372.

s.37 c.(2) "in the electoral district" local public has interest.

Georges replies:

Applicant challenges right to be Minister of Education and member of Executive Council. Concern colony as a whole.

R.v.Speyer. Strong Court.

The L.C.J.K.B.639. It cannot be omitted that this case concerns public government. p.647. Lush.p.644 Avory. Sufficient that public offices usurped. Relator need not reside in constituency.

As to office. I agree that an M.P. is not an officer under the Crown. Crown puts to the Privy Council. Trinidad and Tobago conquered - right to legislate vests in the Queen. These are offices under the Crown. Office she has the right to legislate directly. You can hold office directly by appointment or by election. Office directly created by Crown. This is a statutory testament.

I am referring this matter to the Court under s.40 which confers jurisdiction. The law in force in the Colony is 'quo warranto' as amended.

Office is one to which quo warranto can apply; therefore in accordance with provision of the law in force possible to bring the matter by way of 'quo warranto'.

The section contemplates further legislation. The reference shall be in accordance with the laws of the Colony. Why add 'in accordance with the laws of the Colony'.

Rights of public should not be cut down. Beneficient interpretation of enabling provision.

Hannays Q.C.:

S.40 read with s.67 shew at once that these questions are not to be interfered with except by House or the Attorney General.

Order-in-Council regulates Government of

Colony. Prescribes code. Who shall be members and operate and how they shall be removed. Where remedy prescribed in new situation that is only remedy. Who shall determine disqualification and how.

39 and 40. Look at pattern. Word 'referred'.

In accordance with law '= in accordance with law for getting matter before Supreme Court by way of reference.

P.341 5th Ed. Craies Statute Law. R. v. Essex County Court. J.J. remedy alone. Is this a reference?

The Attorney General I presume would be the party moving. Ref. to Committee of Privileges - per case stated on construction summons.

As to 'Office under Crown'. The Queen had divested herself of her prerogative by transferring her powers to electorate, elected and governor.

As to public interest in ministers. If contract disqualifies, it disqualifies him as a member - s.38.

Quo warranto are not granted if there is another available remedy.

No. 6

JUDGMENT OF WATKIN-WILLIAMS J.

(Title as No. 2)

J U D G M E N T

This is an application on the part of one Augustus Patterson for an injunction restraining Dr. Patrick Vincent Joseph Solomon from claiming to be or in any way acting as:-

(a) Minister of Education and Culture in the

In the Supreme Court

No. 6

Judgment of Watkin-Williams J.

11th June, 1957 - continued.

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.

In his statement pursuant to the Judicature Ordinance Chapter 3 No.1 section 20 and the Rules of Court the applicant describes himself as a mattress maker and a registered voter in the electoral district of San Fernando.

The grounds upon which the applicant claims relief are that the seat of the said Dr.Solomon in the Legislative Council of the Colony of Trinidad and Tobago has become vacant under the provisions of section 38(3)(c) of 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 first obtained from the Legislature exemption from the consequences of becoming a party to such a contract. The nature of the contract is then set out.

In his affidavit the Applicant states that the said Dr. Solomon 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. It is unnecessary at this stage to set out the terms of the said Bill of Sale for points have been taken in limine and it is with those points that this judgment deals.

The applicant applied ex parte for the leave

of the Court to issue notice of motion and such leave was granted to him on the 31st May, 1957.

At the commencement of the hearing two objections were taken on behalf of the respondent. The first of these objections was that the procedure adopted by the applicant was not proper in that the applicant had applied for an injunction on the footing that the procedure by way of quo warranto has been abolished in this Colony.

The procedure by way of quo warranto was abolished in England by the Administration of Justice (Miscellaneous Provisions) Act 1939, s.9(1). Subsection 2 of section 9 reads as follows:- "In any case where any person acts in an office in which he is not entitled to act and an information in the nature of quo warranto would, but for the provisions of the last foregoing subsection, have laid against him, the High Court may grant an injunction restraining him from so acting and may (if the case so requires) declare the office to be vacant". Order 59 Rule 11 of the Rules of the Supreme Court lays down the procedure to be followed.

It has been specifically held by the Full Court in Case No.799 of 1953 - In the Matter of an application by Dalton Chadee for an Injunction - that s.9 of the Administration of Justice (Miscellaneous Provisions) Act abolishing informations in the nature of quo warranto has effect in this Colony and it was also held in the same case that an injunction to restrain a person from acting in the office in which he was not entitled to act, operates with the same legal effect as a formal judgment of ouster and is the correct way to proceed. By that decision I am bound. The first objection consequently fails.

The second objection is that these proceedings are not maintainable because (a) the offices held by Dr. Solomon are not subject to an order of this kind whether by way of injunction or by quo warranto and (b) that the applicant has not shewn any, or any sufficient interest.

The effect of sub-section 2 of section 9 of the Administration of Justice (Miscellaneous Provisions) Act 1938 quoted above is to alter the nature of the remedy without affecting the persons to whom it applies. It is therefore necessary to

In the Supreme Court

No. 6

Judgment of Watkin-Williams J.

11th June 1957 - continued.

go back to the former practice of quo warranto in order to ascertain the persons against whom the procedure was applicable. In the case of Regina v Darley (12 Clark & Finnelly p.536) the matter was argued before the House of Lords in the presence of seven Judges and four Barons and the Lord Chief Justice, Lord Tindal, having dealt with a mass of precedents, many of them conflicting, said (p.541)

> "After the consideration of all the cases and dicta on the subject the result appears to be that the proceedings by information in the nature of quo warranto will lie for usurping any office, whether created by charter alone or by the Crown with the consent of Parliament, provided the office be of a public nature and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others."

In a note to Order 59 Rule 11 of the Rules of the Supreme Court the effect of the judgment quoted above is formulated as follows:-

1. The office must be held under the Crown or created by statute whether immediately or mediately

2. It must be an office of a public nature;

3. It must be of a permanent character.

4. It must be substantive, and

5. There must have been usurpation.

The applicant has established that the respondent's office fulfils the requirements of 2, 3 and 4 above and he has also established that the respondent occupied the office at the material time. The argument has been devoted solely to the question whether the respondent holds an office in respect of which the procedure is applicable. The meaning of the expression 'office under Her Majesty the Queen' is given in section 8 of the Official Secrets Act of 1889 as 'including any office or employment in or under any department of the Government of the United Kingdom'. That, of course, is essentially an interpretation applicable to the Official Secrets Act but nevertheless it seems to

me to provide an apt indication of the meaning of the expression generally and it is, so far as I have been able to discover, the only occasion upon which it has been defined.

This expression would exclude Members of Parliament whether they be rank and file of the House or Ministers: for a Minister is not in or under a department; he controls it from above. Of the very many reported cases of proceedings by information in the nature of quo warranto against persons holding an office I have not been able to find a single one in which a member of Parliament has been proceeded against and in this I am not alone for Counsel on both sides have been equally unsuccessful.

There are two methods of redress in cases in which members of Parliament are alleged to have usurped a seat. First an order of the House may be made appointing a select committee to consider the matter. The select committee subsequently reports its findings to the House and the House decides what action, if any, shall be taken. This was done in the case of Sir Stuart Samuel (1913 A.C.514). The Select Committee reported that important and difficult questions of law were involved and asked the House to determine whether, while reserving its rights of ultimate decision, the House should invoke power of the Crown under 3 and 4 Will 4 Ch.41 S.4 to refer the questions of law for consideration by the Judicial Committee of the Privy Council. An humble address was presented by the House of Commons to His Majesty the King who ordered that "the following question of law be and the same is hereby referred to the Judicial Committee for their hearing and consideration". The question was then set out. This method of redress comes from within the House itself.

The second method of redress comes from without and bestows upon members of the public a right to sue for a forfeiture of £500 for every day upon which any person presumes to sit or vote when disabled (see House of Commons Disqualification Acts 1782 to 1801). It appears to me that it was for the reason that information in the nature of quo warranto was not applicable to Members of Parliament that the necessity for the provisions of the House of Commons Disqualification Acts 1782 to 1801 arose.

In the Supreme Court

No. 6

Judgment of Watkin-Williams J.

11th June, 1957 - continued.

Next it must be decided whether members of the Legislative Council of Trinidad and Tobago are to be regarded differently. The Legislative Council of Trinidad and Tobago was created by His Majesty in Council in exercise of the powers vested in Him by the Trinidad and Tobago Act 1887 - the office of the respondent was therefore created by the Crown under statutory authority. It cannot in my view be said that the respondent holds office under the Crown on that account, for the Crown once having created the office ceases to exercise control over it. It can however be said that the office was created mediately by statute and I am inclined to think that that argument is technically right though it does not follow that even if it is right, information in the nature of quo warranto would have lain against the holder of the office. It has to be remembered that the information in the nature of quo warranto goes back very many years and that when Lord Chief Justice Tindal expressed the confines of the procedure he was founding himself upon a history in which the position of members of legislative bodies created outside the United Kingdom by Order in Council played no part for the reason that at that date no such bodies had been brought into existence. At no time had the precise boundaries of the procedure in the nature of quo warranto been declared and Lord Chief Justice Tindal merely determined its limits by considering those cases in which it had been resorted to, successfully or unsuccessfully, in the past. It seems to me therefore that this question cannot be determined by merely inquiring whether an elected member of the Legislative Council of Trinidad and Tobago falls within the ambit propounded by Lord Chief Justice Tindal. It is necessary to consider the machinery provided for challenging the qualification of Members to sit and for the liability of members for sitting when disqualified and to decide whether there are grounds for the conclusion that the procedure substituted by Section 9 of the Administration of Justice (Miscellaneous Provisions) Act of 1938 for informations in the nature of quo warranto is applicable as an essential part of that machinery.

Section 40 of the Trinidad and Tobago (Constitution) Order in Council 1950 as amended by the Trinidad and Tobago (Constitution) Order in Council 1956 reads:-

40(1) "All questions which may arise as to the right of any person

(i) Not being an Elected Member of the Legislative Council to be or remain a Member of the Legislative Council as speaker, or

(ii) to be or remain an Elected Member of the Legislative Council, shall be referred to the Supreme Court of the Colony in accordance with the provisions of any law in force in the Colony.

(2) All questions which may arise as to the right of any other person to be or remain a Member of the Legislative Council shall be referred to the Governor and shall be determined by the Governor acting in his discretion".

Section 67 reads:-

"(1) Any person who

(a) Having been appointed or elected as a Member of the Legislative Council but not having been, at the time of such appointment or election, qualified to be so appointed or elected, shall sit or vote in the Legislative Council, or

(b) shall sit or vote in the Legislative Council after his seat therein has become vacant or he has become disqualified from sitting or voting therein, knowing, or having reasonable grounds for knowing, that he was so disqualified, or that his seat has become vacant, as the case may be, shall be liable to a penalty not exceeding ninety six dollars for every day upon which he so sits or votes.

"(2) The said penalty shall be recoverable by action in the Supreme Court of the Colony at the suit of the Attorney General."

Section 40 provides machinery for the determination of questions arising as to the right of a member to sit while Section 67 provides for the imposition of a sanction against any person who wilfully sits when he is not qualified to do so.

In the Supreme Court

No. 6

Judgment of Watkin-Williams J.

11th June, 1957 - continued.

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. Mr. Georges, in the course of his spirited argument on behalf of the applicant, appeared to accept that this is so and contended that section 40 of the Order in Council is the vehicle by which an informant from outside the Council may bring his complaint before the Supreme Court. I am satisfied that this contention is wrong and that section 40 only applies to questions which may arise within the House itself. When such questions arise it is for the House to refer them in accordance with the provisions of any law in force in the Colony to the Supreme Court for determination, a procedure in many ways analogous to the procedure by which the House of Commons may refer similar questions to the Privy Council. There is no justification for the conclusion that a person from outside the House in whose mind a question may arise has the right to refer that question to the Supreme Court. Although the House of Commons Disqualification Acts specifically enable an informer to bring a member who sits when disqualified before the Court, a procedure for which in Trinidad there is no counterpart, it cannot in truth be said that in Trinidad the rights of the general public are not safeguarded for if a member of that public wishes to raise any questions as to the right of a member to sit, he can approach a member of the opposing party who would probably need little persuasion to take the matter up in the House. Where the facts clearly showed that a member had sat in the House when under disqualification, the Attorney-General would be under an obligation to proceed under Section 67 upon the matter being brought to his attention.

I have come to the conclusion that the provisions in the Trinidad and Tobago (Constitution) Order in Council to which I have alluded must be regarded as complete and exclusive and that this matter cannot be brought before the Court by way of the procedure which the applicant has adopted. It is a procedure which is not applicable in England to Members of Parliament and likewise it is not applicable here in this Colony to members of the Legislative Council.

This application must therefore, be dismissed.

It is, however, appropriate that I should express my views on the further objection advanced by Sir Courtenay Hannays on behalf of the respondent that assuming the proceedings to be maintainable, this applicant is nevertheless not competent to maintain them.

In Halsbury, Laws of England 3rd Edition Vol. 11 at page 150 under the heading 'Interest Essential' it is stated:- "A private relator had to have some interest in the election which he impeached". In support of this statement a number of cases have been referred to including The Queen v. Thirlwin (33 L.J.Q.B.171), R. v. Briggs (1864 L.T.372) R. v. Wells 1895 3 W.R. 576 and Everett v. Griffiths 1924 1 K.B. p.941 at p.959. It is, I think, well established that where the qualification of a Local Government Officer is sought to be impeached, the relator must show that he had a local interest namely that he resides in the district and is entitled to vote. It appeared to be assumed by Counsel on both sides that the cases to which I have referred and the passage in Halsbury's Laws of England which I have quoted are inconsistent with the judgment of the Court in R. v. Speyer and R. v. Cassel (1916 1 K.B. 595). That was a case in which the eligibility of two members of His Majesty's Privy Council was questioned by a relator proceeding by information in the nature of quo warranto. Lord Reading L.C.J. said (p.613):-

> "A stranger to the suit can obtain prohibition and I see no reason why he should not in a proper case obtain information quo warranto".

Lush, J. said "Every subject has an interest in securing that public duties shall be exercised only by those competent to exercise them".

Avory J. said:-

> "Although the Court in the exercise of its discretion may have refused in some instances the application of a mere stranger, I think the principle on which Brett, J., as he then was, in Worthington v. Jeffries said the Court ought to act in prohibition should be applied to such a case as that before the Court that there should not be any distinction in the action of the Supreme Court dependent upon the means by which or the person by whom,

In the Supreme Court

No. 6

Judgment of Watkin-Williams J.

11th June, 1957 - continued.

it is informed of the breach of Order which is a breach of the prerogative. If information is given by a stranger 'Order is no less broken, the prerogative is no less invaded'."

The words I have underlined seem to me to indicate that the Judges were not suggesting that the relator need have no interest but that in that particular case every subject had an interest. That is specifically what Lush J. said.

A member of Legislative Council is a member of a body which exercises jurisdiction over the whole of the Colony of Trinidad and Tobago. He is moreover eligible for election to the Executive Council and to be charged with the Administration of a Government Department. That being the case I am of opinion that every resident in Trinidad and Tobago would have a sufficient interest if the proceedings were otherwise maintainable.

Application dismissed with costs.

P. Watkin Williams

11th June, 1957. PUISNE JUDGE.

No. 7

Order of Watkin-Williams J.

11th June, 1957.

No. 7

ORDER OF WATKIN-WILLIAMS J.

(Title as No.2)

Entered on the 11th day of June, 1957.
Dated the 11th day of June, 1957.
Before the Honourable Mr.Justice P. Watkin-Williams.

Upon Motion made unto this Honourable Court by Counsel for and on behalf of Augustus Patterson, the applicant, for an injunction to restrain Dr. Patrick Vincent Joseph Solomon, the Respondent, from claiming to be or in any way acting as (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

In the Supreme Court

No. 7

Order of Watkin-Williams J.

11th June, 1957 - continued.

Tobago and (c) a member of the Legislative Council of the Colony of Trinidad and Tobago for Port-of-Spain South Upon Reading the Notice of Motion dated the 31st day of May, 1957, the applicant's statement dated the 31st day of May, 1957, and the Order of the Honourable Mr. Justice J.R. Blagden, dated the 31st day of May, 1957, all filed herein and upon Counsel for the Respondent taking objections in limine, to wit, (1) that it was not open to the applicant to ask for an injunction and that the proper procedure should have been by way of a Writ of Quo Warranto; (2) that the Offices held by the Respondent not being offices held of the Crown are not subject to an order of this kind whether by way of injunction or by Quo Warranto; (3) that the applicant had not shown any, or any sufficient, interest in the matter; (4) and that by virtue of sections 40 and 67 of the Trinidad and Tobago (Constitution) Order-in-Council 1950 as amended by the Trinidad and Tobago (Constitution)Order-in-Council, 1956, it was competent only for the Legislative Council itself to refer the said matter to the Court. AND UPON hearing Counsel for the applicant and Counsel for the Respondent in reply the Judge having reserved his judgment on the said objections and the matter coming on for judgment this day

THIS COURT DOTH ORDER

That the said application be and the same is hereby dismissed with costs to be taxed and paid by the applicant to the said Respondent.

R.V.I. McI. Clarke.

Acting Registrar.

No. 8

No. 8

Notice of Appeal Motion to Full Court.

24th June, 1957.

NOTICE OF APPEAL MOTION TO FULL COURT

(Title as No. 2)

TAKE NOTICE that the Full Court will be moved on a date to be fixed by the Registrar at the hour of 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel for the

In the Supreme Court

No. 8

Notice of Appeal Motion to Full Court.

24th June, 1957 - continued.

above-named Appellant for an order that the judgment of the Honourable Mr. Justice Peter Watkin-Williams in the above application dated the 11th day of June, 1957, be set aside with costs here and in the Court below on the following grounds, inter alia:-

1. The learned Judge erred in law in holding that the application was misconceived or that the Applicant (Appellant) was not entitled to the relief sought therein.

2. The learned Judge erred in law in holding that only the Legislative Council of Trinidad and Tobago could refer to the Supreme Court of the Colony any question which might arise as to whether the seat of any elected member of the said Legislative Council has become vacant.

Dated this 24th day of June, 1957.

George A.Tsoi-A-Sue

Solicitor for the Appellant.

TO:
The Registrar of the Supreme Court;

AND TO:
M.T.I. Julien, Esq.,
Solicitor for the Respondent.

No. 9

In the Supreme Court

No. 9

Notice of Additional Grounds of Appeal.

4th July, 1957.

NOTICE OF ADDITIONAL GROUNDS OF APPEAL

(Title as No.8)

TAKE NOTICE that the Appellant will at the hearing of this appeal in addition to the grounds filed herein on the 24th day of June, 1957, seek leave to add the following grounds, viz:-

3. That the learned trial Judge was wrong in law in holding and/or ruling that the offices held by the Respondent, namely (a) a Minister, (b) a member of the Executive Council and (c) a member of the Legislative Council, were not subject to an order of this Honourable Court by way of injunction or quo warranto.

4. That the said office of a Minister held or purported to be held by the Respondent was and is a substantive office of a public nature created either by the Crown with the consent of Parliament or by the Crown alone.

5. That the proceedings taken by the Appellant were in any case valid and in order as a reference to this Honourable Court under section 40 sub-sections (1) and (2) of the Order-in-Council of the question whether the Respondent has a right to be or remain an elected member of the Legislative Council.

6. That the learned Judge should have over-ruled all the preliminary objections made and taken by or on behalf of the Respondent and should have gone on to consider the case on the merits and to grant an injunction as prayed in the application herein.

DATED this 4th day of July, 1957.

George A.Tsoi-A-Sue.

TO:
The Registrar of the Supreme Court,

AND TO:
Mr. M.T.I. Julien,
Solicitor for the Respondent.

In the Supreme Court

No.10

Judgment.

13th November, 1957.

No. 10

JUDGMENT

(Title as No.8)

J U D G M E N T

The appellant who is a registered voter for the electoral district of San Fernando made application to a judge of the Supreme Court for an Injunction restraining the respondent who is an elected member of the Legislative Council of the Colony from claiming to be or in any way acting as (a) Minister of Education and Culture of the Government of the Colony, (b) a member of the Executive Council of the Colony, and (c) a member of the Legislative Council of the Colony. The grounds upon which the relief claimed were based were that the seat of the respondent in the Legislative Council of the Colony had become vacant under the provisions of section 38(3) 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 respondent having become party to a certain contract with the Government of the Colony without having first disclosed to the Legislature his intention of becoming a party to the said contract and without having first obtained from the Legislature exemption from the consequences of becoming a party to such contract, and that by reason of such vacancy the respondent was no longer entitled to be a member of the Executive Council of the Colony or Minister of Education and Culture in the Government of the Colony.

At the hearing before Watkin-Williams, J., two objections in limine were taken by counsel for the respondent. They were (1) that the procedure adopted by the appellant was not proper in that he had applied for an injunction on the footing that the procedure by way of quo warranto had been abolished in the Colony, and (2) that the proceedings were not maintainable because (a) the offices held by the respondent were not subject to an order by way of injunction or quo warranto, and (b) that the appellant had not shewn any, or any

sufficient interest entitling him to move the Court. The trial judge overruled the first objection and the second objection in part: he, however, held that the application was misconceived, that the question of the right of the respondent to remain an elected member of the Legislative Council could only be entertained by the Supreme Court on a reference made to the Supreme Court by the Legislative Council and that the appellant was incompetent to bring proceedings against the respondent.

The grounds of appeal are: (1) that the learned judge erred in law in holding that the application was misconceived or that the appellant was not entitled to the relief sought; (2) that the learned judge erred in law in holding that only the Legislative Council of the Colony could refer to the Supreme Court any question which might arise as to whether the seat of any elected member of the Legislative Council has become vacant. Counsel for the appellant submitted that the relevant portion of section 40(1) of the 1950 Order-in-Council provided a right of challenge by any member of the public in two classes of cases: (a) where an elected member had not yet taken his seat in the Legislative Council (b) where an elected member has taken his seat in the Legislative Council. Section 40(1) of the 1950 Order-in-Council reads as follows:

> "All questions which may arise as to the right of any person -
>
> (i) ... ...
> (ii) to be or remain an elected member of the Legislative Council, shall be referred to the Supreme Court in accordance with the provisions of any law in force in the Colony."

Counsel argued that where an elected member has not yet taken his seat the law in accordance with which any question as to his right to be an elected member is to be referred to the Supreme Court is the law governing election petitions as set out in the Legislative Council (Elections) Ordinance, Ch.2 No.2, that where an elected member has taken his seat the law in accordance with which any question as to his right to remain an elected member is to be referred to the Supreme Court is the common law because although the Legislative Council has been empowered under section 47 of the

In the Supreme Court

No.10

Judgment.

13th November, 1957
- continued.

1950 Order-in-Council to enact legislation providing for the determination of all questions which may arise as to the right of any person to be or remain an elected member of the Legislative Council it has not done so and the common law right of any member of the public to use the procedure afforded by proceedings in the nature of quo warranto which is independent of the right conferred by section 40 of the 1950 Order-in-Council is therefore unimpaired and such procedure is appropriate. He conceded that the Order-in-Council contained no specific provision for questioning the right of an elected member to be a minister but contended that the right existed and could be enforced by quo warranto proceedings because the office of minister fell within the rule in R. v. Darley (12 C & F. page 536). Counsel said that section 10 of the Order-in-Council (which provides that all questions which may arise as to the right of any person to be or remain a member of the Executive Council shall be referred to the Governor and shall be determined by the Governor acting in his discretion) was per incuriam and that the respondent's membership of the Executive Council could properly be questioned in proceedings brought by any member of of the public before the Supreme Court.

Counsel for the respondent while not abandoning the objections decided against the respondent did not argue them and confined his submissions to the objection upheld by the trial judge. He urged that a proceeding by way of injunction of quo warranto is a lis and not a reference which is a totally different conception conveying the notion of submission to an authority for guidance or advice as contemplated by sec.65(1) and sec.66 (c) and (e) of the 1950 Order-in-Council. He further submitted that section 40 of the Order-in-Council provided the only procedure for determining questions which may arise as to the right of a person to remain an elected member of the Legislative Council and relied on the case of R. v. Judge of Essex County Court (1887) 18 Q.B.D. 704.

Section 40 of the Order-in-Council is in similar terms to section 21 of the 1924 Order-in-Council by which provision was made for the first elected members of a Legislative Council for the Colony. The expression "in accordance with any law in force in the Colony" does not occur in

section 21 of the 1924 Order-in-Council but if the interpretation sought to be put upon section 40(1) of the 1950 Order-in-Council by the appellant is right, section 21 of the 1924 Order-in-Council can be interpreted in no different way despite the absence of the words "in accordance with any law in force in the Colony" for a reference under that section could not have been but in accordance with the laws of the Colony. There was however at the time when that Order-in-Council came into force no Ordinance of the Colony authorising the bringing of an election petition to unseat an elected member of the Legislative Council. That remained the position until 1946 when an Ordinance which is now the Legislative Council (Elections) Ordinance, Ch.2. No.2, was enacted but the relevant provisions of that Ordinance deal only with undue returns and undue elections, they contain no power to question the right of a person to be an elected member of the Legislative Council, or to remain an elected member, on the ground that he was, or since election had become, disqualified. A member of the public in 1924 therefore, according to the appellant's contention, had the right to bring proceedings before the Supreme Court to question the right of a person to be an elected member, but it would have been an unenforceable right for the proceedings could not have been by way of an election petition for which there was no provision, nor by way of quo warranto if the elected member had not taken his seat for quo warranto is not available if an office is vacant, and this disability would have continued until the coming into force of the 1950 Order-in-Council. The conclusion to which this argument leads exposes its fallacy and it seems to us that both the 1924 Order-in-Council and the 1950 Order-in-Council contemplate reference of questions to the Supreme Court by the Legislative Council and not by members of the public. The scheme of the 1950 Order-in-Council is clear, the framework of the procedure for the determination of questions has been legislated for and proceedings against an offending elected member are limited to the recovery of penalties by action in the Supreme Court at the suit of the Attorney General under section 67. This section has its counterpart in section 19 of the 1924 Order-in-Council (which provided for recovery of penalties by a common informer)as amended by the 1941 Order-in-Council. Section 40(1) of the 1950 Order-in-Council is

In the Supreme Court

No.10

Judgment.

13th November, 1957 - continued.

purely procedural. 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.

We consider that the learned trial judge construed section 40 of the Order-in-Council correctly and we dismiss the appeal with costs.

J.L. Mathieu-Perez
Chief Justice

Fabian J. Camacho
Ag. Senior Puisne Judge

C.V.H. Archer
13th November, 1957 Puisne Judge.

No.11

Order of Full Court.

13th November, 1957.

No. 11

ORDER OF FULL COURT

(Title as No.8)

Entered the 13th day of November, 1957.
On the 13th day of November, 1957.
Before the Honourable Sir J.L. Mathieu Perez,
Chief Justice
the Honourable Mr. Justice F.J. Camacho and
the Honourable Mr. Justice C.V.H. Archer.

UPON MOTION made unto the Court on the 7th day of November, 1957, for an order that the judgment of the Honourable Mr. Justice Peter Watkin-Williams bearing date the 11th day of June, 1957, be set aside, upon reading the Notice of Motion dated the 24th day of June, 1957, the order of the Honourable Mr. Justice Peter Watkin-Williams dated the 11th day of June, 1957, and the written judgment of the Honourable Mr. Justice Peter Watkin-Williams dated the 11th day of June, 1957, and upon hearing the said Counsel for the appellant and counsel for the respondent, the Court ordered that the matter should stand for judgment and the matter standing for judgment in the paper this day

THE COURT DOTH ORDER

That this appeal be and the same is hereby dismissed with costs to be taxed and paid by the appellant to the respondent.

J.B. McDowell
Acting Deputy-Registrar.

L.S.

In the Privy Council

No.12

Order in Council granting Special Leave to Appeal to Her Majesty in Council.

30th July, 1958.

AT THE COURT AT BUCKINGHAM PALACE

The 30th day of July 1958

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

PRIME MINISTER	MR.ORMSBY-GORE
LORD PRESIDENT	MR. BROOKE
LORD MILLS	MR. MOLSON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 23rd day of July 1958 in the words following viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Augustus Patterson in the matter of an Appeal from the Supreme Court of Trinidad and Tobago between the Petitioner Appellant and Dr. Patrick Joseph Vincent Solomon Respondent setting forth (amongst other matters) that the Petitioner a registered elector in the Colony of Trinidad and Tobago gave notice of Motion in the Supreme Court of Trinidad and Tobago on the 31st May 1957 for an injunction restraining the Respondent from claiming to be or in any way acting as (a) Minister of Education and Culture of the Government of Trinidad and Tobago (b) a member of the Executive Council of the Colony of Trinidad and Tobago and (c) a member of the Legislative Council of the Colony of Trinidad and Tobago: that the Court delivered Judgment dismissing the Motion and the Petitioner appealed to the Full Court of the said Supreme Court which on the 13th November 1957 dismissed the Appeal with costs: that on the 17th December 1957 the said Full Court granted the Petitioner leave to appeal to Your Majesty in Council on the usual conditions but subsequently on the 20th December 1957 the matter was recalled and the leave to appeal refused on the ground that the application for leave was out of time: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Full Court of the Supreme Court of Trinidad and Tobago dated the 13th November 1957 and for further or other Order:

In the Privy Council

No.12

Order in Council granting Special Leave to Appeal to Her Majesty in Council.

30th July, 1958 - continued.

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Full Court of the Supreme Court of Trinidad and Tobago dated the 13th day of November 1957 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs and upon paying into Court in Trinidad within four weeks of the date of Your Majesty's Order in Council herein the costs which he was ordered to pay as a condition of appeal by the said Full Court:

"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Colony of Trinidad and Tobago for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.