

Privy Council Appeal No. 34 of 1958

Augustus Patterson - - - - - *Appellant*

v.

Dr. Patrick Vincent Joseph Solomon - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 21ST March, 1960**

Present at the Hearing :

VISCOUNT SIMONDS

LORD DENNING

LORD JENKINS

[Delivered by VISCOUNT SIMONDS]

This appeal arises out of proceedings instituted in the Supreme Court of Trinidad and Tobago by the appellant, a mattress maker and registered elector in that Colony. On the 31st May, 1957, he was granted leave by the Court to issue a notice of motion 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 the Colony, (b) a member of the Executive Council of the Colony and (c) a member of the Legislative Council of the Colony. Notice was duly served on the respondent and supported by an affidavit of the appellant in which the grounds of the relief sought were stated. They were that the seat of the respondent in the Legislative Council of the Colony had 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 his having become a party to a contract with the Government of the Colony 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 details of the contract were then set out. It is not necessary to refer to them, for the merits of the case have not to be examined. In the Courts of the Colony and before their Lordships the issue has turned on questions of jurisdiction and procedure. The remaining facts that need to be stated are that the respondent was duly returned as member of the Legislative Council of the Colony for the constituency of Port of Spain South and took his seat on the 26th October, 1956, that on the same day he was elected to be a member of the Executive Council and was subsequently charged by the Governor with the administration of the Ministry of Education and Culture and assumed that office.

It will be convenient now to refer to the relevant provisions of the operative Order in Council. They will be stated in the terms of the Order in Council of 1950, as amended, where amended, by the Order in Council of 1956.

Section 4 provides that there shall be an Executive Council for the Colony which subject to the provisions therein mentioned shall consist of the Governor as Chairman, a Chief Minister, two ex officio members and seven Elected Members.

Sections 6, 7 and 8 provide for the election of the Chief Minister, for the ex officio members and for the election of the elected members, and section 9 for the tenure of office of members of the Executive Council.

Section 10 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.

Section 20 provides that the Governor acting in his discretion may by his directions in writing declare which other departments not including the subject of finance may be assigned to Members of the Executive Council other than ex officio members and on the advice of the Chief Minister charge any members of the Executive Council other than an ex officio member, subject as therein mentioned, with the administration of any other department or subject.

Section 29 provides that there shall be a Legislative Council for the Colony which should consist of thirty-one members, namely two ex officio members, five nominated members and twenty-four elected members, with a proviso in regard to the Speaker of the Council.

Section 37 provides for disqualification for nomination or election of members. The grounds of such disqualification are numerous but need not be set out for they are substantially repeated in section 38 which provides for the tenure of office of nominated or elected members of the Legislative Council, or, in other words, for disqualification after nomination or election.

Subsection (3) of section 38 is the immediately relevant provision. It provides that the seat of a nominated or elected member of the Council shall become vacant upon a number of grounds which include (a) upon his death or (b) if in the case of a nominated member he shall be absent from the sittings of the Legislative Council as therein mentioned, or (c) if, being a nominated member, he is nominated as a candidate in any election of a member to the Legislative Council, or, being an elected member, is appointed as a nominated member, or (d) if he shall cease to be a British subject or take such oath or do such act as therein mentioned or (e) if he shall become a party to any contract with the Government of the Colony for or on account of the public service with a proviso for exemption by the Governor of any nominated member and by the Legislative Council of any elected member in the circumstances therein mentioned, or (f) if he shall be adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's Dominions, or (g) if he shall be sentenced by a Court in any part of Her Majesty's Dominions to death or imprisonment (by whatever name called) for a term exceeding twelve months, or upon divers other grounds which need not be enumerated.

Section 40—the most material clause—is as follows:—

“(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.”

It would appear to their Lordships that the words “to be” refer to the initial nomination or election which is dealt with by section 37 and the word “remain” to the grounds of subsequent disqualification dealt with by section 38. They further note that the Order in Council of 1950 provided that all questions as to the right of any person to be or remain an elected member of the Council should be referred to *and determined* by the Supreme Court of the Colony in accordance with the

provisions of any laws in force in the Colony, whereas in the amending Order of 1956 the italicised words have dropped out. The explanation of this is not obvious: it is possible that it was intended to emphasise that the function of the Supreme Court is advisory rather than determinative, whereas the questions which are referred to the Governor are still to be determined by him.

It only remains to refer to section 67 which provides (1) that any person who . . . (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 reason to know that . . . his seat has become vacant . . . shall be liable to a penalty not exceeding 96 dollars for every day upon which he so sits or votes and (2) that the said penalty shall be recoverable by action in the Supreme Court of the Colony at the suit of the Attorney General.

Upon the motion coming before Mr. Justice Watkin Williams in the Supreme Court of the Colony certain objections were taken in limine for the respondent. They were (1) that the procedure adopted by the appellant was not proper in that he had applied for an injunction upon 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 shown any sufficient interest entitling him to take proceedings. These objections were substantially overruled by the learned Judge, who nevertheless refused the motion on the ground 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 it by the Legislative Council itself and that the appellant was incompetent to bring proceedings against the respondent.

The appellant appealed to the Full Court of the Supreme Court. It is noteworthy in view of the admission made by counsel upon appeal to Her Majesty in Council that the same relief was sought as in the original motion. No distinction was made between the respondent's position as member of the Legislative Council, member of the Executive Council and Minister of Education and Culture.

The Full Court dismissed the appeal in a judgment which their Lordships may be permitted to say is clear, cogent, and exhaustive. The Court found it necessary to deal only with the competence of the appellant to maintain the proceedings, and, affirming the learned Judge, held that section 40 of the Order in Council contemplated a reference to the Supreme Court by the Legislative Council only and that the appellant could not maintain the proceedings.

Upon appeal to Her Majesty in Council the appellant abandoned his claim to relief so far as it related to the respondent's membership of the Legislative and Executive Councils, maintaining it only in relation to his office of Minister. It is that issue which their Lordships are invited by the appellant to determine.

At once upon the opening of the appeal learned counsel for the respondent took the objection that no appeal lay to Her Majesty in Council from the decision of the Supreme Court of the Colony in a matter affecting membership of the Legislative Council and consequently affecting also membership of the Executive Council and the office of Minister. It was open to him to do so notwithstanding that special leave to appeal had been granted.

This objection can conveniently be examined upon the footing that the appellant's claim had been maintained in its entirety. Upon this footing it appears to their Lordships that it must be sustained. Adapting the words of Lord Cairns, L.C., in *Théberge v. Laudry*, 2 App. Cas. 102, they are of opinion that, upon a fair construction of the Order in Council, it does not provide for the decision by the Supreme Court of mere ordinary civil rights but creates an entirely new jurisdiction in a particular Court of the Colony for the purpose of taking out of the Legislative Council with its own consent and vesting in that Court

the very peculiar jurisdiction which had existed in the Council itself of determining the status of those who claim to be members of the Council. If so, it follows that the determination of that Court is final and that from it no appeal lies. Nor does this rest on the validity of the assumption that apart from section 40 of the Order in Council the question could be determined by the Council itself. In *de Silva v. Attorney General*, 50 Ceylon N.L.R. 481, it was made clear that the same principle applies whether or not the jurisdiction vested in the particular Court had previously been exercised by the Legislative body. As was said in that case the dispute is one "which concerns the rights and privileges of a legislative assembly and whether that assembly assumes to decide such a dispute or it is submitted to the determination of a tribunal established for that purpose, the subject matter is such that the determination must be final, demanding immediate action by the proper executive authority and admitting no appeal to His Majesty in Council." It is therefore unnecessary to consider whether apart from the Order in Council the Legislative Council could itself have determined such a dispute. It is sufficient that the dispute is of such a character that the decision of the Court to which it is referred must be final. To this effect also is the decision of this Board in *Senanayake v. Navaratne* [1954] A.C. 640.

If, as their Lordships hold, an appeal would not lie from a determination of the Supreme Court upon a reference under section 40 of the Order in Council, equally it cannot lie from a determination of that Court upon the same subject matter otherwise than upon such a reference. Their Lordships do not entertain any doubt upon the correctness of the decision of the Supreme Court that the appellant could not competently maintain the proceedings in any form. They only add that, if he could, no appeal would lie. They find it unnecessary to add any observations upon the somewhat cryptic words in section 40 of the Order "in accordance with the provisions of any law in force in the Colony." They cannot afford any assistance to the appellant.

But, as has already been said, learned counsel for the appellant, faced by a difficulty which he might well regard as insuperable, abandoned his claim for relief in regard to the respondent's membership of the Legislative and Executive Councils. But, while thus admitting that so far as these proceedings were concerned he could not claim that the respondent had ceased to be such a member, he nevertheless insisted that he was entitled to an injunction restraining him from acting as Minister of Education and Culture. This claim is clearly not tenable. The respondent is, until the contrary is competently determined, a member of the Legislative Council. He is, until the Governor otherwise determines under section 10 of the Order in Council, a member also of the Executive Council. It is only if he "ceases to be" such a member that he can no longer hold the office of Minister to which he has been appointed. The appellant cannot, by omitting a necessary link in the chain of his argument and assuming that to be proved which he cannot even try to prove, arrive at the conclusion at which he aims. But that is what he invited their Lordships to do. The disqualifying event, he urged, was an event susceptible of proof like any other event and, being proved, led automatically to disqualification, and disqualification led in its turn to incompetence to hold office. And (so their Lordships understood the argument to proceed) so long as the object of the proceedings was not disqualification but its sequel, section 40 had no application. The argument was enforced by illustrations from other proceedings in which it might be necessary to prove that a particular person was or was not at a given time a member of the Legislative Council, e.g. in order that he might qualify as a beneficiary under a will or settlement. Their Lordships cannot accept this argument. Whether the purpose of the proceedings is directly to challenge the right of a person to be a member of the Legislative Council or to challenge his right only for some ulterior purpose, he is confronted by section 40 and, if there is in fact a question to be determined, he is arrested in his argument

until the Supreme Court upon a proper reference has determined it, or, perhaps it should be better said, has advised upon it. No doubt in most cases, as, for example, if the event disqualifying the person concerned is his death, such a reference would be regarded as unnecessary, and in other cases it could be merely formal. But, where as here the proceedings are controversial, there is no escape from the explicit terms of section 40. Unless and until the fact of disqualification has been established in the only manner permissible, it is not possible to argue its consequences.

Their Lordships therefore reach these conclusions: (1) that the Supreme Court was right in deciding that the appellant could not maintain his action in the form in which it was presented to it, (2) that he cannot escape from the consequences of that decision by dropping his claim so far as it relates to membership of the Legislative and Executive Councils and (3) that, if upon a proper reference the Supreme Court had come to a determination, whatever form it might take, no appeal would lie to Her Majesty in Council. For these reasons their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.

In the Privy Council

AUGUSTUS PATTERSON

v.

DR. PATRICK VINCENT JOSEPH SOLOMON

DELIVERED BY
VISCOUNT SIMONDS