

ECSC E-NEWSLETTER



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GREETINGS FROM THE CHIEF JUSTICE

The long vacation has now ended. We decided that the newsletter too deserved a break. As a result this issue is for August and September. We can now have a new beginning with our website. This is the first issue of the Newsletter which will be distributed via the website only. I would like to say a special thank you to Mr. Greg Girard and Mr. Augustus Marcellin for their assistance in making the website a reality. This allows the Newsletter to only list the judgments delivered each month. They can be accessed directly from the relevant page on the website.

We have now entered the new Law Year 2000-2001. I expect that during this year the new Civil Procedure Rules will be fully implemented. I must give special thanks to the members of the Judiciary and Officers of the Bar throughout the region who have been very supportive of the reform process. I trust that the public will be able to benefit from our efforts.



EASTERN CARIBBEAN SUPREME COURT NEWS

COURT OF APPEAL

UNIFEM Barbados

On August 26th, 2000 UNIFEM, in collaboration with the UWI Faculty of Law convened a two-day Roundtable on Gender and Human Rights for the Magistrates of the Judiciary from Barbados and the OECS. His Lordship, the Hon. Chief Justice, Sir Dennis Byron delivered the keynote address.

The main objectives of the Roundtable were to sensitise Magistrates to integrate a gender perspective in their work, to improve the response of the Magistrates to the problem of gender-based violence, and to encourage Magistrates to use international/regional human rights instruments as reference points for cases dealing with gender-based violence. The Roundtable also examined how the Judiciary could contribute to a development of common law that is consistent with these international instruments, even in the absence of implementing legislation.

The Caribbean Council of Legal Education 32nd Meeting

The Council of Legal Education held its 32nd Meeting in Montego Bay, Jamaica on 8th September 2000 under the chairmanship of Mr. C. Dennis Morrison Q.C., the first graduate of the Council's Law Schools to hold that position.

The Council received reports from the Principals and Registrars of each of the three Law Schools and approved the examination results. Graduation ceremonies in the Bahamas (23 September 2000), Jamaica (30 September 2000) and (Trinidad 7 October 2000) were addressed by His Excellency Sir Orville Turnquest Governor General of the Bahamas (EDLS), the Honourable Sir Dennis Byron Chief Justice of the Eastern Caribbean Supreme Court (NMLS) and the Honourable Senator A. J. Nicholson Q.C. Attorney General of Jamaica (HWLS) respectively.

The Council recognises that the inability of the Law Schools to accommodate all who would wish to enter, stems from a resource constraint. The demand for legal education in the Caribbean continues to exceed the capacity of the present facilities and resources received by the Council from regional Governments. The Meeting resolved to further examine ways in which it can recommend to member Governments, appropriate responses to the pressing demand.

The perennial and substantial arrears of contributions owed to the Council by member Governments (with very few exceptions) continues to be a cause of concern. At its recent meeting the Council received and considered a number of reports and proposed initiatives aimed at improving the arrangements for the management of its finance.

The delay of The Bahamas Government in commencing the promised construction of premises specifically to house the Eugene Dupuch Law School remains a matter of concern to the Council. Current plans are for construction to commence in January 2001 and to be completed in May 2002. The Government of the Bahamas and the U.W.I. have agreed to commence a U.W.I. Bachelor of Laws degree programme at the College of The Bahamas in September 2000.

NEW DEVELOPMENTS IN THE COURT

Rules Consultant

Ms Sharon Walter, Legal Counsel with the Canadian Department of Justice in Ottawa has been participating in the Eastern Caribbean Supreme Court Judicial Reform Project. In her role as Legal Consultant to the Eastern Caribbean Supreme Court, she has been working on the legal framework for the implementation of the new Rules. She has also been engaged in editing the Civil Procedure Rules including incorporating recommendations of the Rules Review Committee into the Rules. Ms Walter's involvement in this project was made possible through technical assistance from CIDA and the Canadian Department of Justice.

Ms Walter, a national of Antigua, has twenty years experience at the Bar and holds an LL.M in Legislative Drafting from the University of the West Indies.

Final Meeting of the Rules Review Committee

The final meeting of the Rules Review Committee was held on Monday 28th August 2000 at the N.I.S. Building, Castries, Saint Lucia. The meeting was chaired by the Hon. Mr. Justice Albert Matthew, Justice of Appeal and Director of Studies, Judicial Education Institute.

The attendees at the Meeting included the Hon. Chief Justice, the Court of Appeal and High Court Judges, the Masters (who were unavoidably absent), the Chief Registrar, the Legal Consultants, Attorneys General from Anguilla and St. Lucia, the Presidents of the various OECS Bar Associations, a Representative of the OECS Bar Association, the Legal Adviser to the Eastern Caribbean Central Bank, the Court of Appeal Registry, the High Court Registrars and Registry Staff.

Ms Sharon Walter, the Consultant, recognised Judge Greenslade as the backbone and chief architect of the new Rules. She provided background information on the entire consultation process and stated that the Rules Review Committee, together with the Chief Registrars, both past and present were essential partners in the reform process. She made

reference to the contribution made by Mr. Robert Lipscher, USAID Consultant. Ms Walter also presented a table of changes to the participants. This document highlighted the changes requiring the approval of the Rules Review Committee.

The Chief Registrar, Mrs. Leigertwood-Octave made a short presentation on the dissemination of the new Civil Procedure Rules, focusing on the following frequently asked questions:

- (1) When can I get a copy of the Civil Procedure Rules 2000?
- (2) Where can I get a copy of the Civil Procedure Rules 2000?
- (3) Will the Rules be available in print or electronic format?
- (4) What will be the cost of the Civil Procedure Rules 2000?

The Chief Justice then made a thirty-five minute PowerPoint presentation giving a review of Civil Procedure Rules and an overview of the changes that had been put before the Rules Review Committee by the Consultant. He also underscored the broad consultation and participation which had taken place. He referred to the commitment of the Heads of Government of the Eastern Caribbean, the role of the OECS Bar Associations and the Workshops, which were conducted in each member State and Territory.

The open forum discussions touched on issues including the issue of fixed costs and tariffs to be set by the Rules if any, the effects of Order 11 of the existing Rules and provisions made in the new rules to deal with these problems, Case Management of Appeals, Court Reporting, Interim Remedies the Transitional Provisions.

Rules Review Committee

The Honourable Chief Justice, Sir Dennis Byron says thank you to members for their attendance at and contributions to the deliberation of the Rules Review Committee.

“I am grateful for your support and commitment in serving on the Committee and for the invaluable advice that the Committee provided at this very important stage in the Eastern Caribbean Supreme Court judicial and legal reform program.

It was indeed a pleasure to have worked with you and I look forward to your continued support for the national committees that I envisage will undertake the continuing review work of the new Rules.

I will shortly be contacting Attorneys General and Presidents of Bar Associations to ask that they set up, by January 2001, a National Civil Procedure Rules Review Committee to keep the rules and their operation under review and to report on a quarterly basis and on an “as needed” basis to a Standing Rules Review Committee which will be set up to advise the Chief Justice and the two judges of court responsible for making rules.

I will propose to the Attorneys General and Presidents that the National Committee be comprised of representatives of the private and public bars, the judiciary and magistracy, the registry and the public.

Once again thank you for your support and I look forward to your continued support for other aspects of the judicial and legal reform program.”

The following is a list of members of the Rules Review Committee:

His Lordship the Hon. Chief Justice, Sir Dennis Byron, Chairman
His Lordship the Hon. Mr. Justice Albert Matthew
Her Ladyship the Hon. Madame Justice Suzie d’Auvergne
His Lordship the Hon. Mr. Justice Stanley Moore
His Lordship the Hon. Mr. Justice Brian Alleyne, S.C.
His Lordship the Hon. Mr. Justice Adrian Saunders
Her Ladyship the Hon. Madame Justice Indra Hariprashad-Charles
Hon. Mr. Petrus Compton, Attorney General of Saint Lucia
Hon. Mr. Ronald Scipio, Attorney General of Anguilla
Chief Registrar, Mrs. Ianthea Leigertwood-Octave
Ms Sharon Walters, Legal Consultant
Her Worship, Senior Magistrate Gail Royer, Dominica
Mr. Joseph Archibald, Q.C., Representative of the OECS Bar Association
Mrs. Margaret Ferrari, Representative of the OECS Bar Association
Mr. Courtney Abel, Anguilla
Ms. Ann Henry, Antigua and Barbuda
Mr. Paul Webster, British Virgin Islands
Ms Francine Baron, Dominica
Mr. Ruggles Ferguson, Grenada
Ms Denise Campbell, Grenada
Mr. Raj Rajasingham, Montserrat
Mr. Hogarth Sergeant, Montserrat
Mr. Terence V. Byron, C.M.G., St. Kitts and Nevis
Hon. Mr. Hilford Deterville, St. Lucia
Ms Lorraine Williams, St. Lucia
Mr. Dexter Theodore, St. Lucia
Mr. Parnell Campbell, St. Vincent and The Grenadines
Ms Nicole Sylvester, St. Vincent and The Grenadines
Ms Lydia Elliott, Legal Advisor to the Eastern Caribbean Central Bank

Formal Opening of the Law Year: Overview

On Monday 18th September, 2000, the Honourable Chief Justice, Sir Dennis Byron presided over the **First Special Sitting of the Eastern Caribbean Supreme Court** at the High Court, Castries, St. Lucia, **to mark the opening of the 2000 – 2001 Law Year.**

Justices of Appeal Redhead and Matthew, Justices D’Auvergne and Hariprashad-Charles, the Chief Registrar and members of the St. Lucia Bar were in attendance.

The Honourable Chief Justice acknowledged the authorship of the idea to the BVI Bar Association. The innovative step proposed by the Honourable Chief Justice was the intended simultaneous delivery of his address throughout the nine OECS member states. Technological challenges prevented the full execution of this intention, but the simulcast was received in Grenada, St. Vincent, Dominica, Antigua and Anguilla. The Resident High Court Judge delivered the Chief Justice’s address where the simulcast was not possible.

All of the member states prepared their programmes to complement the Chief Justice’s timely address. Speakers included the Attorneys General, Presidents of the various Bar Associations, Representatives of the Inner Bars and Utter Bars, and Solicitors General. In St. Lucia, the Minister of Legal Affairs spoke on behalf of the Attorney General who was regrettably absent. The various speeches will be published in a Special Edition of the Newsletter and we appeal to the authors to forward their contributions to the Eastern Caribbean Supreme Court.

The Honourable Chief Justice addressed the Bar on the activities of the Eastern Caribbean Supreme Court, the Eastern Caribbean Judicial Education Institute and the activities surrounding the reform of the Civil Justice system in the OECS, more particularly, the drafting and review of the Civil Procedure rules and the efforts made to prepare the infrastructure to bring the Rules to life.

The occasion was used to exhort members of the Bar to take advantage of the opportunities for continuing professional training and development, which can be provided by the Eastern Caribbean Judicial Education Institute.

One of the salient points of the address was the announcement that the new commencement date of the Civil Procedure Rules 2000 was **December 31, 2000**. It was recognized that not having final copies of the Rules available for the hitherto announced September 15 date would have been inimical to the proper administration of justice.

The Honourable Chief Justice ended his address with the words:

Our system of justice in the Eastern Caribbean has benefited tremendously over the years from the partnership between the Bench, the Bar, our governments and the public. I would like to praise the contributions of my predecessors on office and members of the judiciary who are no longer in active service. I take this opportunity to thank them and also to thank you, one and all, for your unstinting support and co-operation during all the stages of the Reform process to date. I look forward to your continued support and may God continue to inspire and to guide us....

We too, look forward to the exciting but challenging times that lie ahead.

Formal Opening of the Law Year: Saint Vincent and the Grenadines



His Lordship, the Hon. Justice Odel Adams and His Lordship, the Hon. Justice Don Mitchell with members of the Saint Vincent and the Grenadines Bar.

Formal Opening of the Law Year: Webcast

The address by the Hon. Chief Justice to the members of the Bar, in all the OECS on the opening of the new law year was held on Monday September 18, 2000, commencing at 10.10 a.m.

The Hon. Chief Justice's address was broadcast over the Internet making it available for simultaneously viewing by all of the High Courts in the eight islands which form a part of the Eastern Caribbean Supreme Court. As a result, the High Court in each island planned a special sitting of their court with the objective of making the broadcast available to their Bar members.

All of the islands, with the exception of Montserrat, St. Kitts, and Tortola, were successful at viewing the Hon. Chief Justice's address. We are currently awaiting a report from Cable & Wireless on the reason that these islands were unable to receive the broadcast.

The technical assistance to achieve this Caribbean-wide viewing of the address by the Hon. Chief Justice was provided by Cable & Wireless Ltd. Initially there were a few delays in Cable & Wireless getting the necessary information to all of the islands where the sittings were being held, however in the end a tremendous effort was made to permit the broadcast to be available. Locally in St. Lucia, the Government Information Service provided support in the video and audio capture for the broadcast.

All in all, things went very well, and our objective of bringing the High Courts in the different islands together as one at a High Court sitting was in my opinion generally very successful, with the exception, of course, of the disappointment experienced in St. Kitts and Tortola.

Newsletter – New Publishing Arrangements

During a recent review of the ECSC E-Newsletter, the following jobs were identified in the production of the Newsletter:

1. Collection of Material
2. Writing Function
3. Selection
4. Typing
5. Design
6. Proofreading
7. Technical Expertise
8. Vetting
9. Dissemination of Newsletter
10. Follow up

In recognition of the demands of the above functions, a decision was taken to expand the Editorial Board of the Newsletter to share the burden of the considerable work involved in publishing the Newsletter.

Audit of Library Operations

The ECSC Library is now undergoing a review of the operations. This is expected to lead to recommendations on the following areas:

- Dissemination of information
- Automation of operations and services
- Clientele
- Staff
- Structural layout and environment
- Collection development

The library serves the information needs of the Eastern Caribbean Supreme Court. It is also a source of information for the legal profession to a limited extent. The process of the reform of the Eastern Caribbean Supreme Court has increased the demand on the library services. The increasing demand for information placed on the library with no change in staffing is expected to affect the efficiency of the service adversely. A Library Assistant will be hired within the month. A library automation system is under consideration, with the first step being the establishment of criteria for selection of the appropriate software.

JUDICIAL AND LEGAL SERVICES COMMISSION

Legal Appointments

Grenada

1. Mr. Henry Paryag has been appointed as Magistrate, Southern District, Grenada on contract for a period of two [2] years effective 1st August, 2000.
2. Mr. Lloyd St. Louis has been appointed to act as Magistrate for the western and northern districts, Grenada from 1st October to 11th November, 2000 vice Mr. Samuel Ford due to proceed on vacation leave.
3. Mr. John Tyme has been appointed as Crown Counsel in the Director of Public Prosecution's Office.

St. Christopher

1. Ms. Shona Griffith has been appointed to act as Registrar, for a period 11th to 24th September, 2000.
2. Ms. Gail Edwards to act as Registrar for the period 25th to 29th September, 2000.

CONFERENCES, SEMINARS & WORKSHOPS

Registrars' Workshop

The Judicial Education Institute of Eastern Caribbean Supreme Court held a Registrars' Workshop on Civil Justice Reform, 16th – 19th August 2000 at the Bay Gardens Hotel in Saint Lucia. The Workshop was intended to assist Registrars to strengthen their Offices and improve their operations in anticipation of the civil justice reform. The facilitator of the Workshop was Mr. Robert Lipscher, USAID Consultant. Two major aspects of the reform programme were dealt with: re-organisation of the court office with the introduction of the new Rules and the reduction of the backlog of civil cases. The Honourable Justice of Appeal, Albert Matthew and the Honourable Justice Don Mitchell, Resident Judge of the High Court of St. Vincent and the Grenadines, chaired each of the sessions.

The first two sessions were devoted to issues relating to the operation of the Court office under the new Rules. Participants were divided into three groups, and discussions centered on a Draft Registrar's Manual. The groups reported in plenary, during which

several useful suggestions were tendered with respect to re-organisation of the Court office both in terms of physical space and personnel.

The other issue discussed was the methodology to be employed in reducing the number of outstanding cases to be disposed of, before operations under the new Rules began. Out of this discussion the Masters devised a Programme to be followed by the Registries.

Other important topics presented to the Workshop were “*Automation*” by Mr. Gregory Girard, “*Interim Manual Systems*” by Mr. Robert Lipscher and “*Alternative Dispute Resolution – The Role of the Court Office*” by Mrs. Deborah Mendez-Bowen.

The Workshop culminated in an interesting and captivating power point address delivered by the Honourable Chief Justice, in which he likened the introduction of the new Rules to the “Dawn of a New Day”. Sir Dennis explained to the Workshop his personal troubled feelings by the cry of the public that the ends of justice were not being served by the justice system, the increasing cost of legal services, the complexity of the process and all around discontent and dissatisfaction. He explained that the Judiciary had made a commitment to the change process in that they have agreed to subscribe to a code of ethics and their acquiescence in the creation of the office of the Master of the Supreme Court. The relevance of the office of Master vis-à-vis the Registrars was explained in this way “ In addition to the usual career path, ... you now have the intermediate judicial tier of Master at which to aim...”. The Honourable Chief Justice used the opportunity to thank all of the persons associated with the Reform process to date.

The Workshop provided a valuable mechanism for the Registrars to meet and exchange ideas on the implementation of the new rules, processes and procedures that will become necessary for proper management of cases and suggestions for the way forward.

Judicial Education Institute

The Judicial Education Institute conducted a Workshop for the staff of the Registry of Saint Lucia and a Seminar for the Bar Association on Wednesday August 2, 2000. Similar sessions were conducted in Saint Vincent and The Grenadines on Wednesday August 9, 2000.

At the sessions special welcome was paid to the new Masters of the Supreme Court, Miss Charmaine Pemberton and Mr. Hugh Rawlins, who both indicated their delight to be involved in the wide ranging reforms undertaken by the Chief Justice to introduce efficiency in the judicial system.

At the sessions Ms Sharon Walter, a member of the Chambers of the Attorney General of the Federal Government of Canada, Legal Consultant to the Eastern Caribbean Supreme Court to assist in the legislative underpinnings of the Rules, also made presentations to the Bar Associations on their role and functions. She gave an overview of her activities

and assured Members that all was in place for the implementation of the New Rules by September 15, 2000.

At the sessions in Saint Vincent, Mrs. Judith Jones-Morgan, Registrar of the High Court who had received training earlier in the year gave her impressions of the Commonwealth Judicial Education Institute.

Justice of Appeal, Albert Matthew made presentations to the staff on the concept of Legal Education and the rite role that they played in the judicial process. To the Bar Association he addressed an overview of the New Rules concentrating on the Rules pertaining to case management and pre-trial review as well as mediation.

The Chief Justice by use of PowerPoint made presentations on the implementation of the New Rules. He spoke of the rationale for the reform of the civil process; the overriding objective of the New Rules; the tracking system for cases; the concept of mediation; and the use of technology in the judicial process.

At all sessions there followed lively periods of interaction between the presenters and participants. The number of issues raised and discussed indicated that there was a great measure of cooperation among the Registry Staff, the Bar Associations and the Judiciary.

At the St. Lucia Workshop, Mrs. Andra Gokool-Foster, Registrar of the High Court, chaired the session and Justice Suzie d'Auvergne, High Court Judge, chaired the session for the Bar.

Mrs. Judith Jones-Morgan, Registrar of the High Court of Saint Vincent chaired the Workshop and Ms Nicole Sylvester, Secretary of the Bar Association, chaired the session for the Bar.

All sessions were well attended.

CMJA's Edinburgh 2000 Conference



*Left to right
Justice Benjamin,
Justice Saunders,
Magistrate Gail
Charles and Justice
Mitchell during one
of the sessions at the
CMJA 2000
Conference held in
Edinburgh,
Scotland.*

The Commonwealth Magistrates' and Judges' Association held its triennial conference this year in Edinburgh, Scotland. Attending were some 450 magistrates and judges from throughout the Commonwealth. Attending from the OECS were Ms Gail Charles of the Magistrates Court in Road Town, and Benjamin J, Saunders J, and Mitchell J, of the High Court.

The theme of the conference was "Beyond the Horizon: Justice in the 21st Century." The conference heard addresses on the issues of delay in the administration of justice, historical and constitutional constraints on the administration of criminal law; the impact of international human rights treaties on the rights of women and children within the family; the rights of the child; the principles of judicial conduct; and the constitution and the role of the judge in a civil society. Justices Benjamin and Saunders acted as syndicate leaders in the discussions on the various topics.

It was agreed by all who attended this conference that the interaction among the brother and sister magistrates and judges of the Commonwealth was very positive and beneficial. The generous hospitality of the Scots judiciary was enjoyed by all the visiting delegates.

COURT OF APPEAL SITTING SEPTEMBER 2000

Dominica Court of Appeal Sitting – 11th to 15th September 2000:

Coram: Sir Dennis Byron, Chief Justice
Hon. Albert Redhead, Justice of Appeal
Hon. Albert Matthew, Justice of Appeal

Court opened with a ceremony to commemorate the conferment of Knighthood on His Lordship, the Hon. Sir Dennis Byron, Chief Justice. Speeches were made by Hon. Bernard Wiltshire Attorney General, Jenner Armour S.C., Joffrey Harris S.C., Anthony Astaphan S.C., Ms O Edwards D.P.P. (Ag.), Mr. Ashton Piper, Mr. Ronan David, and Mr. Justin Simon of the Antigua Bar. Sir Dennis Byron replied.

- 1. Toussaint v NCB**
Civ. App. No 7/00
Appearances: Mr. Dyer for the Appellant and Mrs. J. Prevost for the Respondent.
Result: Leave to extend time to file record of appeal extended to 30th October 2000.
- 2. Martin v Gordon**
Civ. App. No. 2/00
Appearances: Mr. Simon for the Appellant and Mr. Marshall for the Respondent.
Result: Court refused to grant leave to extend time for service of the notice of appeal. Appeal was dismissed.
Reasons: Although the period of delay was not inordinately long, the explanation of inadvertence was not compelling. Of greatest importance was the conclusion that on the merits the appeal had little if any chance of success. The Judge found that, in pursuance of an oral agreement, a parcel of land which had been purchased with money provided by both parties and was vested in the name of the Appellant only was subject to a resulting trust for the benefit of both. The law was clear leaving the only issue of finding of whether there was oral agreement. There was ample evidence to support the finding. We concluded that it was unlikely that the court would interfere with the judge's finding on credibility in this case. In keeping with the concept that the court should assist in avoiding wastage of expenses the appeal was dismissed.
- 3. Robin v State**
Crim. App. No. 7/00
Appearances: Mr. W. St. Luce for the Appellant and Ms Edwards for the State.
Issue: Appeal against sentence of 30 years for manslaughter.

Result: Appeal allowed and sentence reduced to 15 years. We considered the sentence excessive and inconsistent. The case was based on provocation - sudden loss of temper in an altercation. There were no special features of aggravation. This was not a domestic matter. The appellant had no previous convictions.

4. **Lanford v State**

Crim. App. No. 8/00

Appearances: Mr. L. Lawrence for the Appellant and Ms Edwards for the State.

Issue: Murder conviction. Heard together with **Freeman v State**.

5. **Freeman v State**

Crim. App. No. 9/00

Appearances: Mr. M. Foster for the Appellant and Ms Edwards for the State.

Issue: Counsel for both cases did not appear at trial. They were still in process of receiving instructions. The conviction had been entered in July. Counsel were being instructed to raise substantial matters of fact and law and needed time to investigate.

Result: Appeals adjourned to next assizes. Directions given:

- a. Appellants to file and serve amended grounds of appeal and affidavits within 6 weeks.
- b. State at liberty to file and serve rebuttal affidavit within 2 weeks of receipt from appellant.
- c. Appellants at liberty to file and serve affidavits in reply within 2 weeks after receipt of affidavits from State.
- d. Skeleton Arguments by 31st December.

6. **Gregoire v State**

Crim. App. No. 1/00

Appearances: Appellant appeared in person.

Issue: Handling stolen goods. Application to withdraw appeal.

7. **George v State**

Crim. App. No. 2/00

Appearances: Counsel for Appellant absent.

Issue: Manslaughter.

Result: Counsel for Appellant absent on urgent and unexpected family matters. Adjourned to next assizes.

8. **Benjamin v State**

Crim. App. No. 3/00

Appearances: Appellant in person and Ms Edwards for the State.

Issue: Solicitation to murder.

Result: Appeal dismissed.

Reasons: None of the grounds of appeal had any merit. We did not agree that the testimony of the witnesses for the prosecution was materially inconsistent. The ground of prejudicial testimony was rejected because the testimony

- complained of was direct evidence addressing the desire of the Appellant to cause the death of the complainant. We also rejected the allegation that the statement made by the Appellant was in breach of judge's rules. The trial judge conducted a voir dire and concluded on the ample evidence adduced, that the statement was voluntary.
9. **Stevens v State**
Crim. App. No. 4/00
Appearances: Appellant in person.
Issue: Burglary. Application to withdraw the appeal.
 10. **James v State**
Crim. App. No. 6/00
Appearances: Ms Barron for the Appellant and Ms Edwards for the State.
Issue: Forgery. Appeal against sentence of 2 years.
Result: Appeal allowed. The sentence varied to time already served and restitution of \$2,175.00 to the Credit Union within 3 months in default 18 months.
Reasons: Mitigating circumstances, mostly relating to information level of appellant. Judge concluded that a custodial sentence was inappropriate but imposed sentence because Appellant had wasted time of court by pleading not guilty. In our view this is wrong in principle.
 11. **L'Homme v The State**
Crim. App. No. 4/00
Appearances: Appellant in person.
Issue: Application to withdraw the appeal.
 12. **Baptiste v Cellular Inc.**
Civ. App. No. 8/96
Appearances: Mr. W. Riviere for the Appellant. No appearance for the Respondent.
Result: The appeal was dismissed.
Reasons: This matter had been dismissed for want of prosecution by the Court of Appeal on 15th September 1998. On 29/03/00 Cenac J, a High Court judge, purported by order to reinstate the appeal. Pursuant to that order, the Appellant purported to serve the record of appeal on 23rd August 2000. There was no evidence that the notice of appeal had ever been served. The judgment of the trial court had been delivered in writing on 31st July 1996. These processes were in breach of the rules of court and were invalid. We concluded that there was no appeal before the court.
 13. **Johnrose v Dominica Broadcasting Corporation**
Civ. App. No. 11/99
Appearances: Mr. A. Astaphan and Mr. M. Bruney for the Appellant and Mr. Justin Simon for the Respondent.
Result: Decision reserved.

14. **Viville v Viville**
Civ. App. No. 2/00 and;
Public Service Commission v Elwin
Civ. App. No. 6/00
Result: Illness of counsel in both cases. Adjourned to next sitting.
15. **Christian v Police**
Mag. Crim. App. No. 3/00
Appearances: Mr. St. Luce for the Appellant and Ms Edwards for the Police.
Result: Appeal allowed conviction and sentence set aside. Retrial ordered.
Reasons: The Appellant was not put to his election to obtain his consent to a summary trial of an offence which may have been triable before a jury in breach of the provisions of the Magistrates Code of Procedure.
16. **James v Edwards**
Mag. Civ. App. No. 3/99
Appearances: Mr. M. Bruney for the Appellant and Mr. R. David for the Respondent.
Result: Appeal withdrawn. No order as to costs.
17. **George v Yankey**
Mag. Civ. App. No. 6/00
Appearances: Both litigants in person.
Issue: Assault.
Result: Sentence varied. The fine of \$1,000.00 set aside and the Appellant ordered to pay the Respondent compensation in the sum of \$300.00 by 31st October 2000 in default 4 months.
18. **Herche v Commodore**
Mag. Civ. App. No. 3/00
Result: Adjourned to accommodate counsel absent from State on urgent and unexpected family matter.

COURT OF APPEAL SITTING SEPTEMBER 2000

St. Kitts Court of Appeal Sitting – 25th to 27th September 2000:

Coram: Sir Dennis Byron, Chief Justice
Hon. Albert Redhead, Justice of Appeal
Hon. Albert Matthew, Justice of Appeal

Mr. Emile Ferdinand, President of the Bar Association offered congratulations on the conferment of the Knighthood on Sir Dennis Byron. Sir Dennis replied.

1. **Attorney General v Inniss**
Civ. App. No. 6/00
Appearances: Ms S. Griffith for the Appellant and Mr. T. Byron for the Respondent.
Result: Adjourned to next sitting, on request of both parties.

2. **J. Gonzalez v R.**
Crim. App. No. 2/98
Appearances: Mr. V. Viera and Ms M. Hobson for the Appellant and Mr. D. Merchant D.P.P. for the Respondent.
Issue: Murder. Imbalance in summing up. Whether the trial was fair.
Result: Decision reserved. Decision to be put in writing.

3. **K. Charles v R.**
Crim. App. No.4/99
Appearances: Dr. H. Browne and Mr. K. Omowale for the Appellant and Mr. D. Merchant, D.P.P. for the Respondent.
Issue: Unlawful carnal knowledge. Imbalance in summing up.
Result: Appeal dismissed.
Reasons: The appellant was a family friend who was staying in the home overnight while the child's mother went out; there was no factual merit in assertions on the failure of the 11 year old complainant to make a recent complaint when the intercourse was alleged to have taken place between 3.30 am – 4.00 am and the appellant was picked up for questioning within 12 hours thereafter; there was no legal merit in the assertions that the trial judge should have suggested to jury that a third party against whom the complainant had made no allegations could have been the perpetrator; the allegations of unfair trial based on an imbalanced summing up not made out and the defence was fairly put; there was ample evidence to support the verdict.

4. **France v R.**
Crim. App. No. 2/99
Appearances: Appellant not represented and Mr. Dennis Merchant, D.P.P. for the Respondent.
Issue: Rape.
Result: Adjourned to next sitting.
Reasons: Appellant alleged that he had retained Mr. Patterson. Ms Transeco a member of Mr. Patterson's Chambers attended court in response to call from Registrar and stated that although the appeal record had been deposited with their Chambers no retainer had been made. The matter was adjourned to allow Appellant opportunity to get counsel.

5. **Tweede v R.**
Crim. App. No. 7/99
Appearances: Ms A. Inniss for the Appellant and Mr. D. Merchant, D.P.P. for the Respondent.
Issue: Causing death by reckless driving.
Result: Appeal dismissed.
Reasons: The deceased was killed when a bulldozer being pulled on a flatbed by the appellant fell onto the vehicle being driven by the appellant. The allegation that the judge erred in law in explaining elements of the offence were unfounded. He used the exact words in R. v Lawrence (1981) 1 All E. R 981. The allegation that there was a judicial rejection of the expert defence witness was unfounded – the law is that it is for the jury to find the facts and they can accept or reject the testimony of the expert, the issue of relevance is a question of law for the judge. In his summing up the judge did not go outside of those parameters; we found that the defence was fairly put; the verdict was supported by the evidence. In the circumstances the sentence of a fine of \$10,000.00 and disqualification for 2 years was not excessive and erred on the side of moderation.

6. **Seaton v R.**
Crim. App. No. 9/99
Appearances: Appellant in person and Mr. D. Merchant, D.P.P. for the Respondent.
Issue: Wounding with intent. Self defence not accepted.
Result: Appeal dismissed. Sentence varied from 7 years to 4 years.
Reasons: There was no evidence to support the appellant's allegation that he was attacked by the victim with a knife; the testimony of all eye-witnesses contradicted this assertion; the judge's direction on self-defence was sound; there was evidence to support the verdict of the jury; this was a 21 year old man with no previous convictions. Although the crime was serious because the wound was severe and the facts the jury must have found showed no provocation, 7 years was excessive.

7. **Carty v R.**
Crim. App. No. 5/00
Appearances: Appellant in person and Mr. D. Merchant, D.P.P. for the Respondent.
Issue: Unlawful carnal knowledge.
Result: Adjourned to next sitting. The appellant was not served with a copy of the Record of Appeal.
8. **Astaphan et al v The Democrat Printing Co. Ltd.**
Civ. App. No. 3/00
Appearances: Mr. D. Kelsick for the Appellant and there was no appearance for the Respondent.
Issue: Damages for defamation. Appeal against the quantum of damages.
Result: Appeal allowed; damages increased to \$35,000.00.
Reasons: The award of \$7,000 was inordinately low; the allegation that the appellant a practicing Barrister at law was not qualified was not shown to have had any effect on his practice so that no financial losses were established; the respondent although pleading justification adduced no evidence to rebut malice based on knowledge that the allegation was false; the allegation was made when the appellant had put himself up as a candidate for election and suggested an unfitness for public office; the appellant nonetheless won his seat.
9. **Knorr v Vaughn**
Civ. App. No. 8/00
Appearances: Mr. M Brantley for the Appellant and Mr. J. Nisbett for the Respondent.
Issue: Easement, nuisance.
Order: Hearing of appeal adjourned to next sitting of Court on terms that the counsel for both parties submit joint report on the settlement discussions on or before 15th December, 2000; the order of the trial judge relating to the right of the appellant to use the way in dispute is extended to final judgment of this appeal.
10. **Sutton v Chief of Police**
Mag. Crim. App. No. 5/00
Appearances: Dr. H. Browne for the Appellant and Mr. D. Merchant, D.P.P. for the Respondent.
Issue: Possession of firearms.
Result: Appeal dismissed; sentence varied to fine of \$5,000.00 in 2 weeks or 6 months in prison.
Reasons: There was evidence to support the magistrate's finding that the explanation of the appellant that he had no knowledge of the contents of the package he had brought from Tortola to St. Kitts until it was opened by customs should be rejected. This was first offence of any sort and custodial sentence not appropriate in circumstance of case.

11. **Maynard v Kisco Travel Ltd**
Mag. Civ. App. No. 3/00
Appearances: Mr. J. Cato for the Appellant and Mr. K. Liburd for the Respondent.
Result: Appeal already withdrawn at last sitting of court and listed in error.

12. **Greene v Henry**
Mag. Civ. App. No. 6/00
Appearances: Mr. T. Byron for the Appellant and Mr. K. Liburd for the Respondent.
Issue: Child maintenance.
Result: Appeal neither allowed nor dismissed. Matter settled by consent. Previous award of \$45.00 per week varied to \$40.00 per week.

13. **Buchanan v Warner**
Mag. Civ. App. No. 7/00
Appearances: Dr. H. Browne holding for Mr. G. Hamilton for the Appellant and Mr. H. Benjamin for the Respondent.
Issue: Arrears of maintenance.
Result: Appeal dismissed.
Reasons: The Magistrate' s finding that the receipt produced by the Appellant to show the he had paid \$1,500.00 was obtained by a trick was supported by evidence and should not be disturbed.

WRITTEN JUDGMENTS

Court of Appeal Judgments

The following are written Court of Appeal judgments available for the month of September 2000:

Superintendent of Prisons v Peters

Saint Vincent and The Grenadines

Civ. App. No. 9/99

Singh J A

Delivered: 25/09/00

Davis v Nelson

Saint Vincent and The Grenadines

Civ. App. No. 4/00

Redhead J A

Delivered: 25/09/00

Smith v Huggins

Saint Vincent and The Grenadines

Civ. App. No. 6/00

Singh J A

Delivered: 25/09/00

Matthews v Patterson

Saint Vincent and The Grenadines

Civ. App. No. 7/00

Redhead J A

Delivered: 25/09/00

Lewis v Bowens

Saint Vincent and The Grenadines

Civ. App. No. 8/00

Matthew J A

Delivered: 11/09/00

High Court Judgments

The following are written High Court judgments received during the months of August and September 2000:

Antigua and Barbuda

Oral contract for transplanting fruits trees after removal of grit and marl by grading soil surface - digging holes 4 feet deep- filling with topsoil - transplanting over 100 trees. Whether legally binding contract - substantial sum (\$15,000.00) paid to plaintiff by defendant - services alleged by defendant to have been voluntary - payments said to have been gratuitous.

I. Murraine v S. Sergeant

Antigua and Barbuda

Suit No. 320/94

Georges J

Delivered: 07/03/00

Agreement for sale of ten parcels of land by General Manager of plaintiff company to defendant - deposit not fully paid - no payment made in respect of outstanding balance - plaintiff claiming right to rescind agreement after 5 years of concluding same - declaration sought that defendant no longer has any interest in parcels of land and that plaintiff be at liberty to sell same.

St. Clare Estate Limited v C. Halstead

Antigua and Barbuda

Suit No. 374A/90

Georges J

Delivered: 21/03/00

Old Public Library – 200 year old historical building – plans to demolish and replace – Plaintiff concerned with issues of conservation – application by Defendant to discharge ex parte restraining order – whether Plaintiff has shown any cause of action or serious issue to be tried – locus standi of Plaintiff – issues of public law – injunction discharged.

The Historical and Archaeological Society of Antigua and Barbuda v Colonial

Ventures Limited et al

Antigua and Barbuda

Suit No. 156/00

Georges J

Delivered: 22/06/00

Claim for damages for personal injuries sustained by plaintiff in the workplace – settlement reached between defendant’s insurers and plaintiff’s solicitor who accepted insurers’ cheque and signed release on behalf of plaintiff in full and final settlement of all claims upon the insurers in respect of plaintiff’s injuries. Quere whether solicitor had authority to compromise plaintiff’s claim before suit and without her assent – is acceptance of the cheque from the insurers by the plaintiff’s solicitor and his signing the

release for and on her behalf tantamount to accord and satisfaction so as to preclude the plaintiff from bringing any further action against the defendant in respect of her injuries? Distinguish between cases in which a solicitor appears for a party in an action and cases in which no action is in existence.

C. Simon v Universal Caribbean Establishment – Development T/A Jolly Beach Hotel

Antigua and Barbuda
Suit No. 460/90
Georges J
Delivered: 22/06/00

Setting aside judgment in default of defence – solicitor’s collection commission costs of 10% - standard Bar Association fee – application under RSC Order 2 rule 2(2) – no irregularities specified in summons – power to amend judgment under slip rule – no good defence shown – application of Defendant dismissed.

Antigua Commercial Bank v Joshua Graham & Company Limited et al

Antigua and Barbuda
Suit No. 361/98
Georges J
Delivered: 07/07/00

Striking out part of defence – RSC Order 18 rule 19 (1) – claim of no or no reasonable defence.

E. Bridges et al v N.E.M. (West Indies) Insurance Limited

Antigua and Barbuda
Suit No. 395/95
Georges J
Delivered: 07/07/00

Probate action – Plaintiff executor of third will of deceased – Defendant executor of fourth will of deceased – claim that testator did not know or approve of contents of fourth will – finding on the facts of third in solemn form.

A. J. Chaia v E. Chaia et al

Antigua and Barbuda
Suit No. 95/92
Georges J
Delivered: 18/09/00

Employment – Pension and Gratuity – damages for breach of contract with regard to non-payment of returned benefits – damages for wrongful dismissal – held that pension rights not applicable to plaintiff – no basis in law or equity to sustain pleas of promissory estoppel or estoppel by representation – alternative claims for damages for wrongful dismissal and for severance payment dismissed as ex gratia payment reasonable.

M. A. Edwards v Antigua Public Utilities

Antigua and Barbuda
Suit No. 298/95

Georges J
Delivered: 18/09/00

British Virgin Islands

High Court of Justice In the matter of The International Business Act (CAP.291)
British Virgin Islands
Suit No. 69/97
Benjamin J
Delivered: 04/09/00

Montserrat

Contract of insurance - cancellation by insurance company - whether notification of cancellation by letter sufficient to terminate contract - peril occurring after notification but before refundable portion of premium returned to policy holder - whether company entitled to cancel policy unilaterally - whether return of premium a condition precedent to cancellation - whether company guilty of bad faith and if so relevance of same.

M. J. Roach v (N.E.M.) West Indies Insurance Limited

Montserrat
Civ. Suit No. 30/98
Saunders J
Delivered: 19/07/00

Husband and wife – property – summons pursuant to the Married Women’s Property Act, Chapter 302 of the Laws of Montserrat – wife contributed cash for construction of house before marriage – contribution made close to the marriage – common intention that this was to be the matrimonial home – wife to have a share in the house.

L. S. G. Lynch nee Hill v L. S. McCarter Lynch

Montserrat
Civ. Suit No. 4/00
Saunders J
Delivered: 14/08/00

Saint Kitts and Nevis

Social Security Board v National Caribbean Insurance Company Limited

Saint Kitts and Nevis
Civ. Suit No. 58/99
Bruce-Lyle J
Delivered: 11/07/00

M. Davis v K. Blackman et al

Saint Kitts and Nevis

Civ. Suit No. 148/99

Bruce-Lyle J

Delivered: 19/07/00

Saint Lucia

Company Law – petition for winding up of company – respondent filed a Summons to Strike out the Petition – petitioner has no locus standi to institute proceedings – service of petition was irregular and ineffectual – held that petitioner is prospective creditor – petition filed but not heard – submission premature – summons to strike out petition for winding up dismissed.

D. Bickford v St. Lucia Estates Limited

Saint Lucia

Suit No. 864/99

d’Auvergne J

Delivered: 19/09/00

Judicial Review of Coroner’s Inquest – verdict of coroner’s inquest – application for an order of certiorari to remove verdict into the High Court for the purpose of it being quashed - only on a finding of murder or manslaughter that the jury is charged with naming person or person who they believe to have been guilty of such offences or of being accessories before the fact of such murder – Section 27(4) of the Coroner’s Ordinance No. 35 of 1965 – in the jury’s verdict there is no such finding – a Coroner’s jury should not frame a verdict in such a way as to appear to determine any question of civil liability – ex parte application for an order that opposant be joined as a Respondent or an opposant to the suit – opposant granted leave to oppose application for judicial review – submitted as a point in limine that the applicants have no locus standi – held that the point in limine that the Applicants have no locus standi to discuss.

Conway Bay Limited et al v The Corner et al

Saint Lucia

Civ. Suit No. 972/99

d’Auvergne J

Delivered: 19/09/00

Injunction – executor prohibited from selling or placing any person in possession of any of the properties – appellant in reply to the order of injunction filed by the Respondent – property sold with full knowledge and consent of all the beneficiaries – (See AER 1981, 1 (847-915)) – held that order of injunction be discharged – caution placed on property be removed forthwith.

Ex Parte: J. Emmanuel v Jn Baptiste Emmanuel

Saint Lucia

Suit No. 477/99

d’Auvergne J

Delivered: 19/09/00

Preliminary submission - whether the pleadings and statement of claim disclosed a cause of action - oral agreement - whether article 1163 (2) and article 1163 (7) of the Civil Code is applicable.

F. Maurice v B. Leric

Saint Lucia

Civ. Suit No. 276/92

Hariprashad-Charles J

Delivered: 27/07/00

Land dispute - whether survey carried out by licensed land surveyor was erroneously done - whether heirs acquiesced to survey - whether land register should be rectified.

C. Jalim v J. Leon et al

Saint Lucia

Civ. Suit No. 373/90 Consolidated with

Suits No. 372/90 and 374/90

Hariprashad-Charles J

Delivered: 18/09/00

Divorce – custody and access – maintenance – community property.

S. Lammie v P. Lammie

Saint Lucia

Civ. Suit No. D30/95

Hariprashad-Charles J

Delivered: 19/09/00

Constitutional motion - whether amendment to customs [prohibited imports] [amendment] order no.4 of 1998 is unconstitutional, void and of no effect - whether minister of finance acted ultra vires the constitution in amending said act - allegation that sections 6, 10 and 13 of constitution are being contravened - compulsory acquisition of property - discrimination on basis of place of origin - reasonably justifiable in a democratic society.

Rambally & Sons Limited et al v Attorney General of Saint Lucia

Saint Lucia

Civ. Suit No. 35/99

Hariprashad-Charles J

Delivered: 19/09/00

Saint Vincent & The Grenadines

This case relates to the 2nd of July 1996 when after an altercation on a sidewalk between Sergeant of Police Caesar and one of the plaintiffs, the former proceeded to enlist other policemen from Police Headquarters who duly arrived at the scene of the altercation. The evidence revealed that the plaintiffs were all arrested and taken to the police station on the very night. On being released that night they

were immediately taken to a doctor and examined. The doctor's evidence and photographs of the plaintiffs disclosed the injuries sustained by the men when they were indisputably in police custody. The plaintiffs were all charged with criminal offences and were acquitted of all charges. The upshot of all this was that suits against the Attorney General and the Sergeant of Police were brought by each of the four plaintiffs and consolidated at the hearing. Judgment was given in favour of all the plaintiffs and special, compensatory, aggravated, and exemplary damages awarded.

G. Hadley v Attorney General et al and A. Hadley v Attorney General et al and R. Puckett v Attorney General et al and S. Hadley v Attorney General et al

Saint Vincent & The Grenadines

Consolidated Civ. Suits Nos. 228, 229, 230 & 231 Of 1997

Adams J

Delivered: 04/08/00

Landlord and tenant - forcible ejection of tenant by landlord - judgment for the plaintiff - special, exemplary, and general damages.

L. Ashton v K. Leacock

Saint Vincent & The Grenadines

Civ. Suit No. 14/99

Mitchell J

Delivered: 25/09/00

Nuisance by water - runoff rain water diverted by 3rd party not a party to the action onto defendant's land - defendant in retaliation diverting the water back on to the 3rd party's land - water flowing over 3rd party's land and onto the land of the plaintiff and damaging plaintiff's wall - water not flowing from the land of the defendant to damage the land of the plaintiff - case dismissed.

F. Mc Kree v J. Lewis

Saint Vincent & The Grenadines

Civ. Suit No. 88/99

Mitchell J

Delivered: 27/09/00

Probate action - practice and procedure - Order 53 of the RSC not followed - finding that no probate cause book kept in St Vincent for the past 30 years at least - matters that should be filed as probate actions normally filed in St Vincent under the ordinary civil rules - no objection made to procedure by defendant until close of trial - duty of court to deal with matter - Grant of Probate made by Registrar - plaintiff children of testator applying to set aside grant - will of dying testator prepared by solicitor based on instructions received not from testator but from principal legatee - solicitor not interviewing testator - solicitor not giving evidence of instructions but acting instead as counsel at trial - will witnessed by sons of principal beneficiary when independent witnesses easily available - JP who acted as third witness not called to prove will - deceased on deathbed at time of executing will and dying following day - medical evidence establishing that deceased was unresponsive and not well orientated some days

prior to the execution of the will when he had been discharged from hospital with poor prognosis - court not satisfied that the wishes and instructions of the deceased were as set out in the will - court satisfied the deceased was not competent at the time of the execution of the will - finding that testator died intestate - Grant of Probate revoked - executor and principal legatee ordered to account to the beneficiaries on intestacy.

S. Williams et al v R. B. Layne et al

Saint Vincent & The Grenadines

Civ. Suit No. 440/96

Mitchell J

Delivered: 27/09/00

EASTERN CARIBBEAN SUPREME COURT

As at 30th, September 2000

Court of Appeal

The Chief Justice

His Lordship, the Hon. Chief Justice, Sir Dennis Byron – Saint Lucia

Justices of Appeal

His Lordship, the Hon. Justice Satrohan Singh – Saint Christopher & Nevis

His Lordship, the Hon. Justice Albert Redhead – Saint Lucia

His Lordship, the Hon. Justice Albert Matthew – Saint Lucia

High Court

His Lordship, the Hon. Justice Odel Adams – Saint Vincent & The Grenadines

Her Ladyship, the Hon. Justice Suzie d' Auvergne – Saint Lucia

His Lordship, the Hon. Justice Ephraim Georges – Antigua

His Lordship, the Hon. Justice Lyle St. Paul, OBE, CBE [Ag.] – Grenada

His Lordship, the Hon. Justice Dunbar Cenac – Dominica

His Lordship, the Hon. Justice Kenneth Benjamin – Tortola, British Virgin Islands

His Lordship, the Hon. Neville Smith – Tortola, British Virgin Islands

His Lordship, the Hon. Justice Brian Alleyne, SC – Grenada

His Lordship, the Hon. Justice Adrian Saunders – Anguilla/Montserrat

His Lordship, the Hon. Justice Henry Moe [Ag.] – Antigua

His Lordship, the Hon. Justice Don Mitchell, Q.C. – Saint Vincent & The Grenadines

Her Ladyship, the Hon. Justice Indra Hariprashad-Charles – Saint Lucia

His Lordship, the Hon. Justice Frederick Bruce-Lyle – Saint Christopher & Nevis

Mrs. Ianthea Leigertwood-Octave, Chief Registrar - Saint Lucia