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GREETINGS FROM THE CHIEF JUSTICE

The relationship between the judiciary and the media took center stage this month. A radio and television commentator ran a series of call in programmes alleging impropriety in connection with the duty-free concessions granted to a member of the judiciary. Eventually, demands were made on me as Chief Justice to comment. On one occasion journalists waylaid me en route to an appointment at the OECS Headquarters and sprang at me from behind posts where they were hidden and pushed a microphone and camera into my face. By that time, however, I had already issued a Press Release. The release seems to have resolved the matter. It was an interesting experience for me as one of the reform themes that I have been advocating is the need to strengthen the information base of the Judiciary and to improve public awareness. It is obvious that lack of proper and timely dissemination of information is a serious impediment to informed discussion of issues affecting the judiciary and the administration of justice. The notion of the independence of the judiciary has traditionally inhibited judicial inclination to “talk” to the public. During the month of June a new dimension to this subject was realized. Mr. Kendall Morgan, the OECS Communications Officer, has been assigned to perform the functions of Press Officer to the Eastern Caribbean Supreme Court. This will enable the court to communicate with the public in an orderly and professional manner. I trust that he will provide a useful service throughout our jurisdiction.

Please send any comments, suggestions and contributions to the ECSC E-Newsletter at appeal@candw.lc.



EASTERN CARIBBEAN SUPREME COURT NEWS

COURT OF APPEAL

World Bank

On the 13th day of June 2000, Chief Justice Dennis Byron was in Washington DC as a panelist leading discussion on the presentation of the “**Challenges of Capacity Development: Towards Sustainable Reforms of Caribbean Justice Sectors.**” The panel discussion was chaired by the Hon. Dr. K. Anthony, Prime Minister St. Lucia, and the other panelists were Ms Besson, Private Sector Trinidad and Tobago, Dr. Ralph Carnegie, Academician, Mr. Dennis Darby, donor representative and Mr. Ross, Private Sector Jamaica.

The report was prepared under the auspices of the Caribbean Group for Cooperation in Economic Development (CGCED). Established in 1977, the CGCED is the main forum for policy dialogue and aid coordination among the Caribbean Countries, international financial organizations, and bilateral donors. A meeting is held every two years in Washington, DC and is chaired by the World Bank.

The themes for the June 12-15 2000 meetings were on a long-term Caribbean perspective and on the challenges of capacity development with a focus on Caribbean justice sectors. Two main regional reports were presented, one of which was “**The Caribbean in a Long Term Perspective: A 2020 Vision**”.

St. Kitts Chamber of Industry and Commerce

On June 17th, at the invitation of its President, the Hon. Chief Justice addressed the general membership of the St. Kitts Chamber of Industry and Commerce. The title of his speech was “Judicial Reforms in the Eastern Caribbean and the Caribbean Court of Justice”.

The Hon. Chief Justice spoke on the necessity for increased investment in the Justice Administration sector and the social benefit that derives from an efficient judicial system. He made reference to the World Bank policy document, “Challenges of Capacity Development: Towards Sustainable Reforms of Caribbean Justice Sectors” to support his views.

He outlined to the meeting some of the reforms that are under way in our communities, such as, the new Rules of Court, the proposed Case Management System, mediation and computerisation. The Hon. Chief Justice further dealt with the need for establishing the Caribbean Court of Justice. *[See Attachment]*

Press Release

While the court will uphold the right of citizens in our democratic society to criticize in good faith, in private or public, any public act done in the seat of justice, intentional publication of defamatory material calculated to undermine the authority of the court, cannot be permitted to continue with impunity. In this regard I should point out that it is a contempt to publish matter so defamatory of a judge or a court as to be likely to interfere with the due administration of justice, by seriously demeaning the authority of the judge or court.

In this context I decided to issue a release on a matter which has been treated by sections of the media in a scandalous manner.

The granting of duty-free concession to Resident High Court Judges in St. Lucia is not a power exercised by the Eastern Caribbean Supreme Court. It is a perquisite privilege granted by Government and derives its authority from Cabinet Conclusion No. 720 [b] of 3rd December 1987.

On 20th December 1999, an acting Judge of the High Court, made an application to the relevant Government Ministry, that is, the Ministry of Foreign Affairs, for the grant of this duty free concession on the purchase of a motor car.

The application was approved by the said Ministry on 23rd December 1999. The approved Form from the Ministry of Foreign Affairs was subsequently submitted to the Customs Department.

The Judge who had been acting since November 1998 was confirmed as a Judge of the High Court by the Judicial and Legal Services Commission with effect from 6th January 2000.

For the record, an Acting Judge is entitled to the same terms and conditions of service as is a confirmed Judge. He or she is vested with all the powers of a Judge – he or she hears and determines cases in the Criminal Assizes including passing Sentences of Death.

I should also state that there is defined procedure for dealing with complaints of improper conduct by judicial officers.

It cannot be in the public interest for continuation of conduct calculated to undermine confidence in the administration of justice.

HIGH COURT

Grenada

The Grenada Assizes opened on June 6th, 2000 with forty-seven (47) cases including four (4) murders listed.

NEW DEVELOPMENTS IN THE COURT

Study Programme for Judicial Educators

The Seventh Annual Intensive Study Programme for Judicial Educators was held from June 3-23 2000 in Halifax, Canada.

There were representatives from some 8 countries from all over the Commonwealth. They included the OECS States, Trinidad and Tobago, Bermuda, and the Bahamas. There were 15 participants in the programme. Judith S Jones-Morgan, Registrar, St Vincent and the Grenadines, attended from the ECSC jurisdiction.

Topics included “Objectives and Standards in Judicial Education”, “Long-range Designs”, “Adult Education Pedagogy”, “Communication Skills”, “Judicial Education Video Making” and “Electronic Judicial Education Tools”.

We hope to publish in a later issue the full text of the report to the Chief Justice.

Family Law and Domestic Violence

The reform process continued with a committee meeting on 21st June 2000. The committee was pleased to welcome the CJEI representative on the Family Law and Domestic Violence Conference Committee, Australian Judge Neil Buckley.

Judge Buckley spent the week of 19th-23rd June in the Eastern Caribbean. He participated in a number of meetings in St. Lucia and contributed to the development of a programme for advancing the reform process. He also joined in the Workshop with the Dominica Bar Association where he made a presentation on the Australian experience with case management.



Chief Justice Dennis Byron and Justice Buckley

OECS Advocate

The Chief Justice of the Eastern Caribbean Supreme Court, Hon. Dennis Byron was among the guests at the official launching of the OECS monthly newspaper, OECS Advocate, on Wednesday June 28th, at Bay Gardens Hotel in St. Lucia. Among those addressing the gathering were, St. Lucia's Foreign Minister Mr. George Odum, OECS Director General Mr. Swinburne Lestrade and the OECS Advocate Editor Mr. Kendol Morgan. Present were, Justice Susie d'Auvergne, representatives of the Diplomatic Corps, the private sector, Government and the Media.

Through this medium, the OECS Secretariat will provide an information link among the nine OECS Member countries. The paper will facilitate an exchange of news and update the region on

the Secretariat's work. A section of the paper is devoted also to exploring the similarities and differences among the people and encouraging greater levels of interaction.

The July issue of the paper will introduce a monthly page on the Eastern Caribbean Supreme Court. This will be coordinated jointly by Justice Don Mitchell and Mr. Kendol Morgan the recently appointed Press Officer for the Supreme Court.

At the ceremony, the OECS 19th anniversary magazine was launched. This publication reviewed the last year of operation of the OECS Secretariat, with comments from Heads and Senior staff of the various Units. The nineteenth anniversary celebrations were seen as a prelude to the major activities planned for the 20th anniversary in June 2001.

JUDICIAL AND LEGAL SERVICES COMMISSION

Legal Appointments

Grenada

The Judicial and Legal Services Commission has approved the appointment of His Worship, Mr. Lloyd St. Louis to act as Magistrate of the Western and Northern Districts from 19th June to 7th July, 2000 in the absence of Mr. Samuel Forde, who will be on vacation leave during that period.

St. Vincent & The Grenadines

The Judicial and Legal Services Commission has approved the appointment of Mr. Stephen M. Huggins, to act as Registrar of the High Court from 3rd to 30th June, 2000 in the absence of Mrs. Judith Jones-Morgan, who will be overseas on official duties during that period.

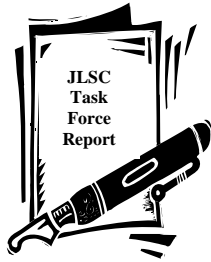
St. Lucia

The Judicial and Legal Services Commission has approved the appointment of Ms. Valera Fiklie Dlamini to the post of Director of Legislative Drafting in the Attorney-General's Chambers with effect from 1st July, 2000

British Virgin Islands

His Lordship, the Hon. Chief Justice, Mr. Dennis Byron has approved the following appointments:-

- (1) Mr. Ian Macintyre as Assistant Parliamentary Counsel on contract for a period of two (2) years;
- (2) Mr. Bilika Simamba as Parliamentary Counsel with effect from 10th April, 2000.



The Dumas Report

This item concludes our look at the recommendations of the Dumas Report presented to the Hon. Chief Justice in February 2000. Mr. Reginald Dumas of Trinidad and Tobago was established by the Hon. Chief Justice in November 1999 as a Task Force to examine and report on the structure and functioning of the Judicial and Legal Services Commission. In the event, his Report, consisting of over 100 pages of observations and recommendations, covered much more than the bare Commission itself. Mr. Dumas ventured into all the areas covered by the work of the Commission. He came up with a series of studied recommendations dealing with the Commission itself, the Magistracy, the Registry, Judicial Ethics, and terms and conditions of higher judicial office. We have looked in previous issues at the first 3 of those areas of recommendations. This month, we conclude by looking at his quite controversial recommendations relating to the last two areas: Judicial Ethics, and terms and conditions of higher judicial office. *[See attachment]*

CONFERENCES, SEMINARS & WORKSHOPS

Ombudsman Conference

The Honourable Chief Justice, Mr. Dennis Byron was invited to deliver the feature address at the formal opening of the Ombudsman Conference on Tuesday, 13th June 2000 at Bay Gardens Hotel. *[See attachment]*

C.J.E.I. Training

The 7th Annual Intensive Studies Programme for Judicial Educators was held June 3rd -23rd 2000 in Halifax, California. This is the C.J.E.I.'s Flagship Programme, which has established a network, of Judicial Educators knowledgeable in Judicial Education techniques and methodology to create judicial education curricula supportive of contemporary judicial reform. Mrs. Judith Jones-Morgan, Registrar of the High Court, Saint Vincent and The Grenadines was nominated by the Court to attend the Judicial Educators Conference, Halifax, Canada.

Judicial Education Institute

June saw a number of initiatives by the Institute. In Antigua on the 16th June Chief Justice and Matthew JA conducted a workshop for the Bar Association. There was a large turnout. The papers presented were Skeleton Arguments in the Court of Appeal, and the Rule Implementation Process by the Chief Justice and the Main Innovations in the New Rules by Matthew JA. This was followed by lively question and discussion time.

In Dominica a two day seminar was held at the Fort Young Hotel for the Dominica Bar Association on the 23rd and 24th June. This was aimed at a full study of the New Rules of Court and papers were presented by the Chief Justice, Matthew JA, Mr. Joseph Archibald Q.C. of the BVI Bar, and Ms Denise Campbell of the Grenada Bar. Australian Justice Neil Buckley also made a presentation on Case Management in Australia. The full Bar was in attendance.

In BVI a workshop with the support staff of the High Court, the Attorney General's Chambers and the Magistracy was conducted on the 27th June 2000. The presenters were Benjamin J, Matthew JA and the Chief Justice. The presentations dealt with the steps being taken to introduce the new rules, computerisation and the idea of judicial education for support staff in the Judiciary.

Preparing For Practise Under Civil Procedure Rules

We have decided to sensitise the Bar to some of the issues critical to the new systems and structures of legal practice under the Civil Procedure Rules.

These issues will include the following:

- ◆ Law office administration and particularly the development of the concept of litigation project management;
- ◆ Financial Management for lawyers;
- ◆ Professionalising Lawyers/Bar Associations.

Caribbean lawyers who practice in jurisdictions in which versions of the Rules and more particularly Case Management have been introduced, have been targeted to assist us with our programme. Three (3) OECS lawyers have indicated their willingness to assist in organising this venture. They are Tony Ross of Canada, Cecile Hill of Antigua and Joseph Archibald of Tortola.

Sessions will take place in each territory so that discussions can focus upon topics relevant and specific to each territory. The target audience will be members of both the senior and junior bar and at least one senior Para-legal staff from Law offices and Chambers. To defray administrative expenses, participants will be asked to contribute by way of payment of a seminar fee.

Continuing Education For The Bench - Preparing For Civil Procedure Rules

Towards the end of August, the Masters will participate in a Training Programme in Ontario, Canada. Master Robert Beaudoin will co-ordinate and will supervise the Programme. It is envisaged that the entire session will extend over six (6) working days comprising two (2) days

in court in Toronto, two (2) days in Windsor and two (2) days in session with Master Beaudoin in Ottawa.

It is further proposed that follow-up sessions take place in the OECS in or about the end of January into February, when Master Beaudoin and Justice Chadwick will visit the region. The Chief Justice, Judges, Masters, Chief Registrar, and the facilitators will have an opportunity to examine the initial impact of the CPR on OECS territories. It is envisaged that members of the team will visit OECS territories individually.

St. Kitts and Nevis – 7th to 9th June 2000: [In Chambers]

Singh JA

1. **Kelly v Diocesan Synod**
Civ. App. 10/00
Appearances: Miss Angela Inniss for the Applicant and Miss Myrna Walwyn for the Respondent.
Issue: Application for extension of time to appeal from an Order of Writ of Possession.
Delay: 3 months: Long.
Reason for Delay: None given
Merits: Real grievance of applicant was against Order for possession made 3 years ago against which there was no appeal and on which Order Judge granted Writ of Possession. That order for Possession was made with consent of applicant. No arguable ground of appeal against Order for Writ of Possession.
Prejudice: Serious prejudice to Respondent which had Order for Possession 3 years ago.
Result: Application for leave to appeal out of time refused. No order as to costs.

2. **Tweede v The Queen**
Crim. App. 7/99
Appearances: Miss Angela Inniss for the Applicant and Mr. Dennis Merchant, D.P.P for the Respondent.
Issue: Appeal against conviction of causing death by dangerous driving. Application to stay order disqualifying Appellant from driving, pending determination of appeal.
Result: Application to stay Order of disqualification refused, (1) the Registrar having advised the Court that the record of appeal will be ready for the September 2000 sitting of the Court, and (2) because disqualification was not a penalty but an imposition on the Appellant after conviction by jury for the protection of the public.

Friday June 9, 2000

3. **Warner v Chief of Police**
Mag. Crim. 6/00
Appearances: No appearance of or for the Appellant and Mr. Dennis Merchant D.P.P (Ag.) for the Respondent.
Issue: Appeal against conviction of possession of controlled drugs. Application by Appellant for extension of time to enter recognizance. Mr. Merchant does not oppose application.
Result: Application granted. Applicant to enter into and file recognizance within 7 days from today's date.

Antigua Court of Appeal Sitting – 12th – 16th June 2000

Coram: Singh JA
Redhead JA
Matthew JA

Monday June 12, 2000

1. **Port Services v Potter**
Civ. App. No. 8/98
Appearances: Mr. Lenworth Johnson for the Applicant and Miss E Ann Henry for the Respondent.
Issue: Application for conditional leave to appeal to Privy Council. Application filed out of time. No jurisdiction in Court to extend time.
Result: Application dismissed for want of jurisdiction.

2. **Marshall v Antigua Aggregates**
Civ. App. No. 23/99
Appearances: Mr. Hugh Marshall Jnr. for the Appellant and Mr. Anthony Astaphan, Q.C., Miss Rika Bird with him for the Respondent.
Issue: Winding-up proceedings struck out by judge. Wrong procedure followed. Appeal.
Result: Decision reserved.

3. **Courts v D. Haywood**
Mag. App. No. 1/00
Appearances: Mr. Hugh Marshall for the Applicant. No appearance of or for Respondent.
Issue: Application for extension of time to appeal.
Delay: 2 days.
Reason: Inadvertence of Counsel in miscalculating the days.
Merits: Appeal against quantum only.
Prejudice: Slight.
Result: Application re-instated after being struck out for non appearance of Mr. Marshall. Time to file notice of appeal extended. Notice already filed deemed to be properly filed.

4. **Sunny Investment v Scott**
Civ. App. No. 3/00
Appearances: Mr. Hugh Marshall for the Applicant and Mr. Dexter Wason for the Respondent.
Issue: Application for extension of time to appeal from decision of Industrial Court. Application for stay of execution. Judgment given December 16, 1999. Application for extension filed March 1, 2000
Delay: 2½ months.
Reason: Awaiting Court's reasons for decision.
Prejudice: Judgment for \$76,605.25.

Merits: Jurisdiction of Industrial Court challenged when it heard reference that was referred to it more than 10 days after Labour Commission failed to reach settlement pursuant to S 19(2) of Industrial Court Act. No hardship reason given for stay.

By consent: Application for extension of time to appeal granted. Notice of appeal already filed deemed to be properly filed. Judgment of Court below stayed pending determination of appeal.

5. **Roberts v Olladelle**

Civ. App. No. 7/00

Appearances: Mr. Justin Simon for the Applicant and Miss Ann Henry for the Respondent.

Issue: Extension of time to appeal.

Delay: 2 days.

Reason: Clerical default in Solicitor's office, not typing draft notice given to her on time.

Merits: Decision on Solicitor's collection costs of importance to the practice of the profession.

Prejudice: Minimal

By Consent: Application granted. Notice of appeal already filed, deemed to be properly filed.

6. **Antigua Port Authority v Davis**

Civ. App. No. 10/00

Appearances: Mr. Dexter Wason for the Appellant and Mr. Septimus Rhudd for the Respondent.

Issue: Application for stay of execution of Judgment of Industrial Court pending appeal.

Reason: If award paid difficulty in recovering if appeal succeeds. Appellant willing to give security to pay judgment if appeal unsuccessful.

By Consent: Judgment stayed pending determination of appeal on condition that appellant gives security for the judgment on terms to be agreed between the parties.

7. **Woods Development v Albert et anor**

Civ. App. No. 9/00

Appearances: Mr. Dexter Wason for the Appellant. No appearance of or for Respondent.

Issue: Application to stay judgment of Industrial Court on ground that if appeal successful difficult to recoup the judgment if paid. Applicant willing to provide security for award.

Result: Applicant delinquent in not having motion served at all on the respondent. Application struck out for want of prosecution because of that delinquency.

8. **Marius v Chase**

Civ. App. NO. 4/00

Appearances: Mr. Ralph Francis for the Applicant and Mr. Justin Simon for the Respondent.

Issue: Application for extension of time to file record of appeal.

Reason: Notes of evidence not yet available on Judgment delivered on March 15, 2000.

Delay: Not inordinate.

Prejudice: None.

Merits: Arguable grounds.

By Consent: Time to file record of appeal extended to 6 weeks from date of receipt by the appellant of the notes from the Court.

9. **Turner v Director of Public Prosecutions**

Motion No.1/00

Appearances: Mr. Dane Hamilton for the Applicant and Mr. Cosbert Cumberbatch, Director of Public Prosecution for the Respondent.

Issue: Application for leave to appeal already denied by the High Court Judge.

1. On November 29, 1999, Moe J made a Restraint and Disclosure of Information Order on an ex parte application of Director of Public Prosecutions under the Proceeds of Crime Act 1993. The applicant did not comply.
2. On March 15, 2000, Bruce-Lyle J (Ag.), on an application of the applicant, revoked the order of Moe J.
3. On May 26, 2000, Moe J on application of Director of Public Prosecutions, revoked the order of Bruce-Lyle J on the ground that it was made “blandly” and in contravention of “that great principle of natural justice (audi alteram partem)” and restored his own order of November 29, 1999. Apparently, the Director of Public Prosecutions was not given an opportunity to be heard before Bruce-Lyle J.
4. The proposed appeal is from the second order of Moe J.
5. However, the re-instated order of Moe J of 29th November, 1999, has expired, S 40 of the aforesaid Act only giving 6 months life to such an order.

Result: Application withdrawn.

10. **Peters v The Queen**

Crim. App. No. 6/99

Appearances: Mr. Dane Hamilton for the Appellant and Mr. Cosbert Cumberbatch, Director of Public Prosecutions, Mr. Thom with him for the Respondent.

Issue: Appeal against conviction of robbery with aggravation.

1. Directions on identification
2. Inconsistent verdict

Result: No merit in the issues. Appeal dismissed. Conviction and sentence affirmed.

Wednesday June 14, 2000

11. **Francis et al v The Queen**

Crim. App. Nos. 8 & 9/99

Appearances: Mr. Dane Hamilton for the Appellant and Mr. Cosbert Cumberbatch, Director of Public Prosecutions, Mr. Thom with him for the Respondent.

Issue: Appeal against conviction of Robbery with Aggravation and Assault. **Francis** - No evidence to go to jury for offence convicted of **Davis** - Admissibility of confession - No Voire Dire as to its voluntariness.

Held: Was one necessary in circumstances where no allegation or challenge was made as to voluntariness, the appellant having said that he did not make the statement, he signed a piece of paper voluntarily.

Result: **Francis** - Appeal allowed. Conviction quashed and sentence set aside. No evidence to go to jury for offences indicted. **Davis** - Appeal dismissed - Conviction and

sentence affirmed: whether appellant made statement was question for jury - Voire Dire not necessary. *Ajodia* applied.

12. **Rosario v The Queen**
Crim. App. No. 1/00
Appearances: Mr. John Fuller for the Appellant and Mr. Cosbert Cumberbatch, Director of Public Prosecution for the Respondent.
Issue: Appeal against conviction of rape. Whether there was mistrial after Georges J asked four jurors to stand down without giving a reason after they were chosen by the Registrar to try the appellant and before they were sworn.
Result: Material irregularity at trial, the judge not having given a reason for his action. Retrial ordered. [Written judgment **Singh J.A.**]
13. **Martin v Quality Builders**
Civ. App. No. 1/00
Appearances: Mr. Colin Derek for the Applicant and Miss E. Ann Henry for the Respondent.
Issue: Application for extension of time to file notice of appeal.
Delay: 2 months and 6 days.
Reason: Late instructions due to illness of Applicant. Affidavit insufficient. Not enough in it to show substantial grounds.
Prejudice: Serious for respondent. Case arose over 10 years ago. Respondent waiting since 1986 to have matter resolved. Judgment for \$117,000.00
Merits: Arguable questions of fact and law.
By Consent: Application for extension of time to file appeal granted. Appellant to file appeal within 7 days from date hereof. Judgment stayed if appeal filed within 7 days and judgment debt with interest to date of lodgment is lodged and deposited in Escrow account at Caribbean Banking Corporation in names of Mr. Derek and Miss Henry within 28 days from date hereof. Failure by appellant to make the lodgment, appeal will stand dismissed with costs to the respondent to be taxed if not agreed without further order. Costs of application to respondent to be taxed if not agreed.

Thursday June 15, 2000

14. **Alexander v The Queen**
Crim. App. No. 10/99
Appearances: Mr. Ralph Francis for the Appellant and Mr. Cosbert Cumberbatch, Director of Public Prosecutions with Mr. Thom for the Respondent.
Issue: Appeal against conviction of murder. Verdict unreasonable. Duty of Prosecution to disclose.
Result: Decision reserved.
15. **Francis v Dew**
Civ. App. No. 10/99
Appearances: Mr. Sydney Christian for the Appellant and Miss Ann Henry for the Respondent.
Issue: Land dispute. Mr. Christian asks for postponement on ground of late brief. No objections from Miss Henry.
Result: Adjournment to next Sitting.

16. **Carrott v Tonge**
Civ. App. No. 15/99
Appearances: Mr. Charlesworth Brown, Mr. Kendrick Kentish with him for the Appellant and Miss Stacey Richards Anjo for the Respondent.
Issue: Land dispute. Whether there was evidence to justify award by trial judge of $\frac{3}{4}$ acres to the respondent. Ample evidence. Appeal dismissed with costs to the respondent to be taxed if not agreed.
17. **Pizza v Weston et anor**
Civ. App. 19/99
Appearances: Mr. Loric Osborne for the Appellant and Mr. Justin Simon for the Respondent.
Issue: Wrongful dismissal appeal from Industrial Court who found in favour of the employees. Whether dishonesty was a ground for summary dismissal. Theft by respondent of "tips" that were to be shared by all employees.
Result: No admissible evidence of dishonesty. Appeal dismissed.
18. **Maclean v Raeburn**
Civ. App. No. 2/00
Appearances: Mr. Alfred James for the Appellant and Mr. Charlesworth Brown for the Respondent.
Issue: Land dispute. Whether English Court had jurisdiction over matrimonial reality in Antigua in Divorce Ancillary proceedings filed in England when the parties were married in England.
Result: Decision reserved.
19. **Murray v Joseph**
Mag. Civ. 1/00
Appearances: No appearance.
Issue: Appeal against order of possessions. No tenancy agreement evidenced. Evidence of long possession in appellant established. Whether Magistrate should have declined to make order of possession.
Result: Appeal dismissed for want of prosecution.
20. **Myers v Constant**
Civ. App. No. 51/99
Appearances: Mr. Gerald Watt, Q.C. for the Appellant and Miss Ann Henry for the Respondent.
Issue: Running down action. Appeal against judgment in favour of respondent on liability and quantum of damages.
By Consent: Matter reported settled. Appeal withdrawn upon parties agreeing to damages in the sum of \$250,000.00.

Friday June 16, 2000

21. **Roberts v Oladelle**
Civ. App. No. 7/00
Appearances: Mr. Justin Simon for the Appellant and Miss Ann Henry for the Respondent.

Issue: Appeal against dismissal of application by Appellant to set aside part of a default judgment. Arguable defence with prima facie merits disclosed. No prejudice to Respondent as the challenged part of the default defence does not belong to the Respondent but to her solicitors.

Result: Appeal allowed. Judgment of trial judge refusing to set aside the \$24,000.00 part of the default judgment is set aside. Appellant given 7 days from today's date to file his defence to that \$24,000.00 part of the respondent's statement of claim, failing which the full judgment will stand. Matter referred to the High Court to determine that aspect of the respondent's claim on its merits should the defence be filed with the prescribed time. No order as to costs.

22. **Murray v F. Joseph**

Mag. Civ. App. No. 1/00

Appearances: Mr. C. Samuel for the Appellant and Mr. Hugh Marshall for the Respondent.

Issue: Appeal restored. Order for possession made by Magistrate in suit where genuine dispute as to title to the property was disclosed.

Result: Appeal allowed. Possession Order of Magistrate set aside on ground of lack of jurisdiction in the Magistrate. Costs to the appellant to be taxed if not agreed.

British Virgin Islands Court of Appeal Sitting – 26th to 28th June 2000

Coram: Singh JA
Redhead JA
Matthew JA

Monday June 26, 2000

1. **Marshall v Antigua Aggregates**
Civ. App. No. 23/99
Appearances: Mr. Hugh Marshall Jnr. for the Appellant and Mr. Gerard Farara, Q.C. holds for Mr. Astaphan Senior Counsel for the Respondent.
Issue: Application of English Rules to winding up proceedings. Written judgment of Singh, JA.
Result: Appeal allowed. Judgment of trial judge set aside. Matter referred back to the High Court for hearing. Costs of the appeal to the appellant to be taxed if not agreed.
2. **Molyneaux v Molyneaux et anor**
Civ. App. No. 9/99
Appearances: Mr. Lewis Hunte for the Appellant and Mr. S. J. Husbands, Miss Bernie Stephens with him for the Respondent.
Issue: Mandatory injunction. Exercise of judge's discretion to grant injunction. Moore J granted injunction.
Result: Dismissed with costs. No reason to interfere with the exercise of the judge's discretion.
3. **Emerging Debt v Chase**
Civ. App. No. 3/00
Appearances: Miss Deborah Herbeck for the Appellant and Mr. J. Carrington for the Respondent.
Result: Matter settled. Order in terms of settlement.
4. **Nibbs v Todman**
Civ. App. No. 5/00
5. **Clarke v Alphonso**
Civ. App. No. 7/00
6. **Rainbows End Limited v Turnbull**
Civ. App. No. 9/00
In these three matters (Nos. 4, 5 & 6) Q.C., Mr. Archibald representing either an appellant or a respondent requested adjournments on the ground that he had too much work and had no time to prepare. Also that Mr. Ramjeet from his firm appearing in No. 5 was out of the jurisdiction on urgent personal business. Messrs J. Carrington and Farara, Q.C. the other lawyers had no objection.
By Consent: The matters were adjourned to the next sitting of the Court.

7. **Flamboyance Enterprise Ltd. v BVI Port Authority**
Civ. App. No. 1/00
Appearances: Mr. Lewis Hunte for the Appellant and Miss Tananya Small for the Respondent.
Issue: After five adjournments all applied for by the Appellant and granted by the Magistrate, the matter was dismissed when on the sixth occasion the Appellant was not ready to proceed. Appeal from dismissal.
Result: No justifiable reason to interfere with exercise of Magistrate's discretion. Appeal dismissed with costs to the Respondent.
8. **Mitchell v George**
Mag. Civ. No. 2/00
9. **Mitchell v James**
Mag. Civ. No. 3/00
Appearances: Mr. Lewis Hunte for the Appellant and Miss Dion Borland for the Respondent James and Miss Creque for the Respondent George.
Issue: Question of fact.
Result: Appeals dismissed with costs to the Respondent.

Tuesday June 27, 2000

10. **Amesby Ltd. v Chelsworth Investments Ltd.**
Civ. App. No. 11/00
Appearances: Mr. W. Hare for the Appellant and Mr. Paul Dennis for the Respondent.
Issues: Application for leave to appeal after refusal by judge, against judgment dismissing appellants application to set aside default judgment. Default judgment entered 3 years before filing of application to set aside.
 1. Was judgment irregularly entered?
 2. If regularly entered was judge correct to dismiss when he had no affidavit of merit or draft defence.**Result:** Adjourned to Wednesday June 28.
11. **Purwy Overseas Trading Co. Ltd. v Organizacoes Keide Importacao**
Civ. App. No. 16/00
Appearances: Mr. Stephen Moverley Smith for the Appellant and Miss Tananya Small for the Respondent.
Application for leave to appeal against judgment dismissing application to set aside judgment in default.
Issue: Was there arguable ground that there was prima facie merits in draft defence? Leave to appeal granted. Costs of application to be costs in the appeal.
By Consent: On condition that the applicant pays the admitted judgment of \$250,129.07 within 28 days from today's date to the respondent, execution of the disputed balance is stayed pending the determination of the appeal.

Tuesday June 27 and Wednesday June 28, 2000

13. **Adex Int'l Ltd. and Juris Magister Ltd. et al v Villaba**
Civ. App. No. 18/00
Appearances: Mr. Terence Neale, Miss Sarah Fairclough with him for Adex and Juris and Mr. Paul Webster, Miss Nicole Mc David with him for Villaba.
Issue: 18/2000 Application for extension of time to appeal.
17/2000 Application to file notice of appeal out of time.
12/2000 Application for leave to appeal out of time.
Both sides agree that applications in 12 and 18 of 2000, will abide result of application in 17/2000.
Result: 17/2000 - Delay inordinate – reason unacceptable – prejudice balanced – merits arguable. Application granted. Appeal to be filed within 7 days from today's date. Costs to the respondent in any event. Order for stay in respect of Assets to continue until determination of appeal. Undertaking given in Stay Order by Solicitor for respondents referred to Court below for further consideration.
14. **Adex Int'l Ltd. v Juris Magister**
Civ. App. No. 17/00
Appearances: Mr. Terence Neale, Miss Sarah Fairclough with him for Adex and Juris and Mr. Paul Webster, Miss Nicole Mc David with him for Villaba.
Issue: Application for extension of time to file notice of appeal.
Result: As per 17/2000.
15. **Adex Int'l Ltd. v Juris Magister**
Civ App. No. 18/00
Appearances: Mr. Terence Neale, Miss Sarah Fairclough with him for Adex and Juris and Mr. Paul Webster, Miss Nicole Mc David with him for Villaba.
Issue: Application for extension of time to file notice of appeal.
Result: As per 17/2000.

Wednesday June 28, 2000

16. **Amesby Ltd. v Chelsworth Investments Ltd.**
Civ. App. No. 11/00
Appearances: Mr. William Hare for the Applicant and Mr. Paul Dennis for the Respondent.
Issue: Application for leave to appeal against order of **Moore J** dismissing application to set aside default judgment. Arguable grounds.
Result: Leave granted. Costs to be costs in the appeal.
By Consent: Default judgment stayed pending determination of appeal.

British Virgin Islands – 26th July 2000: [In Chambers]

Byron CJ

Monday June 26, 2000

1. **Weekes v The Queen**
Crim. App. No. 1/00
Appearances: Mrs. M. Price-Findlay and Mrs. M. Creque for the Appellant. Mr. T. Williams, Mr. D. Abendigo and Mr. S. Allen for the Crown.
Issue: Application for leave to appeal against conviction and sentence.
Result: With the consent of the Crown time to file notice of appeal was extended to 9th May 2000, the date on which it was lodged.
2. **Thomas v Peter Island Hotel**
Civ. App. No. 4/98
Appearances: Ms. M. Creque for the Appellant, ex parte.
Issue: Summons for leave to file record out of time.
Result: Application to extend time to serve notice of appeal filed on 12th June 1998 refused. The delay was inordinate, the reason of inadvertence unacceptable, the prejudice to the respondent unarguable and no special injustice was demonstrated as likely to accrue to appellant.
3. **Fennec Fox Ltd. v Lisa L. S. A.**
Civ. App. No. 12/99
Appearances: Mr. Hare for the Respondent.
Issue: Notice of withdrawal of appeal.
Result: Leave to withdraw granted in accordance with notice. No order as to costs.
4. **Canada Trust Company v Farara George-Creque & Kenns**
Civ. App. No. 1/00
Appearances: Mr. Hare for the Appellant and Mr. Dennis.
Issue: Summons for leave to appeal.
Result: Appeal withdrawn. The appellant to pay respondents costs (already agreed) in Court of Appeal and Court below.
5. **In the Matter of Beacon Emerging Debt Fund Ltd and in the Matter of the IBC Art, and in the Matter of a Petition by The Chase Manhattan Bank et al**
Civ. App. No. 3/00
Appearances: Ms T. Small for the Respondent and Mr. J. Carrington for the Petitioner
Issue: Summons for security for cost of appeal.
Result: Application withdrawn. Matter has been settled.
6. **Dailey v Dailey**
Civ. App. No. 4/00
Appearances: Mrs. J. George-Creque and Mrs. M. Price-Findlay.
Issue: Summons for extension of or abridgment of time for service.

Result: Time for serving notice of appeal extended to 22nd March 2000. The delay was brief (9 days), there was ample evidence of reasonable efforts to serve within time, no discernible prejudice from the delay.

7. **Amesby Ltd. v Chelsworth Investments Ltd.**

Civ. App. No. 11/00

Appearances: Mr. Hare for the Appellant and Mr. Dennis for the Respondent.

Issue: Summons for leave to appeal.

Result: Referred to a full court, very contentious.

8. **Adex International Ltd. v Jurist Magister [Bahamas] Ltd. et al**

Civ. App. Nos. 12/00, 17/00 & 18/00

Appearances: Mr. P. Webster, Mr. N. McDavid and Ms. S. Fairclough

Issue: Summons for leave to appeal against order

Result: Leave granted to respondent to file and serve affidavit in reply forthwith.
Matters referred to full court.

9. **Purvy Overseas Trading Co. Ltd. v Organizacoes Keide Importacao Exportacao de Cale de E. Cereais Ltd.**

Civ. App. No. 16/00

Appearances: Mr. Hare for the Appellant and Mr. Dennis for the Respondent.

Order: Referred to full court.

WRITTEN JUDGMENTS

Court of Appeal Judgments

The following is a written Court of Appeal judgment for the month of June 2000:

Antigua

H. C. Marshall Snr. v Antigua Aggregates Ltd. et al

Antigua

Civ. App. No. 23/99

Singh JA

Delivered: 26/06/00

High Court Judgments

The following are written High Court judgments received during the month of June 2000:

British Virgin Islands

Zeevi Communications Limited et al v Rathbone Trustee Limited et al

British Virgin Islands

Civ. Suit No. 52/00

Benjamin J

Delivered: 09/06/00

Credicom Asia Limited v Colony Credicom L.P. et al

British Virgin Islands

Civ. Suit No. 20/99

Benjamin J

Delivered: 21/06/00

Grenada

Personal negligence – consent judgment on pleadings - assessment of damages – defendant absent – Judge refuses application for adjournment – witnesses called for plaintiff and expert witness for defendant – defendant dissatisfied.

E. Baptiste v Henry, Henry & Bristol

Grenada

Civ. Suit No. 116/98

Alleyne J

Delivered: 17/04/00

Application to amend statement of claim – objection to form – pleading of indirect or inferential meaning – necessary to plead particulars – aggravated damages – exemplary damages – malice.

P. George v M. Beddoe

Grenada

Civ. Suit No. 476/97
Alleyne J
Delivered: 05/06/00

Possession
H. H. Redhead v V. Whiteman
Grenada
Civ. Suit No. 73/98
Alleyne J
Delivered: 05/06/00

Building contract – variation – non-performance – quantum meruit.
L. Williamson v J. Bertrand
Grenada
Civ. Suit No. 245/95
Alleyne J
Delivered: 05/06/00

N. Calliste et al v R. Spronck et al
Grenada
Civ. Suit No. 559/97
Alleyne J
Delivered: 29/06/00

St. Christopher and Nevis

Adverse possession - plaintiffs obtaining letters of administration of lands owned by deceased - lands in occupation of nephews of plaintiffs - nephews alleging that lands do not form part of estate of deceased - nephews alleging that lands were given by deceased to their father - whether lands form portion of estate of deceased - whether acts of nephews and their parents on the land consistent with adverse possession or consensual family arrangement - pleadings - duty to plead statute of limitation - effect of failure to plead statute of limitation.

W. L. Brookes et al v J. Hendrickson et al
St. Christopher and Nevis
Civ. Suit No. 51/97
Saunders J
Delivered: 26/06/00

Slander.
R. Ferlance v A. Halliday
St. Christopher and Nevis
Civ. Suit No. 60/96
Bruce-Lyle J
Delivered: 20/06/00

Saint Lucia

M. Desir v M. Agdomer

Saint Lucia
Civ. Suit No. 519/93
d' Auvergne J
Delivered: 31/05/00

Divorce
M. M. Francis v S. P. Francis
Saint Lucia
Civ. Suit No. D21/93
d' Auvergne J
Delivered: 30/06/00

Saint Vincent and The Grenadines

A. Dennie v Chairman and Members of the Public Service Commission
Saint Vincent and The Grenadines
Civ. Suit No. 186/85
Adams J
Delivered: 19/06/00

Running down – Compensation for Injuries Act – claim by parents of deceased – finding that the parents were not dependents – general damages for estate – loss of future earnings – pain and suffering – loss of expectation of life – loss of amenities.

A. Jackson v D. Balcombe
Saint Vincent and The Grenadines
Civ. Suit No. 138/94
Mitchell J
Delivered: 13/06/00

Landlord and tenant – arrears of rent by tenant – breach of covenants by landlord – removal of roof – need to collect water in Bequia – excessive rainfall causing damage to business of tenant – failure of tenant to prove special damages – award of general damages.

Z. Joyette et al v C. Samuel
Saint Vincent and The Grenadines
Civ. Suit No. 27/99
Mitchell J
Delivered: 08/06/00

Interpretation of statute – National Insurance Act – whether a worker is an employee or an independent contractor – finding in favour of the NIS Board.

National Insurance Board v Bottlers (St. Vincent) Ltd.

Saint Vincent and The Grenadines
Civ. Suit No. 365/98
Mitchell J
Delivered: 09/06/00

Interpretation of statutes - Protection of Employment Act - whether the St Vincent Banana Growers Association is an exempt employer - prerequisites for exemption under the Act - burden of proving an exception - judgment for the plaintiff

S. Green v St. Vincent Banana Growers Association

Saint Vincent and The Grenadines
Civ. Suit No. 137/00
Mitchell J
Delivered: 26/06/00

Land dispute - action for trespass - fraudulent administration of estate of deceased - land of wife wrongly treated by administrator as wife's "family land" and distributed by him to a sister of the deceased instead of to the child of the deceased - Administration of Estates Act - Order 53 of the RSC - plaintiff a granddaughter of the deceased - plaintiff not administrator of either her deceased grandmother or of her deceased mother's estate - fraudulent administrator deceased and not a party to the suit - fraudulent administrator the widower and beneficially entitled to one third of the deceased's estate - plaintiff in possession of more of her grandmother's estate than the two thirds that her deceased mother was entitled to - no equity in plaintiff to follow the asset - plaintiff not entitled to the reliefs she seeks - equity requiring that the land in dispute be considered a part of the entitlement of the fraudulent administrator in his wife's estate - judgment for the defendant

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S. Joseph v E. Burgin

Saint Vincent and The Grenadines
Civ. Suit No. 366/97
Mitchell J
Delivered: 26/06/00

Fraudulent grant of letters of administration - asset of deceased fraudulently transferred to the defendants by the administrator - right of heirs to follow the asset - Administration of Estates Act - declaration that the defendants hold the asset in trust for the estate of the deceased - judgment for the plaintiffs

E. Mc Lean et al v Pearl Mc Lean et al

Saint Vincent and The Grenadines
Civ. Suit No. 326/94
Mitchell J
Delivered: 26/06/00

Land dispute - private right of way - claim that neighbour wrongfully enclosed lands- Prescription Act - judgment for the plaintiff

L. Teshira v Gaylene Shallow et al

Saint Vincent and The Grenadines
Civ. Suit No. 111/97
Mitchell J
Delivered: 26/06/00

Land dispute - two private citizens contending over a piece of Crown land - trespass by defendant in defiance of injunction - judgment for damages for the plaintiff

E. Daize v E. Stephens

Saint Vincent and The Grenadines
Civ. Suit No. 376/95
Mitchell J
Delivered: 29/06/00



EASTERN CARIBBEAN SUPREME COURT

As at 30th June 2000

Court of Appeal

The Chief Justice

His Lordship, the Hon. Chief Justice, 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 [Ag.] – Saint Christopher & Nevis

Ms Ianthea Leigertwood-Octave, Chief Registrar – Saint Lucia