

ECSC E-NEWSLETTER



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GREETINGS FROM THE CHIEF JUSTICE

EASTERN CARIBBEAN SUPREME COURT NEWS

Anguilla

JEMS Go-Live in Anguilla

During the week of April 23, 2001, the Anguilla High Court implemented the JEMS software in their Registry. Mr. Victor de La Cruz from PCSS Inc., provided on-site go-live assistance.

All of the cases filed for the year 2001 were entered during the week and the Court Office staff were provided with follow-up training on Case Entry, Case Scheduling, preparing Word Merge documents, entering ticklers, and Criminal Case Entry.

In addition, some time was spent with the Staff from the Information Technology Department of the Government of Anguilla to provide them with direct training on various aspects of the JEMS software which will be needed in order to support the Court Office Staff.

British Virgin Islands

Report of Visit to Hugh Wooding Law School

1. At the kind invitation of the Principal of the Hugh Wooding Law School, St. Augustine, Trinidad and with the concurrence of the Honourable Chief Justice, I visited the Law School and met with and interacted with the students of both Years I and II.
2. Upon my arrival at the Law School on the morning of March 15, 2001, Mde. Justice Anestine Sealey took me on a tour of the entire building during which I was introduced to members of staff, both academic and administrative. The Legal Aid Clinic is staffed by one full-time staff-member and two part-time lawyers. The Clinic attracts more clients than the Year II Students can handle. Hence, the means test represents the preliminary interview with each client. For this purpose a comprehensive form is provided for the guidance of the Student and for monitoring by the supervising Staff Member. The substantive consultations are largely drawn from the area of matrimonial causes and landlord and tenant. The students have the benefit of comprehensive instruction sheets and skeletal precedents to assist them in the drafting of the requisite documents to be filed. At the time of my visit I was unable to witness any interviews in progress. The Students generally expressed to me satisfaction with the exposure and experience afforded by the Legal Aid Clinic in preparation for practice.
3. Later that morning I lectured to the Year I Students of the Civil Procedure Course on (a) the Structure of the Eastern Caribbean Supreme Court and (b) the Civil Procedure Rules, 2000. The lecture was well received and a lively question and answer ensued continuing beyond the allotted one hour. The Students were clearly influenced by the

negative positions taken with regard to the introduction of new Rules of Court in Trinidad and much effort had to be put into assuring them that CPR 2000 is in force and will be in full implementation when they would have graduated. Some students were pre-occupied with the sanctions for non-compliance with the Rules. Other Students expressed the view that they were more comfortable dealing with the Rules of Court of Trinidad and Tobago for course work and assignments given the abundance of ready material. I was quite pleased to learn from speaking to Students over the three days of my visit that the explanation of the ethos of CPR 2000 with its objective Court-driven litigation, Case Management and formal opportunities for mediation served to project a clearer understanding of the overriding objective and the general thrust of the new Rules.

4. After the lecture I was immediately required to attend a farewell luncheon for those Students on the 6 month course for 2000-2001 at the Crowne Plaza Hotel, Wrightson Road, Port-of-Spain. This Course having come to an end, the Principal hosted the function in their honour.

5. After the luncheon, I accompanied Mde. Justice Sealey on a fraternal visit to the Hall of Justice where in the office of the Court Administrator, Master Christine-Ann Morris-Alleyne, I was able to meet and converse with Justices Ivor Archie and David Myers. The discussion centered around threats to the independence of the Judiciary in Trinidad and Tobago arising from recent statements made by the learned Attorney General while a Constitutional Motion was pending before Justice Archie.

6. During the morning of Friday, March 16, 2001, I interviewed three candidates for the Eastern Caribbean Supreme Court Legal Internship Programme. The candidates were KAREN SAMUEL of Grenada, LESLIE PROSPERE of St. Lucia and DONNA JACOBIE also of St. Lucia. My recommendations are attached to this Report. All three applicants seemed extremely keen on embarking on the Internship Programme. Given that the deadline was stated to be March 31, 2001 on the Notice posted at the Law School, there is a possibility that there may be other applicants. All three applicants did not appear to be deterred by the level of the stipend. Of course, the St. Lucian applicants would not incur accommodation expenses; the Grenadian applicant was so eager that she was confident that her father could be persuaded to make up for any deficiency.

7. From 1:00 p.m. on the said Friday, March 16, 2001, I presided over a moot court trial in a purpose built room at the Law School. The advocates were drawn from Year II and the subject of the trial was a criminal case involving an indictment for wounding with intent to do grievous bodily harm. The Jurors were Sixth Form Students from the neighbouring Secondary School and the accused, witnesses and Court officers were drawn from the Law School's student population. At the trial I was assisted by the Principal and another Staff Member who acted as Assessors with me of the performance of the Student Advocates. During and at the end of the trial, I was afforded the chance to correct undesirable practices, give pointers and explain matters of procedure for the benefit of the participants and the considerable number of spectators who turned out to witness the trial.

8. On the evening of Saturday, March 17, 2001, I attended the Annual Dinner for Year II Students. In attendance with the Students were Mr. C. Dennis Morrison, Q.C. – Chairman of the Council of Legal Education, the Principal, Hon. Mr. Justice Rolston Nelson, Justice of Appeal, Justices Wendell Kangaloo and Sebastian Ventour of the High Court bench, the Court Administrator and a number of practicing lawyers. Their Lordships and the practitioners were randomly allocated to tables to interact with the students during the dinner. I delivered the after-dinner Feature Address on the subject of Judicial Ethics using as the foundation therefor the recent consultation on drafting and adoption of a Code of Ethics for Judges of the Eastern Caribbean Supreme Court. Taking advantage of the captive audience, I took the liberty of passing on a few snippets of advice to the Students. Much interest was expressed by the Judges present in seeing our Draft Code of Ethics. I have since sent a copy to Mr. Justice Ventour, who chairs a Committee to explore the same subject matter as well as to the Principal of the Law School.

9. From the reaction of the Students and the enthusiasm of the Principal and members of Staff, I am confident that the purpose of the visit was thoroughly served. The benefits to be derived from future visits by members of our Judiciary are numerous. In fact, with the introduction of CPR 2000, my visit was uncannily timely and of immense re-assurance to the Students.

Grenada

February Assizes 2001

The February Assizes 2001 were formally closed today 11 April. There were 69 cases listed, of which 3 were taken off the list, being cases in which warrants for the arrest of the accused had been outstanding for many years. 52 cases were completed, and 14 were traversed for a variety of reasons, most particularly time, but including also the unavailability of prosecution witnesses in at least one case.

The court bade farewell to Justice Farara. There were warm expressions of appreciation from the President of the Bar Association Mr. Ruggles Ferguson and from the acting DPP Mr. Christopher Nelson, as well as by the Hon. Justice Brian Alleyne. Regrets were expressed by all that Justice Farara has not yet agreed to accept an appointment on the court, in view of the outstanding quality of his service during his short stay in Grenada. Justice Farara in responding, spoke on the need for reform of the Criminal Justice system and of the nature of the reforms now taking place in the Civil Justice system to counter the significant delays that now exist in the trial of criminal matters

Saint Lucia

JEMS Software Press Conference – St. Lucia

On Friday April 20th, 2001, the High Court Registry in St. Lucia hosted a press conference at 2:30 PM in their offices. The conference was chaired by Her Ladyship, the Hon. Justice Suzie d'Auvergne and featured the following items:

- Welcome & Opening Remarks - Her Ladyship, the Hon. Justice Suzie d'Auvergne
- Remarks by the Hon. Chief Justice, Sir Dennis Byron and the Hon. Minister of Legal Affairs, Mr. Velon John
- Presentations by the St. Lucia Registrar, Mrs. Andra Gokool-Foster, and the IT Manager from the Court of Appeal, Mr. Gregory Girard
- Demonstration of the software by the Court Office Staff

In his remarks, the Hon. Chief Justice commented on the initiatives of the Supreme Court specifically as it relates to the introduction of the new rules. The JEMS software was cited as a tool to assist the Court Office with the implementation of the new Civil Procedure Rules 2000. As such the critical role which the software plays with the attainment of the overriding objective of dealing with cases justly was stressed. The Hon. Chief Justice thanked the Court Office staff for their hard work to enter all the cases filed for the year 2001 into the system to facilitate the go-live with the use of the software. He also thanked the Government of St. Lucia for their support in the computerization exercise, since without this support the events taking place would not have been possible.

The Hon. Mr. Velon John, Minister of Legal Affairs, in his presentation indicated that his Government is committed to the improvement of the justice system and the computerization exercise. He articulated some of the future projects which the Court had planned including the electronic filing of documents, internet access to case information, and computerized jury selection and pledged his Governments support in these areas.

As a final event, the Court Office had arranged for a case to be filed by a clerk from one of the local law firms. The case was filed by the clerk and immediately entered onto the computer system where the case number was generated automatically and all of the documents filed entered as actions on the system. The Court Office staff also indicated the ease with which a case could be accessed through the computer system and highlighted all the documents which had been filed to date in that particular matter.

NEW DEVELOPMENTS IN THE COURT

Arrival of Hardware from USAID

The much anticipated computer hardware from USAID to support the JEMS case management software implementation arrived in St. Lucia on April 26, 2001.

After its arrival the 40' container with the equipment was brought to the Court of Appeal offices and the equipment was stored in the Conference Room of the office. The photographs below demonstrate the conditions of the Conference Room while the equipment was stored there.

[Let Gus get the pictures which we took on the Chief Justices camera for inclusion here]

Unfortunately the network printers purchased by USAID were inadvertently shipped to Jamaica. Arrangements are now being made to send this equipment to St. Lucia.

In addition, arrangements were made during the week of April 30th to ship all of the equipment to the different High Courts where they are to be installed to facilitate the JEMS implementation in those territories.

We are very grateful to the USAID for their support of our judicial reform programs and more specifically the JEMS software implementation which is a critical element to support the new Civil Procedure Rules 2000. The equipment provided which is estimated at a total value of US \$ 167,000 (or EC \$ 454,000) will be used to support the operations of the Court Offices in each of the High Courts and the Court of Appeal Registry. USAID's support in this way permits the Governments to proceed with the initial phase of the JEMS implementation and requires them to only purchase the necessary license fees for the JEMS software from PCSS.

JUDICIAL AND LEGAL SERVICES COMMISSION

Judicial Appointments

Legal Appointments

CONFERENCES, SEMINARS AND WORKSHOPS

Eastern Caribbean Judicial Education Institute – Report of Case Management Seminar

The seminar was conducted on Wednesday, 7th March, 2001 at the Reef House, Prospect Reef Hotel, Tortola, British Virgin Islands

1. The Seminar was chaired by Mr. Justice Kenneth Benjamin, Resident Judge of the BVI. At any given time, there were not more than 45 attendees including Mr. Justice Neville Smith, the Magistrate, the Registrar, the Deputy Registrar, the acting President of the BVI Bar Association, members of the Bar Council and legal practitioners drawn from the public and private Bar of the BVI. Also in attendance and included in the number were the Registrar, Deputy Registrar, Magistrate, Crown Counsel, a Court office staff member and practicing lawyers from Anguilla.
2. Following an invocation by Ms. Josephine Gumbs of the Anguilla Bar, opening remarks were given by the Chairperson. These remarks were aimed at putting the seminar into context and setting the tone for the ensuing presentations. Reference was made to a similar Seminar conducted in Antigua in January 1999.
3. The Head-table comprised the Hon. Chief Justice, Justices Benjamin and Smith, Master Robert Beaudoin, Mr. Joseph Archibald Q.C., and Mrs. H  l  ne Lewis, acting President of the BVI Bar Association.
4. The first presentation was by Mr. Joseph Archibald, Q.C., a member of the Rule-making Committee and a leading member of the BVI private bar. Mr. Archibald gave his perception of the new CPR 2000 and of the benefits to be accrued for private practitioners. He highlighted the significance of the formal opportunities to explore settlement of cases and gave vivid examples of case management in action. He made mention, again with practical scenarios, of the advantage of case management and the effect of the Court rendering thorough directions for trial. This presentation appealed to the private practitioners who were in the majority and was extremely well received.
5. There followed remarks by the Honourable Chief Justice. Having introduced the team from Canada (inclusive of those not present), he went on to identify the input of the Eastern Caribbean Judicial Education Institute and the local logistical and other support provided by the BVI Bar Association and Mr. J.S. Archibald, Q.C.
6. The Chief Justice's remarks were prefaced by reference to the overriding objective embodied in Part I of CPR 2000. He emphasized the object of dealing with cases justly while cautioning that (1) the object was justice and not speed o

disposal of cases and (2) the saving of expense for the litigant did not necessarily translate into a reduction of income for practitioners.

7. The gathering was told that an on-going Rules Review process was contemplated and it is expected that a local committee for this purpose would be formed.
8. It was emphasized that the recently appointed Masters are essentially Judges in Chambers with the same for all intents and purposes with certain exceptions. The work of the Master would encompass: backlog reduction, status hearings, Chamber applications and trial listing. In support of the new CPR, the Court Officer Staff having prepared through various training initiatives. The teamwork approach was highlighted.
9. An announcement was made to the effect that the Computerization programme would take a historical leap with the JEMS Software going live in St. Lucia on March 26, 2001.
10. Addressing concerns and frequently asked questions about CPR 2000, His Lordship stated the following:
 1. The CPR 2000 are in force.
 2. The operative date is December 31, 2000.
 3. The Rule-making power resides in a Committee comprised of Chief Justice and Justices Matthew and Saunders.
 4. An instrument in an agreed form for universal application is being prepared.
 5. There is a 6-month transitional period in effect until June 30, 2001.
 6. Voluntary use of CPR 2000 is encouraged.
11. The Chief Justice stated the need for regulatory legislation to govern professional and ethical standards. He also expressed the desirability of a partnership between the Bar and ECJEI for on-going education.
12. Appreciation was expressed for the co-operation of the branches of Government in the States and Territories of the Eastern Caribbean Supreme Court and the support rendered by the OECS Authority thus far in the process of judicial reform. His Lordship singled out the lead taken by Attorneys General in this regard.
13. After lunch, the gathering was shown a video of a speech by Justice James Chadwick of the Ottawa Provincial Court on case management and the Ottawa experience. This was followed by a presentation by Master Robert Beaudoin Case management Master of Ottawa.
14. Master Beaudoin first explained that in his system the Rules only governed cases over \$10,000. By way of background, he said that the overhaul of the Rules was aimed at eliminating trial by ambush and narrowing the rules relating to discovery. The experience of the Courts under the previous system was that a 3-

day trial cost \$35,000 Can. And a litigant had to wait an average of 3 – 5 years to get on the hearing list and thereafter 1 – 3 years for a hearing date. Further, inasmuch as 90% of the cases were settled, they were not settled until the eve of the trial or at the last minute before hearing. The need of earlier intervention became apparent. Consequently Rule 77 dealing with Case Management was devised and added to the existing Rules of Court.

15. The problems identified were as to delay and cost.
16. Under the new system as devised time begins to run from the date of filing with provision for default and extension of time. Undefended cases did not attract case management as plaintiffs could sign judgment. Optional tracks were devised.
17. Early opportunities for settlement conferences and mediation were offered to the parties with mediators provided. The presence of the parties at Settlement Conferences is essential and the Case management master conducts an evaluation of the case. At the Case Management Conference dates are fixed for the future conduct of the case. Ergo, under Case Management, there is no allowance for the case file to be put away before disposition.
18. The final substantive session was interactive with questions being posed by the participants to the Chairperson and the presenters. A separate synopsis prepared by the Acting President of the BVI Bar Association is herewith attached.
19. The acting President closed the proceedings at 4:00 p.m. with a comprehensive vote of thanks.
20. The overall feedback from attendees was to the effect that the Seminar was as timely as it was informative. Considerable relief was expressed as a result of the Chief Justice's comments on CPR 2000.
21. There can be no doubt that the willingness of CIDA to provide critical support in making Hon. Mr. Justice Chadwick and Master Robert Beaudoin available as part of its Case Management Project of the Eastern Caribbean Supreme Court in conjunction with ECJEI must be applauded as a wholly worthwhile venture as was addressed by the acting President in expressing gratitude to CIDA.

Environmental Law Workshop

Members of the judiciary and the offices of the DPPs of the ECSC attended a symposium in St Lucia between 8-10 April. Participating judges included the Hon Chief Justice, Matthews JA, d'Auvergne J, Cenac J, Georges J, and Mitchell J. Countries represented ranged from Bermuda in the north to Guyana in the South. The symposium focused on a wide range of judicial issues affecting the development of and enforcement of environmental law within the region. The workshop provided participants with an

opportunity to share information on similarities and differences in the judicial systems within the territories. The Hon Chief Justice hosted the delegates to a dinner dance and cultural presentation on the last evening.

At its conclusion, the participants adopted the “Castries Resolution.” The main thrust of this resolution is the promotion and encouragement of a more effective participation of Caribbean Judiciaries, Magistracies, and prosecutors in the enforcement of laws for the protection and conservation of the environment.

A comprehensive report is to be produced by the symposium organizers. Copies will be available from participants and from the Court of Appeal Library after they have been received.

COURT OF APPEAL SITTING APRIL 2001

St. Vincent and The Grenadines Court of Appeal Sitting – 2nd to 6th April 2001

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

Monday, April 2nd, 2001

1. **Richards v Edwards**
Civ. App. No. 20/00
Appearances: Mr. O. Dennie for the Appellant and Ms N. Sylvester for the Respondent.
Result: Adjourned to next Sitting. Appellant deceased. Need appointment of personal representative.
2. **Dennie v Public Service Commission**
Civ. App. No. 28/00
Appearances: Ms N. Sylvester for the Appellant and Mr. D. Browne, Solicitor General for the Respondent.
Result: Adjourned to next Sitting. Record of appeal incomplete.
3. **Da Breo v Punnett**
Civ. App. No. 2/01
Appearances: Ms N. Sylvester for the Appellant and Mr. S. Commissiong for the Respondent.
Result: Adjourned to next Sitting. Record incomplete.
4. **Mills v Mills and Mills**
Civ. App. No. 5/01
Appearances: Mr. S. Commissiong for the Appellant and Ms Paula David for the Respondent.
Issue: Extension of time to file record of appeal out of time.
Order: Leave granted to file record on or before May 2nd, 2001.
Reason: Court office delay in producing documentary exhibits for the record.
5. **Swift v Police**
Mag. Crim. App. No. 9/00
Appearances: Appellant in person and Ms Bollers and Ms Fraser for the Respondent
Issue: Appellant convicted on three charges of burglary and sentenced to one [1] year on each to run concurrently and to pay compensation on one [1] of \$1000.00 in twelve [12] months or three [3] months and \$600.00 in eighteen [18] months or six [6] months.

Order: Sentence varied. Compensation order discharged. Probation report ordered to be delivered within two months. Report at next Sitting of Court in July.

Reason: Appellant twenty [20] years old, and has lived in and out of prison for the last four [4] years. He has nowhere to live and committed the burglaries after release from prison to find something to eat. He has no ability to pay the compensation ordered and must inevitably serve the further period of imprisonment. Not a proper exercise of discretion.

6. **Caldron v Police**

Mag. Crim. App. Nos. 4/01 and 5/01

Appearances: Appellant in person and Ms Bollers and Ms Fraser for the Respondent.

Issue: Appellant convicted of burglary and sentenced to two [2] years to run consecutively with current sentence; and convicted of escaping lawful custody and sentenced to one [1] year to run consecutively with current sentences.

Order: Sentences on all offences varied to five [5] years for burglary to run concurrently; and three [3] years on escaping custody to run concurrently.

Reason: The Appellant is a habitual offender for offence of burglary and deserved severe punishment. However the device used by the Magistrate resulted in imposing sentence of nine [9] years, which is beyond the maximum sentence the Magistrate is permitted to impose. The sentence was in excess of Magistrates' jurisdiction. A case of this nature should have been sent to the High Court for sentence.

7. **Michael v Police**

Mag. Crim. App. No. 11/01

Appearances: Mr. A. Williams for the Appellant and Ms Bollers and Ms Fraser for the Respondent.

Issue: Appellant convicted of possession of firearm and ammunition and sentenced to six months for firearm possession and two months for ammunition possession.

Order: Appeal allowed. Custodial sentence set aside. We ordered instead a fine of \$5,000 payable in seven [7] days, in default six [6] months for the firearm possession and caution on the ammunition possession.

Reason: Appellant is a reputable businessman with no previous convictions. It is now beyond doubt that conditions in prison are inhuman. Sentencing policy should take that into account and use prison only as a last resort.

Tuesday April 3rd, 2001

8. **Hamilton v The Queen**

Crim. App. No. 6/00

Appearances: Appellant in person and Ms Bollers and Ms Fraser for the Respondent

Issue: Appeal against conviction for burglary and sentence of seven years [7] to run consecutively to twenty year [20] sentence presently being served.

Order: Appeal dismissed. Sentence varied to run concurrently.

Reason: Appellant seen and identified by owner of house, to whom he was well known, when he entered her house in the dead of night and demanded money from her. Although habitual offender and severe custodial sentence deserved, a sentence of twenty-seven [27] years was excessive.

9. **Peters v The Queen**

Crim. App. No. 8/00

Appearances: Mr. Williams for the Appellant and Ms Bollers and Ms Fraser for the Respondent.

Issue: Appeal against conviction of manslaughter and sentence of ten [10] years.

Order: Decision Reserved.

10. **Clarke v The Queen**

Crim. App. No. 10/00

Appearances: Mr. E. Robertson for the Appellant and Ms Bollers and Ms Fraser for the Respondent.

Issue: Appeal against conviction for rape and sentence of seven [7] years.

Order: Appeal against conviction dismissed sentence varied to four [4] years.

Reason: The complainant was mute. The Appellant who was known to her entered the house when she let him in, and forcibly had sexual intercourse without her consent. The complainant's husband, who was also mute, returned home and was a witness. The Appellant exercised his right of silence at the trial. He had made a statement denying intercourse to the police during their investigations. The grounds of appeal relating to corroboration and consent were non-starters on the evidence and the summing up was impeccable. This was the Appellant's first conviction. He was twenty-five [25] years old, and worked on his parents' farm. We also took into account the deplorable prison conditions.

11. **Smith v Smith**

Civ. App. No. 19/00

Appearances: Ms P. David for the Appellant and Mr. O. Dennie for the Respondent.

Issue: Appeal against order of Judge under Matrimonial Causes Act ordering divorced husband to pay half of the value of the matrimonial home being \$28,498.50 and half of the value of the furniture therein being \$15,575.00 to wife and her costs.

Order: Appeal dismissed with costs to be taxed if not agreed.

Reason: The reasons in written decision of Judge except that we agreed that the conduct of the parties were not of substantial importance. In short the parties contributed to the family welfare, the wife left the matrimonial home after fourteen fourteen [14] years of marriage because of the husbands cruelty since 1992. Since then the husband made no financial provisions and enjoyed the matrimonial home and furnishings exclusively. He also paid off the arrears of the mortgage during that period. He told the Court that his financial position was much better than that of the wife's.

12. **Carlton Construction Ltd v Taylor**

Civ. App. No. 24/00

Appearances: Mr. S. Commissiong for the Appellant and Ms P. David for the Respondent.

Issue: Appeal against order dismissing claim for extras on building contract.

Order: Appeal dismissed with costs to be taxed if not agreed.

Reason: The contract was a labour only contract. The sums claimed by the Appellant were based on the value of labour provided during the period of claim supported by the contractors pay sheet and certified by the engineer. Thirty-two [32] interim certificates were issued with no reference to variations or extras. After the construction was completed a final certificate was issued for \$38,356.20 for extras. The trial Judge found that there was no agreement between the parties for any extra payment. Before the Court of Appeal the argument was on the basis of quantum meruit. There was no evidence to contradict the inference that the labour provided was paid for during the continuance of the contract as the pay sheets and interim certificates suggested that payments were made for all labour provided during the construction period.

13. **Huggins v Hamilton**

Civ. App. No. 31/00

Appearances: Mr. O. Dennie for the Appellant and Ms N. Sylvester for the Respondent.

Issue: Appeal against judgment for US\$9,000.00 and interest at 6%.

Order: Appeal dismissed with costs to be taxed if not agreed.

Reason: Appellant withdraws appeal.

St. Vincent and The Grenadines Court of Appeal Sitting – 4th to 8th April 2001

Coram: **Hon. Albert Redhead, Justice of Appeal**
 Hon. Albert Matthew, Justice of Appeal
 Hon. Adrian Saunders, Justice of Appeal [Ag.]

Wednesday, April 4th, 2001

1. **Huggins v Hamilton**
 Civ. App. No. 31/00
 Appearances: Mr. O. Dennie for the Appellant and Ms N. Sylvester for the Respondent.
 Result: Leave to withdraw granted. Costs to the Respondent to be taxed, if not agreed.

2. **Joyette et al v Samuel**
 Civ. App. No. 25/00
 Appearances: Mr. S. Commissiong for the Appellant and Miss Z. Horne for the Respondent.
 Issue: Appeal against award of damages for breach of tenancy agreement.
 Results: Appeal dismissed with costs to the Respondent to be taxed, if not agreed.

3. **Ryan v Ryan**
 Civ. App. No. 27/00
 Appearances: Mr. J. Delves for the Appellant Mr. E. Robertson for the Respondent.
 Issue: Appeal against consent order.
 Result: Appeal is allowed, consent order set aside. Appellant's share in the property is fixed at 1½. Costs to the Appellant to be taxed, if not agreed.

4. **John v Barnwell**
 Civ. App. No. 29/00
 Appearances: Mr. R. Williams for the Appellant and Mr. S. Commissiong for the Respondent.
 Result: Decision Reserved.

5. **McLean et al v McLean et al**
 Civ. App. No. 30/00
 Appearances: Mr. O. Dennie for the Appellant and Ms N. Sylvester for the Respondent.
 Issue: Appeal against a judgment granting the Respondent's declarations that the disputed property remains vested in the estate of the deceased.
 Result: Result as per written judgment. Appeal is dismissed. Costs to the Respondents to be taxed, if not agreed.

6. **Ambris v Ambris**
Civ. App. No. 34/00
Appearances: Mr. C. Williams for the Appellant and Mr. V. Cuffy for the Respondent.
Issue: Appeal against an order for survey of a parcel of land.
Result: By consent case remitted to a Judge of the High Court for a proper adjudication, no order as to costs.
7. **Layne et al v Williams et al**
Civ. App. No. 35/00
Appearances: Mr. O. Dennie for the Appellant and Mr. R. Williams for the Respondent.
Issue: Appeal against an order declaring a will invalid.
Result: Appeal dismissed. Decision of the learned trial judge affirmed. Costs to the Respondents to be taxed, if not agreed.
8. **Moore v Moore**
Civ. App. No. 37/00
Appearances: Mr. C. Williams for the Appellant and Mr. A. Williams for the Respondent.
Issue: Appeal against an oral judgment in which no reason was given.
Result: Case remitted to Judge to give reasons.
9. **Da Silvas Motors Limited v Soso**
Civ. App. No. 39/00
Appearances: Mr. R. Williams for the Appellant and Mr. M. Commissiong for the Respondent.
Issue: Appeal against the decision of the Judge whereby he held that reconditioned vehicles fell within the provisions of the Price and Distribution of Goods Act, Chapter 117.
Result: Decision reserved.
10. **Da Silva v Alexander**
Civ. App. No. 6/00
Appearances: Mr. A. Williams for the Appellant and Mrs. S. Bowers for the Respondent.
Issue: Appeal against conviction and sentence for the offence of incest.
Result: Appeal dismissed conviction and sentence affirmed.
11. **Franklyn v Commissioner of Police**
Mag. Crim. App. No. 7/00
Appearances: Appellant in person. Mrs. S. Bollers for the Respondent.
Issue: Appeal against conviction and sentence.
Result: Sentence is varied to time already served in custody.
12. **La Roche v Commissioner of Police**
Mag. Crim. App. No. 8/00

- Appearances:** Appellant in person. Mrs. S. Bollers for the Respondent.
Issue: Appeal against conviction and sentence.
Result: Sentence varied to time already served in custody.
13. **Ross v Commissioner of Police**
Mag. Crim. App. No. 1/01
Appearances: Mr. Williams for the Appellant and Mr. S. Bollers for the Respondent.
Issue: Appeal against conviction and sentence for causing bodily harm.
Result: Appeal is dismissed. Sentence varied from custodial to a fine of EC\$2000.00 to be paid in two [2] weeks in default, six [6] months imprisonment.
14. **Hackshaw v Commissioner of Police**
Mag. Crim. App. No. 2/01
Appearances: Mr. A. Williams for the Appellant and Mrs. S. Bollers for the Respondent.
Issue: Appeal against conviction and sentence of a fine of EC\$2000.00.
Result: Appeal is allowed conviction and sentence are set aside.
15. **Ellis v Commissioner of Police**
Mag. Crim. App. No. 3/01
Appearances: Appellant is called, no appearance by or on behalf of the Appellant. Proof of service. Mrs. S. Bollers for the Respondent.
Result: Appeal is dismissed for want of prosecution. Conviction and sentence are affirmed.
16. **Hull v Commissioner of Police**
Mag. Crim. App. No. 6/01
Appearances: Mr. C. Glasgow and Mrs. S. Bollers for the Respondent.
Issue: Appeal against conviction and sentence.
Result: Appeal is allowed. Conviction and sentence are set aside.
17. **Joseph v Commissioner of Police**
Mag. Crim. App. No. 7/01
Appearances: No appearance by or on behalf of the Appellant. Proof of service. Mrs. S. Bollers for the Respondent.
Result: Dismissed for want of prosecution. Conviction and sentence are affirmed.
18. **Peters v Commissioner of Police**
Mag. Crim. App. No. 8/01
Appearances: No appearance by or on behalf of the Appellant. Proof of service. Mrs. S. Bollers for the Respondent.
Result: Dismissed for want of prosecution. Conviction and sentence affirmed.
19. **John v Commissioner of Police**
Mag. Crim. App. No. 9/01

Appearances: No appearance by or on behalf of the Appellant. Proof of service. Mrs. S. Bollers for the Respondent.

Result: Dismissed for want of prosecution. Conviction and sentence are affirmed.

20. **Browne v Commissioner of Police**

Mag. Crim. App. No. 10/01

Appearances: Mr. A. Williams holding papers for the Appellant and Mrs. S. Bollers for the Respondent.

Issue: Leave to withdraw granted.

Result: Dismissed for want of prosecution. Conviction and sentence affirmed.

21. **Providence v Commissioner of Police**

Mag. Crim. App. No. 12/01

Appearances: Mr. A. Williams for the Appellant and Mrs. S. Bollers for the Respondent.

Issue: Appeal against conviction for assault and sentence of nine [9] months.

Result: Appeal dismissed. Sentence varied from nine [9] months to six [6] months.

22. **Ellis v Commissioner of Police**

Mag. Crim. App. No. 13/01

Appearances: Miss Yvonne Williams, mother of the Appellant, Colin appeared on behalf of the Appellant and Mrs. S. Bollers for the Respondent.

Result: By consent adjourned to the next sitting of the Court to give the Appellant time to brief Counsel.

St. Christopher and Nevis Court of Appeal Sitting 23rd to 27th April 2001

Coram: **Hon. Satrohan Singh, Justice of Appeal**
 Hon. Albert Redhead, Justice of Appeal
 Hon. Albert Matthew, Justice of Appeal

Monday 23rd April, 2001

1. **Brade v West**
 Civ. App. No. T01/01 - Montserrat
 Appearances: Mr. Damian Kelsick holds for Mr. Jean Kelsick and Mr. Lindsay Grant holds for Mr Kenneth Allen, Q.C.
 Result: Written judgment delivered by **Matthew J.A.** Wrongful dismissal. Case stated. Decision of Tribunal set aside. No order as to costs.

2. **Browne v Nisbett**
 Civ. App. No.1/01
 Appearances: Mrs. Joyah Sutton-Daniel with Mr. Geoffrey Romany for the Appellant and Mr. Patrice Nisbett for the Respondent.
 By Consent: The order of the Magistrate is varied to read \$100.00 per week. There will be no order as to costs of this appeal.

3. **S. Morton v St. Kitts-Nevis-Anguilla Trading and Development Co. Ltd.**
 Civ. App. No. 2/01
 Appearances: Mrs. Joyah Sutton-Daniel with Mr. Geoffery Romany for the Appellant and Mr. Damian Kelsick for the Respondent.
 Result: The matter stood down for supplementary affidavit to be filed by applicant.

4. **Huggins v Colbourn**
 Civ. App. No. 3/01
 Appearances: Mr. Damian Kelsick for the Appellant and Miss Marcella Liburd holding papers for Karlweis Liburd for the Respondent
 By Consent: Extension of time granted for entering in recognizance within 14 days from today's date.

5. **Francis v Marks**
 Civ. App. No. 4/01
 Appearances: Mrs. Joyah Sutton-Daniel with Mr. Geoffery Romany for the Appellant and Mr. Karlweis Liburd for the Respondent
 Issue: Application opposed by Counsel for the Respondent.
 Result: The application is dismissed.
 Reason: The delay of 3½ years is too long. No arguable ground of appeal.

6. **Francis v St. Clair Hanley**
 Civ. App. No. 5/01

Appearances: Mr. John Cato for the Applicant and Mr. Theodore Hobson for the Respondent.

Issue: Sale of Shares. Application opposed by Counsel for the Respondent.

Result: The application is dismissed.

Reason: Insufficient reason given for the delay. The delay of one [1] year and one [1] month, too long.

Costs of the application to the respondent will be taxed if not agreed.

7. **National Caribbean Insurance Company Limited v Social Security Board**

Civ. App. No. 6/01

Appearances: Ms Patricia Haynes with Ms Marcella Liburd for the Appellant and Dr. Henry Browne for the Respondent

By Consent: The application is granted. Record of Appeal already filed.

8. **Sutton v The D.P.P.**

Crim. App. Nos. 2&4/00

Appearances: Mrs. Joyah Sutton-Daniel with Mr. Geoffrey Romney for the Appellant and Mr. Dennis Merchant, D.P.P. with Mrs. Pauline Hendrickson for the Respondent.

Issue: Store Breaking and Larceny

Result: Appeal against sentence. The consecutive nature of the sentence is removed and substituted by concurrent sentences. Sentences of 6 years and 7 years will remain.

9. **Ferlance v The DPP**

Crim. App. No. 9/00

Appearances: Appellant in person and Mr. Dennis Merchant, DPP, with Mrs. Pauline Hendrickson for the Respondent.

Issue: Larceny.

Result: Appeal against sentence and conviction. There is no merit in the appeal. The appeal is dismissed. The conviction and sentence are affirmed.

10. **France v The Queen**

Crim. App. No. 2/99

Appearances: Unrepresented. Mr Dennis Merchant, D.P.P. with Mrs. Pauline Hendrickson for the Respondent.

Issue: Rape.

Result: The appeal is dismissed for want of Prosecution.

11. **Carty v The D.P.P.**

Crim. App. No. 5/00

Appearances: Appellant in person and Mr. Dennis Merchant, D.P.P. with Mrs. Pauline Hendrickson for the Respondent.

Issue: Unlawful Carnal Knowledge

Result: Appeal against conviction and sentence. With the application of the proviso the sentence is conviction and sentence are affirmed. The appeal is dismissed.

12. **McDowell and Otto v The D.P.P.**
Crim. App. Nos. 6 & 10/00
Appearances: Mr. John Cato for the Appellants and Mr. Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for the Respondent.
Issue: Robbery.
Result: Appeal against sentence and conviction. Matter stood down until tomorrow morning to await appearance of Accused McDowell.
13. **G. Grant –v- The D.P.P.; Criminal Appeal No. 7 of 2000**
Appearances: Mr John Cato for the Appellant
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for the Respondent
Issue: Possession of Firearm and Ammunition Without a Licence
Appeal against conviction and sentence.
Matter stood down until tomorrow morning at the request of Mr Cato.
14. **S. Sharry –v- The Queen; Criminal Appeal No. 18 of 2000**
Appearances: Mr Anthony Johnson with Ms Patricia Dublin for the Appellant
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for the Respondent
Issue: Indecent Assault
Counsel for Appellant sought adjournment for want of proper briefing/instructions.
Matter adjourned to Wednesday.
15. **G. Knorr et al –vs- J. Vaughan; Civil Appeal No. 8 of 2000**
Appearances: Mr Mark Brantley for the Appellant
Mr Jeffrey Nisbett for the Respondent
Issue: Boundary Dispute
Parties’ settlement agreement was finalized on 19th April. Consent Order to be submitted tomorrow.
16. **Attorney-General of St. Kitts and Nevis –vs- Angela Inniss; Civil Appeal**

No. 6 of 2000

Appearances: Mr Terence Byron is with and holding papers for Mr Karl Hudson Phillips, Q.C. for the Appellant
Dr. Richard Cheltenham, Q.C. with Ms Shona Griffith for the Respondent

Matter adjourned to Wednesday at the request of Mr Byron to accommodate the appearance of Mr Phillips who was absent.

17 J. Audain –v- C. Springer; Civil Appeal No. 7 of 2000

Appearances: Dr. Henry Browne holding for Mr Hesketh Benjamin for the Appellant.
Mr Damian Kelsick for the Respondent

Dr. Browne reported Mr H. Benjamin's unavailability due to illness and requested on behalf of Mr Hesketh Benjamin to have his matters adjourned to the last day of the Court's sitting.

Matters adjourned to be dealt with at a time convenient to Mr Benjamin.

18. C. McKoy –v- S. McKoy; Civil Appeal No. 11 of 2000

Appearances: Ms Anthony Johnson with Ms Patricia Dublin for the Appellant
Mrs Dahlia Claxton-Morris for the Respondent

Counsel for Appellant instructed to withdraw appeal.

Request to withdraw appeal granted. Appeal dismissed.

19. Jack Tar Village Management Co. –v- L. Sullivan; Civil Appeal No. 12 of 2000

Appearances: Mr Emile Ferdinand with Mr Damian Kelsick for the Appellant
Mrs Margaret Foreman for the Respondent

Issue: Occupier's liability. Negligence.

Appeal against finding by Judge in favour of the respondent.

Counsel for Appellant requested an adjournment.

Matter stood down until tomorrow at request of Mr Ferdinand.

20. G. Pemberton –v- G. Flemming; Civil Appeal No. 13 of 2000

Appearances: Mr Damian Kelsick for the Appellant
Mr Joseph Quinlan for the Respondent

Issue: Abandonment Rule.

This appeal concerns the interpretation of the Abandonment Rule under Order 34 of the Rules of the Supreme Court. Preliminary objection was taken. Defendant asked Court to deem matter abandoned. The Learned Trial Judge disagreed with the submission. Pleadings in matter closed on November 7, 1996, Court having heard a Summons for Directions. However, request for hearing was not filed until sometime in 1998. It was on that basis that Appellant sought to invoke the operation of the Abandonment Rule. A matter becomes ripe for hearing after Summons for Directions is determined. The Rules prescribe that request for hearing must be filed within 6 weeks of that date.

Counsel for Respondent submitted that Summons for Directions was not completely heard therefore matter was never ripe for hearing. The Order for the Summons for Directions indicated matter will be set down for next call-over. Counsel emphasized that until a date was fixed for hearing, the Summons of Directions was not complete.

We disagreed with that submission. The view taken was that the Summons for Directions was completely heard when the Order was made setting down the matter for the next call-over. The matter became ripe for hearing in November 1996 and in accordance with Order 34 Rule (1) the request for hearing should have been filed within 6 weeks thereafter. Request for hearing was not filed until 1988. Nothing was done in the interval.

The submission that the matter be deemed abandoned is good.

The appeal is allowed. The judgment of Trial Judge is set aside. We Order that the matter be deemed abandoned under Order 34 Rule 11 (1).

Tuesday 24th April, 2001

21. S. Morton –v- St. Kitts-Nevis-Anguilla T.D.C. Co. Ltd.; Civil Appeal No. 2 of 2001

Appearances: Mrs Joyah Sutton-Daniel with Mr Geoffery Romany for the Appellant
Mr Damian Kelsick for the Respondent

Extension of time to file Notice of Appeal. Application granted. Notice of Appeal to be filed within 7 days from today's date.

22. G. Grant –v- The D.P.P.; Criminal Appeal No. 7 of 2000

Appearances: Mr John Cato for the Appellant
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for the Respondent

Issue: Possession of Firearm and Ammunition without a Licence

Appeal against conviction and sentence. Whether statutory definition of firearm was satisfied.

The appeal is dismissed. Conviction and sentence are affirmed.

23. S. McDowell and D. Otto –v- The D.P.P.; Criminal Appeal Nos. 6 and 10 of 2000

Appearances: Mr John Cato for the Appellants
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for the Respondent

Issue: Robbery

Appeal against sentence and conviction.

No merit in appeals. The appeals are dismissed. Convictions and sentences are affirmed.

24. Jack Tar Village Management Co. –v- L. Sullivan; Civil Appeal No. 12 of 2000

Appearances: Mr Emile Ferdinand with Mr Damian Kelsick for the Appellant
Mrs Margaret Foreman for the Respondent

Issue: Occupier's liability. Negligence

There is no evidence to show how respondent fell and/or what caused her to fall.

Allegations of negligence as pleaded, not proved.

The appeal is allowed. The judgment of the Trial Judge is set aside. The Appellant will have its costs of appeal to be taxed if not agreed.

25. Casablanca Resorts Limited –v- T. Astaphan; Civil Appeal No. 14 of 2000

Appearances: Dr. Henry Browne with Mr Terence Byron for the Appellant
Mr Damian Kelsick for the Respondent

Issue: Question of fact

Counsel Dr Browne granted permission to present Authority on issue raised whether inadmissible hearsay becomes admissible in absence of objection.

26. G. Knorr et al –vs- J. Vaughan; Civil Appeal No. 8 of 2000

Appearances: No appearance for the Appellant
Mr Jeffrey Nisbett for the Respondent

Issue: Boundary Dispute

Settlement Agreement submitted and approved by order of the Court.

Wednesday 25th April, 2001

27. Attorney-General of St. Kitts and Nevis –vs- Angela Inniss; Civil Appeal No. 6 of 2000

Appearances: Mr Terence Byron with Mr Karl Hudson Phillips, Q.C. for the Appellant
Dr. Richard Cheltenham, Q.C. with Ms Shona Griffith for the Respondent

Counsel for appellant requested matter adjourned to next Sitting. Dr. Cheltenham agreed.

Matter adjourned to next Sitting of the Court.

28. Casablanca Resorts Limited –v- T. Astaphan; Civil Appeal No. 14 of 2000

Appearances: Dr. Henry Browne with Mr Terence Byron for the Appellant
Mr Damian Kelsick for the Respondent

Issue: Question of fact

Appeal is allowed.

Decision by **Matthew J.A.**

It cannot be denied that Astaphan during the period of his Commission Agent became acquainted with Kris Kanhai. He brought Kanhai into the picture. The introduction took place on January 1996. The termination of this Agency took place at the end of 1996 on the 18th October. The termination of the Agency cannot be valid to destroy anything which occurred before the termination so long as Kanhai had any business to do with it Kanhai and Doobay was introduced then the terms cannot affect them. A termination could be valid if somebody else got into the picture.

The appellant argued that Kanhai was a separate person to St. Michael. The issue of the legality of hearsay evidence being allowed to give a termination was raised. The case being alter-ego then it would be clear the commission would have been rightfully earned.

The respondent stated that even if he was not a Director or Shareholder he was acting for St. Michael. Kanhai being introduced by Astaphan can deny having being the person who actually brought St. Michael to purchase. It seems that the respondent rightfully earned his commission.

The appeal is dismissed with costs to the respondent.

29. S. Sharry –v- The Queen; Criminal Appeal No. 18 of 2000

Appearances: Mr Anthony Johnson with Ms Patricia Dublin for the Appellant
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for
the Respondent

Issue: Indecent Assault. No merit.

The appeal is dismissed. Conviction and sentence affirmed.

30. I. Richardson –v- The Chief of Police; Magisterial Criminal Appeal No. 1 of 2001

Appearances: Mrs Joyah Sutton-Daniel with Mr Geoffery Romany for the
Appellant

Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for
the Respondent

Issue: Stealing

There is no merit to the appeal. The appeal is dismissed.

31. E. David –v- The Chief of Police; Magisterial Criminal Appeal No. 3 of 2001

Appearances: No appearance of or for the Appellant
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for
the Respondent

The appeal is dismissed for want of Prosecution.

32. C. King –v- Chief of Police; Magisterial Civil Appeal No. 1 of 2001

Appearances: No appearance of Appellant
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for
the Respondent

The appeal is dismissed for want of Prosecution.

33. Patrick Warner –v- Chief of Police; Magisterial Criminal Appeal No. 8/2000

Appearances: Dr. Henry Browne for the Appellant
Mr Dennis Merchant, D.P.P. with Mrs Pauline Hendrickson for
the Respondent

Appeal against sentence.

Appeal dismissed. Sentence affirmed. Fine to be paid within 3 months from
today's date.

34. D. Warner –v- T. Powell; Magisterial Criminal Appeal No. 2 of 2001

Appearances: Mr Jeffrey Nisbett for the Appellant
Dr. Henry Browne with Ms Althea Garoth for the Respondent

Issue: Maintenance

Magistrate refused to hear application by appellant for adjournment.

The appeal is allowed. The Judgment is set aside. The matter remitted to the Magistrate to be heard de novo.

35. A. Pariser et al –v- Property Management Limited; Civil Appeal No. 15 of 2000

Appearances: Mr Lindsay Grant with Mr Vernon Veira for the Appellant
Mr Charles Wilkin, Q.C. for the Respondent

Application for leave to serve Notice of Appeal.

Both Counsel to discuss the matter and convey decision to Court before Sitting closes.

36. P. Browne –v- I. Parris; Civil Appeal No. 16 of 2000

Appearances: Mr Theodore Hobson for the Appellant
Mr Hesketh Benjamin for the Respondent

Matter adjourned to the next Sitting. Mr Benjamin ill.

37 M. Bass –v- P. Browne et al; Civil Appeal No. 17 of 2000

Appearances: Mr Theodore Hobson for the Appellant
Mrs Joyah Sutton-Daniel with Mr Geoffery Romany for the Respondent.

Issue: A matter of quantum.

The award given is adequate. The appeal is dismissed. The judgment is affirmed with costs to the respondent to be taxed if not agreed.

Thursday 26th April, 2001

38. Lazarenco –v- Office of National Drugs; Civil Appeal No. 14 of 2000; Antigua

Appearances: Mr Damian Kelsick holds paper for Dr. R. Cheltenham, Q.C. for the Appellant
Dr. Henry Browne holds paper for Mr A. Astaphan, S.C. for the Respondent

Issue: Money Laundering

Justice **Matthew J.A.** gave the synopsis of written judgment.

Appeal allowed. Judgment of Trial Judge set aside. Costs to the appellant.

**39. National Caribbean Insurance Company Ltd., -v- Social Security Board;
Civil Appeal No. 19 of 2000**

Appearances: Ms Patricia Haynes with Ms Marcella Liburd for the Appellant
Dr. Henry Browne for the Respondent.

Breach of Insurance Contract. Whether peril of flood covered. Judgment reserved.

A written judgment to be delivered.

40. C. Phillip -v- T. Phillip; Magisterial Civil Appeal No. 7 of 2000

Appearances: Mr Terence Byron with Dr. Browne for the Appellant
Ms Angela Inniss for the Respondent

Issue: Maintenance

Appeal against Magistrate's Order to pay \$100.00 per week to the respondent.

No evidence of appellant's means. Ample evidence that respondent is financially capable of self-support. No evidence of willful neglect in appellant to maintain respondent.

The appeal is allowed. The judgment of the Magistrate is set aside. Costs to the appellant to be taxed if not agreed.

41. M. Simanic -v- S. Dodge et al; Civil Appeal No. 23 of 2000

Appearances: Ms Patricia Dublin with Mr Anthony Johnson for the Appellant
Mr Vernon Veira with Mr Lindsay Grant for the Respondent

Appeal against refusal by Judge to uphold an objection in limine that respondent had no locus standi to try suit.

The appeal is dismissed. Judgment of Trial Judge affirmed. Costs to the respondent to be taxed if not agreed.

**42. A. Pariser et al –v- Property Management Limited; Civil Appeal
No. 15 of 2000**

Appearances: Mr Lindsay Grant with Mr Vernon Veira for the Appellant
Mr Charles Wilkin, Q.C. for the Respondent

Report on findings to be submitted to Court tomorrow.

Friday 27th April, 2001

**43. National Caribbean Insurance Company Ltd., -v- Social Security Board;
Civil Appeal No. 19 of 2000**

Appearances: Ms Patricia Haynes with Ms Marcella Liburd for the Appellant
Dr. Henry Browne for the Respondent.

Issue: Respondent sued appellant for \$309,450.00 for damages done to its
building as result of flood.

The evidence shows an insurance contract between the parties executed in August 1992 in the form of 2 letters which stated that the perils covered by the appellant were perils which were described as Standard Policy. The perils outlined were Fire, Earthquakes, Hurricane, Lightning and Explosion. The peril of Flood was not included.

The respondent's letter shows acceptance of coverage for perils in the Standard Policy and paying of premiums \$22,682.00 for such coverage. Subsequently, that payment sealed the contract between both parties at that time. The respondent subsequently submitted a proposal form to the Insurance Company which included the perils in the Standard Policy as well as perils of Flood, Riot and Strike. The respondent referred to premium already paid which only covered the Standard Policy in accordance with the 2 letters which formed the contract. No additional premium paid to cover Flood, Riot and Strike.

Subsequent to receipt of the proposal form, Certificates of Insurance were issued called Renewal Certificates or Confirmation Certificates. Also, an Endorsement 109 which spoke of deductibles for perils covered under the Standard Policy as well as for Riot, Strike and Flood and other perils was issued forming part of the policy.

The submission of respondent's Counsel and the Trial Judge's finding were that the Endorsement 109 referred to a deductible for Flood hence the Policy of Insurance covered that peril and when added to the proposal form which had Flood ticked off, the appellant was liable for the Flood damage that was caused to respondent's building.

We are of the view that the contract came into being when the premium was paid after the 2 letters were exchanged between the parties and that the contract did not include the peril of Flood. The Endorsement was merely educational to the insured to inform them what the deductibles would be in relation to perils covered and that that was not evidence that the Insurance Contract covered the peril of Flood hence was not part of the Contract of Insurance.

The Certificates were carefully examined and nowhere in those Certificates is the peril of Flood mentioned. The respondent was not covered for the peril of Flood. The judgment of the Trial Judge is set aside.

The appeal is allowed. The appellant will have their costs in this matter.

44. A. Pariser et al –v- Property Management Limited; Civil Appeal No. 15 of 2000

Appearances: Mr Lindsay Grant with Mr Vernon Veira for the Appellant
Mr Charles Wilkin, Q.C. for the Respondent

Counsel did not submit a report on findings to Court. Counsel were instructed if matter is settled before next Sitting a Consent Order can be had and filed.

45. A. Maloney –v- H. Henry; Magisterial Criminal Appeal No. 9 of 2000

Appearances: Mr Lindsay Grant for the Appellant
Mr Patrick Patterson for the Respondent

Counsel for appellant requests leave to withdraw appeal.

The appeal is withdrawn with costs to the respondent to be taxed if not agreed.

46. R. Rannie –v- C. Matthew; Magisterial Civil Appeal No. 10 of 2000

Appearances: Mr Patrick Patterson for the Appellant
Mr Karlweis Liburd for the Respondent

Issue: Breach of Contract.

Without allowing or dismissing the appeal we confirm the Magistrate's decision but vary the Order by removing therefrom the part that ordered the appellant to repay the sum of \$1500. to the respondent.

Sincerely

Satrohan Singh
Justice of Appeal

WRITTEN JUDGMENTS

Court of Appeal Judgments

The following are written Court of Appeal judgments available for the month of April 2001:

British Virgin Islands

Sherwin Fahie v The Queen

British Virgin Islands
Crim App. No.2/00
Delivered: 02.04.01
Redhead JA

Saint Vincent & The Grenadines

Cardinal Williams v The Queen

Saint Vincent & The Grenadines
Crim. App. No. 10/95
Delivered: 02/04/01
Byron CJ

Newton Spence v The Queen and Peter Hughes v The Queen

Saint Vincent & The Grenadines and Saint Lucia
Crim. App. No. 20/98 & No. 14/97
Delivered: 02/04/01
Byron CJ

High Court Judgments

The following are written High Court judgments received during the month of April 2001:

Anguilla

Application to continue ex parte prohibitory injunction and for grant of mandatory interlocutory injunction – necessity for applicant to demonstrate cause of action against respondent to get injunctive relief

Constitution of Anguilla –allegation of breach of fundamental right of free speech against Cable and Wireless – exclusive licence – monopoly – redress for breach of contract on the basis of breach of the constitution not available against Cable and Wireless directly – Cable and Wireless a private body - no cause of action against Cable and Wireless for breach of constitution – claim for injunction on this ground rejected

Claim in private law against Cable and Wireless for tort of unlawful interference with business – serious issues to be tried – injunction granted

No basis for granting mandatory injunction

Weblinks Limited v Cable and Wireless (West Indies) Limited et al

Anguilla

Civ. Suit No. 14/01

Delivered: 12/04/01

Webster J (Ag.)

Dominica

Prerogative orders – certiorari – respondents unrepresented and not appearing at trial – PSC appointment of Inspector of Police – applicant seeking declaration that appointment of another unlawful – granted as prayed – Constitution of Dominica – Police Service Commission Regulations.

Cuffy Williams v The Police Service Commission et al

Dominica

Civ. Suit No. 44/00

Delivered: 24/01/01

Cenac J

Equity – ex parte interlocutory injunction - offshore banking – appointment of receiver – defendant not obeying ex parte order – claim to belief that order had been stayed – duty to obey court orders until varied or set aside – plaintiff failing to disclose material facts – finding that ex parte order had been irregular – injunction discharged with costs against 1st and 3rd defendants.

British Trade and Commerce Bank Ltd. Price WaterhouseCoopers (W.I.) Inc.

Dominica

Civ. Suit No. 66/01

Delivered: 16/03/01

Cenac J

Civil procedure – striking out statement of claim – Order 18, rule 19 – no reasonable cause of action disclosed – application dismissed with costs.

Castaways Development Limited v Castaways Hotel Limited et al

Dominica

Civ. Suit No. 590/95

Delivered: 21/11/00

Cenac J

Real property – sale of land – contract in writing – provision for arbitration in Sweden/Norway – vendor dying before payment in full – plaintiff purchaser reluctant to complete payment until personal representative appointed – plaintiff purchaser tendering final payment to defendant as personal representative – payment refused by defendant –

defence of arbitration clause – finding that no dispute between the parties existed requiring arbitration – judgment for plaintiff.

Rolf Andvik for Oddmund Andvik v Kurt Westerlund

Dominica

Civ. Suit No. 160/98

Delivered: 4/12/00

Cenac J

Grenada

Divorce – ancillary relief – order on the facts.

Veronica Phillip v Bernard Phillip

Grenada

Civ. Suit No. 62/97 (D)

Delivered: 06/04/01

Alleyne J

Banker and client – duty of banker to client – funds paid to wrong party – liability of banker.

Jean Gibbs v Sharon Otway et al

Grenada

Civ. Suit No. 561/95

Delivered: 11/04/01

Alleyne J

Divorce – ancillary relief – decision on the facts.

Lester Ganpot v Joel Daivis Ganpot

Grenada

Civ. Suit No. 37/99 (D)

Delivered: 11/04/01

Alleyne J

Peter John Phillip v Catherine Ann Charles et al

Grenada

Civ. Suit No. 281/00

Delivered: 11/04/01

Farara J

Montserrat

Ethlyn Weekes nee White v Clyde Weekes

Montserrat

Civ. Suit No. 51/95

Delivered: 06/04/01

Smith J

Charles Mercer Limited v Royal Bank of Canada

Montserrat

Civ. Suit No. 86/93

Delivered: 06/04/01

Smith J

John Punter et al v Thomas Dawkins

Montserrat

Civ. Suit No. 174/93

Delivered: 06/04/01

Smith J

Nicol Taylor et al v John Dublin

Montserrat

Civ. Suit No. 53/92

Delivered: 06/04/01

Smith J

Saint Christopher and Nevis

Contract for services – plaintiff an architect and defendant a building contractor – plaintiff preparing drawings for defendant – defendant receiving from plaintiff draft contract including scale of fees – defendant subsequently requesting plaintiff to complete drawings – drawings completed and planning approval obtained – defendant dismissing plaintiff – defendant completing construction according to plans – plaintiff tendering bill for fees as per contract – defendant admitting part only of plaintiff’s bill – finding of fact in favour of plaintiff – judgment for plaintiff for amount of his claim plus costs

Eustace Hobson v S. Hunkins and Sons Limited

Saint Christopher and Nevis

Civ. Suit No. 52/97

Delivered: 06/04/01

Bruce-Lyle J

Real property – sale of land – 1st defendant and purchaser a registered company – 2nd and 3rd defendants signing contract as officers of 1st defendant - purchaser an alien requiring a licence to complete – defendants not paying deposit as required by contract – defendants not performing – claim by plaintiff for specific performance – finding that all

3 defendants liable to plaintiff for breach of contract – judgment against defendants for unpaid deposit – no order for specific performance.

Jeffrey Cohen v W. T. Western Limited et al

Saint Christopher and Nevis

Civ. Suit No.30/97

Delivered: 06/04/01

Bruce-Lyle J

Building contract – claim by builder for additional works – defence of defective works – finding on facts in favour of defendant – no award of general damages for discomfort and disappointment.

Nathaniel Ward v Ronald Cozier et al

Saint Christopher and Nevis

Civ. Suit No. 6/98

Delivered: 06/04/01

Bruce-Lyle J

Saint Lucia

Ethelina Charles v Winfield Nurse

Saint Lucia

Civ. Suit 607/98

Delivered: 20/04/01

d’Auvergne J

Civil procedure – striking out statement of claim - real property – land dispute – registered land – defendant holding registered title – plaintiff claiming title – plaintiff failing to make claim during registration process – whether law suit amounting to an abuse of process – whether plaintiff had locus standi – whether issue res judicata – statement of claim struck out – Land Adjudication Act – Land Registration Act.

Else Juliet v Julietta Louis et al

Saint Lucia

Civ. Suit 471/97

Delivered: 20/04/01

d’Auvergne J

Civil procedure – striking out statement of claim – registered land - plaintiff failing to apply under land title registration process – title registered in favour of defendant – plaintiff failed to appeal registration – law suit not a proper form of appeal – statement of claim struck out – Land Adjudication Act – Land Registration Act.

Joseph Placide v St. Torrence Merius et al

Saint Lucia

Civ. Suit 877/98

Delivered: 20/04/01

d’Auvergne J

Saint Vincent and The Grenadines

Real property – land dispute – plaintiffs claiming lands belonged to deceased – defendant claiming title to land – no title deeds produced by either party – finding of fact in favour of plaintiffs.

Civil procedure – law of evidence – admissibility – negotiations entered into with a view to settlement – evidence by plaintiffs’ solicitor of concluded agreement reached by defendant – ruling that evidence of agreement admissible at trial

Civil procedure – parties – right of 2 of 3 executors to bring action against alleged trespasser – distinction between probate and administration action and action in tort – plaintiffs held to be proper parties - Orders 53 and 63 of the RSC

Probate and administration – plaintiff executors demanding possession of property of deceased - heir allegedly placing defendant in possession – no legal authority for defendant to resist executors – judgment for the plaintiffs

Adina Garnes et al v Joel Gumbs

Saint Vincent and The Grenadines

Civ. Suit No. 275/98

Delivered: 11/04/01

Mitchell J

Real property – interests in land - co-tenancy between plaintiff and deceased – deed not indicating whether joint tenancy or tenancy in common – defendant subsequently marrying deceased – plaintiff claiming entire property by right of survivorship – defendant claiming deceased’s interest under tenancy in common – finding of fact that property held by plaintiff and deceased as tenants in common – judgment for defendant

Real property – land dispute – forcible eviction of defendant by plaintiff – plaintiff and mob of friends removing roof from disputed property – possessions of defendant lost and damaged – police allegedly supporting plaintiff – judgment for defendant for special damages and general damages of \$30,000.00.

Celestina Adams v Coreen Franklyn

Saint Vincent and The Grenadines

Civ. Suit No. 343/95

Delivered: 11/04/01

Mitchell J

Planning appeal – appeal to High Court from Appeals Tribunal – no right of appeal lying to court – appeal by consent treated as an application for certiorari – decision of Tribunal made outside its jurisdiction – no record before High Court – matter remitted to Tribunal for proper hearing – no order as to costs.

Grenadines Services Limited v The Physical Planning and Development Board et al

Saint Vincent and The Grenadines

Civ. Suit No. 516/00

Delivered: 11/04/01

Mitchell J

Halley Glasgow v Cameron Veira et al

Saint Vincent and The Grenadines

Civ. Suit No. 571/98

Delivered: 11/04/01

Webster J (Ag.)

Order 15 rule 5 – application for separate trials on ground joint trial will embarrass and delay trial of main issue – main issue relating to ownership and possession of boat ready for trial – counterclaim raising issue relating to accounting for profits as between first plaintiff and defendant – separate trials ordered

Plaintiff counterclaiming against defendant’s counterclaim – leave granted to plaintiff to file cross- counterclaim to defendant’s counterclaim.

Beatrice Setzu Marcy et al v Carlos Simmons et al

Saint Vincent and The Grenadines

Civ. Suit No. 462/00

Delivered: 10/04/01

Webster J (Ag.)

Assessment of damages for personal injuries – whiplash injury -\$15,000 for pain and suffering and \$5,000 for loss of amenities.

Halley Glasgow v Cameron Veira et al

Saint Vincent and The Grenadines

Civ. Suit No. 571/98

Delivered: 11/04/01

Webster J (Ag.)



EASTERN CARIBBEAN SUPREME COURT

As at 30th April 2001

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

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

His Lordship, the Hon. Justice Ephraim Georges [Ag.] – Antigua & Barbuda

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 & Barbuda

His Lordship, the Hon. Justice Don Mitchell, QC – 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

Her Lordship, the Hon. Justice Denys Barrow [Ag.] – Saint Lucia

His Lordship, the Hon. Justice John Lawrence O’Meally [Ag.] – Antigua & Barbuda

His Lordship, the Hon. Justice Paul Webster [Ag.] – Saint Vincent & The Grenadines

His Lordship, the Hon. Justice Gerard St. C. Farara , QC [Ag.] – Grenada

Master Charmaine Pemberton

Master Hugh Rawlins

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