

**Address at the Special Sitting of the Eastern Caribbean Supreme
Court**

**To Pay Tribute to the Memory of the Rt. Hon. Sir Vincent Floissac
Formerly Chief Justice**

Honourable Judges of the Eastern Caribbean Court of Appeal and of the High Court and Master; Honourable Attorneys General Mr. Justin Simon, QC, of Antigua and Barbuda; Mrs. Judith Jones-Morgan of St. Vincent and the Grenadines and Mr. Rudolph Francis of Saint Lucia. Honourable Members of the Inner Bar: I recognize Mr. Tapley Seaton, QC, CVO, the President of the OECS Bar Association; Mr. Anthony McNamara, QC and Mr. Hilford Deterville, QC. Members of the Utter Bar. Please permit me to recognize the presence of Her Excellency, the Governor-General, Dame Pearlette Louisy; former Justice of Appeal, Mr. Michael Gordon, QC, former Acting Justice of Appeal, Suzie d'Auvergne, former High Court Judge Mr. Ian Donaldson Mitchell, QC, and the learned Magistrates of the Court. Permit me also to recognize the Minister of National Security, the Honourable Guy Meyers; Honourable Ministers Tessa Mangal and Gaspard Charlemagne, as well as the Commissioner of Police, Mr. Vernon Francois, and the family members of the Floissac family, including the Bristols.

Let us praise great men!

It was on Saturday morning 25th September 2010 that we received the sad news of the passing of the Rt. Hon. Sir Vincent Floissac, KT Bach, PC, CMG, OBE, QC, LL.M (Lond), formerly Chief Justice of the Eastern Caribbean Supreme Court and President of the Court of Appeal. We mourn. However, we are not cast down because we are gathered to pay tribute to the memory of a person who lived a long and illustrious life.

It is common knowledge that Sir Vincent was an outstanding legal luminary and jurist, who is publicly immortalized in his contributions to legal learning and jurisprudence. His legal reasoning was acutely analytical and clear. He is published by the University of Ottawa Press in a selection of Papers presented at the Seminars, which were held in Quebec and St. Lucia in 1983 and 1994 on the Civil Codes of Quebec and St. Lucia. He was the President of the St. Lucia Bar at the time. The publication is entitled "Essays on the Civil Codes of Quebec and St. Lucia". His Chapter in it is entitled "The Interpretation of the Civil Code of Saint Lucia". In his work he discussed the sources of the Civil Code and the difficulties which are presented in its interpretation because of its hybrid character. In this regard he stated that the Code "... is a fascinating blend of Quebec, French and indigenous law". His work provides a brief but very enlightening analysis of the impact of the 3 sources, which makes compulsory reading for anyone who wishes to chart the often unfathomable depths of the Civil Code.

You may no doubt have read his lecture which is contained in a handbook for the St. Lucia Media Workers Association on "The Law & the Mass

Media: Perspectives on Libel". The lecture was delivered on June 1997. Interestingly, he stated that the object of the lecture was to indicate why the Media should regard the law as its best friend. He stated this from the perspective of the constitutional protection of freedom of expression, as well as the defences of justification, absolute privilege, qualified privilege and fair comment. It is a brilliantly balanced piece. He stated, for example:

"With regard to the defence of justification, With regard to the defence of justification, the philosophy of the law of defamation is that there is nothing wrong in speaking or writing the truth even if the truth hurts. But the defamatory words must be true or substantially true in their ordinary or extended meaning. The law does not countenance half-truths. The onus is on the reporter to prove the truth of his defamatory statements. But once he has discharged that onus, the civil law of defamation protects him from legal liability for his exposure of the truth."

"Thomas Jefferson (the third President of the United States) is reported to have said that" Advertisements contain the only truth to be relied on in a newspaper". Of course, we do not agree with the late President. What we know is that it is sometimes difficult to prove the truth when we seek to rely on it."

Among his other writings, Sir Vincent has left an Essay on Judgment Writing which commends itself for constant reading and refreshing by our judges.

Sir Vincent wrote a number of outstanding judgments, some of which are published in the Law reports. He gave pride of place to **Michael Freemantle v The Queen** [1994] 1 WLR 1437. He wrote this judgment as a member of the Judicial Committee of the Privy Council, on which he sat with Lord Templeman, Lord Jauncey of Tullichettle, Lord Lloyd of Berwick and Lord Nolan. It is a short judgment on visual identification and the possible consequences of the failure of a trial judge to warn the jury of the dangers of convicting on uncorroborated identification evidence. Notwithstanding that no warning was given to the jury by the judge in that case, Sir Vincent was not about to permit the appellant, who was convicted for the murder of a woman, to go free on that technical ground. The decision remains the *locus classicus*, which our courts apply in appropriate cases to give effect to the proviso and uphold a conviction even where no warning is given, once the quality of the identification evidence was exceptionally good.

Some of his judgments in our Court which come to mind are **Northrock Ltd v Jardine and Another** (1992) 44 WIR 160. This was a judgment on delict under the Saint Lucia Civil Code; the need for a claimant to prove fault thereunder, and the inter-relationship between the application and interpretation of Code provisions and the common law. This case has been considered or applied in other cases, including *Dipcon Engineering v Webster Jordan*.

ETOILLE COMMERCIALE S.A. v OWENS BANK [1993] 45 WIR 136, which adumbrated principles relating to **leave to** appeal to the Privy Council in a case involving the enforcement of a foreign judgment. There is also **Robert Murray v Reuben Dewberry and Denfield Matthew** Civil Appeal No. 10 of 1993 on undue influence. There is the case **Re Blake** (1994) 47 WIR 174, which is concerned with judicial review, the question of the justiciability of a decision by a Governor-General to appoint a Prime Minister after elections and fundamental rights and freedoms. There is also the case of **Arawak Trust Co Ltd v Inspector of banks and Trust Companies** [1994] 47 WIR 151, on which I wrote a published article when I was in another life. **Charles Savarin v John Williams** Civil Appeal 3 of 1995 is a guiding case on statutory interpretation.

Burril and Another v Schrader and Another (1995) 50 WIR 193 is concerned with the question whether statutory conciliation procedures are a pre-requisite to instituting a wrongful dismissal claim. **Russel (Randolph) and Others v Attorney General of St Vincent and the Grenadines** (1995) 50 WIR 127 is a leading case on the appointment of a Constituency Boundaries Commission prior to elections under a constitution. It was approved by the Privy Council in toto. There is also **VILLAGE CAY MARINA LIMITED et al v BARCLAYS BANK PLC** CIVIL APPEAL No. 8 of 1995.

You may well enquire which of the foregoing is my favourite judgment. It is **Re Blake**. I recall this case fondly because I was close to the process. The appellant had sought mandamus against a decision by the Governor-

General to appoint a Prime Minister and to establish a minority government after general elections. The order of mandamus which he sought was to require the Governor-General to remove the Prime Minister from office; dissolve Parliament and fresh general elections. The appellant had also applied for a declaration that his fundamental rights were infringed by the decision. I was the Solicitor General then. The applicant tried to serve the application on me because he said that the Attorney General, as a member of the government, which he claimed was illegitimate, could not be served. In the end he served it on the Secretary. Velma Hylton J refused the applications on the ground that the appellant had no locus standi (no nexus with the claim to bring it).

In the Court of Appeal, Sir Vincent Floissac, CJ dismissed the appeal on the following grounds: (1) Mandamus cannot be issued to an applicant who has not first applied for leave; (2) The constitutional provision under which the Governor-General made the appointment is non-justiciable; (3) Since the applications had no merit the appellant had no locus standi to bring them. The case is important because the Court could well have dismissed the appeal because the pleadings were strange to the civil law process. Notwithstanding this, Sir Vincent decided that the applicant, who was unrepresented by counsel, must have his day in court. The court did not consider locus standi as a threshold issue as it is usually done. It first considered the merits and found the case unmeritorious before deciding that the applicant had no locus standi. I have always thought that this is a

refreshingly commendable approach, particular where a litigant is not represented by counsel.

We are aware of Sir Vincent's other achievements. He served Saint Lucia as Acting Governor-General of Saint Lucia and President of the Senate. In effect, he served in the top reaches of the 3 arms of Government created by the Constitution. These are outstanding achievements by any measure.

At the end of the day, however, we are really defined by the lives that we live. Sir Vincent was a human person. I have been informed and verily believe that Sir Vincent was an avid sportsman, who excelled in soccer and tennis, in particular. He also had a ready and contagious wit and good humour. I am aware that there are many whom he assisted by way of advice and goodly counsel, which paved the way to success. I benefited from that counsel after the assumption of the present office. In fact, in one or 2 instances before that time it came in very firm tones to curb over-enthusiasm as a practitioner at the Bar. After my assumption of this office it came by way of kindly gentle guidance. In every event there was no discomfort whether his counsel could have been trusted. I will miss that sagacious counsel.

Mrs. Rawlins and I will ever cherish the moments when we were able to sit and converse with Sir Vincent and Lady Floissac after the onset of his illness. She joins me; the Judges of the Court of Appeal and the High Court; the Masters of the Court and Magistrates; the Chief Registrar; the Court

Administrator; the Acting Chief Registrar, the Registrars and Staff of all of the Court Offices of our Court to extend condolences to Lady Floissac, their daughters - Heather and Brenda; and all other family members and friends. May we celebrate the illustrious life of Sir Vincent and the legacy of his dedicated service to the Court; the legal profession and to humanity.

May his soul rest in eternal peace.

MESSAGES OF CONDOLENCE WERE RECEIVED BY THE COURT FROM LORD PHILLIPS OF WORTH MATRAVERS, THE PRESIDENT OF THE SUPREME COURT OF THE UNITED KINGDOM and from the Rt. Hon. MICHAEL DE LA BASTIDE, PRESIDENT OF THE CARIBBEAN COURT OF JUSTICE (CCJ), who asked me to read his message. Chief Justice Floissac was a member of the inaugural Judicial and Legal Services Commission of the CCJ. It states:

“We at the Caribbean Court of Justice were deeply saddened to learn of the passing of the Rt Hon Sir Vincent Floissac. Sir Vincent’s association with the CCJ was in his latter years when he rendered invaluable service as a member of the Regional Judicial and Legal Services Commission (RJLSC). He had been nominated by the Law Associations of the Caribbean to serve as one of the first Commissioners. His wisdom, intelligence and rich experience as a judge and judicial administrator equipped him well to assist in guiding the Commission in its earliest days. As a member of the RJLSC he played, with others, a crucial role in the launching of the CCJ, the

selection of its first Bench and in helping to put that court on a firm footing.”

“This contribution, of course, comprised only a very small part of his monumental service to Saint Lucia, the OECS and the wider Caribbean. He is to our knowledge the only West Indian jurist who, having been appointed a member of Her Majesty’s Privy Council, delivered a judgment of the Judicial Committee which is preserved for posterity by inclusion in a volume of the West Indian Reports (See: *Freemantle v The Queen* (1994) 45 W.I.R. 312).”

“Through his many accomplishments as a jurist Sir Vincent has made a profound and indelible contribution to the advancement of Caribbean jurisprudence and for this the people of the region and the CCJ owe him a tremendous debt of gratitude.”

“To his dear widow, Lady Floissac and his daughters we extend our sincerest condolences.”

MESSAGES WERE ALSO RECEIVED FROM ALL SURVIVING CHIEF JUSTICES OF THE COURT: Sir Dennis Byron; Former Acting Chief Justices Adrian Saunders and Sir Brian Alleyne, as well as from the Chief Justices of Belize, Honourable Dr. Conteh, and the Barbados, Honourable Sherman Moore. All messages which we receive will be transmitted to Lady Floissac and family.

Hugh A. Rawlins

Chief Justice

Eastern Caribbean Supreme Court

30th September 2010