

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit No. 629/1995

In the Matter of the Sections 79(1)
110 (1) and 118 (1) of the Constitution of St. Lucia

Between:

THOMAS R. WALCOTT

Applicant

and

THE ATTORNEY GENERAL OF
SAINT LUCIA

Respondent

Appearances Mr. Velon John for Applicant
Mr. Errol Thomas, Solicitor General, for Respondent

1995: September 28th, 29th
October 31st
1996: January 24th

J U D G M E N T

d'Auvergne J.

By two notices of motion filed on the 7th September, 1995 the Applicant applied to the High Court for certain declarations and orders.

The two notices of motion were consolidated and after points in limine were taken and replied to, the motion was allowed to proceed without the name of the Governor-General of Saint Lucia.

The declarations and orders applied for were:

WALCOTT
v.
THOMAS
THE
A.G.
OF
ST. LUCIA

- (1) A Declaration that the Respondents contravened Section 79 of the Constitution of Saint Lucia by laying on the table of the House of Assembly the Estimates of Expenditure for the year 1995/96 on Thursday the 6th June 1995.
- (2) A Declaration that the Second reading of the said Estimates of Expenditure not being in compliance with Section 68 of the Standing Orders of the House of Assembly and Section 79 of the Constitution was ultra vires the powers conferred upon the Respondents.
- (3) A Declaration that the passing of the Estimates for the financial year 1995/96 by the Saint Lucia House of Assembly and Parliament is null and void.
- (4)
 - (1) A Declaration that the Respondents contravened Sections 110 (1) and 118 (1) of the Constitution of Saint Lucia by failing to appoint and to establish a Parliamentary Commissioner and Integrity Commission respectively.
 - (2) An order that the said Governor-General be ordered to conform to the said provisions of the said Constitution and to bring into existence within 60 days the Parliamentary Commissioner and the Integrity Commission.

Such further other order, declarations or orders as this Honourable Court deems right and just.

That the costs of this action be borne by the Attorney General.

The Applicant Thomas Walcott deposed by affidavits the following:

AFFIDAVIT 1

- (1) "I am a citizen of Saint Lucia, voter and payer of taxes to the Government of St. Lucia, an ex Senator of the Saint Lucia House of Assembly and a Civil Engineer.
- (2) On Thursday the 8th June, 1994 at the 4th Sitting of the 2nd Session of the House of Assembly the Estimates of Expenditure for the financial year 1995/96 were laid on the Table of the said house by the Respondents.
- (3) That the laying of the said estimates occurred approximately 68 days after the end of the of the financial year 1994/95
- (4) The said laying of the said estimates by the Minister of Finance was in direct violation of Section 79 (1) of the Constitution of Saint Lucia and thus making all processes and instruments emanating therefrom unconstitutional and therefore null and void.
- (5) One of the instruments emanating therefrom is the Appropriation Bill and which according to Section 65 (1) of the Standing Order of the House of Assembly has to be in accordance with Section 79 (1) of the said Constitution.
- (6) As a citizen, voter and tax payer of this State and in the face of allegations of corruption on the part of this Government including the misuse of the Consolidated Fund and which allegation in part have necessitated the establishment of a Commission of Inquiry by the Governor-General, I am concerned that the management of the financial and fiscal affairs of the State has been compromised to the detriment of myself and all tax paying citizens of this country.

- (7) Further that this perceived violation of the Constitution by the Government of Saint Lucia threatens my faith in the integrity of the said Government, its processes and organs and puts into question this Government and the Governor-General's capacity, intention, integrity and duty to protect my essential rights and freedoms as enshrined in the said Constitution.
- (8) I make this Affidavit from my knowledge and in support of the Motion filed therein.

AFFIDAVIT 2 reads as follows:

- (2) I have observed 1990 to 1995 the Governor-General has failed to establish in the State of Saint Lucia an Integrity Commission and has also failed to appoint a Parliamentary Commissioner as mandated by Sections 118 (1) and 110 (1) of the Constitution of Saint Lucia 1978.
- (3) As a citizen of this State if such violations of constitutional provisions on the part of the Governor General are allowed, then my essential rights and freedoms as enshrined in the said Constitution are threatened and the security and stability normally engendered by the observance of all constitutional provisions by the State will be subverted and anarchy and dictatorship will constitute the political ethos of our time.
- (4) Further allegations of corruptions on the part of Government officials and which said allegations in part necessitated the establishment of a Commission of Inquiry by the Governor-General, necessitate the establishment of an Integrity Commission and the appointment of a Parliamentary Commissioner.

- (5) Further still the allegations of Government mal practices and which has necessitated international agencies like the United States Agency for International Development Corporation, the United Nations International Drug Control Programme (UNDCP) the Group of Seventy Seven (G77) and the Perez-Guerera, to demand refunds of aid monies granted for projects in Saint Lucia, necessitate full, total compliance with the said and relevant provisions of the Saint Lucia Constitution.
- (6) I further state that the laying on the table of the House of Assembly of the Estimates of Expenditure by the Government on the 8th June 1995 was contrary to Section 79 (1) of the said Constitution, and that the ensuing Appropriation Bill was in contravention of Sections 65 (1) of the Standing Orders of the House of Assembly, and thus making the management of all financial and fiscal matters of my country for that period illegal and un-constitutional.
- (7) In this morass of illegalities and at least questionable conduct on the part of the Governor-General and the Government of Saint Lucia, I as a citizen and tax payer rightly fear that my contribution to the Revenues of the State will be unlawfully dealt with and I would be in no position to utilise the office of the Parliamentary Commissioner nor invoke the powers of the Integrity Commission to address my concerns.
- (8) As a former member of the Senate in a democratic country I greatly fear that the democratic principles upon which this country was founded are gradually and insidiously being eroded.

On the 25th September 1995 the following affidavits were filed on behalf of the Respondent:

They are reproduced in their entirety.

AFFIDAVIT IN REPLY

I, **LORRAINE BERNADINE WILLIAMS** of Reduit Orchard, in the Quarter of Gros Islet in the State of Saint Lucia, Attorney-At-Law, make oath and say as follows:

1. I hold the office of Attorney General of Saint Lucia and am the Second Respondent named in this action.
2. I am a member of the Upper House of Parliament and thus a Senator.
3. I am advised by Counsel for the Respondents and verily believe that with respect to matters such as the laying of Estimates of Expenditure as required by the Constitution of Saint Lucia is subject to a number of variables both within and outside of Saint Lucia.
4. I am advised further by Counsel for the Respondents and verily believe that because^{of} the variables as aforesaid it is not always possible to comply strictly with the letter of the Constitution in this regard.
5. I am advised further still by Counsel for the Respondents that in the context aforesaid so long as the Estimates of Expenditure are laid in, and approved by, the House of Assembly within a reasonable time after the time specified in the Constitution there is no violation or contravention of the said Constitution.
6. That the entire machinery of public and private sectors are presently operating on the basis of the Estimates of Expenditure approved by the House of Assembly.

7. I am advised by Counsel for the Respondents and verily believe that no useful purpose can be served by the prayer for the declarations with respect to the laying in and approved by, the House of Assembly of the Estimates of Expenditure for the financial year 1995/1996.

8 I am advised by Counsel for the Respondents and verily believe that the Applicant is not entitled to the declarations sought and humbly pray that this Honourable Court dismiss this action and award costs to the Respondents.

AFFIDAVIT

I, JACINTA ST HELENE of Union, Quarter of Castries, hereby make oath and say as follows:

- 1 I hold the substantive post of Deputy Director of Finance (Fiscal) in the public service of the Government of Saint Lucia.
2. On 12th May, 1995 I was appointed by the Governor-General to act as Director of Finance with effect from 18th April, 1995, until 31st August, 1995.
3. Both as Deputy Director of Finance and as Acting Director of Finance I have been involved in the revenue preparation and the annual estimates of expenditure of the budget.
4. That with respect to the Estimates for 1995/96 there has been an unusual delay caused by -

(a) Late submissions by the various Ministries and Departments with respect to their budgetary

requirement which is as a result of their concentration on post Tropical Storm Debbie rehabilitation work;

(b) The on-going negotiations with the unions representing public officers with respect to salaries and other conditions of service meant that accurate provisions could not be included in estimates and the budget;

(c) Industrial action by certain public officers affected, not only the Ministry of Finance, but also other Ministries and Departments which had a cumulative negative effect on the preparation of the estimates and the budget.

5. Although there has been a delay in the laying of the estimates for 1995/96 such estimates had to be laid nevertheless since after the statutory period the Government of Saint Lucia would have been without supply.
6. The records at the Ministry of Finance indicate that in five of last six years the Estimates of Expenditure were laid in the House of Assembly during the month of April. The execution relates to the financial year 1992/1993 when the Estimates of Expenditure were laid on June 24, 1992.

AFFIDAVIT

I, **MARINA HENRY-YARDE** of Bagatelle Road, Castries, hereby make oath and say as follows:

1. I am acting in the post of Clerk of Parliament having been appointed to so act with effect from 7th June, 1993.

2. By a Proclamation given by His Excellency the Governor General on 2nd June, 1995, it was appointed that a Session of the House of Assembly be held on Thursday, 8th June, 1995 for the despatch of public business. A true copy of the said Proclamation is produced shown to me, annexed hereto and marked as Exhibit "MHY 1".
3. A part of my prescribed duties as Clerk of Parliament entails sending a written notice to each member of the House of Assembly directing attention to a Proclamation summoning the House and also the preparing of verbatim Minutes of the Proceedings of the House including the names of the members.
4. In consequence of the said Proclamation of His Excellency the Governor-General, notices were sent to all members of the House of Assembly with respect to the Session thereof to be held on the 8th June, 1995
5. On the said 8th June, 1995 the first meeting of the new Session of the House of Assembly was held and presided over by the Speaker of the House.
6. At the said Meeting of the House the Estimates of Expenditure and Revenues for 1995/96 were laid in the said House by the Right Honourable Prime Minister and Minister of Finance, Planning and Development as part of the business of the said House as set out on the Order Paper. An original copy of the said Order Paper is produced, shown to me, annexed hereto and marked as Exhibit "MHY 2".
7. At a meeting of the House of Assembly held on 12th June, 1995 the Report of the Standing Finance Committee on the Estimates of Expenditure 1995/1996 was adopted.

8. At a meeting of the House of Assembly held on 13th June, 1995 the Appropriation Bill received First and Second Reading.
9. At a meeting of the House of Assembly held on 14th June, 1995 the Appropriation Bill, 1995/1996 was read a Third Time and Passed.
10. At the said meeting of the House of Assembly held on 14th June, 1995 when the Appropriation Bill, 1995/1996 was Read a Third Time and Passed twelve members of the House of Assembly voted "Aye" and there were five members of the said House of Assembly recorded as absent.
11. The Honourable Speaker of the House of Assembly has granted me permission to use the Order Paper aforementioned in this matter. An original copy of the said permission of the Honourable Speaker is produced, shown to me, annexed hereto and marked as Exhibit "MHY 3.
12. I was present in the House of Assembly at all meetings thereof held between 8th June, 1995 and 14th June, 1995 in my capacity as Clerk of Parliament.

On the 26th September the following Affidavit was filed by the Attorney-General:

SUPPLEMENTARY AFFIDAVIT IN REPLY

I, LORRAINE BERNADINE WILLIAMS of Reduit Orchard, in the Quarter of Gros Islet in the State of Saint Lucia, Attorney-At-Law, make oath and say as follows:

1. I hold the office of Attorney General of Saint Lucia and am the Second Respondent named in this action.

2. I am a member of the Upper House of Parliament and as such a Senator.
3. I am advised by Counsel for the Respondents and verily believe that this matter which is now before this Honourable Court is an abuse of process for the following reasons:

(a) By originating Notice of Motion the Applicant Thomas R. Walcott (the Applicant) commenced action in the High Court for an Order of Prohibition directed at the Governor General, the Government of Saint Lucia through the Attorney General and the Speaker of the House of Assembly to prevent them from commencing a sitting of the House of Assembly and at which sitting the Estimates of Expenditures and Revenues for the financial year 1995/96 were to be laid before the said House. A true copy of the said motion is produced to me and marked and exhibited as "LBW 1".

(b) The Motion came on for hearing before this Court on the 13th June, 1995 and the Applicant then sought and obtained leave to withdraw the motion on the ground that since Parliament had been convened and the Estimates of Expenditure and Revenue had been laid, these events had rendered nugatory the application for prohibition.

(c) By Writ of Summons with statement of claim endorsed thereon, the Applicant asked this Court to declare that the laying of the table of the House of Assembly of the Estimates of Revenue and Expenditure for the financial year 1995/96 by the Government of Saint Lucia was unconstitutional. A

true copy of the said writ is produced, shown to me and marked and exhibited as "LBW 2."

(d) By letter dated 11th July, 1995 and delivered to my Chambers on 12th July, 1995 the Applicant through his Counsel purported to inform me that he was giving Notice of the filing of another action against the same Respondents and raising the same issues as raised in the said writ and that having regard to his failure to comply with article 28 of the Code of Civil Procedure, Ch. 243, I should treat this action as a nullity. A true copy of the said letter is produced, shown to me, and marked exhibited as "LBW 3".

(e) The action now before this Court raises no new issues and results from serious misunderstanding of the relevant law.

4. I am advised by Counsel for the Respondents and verily believe that the matters sought to be litigated in this present action could have been litigated in earlier proceedings.

5. I am advised further by Counsel for the Respondents and verily believe that His Excellency the Governor General is not a proper party to the present proceedings.

6. I am advised further still by Counsel for the Respondents and verily believe that in the circumstances the present proceedings constitute an abuse of process as aforesaid and that the Respondents are entitled in law to have the said proceedings struck out with costs.

At the trial Learned Counsel for the Applicant submitted that the

laying of the Estimates of Expenditure for the year 1995/96 on or about the 6th of June 1995 was a violation of Section 79 (1) of the Constitution and a fundamental infringement of the said Section which reads as follows:

"The Minister for the time being responsible for finance shall cause to be prepared and laid before the House, before or not later than thirty days after the commencement of each financial year estimates of the revenues and expenditure of Saint Lucia for that financial year."

He contended that the word **shall** in this context is mandatory and not directory.

He quoted **Section 2 of the Finance Act No. 25 of 1988** which states "financial year" means the twelve month period ending with 31st March," and argued that based on the above the laying of the said Estimates had to be done at anytime within the month of April 1995 and not beyond. He said that since the laying of the estimates took place (68) sixty eight days after the constitutionally stipulated thirty days there had been an infringement and therefore all processes and instruments emanating therefrom were unconstitutional and therefore null and void.

He made reference to the affidavit in reply of the Attorney General of Saint Lucia (reproduced earlier) and said that it should be regarded as nothing else but an "edifice of sand," since the argument put forth that the delay in the laying of the Estimates was due to circumstances beyond their control, hence the reason why they were forced to go beyond the Constitutionally stated thirty days.

He then quoted **Section 80 of the Constitution** which reads as follows:

"There shall be such provisions as may be made by Parliament

under which, if the appropriate law in respect of any financial year has not come into operation by the beginning of that financial year the Minister for the time being responsible for finance may authorise the withdrawal of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier."

Learned Counsel strenuously argued that it was of cardinal importance that the laying of the Estimates takes place within 30 days after the 31st March and at no later date for to do so would amount to a contravention of the said Constitution.

He further quoted Section 81 (1) of the Constitution which states:

"There shall be such provision as may be made by Parliament for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need".

He referred to the affidavit of Jacinta St. Helene (reproduced earlier).

Jacinta St. Helene deposed that,

"That with respect to the Estimates for 1995/96 there has been an unusual delay caused by:

- (a) Late submissions by the various Ministries and Departments with respect to their budgetary requirement which is as a result of their concentration on past Tropical Storm Debbie rehabilitation work;

(b) The on-going negotiations with the Unions representing public officers with respect to salaries and other conditions of service meant that accurate provisions could not be included in the estimates and the budget. 4

(c) Industrial action by certain public officers affected, not only the Ministry of Finance, but also other Ministries and Departments which had a cumulative negative effect on the preparation of the estimates and the budget.

Learned Counsel argued that it was of the paramount importance that it be kept in mind, that the contravention was against the Constitution the highest law of the land and quoted Section 120 of the said Constitution which reads thus:

"This Constitution is the Supreme law of Saint Lucia and subject to provisions of Section 41 of the Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void."

He contended that the word shall in the Constitution was imperative, mandatory and obligatory and quoted Lord Denning in *Bradbury and others v Enfield London Borough Council* 1968 1 WLR Page 1311 at Page 1324.

"The Department of Education and the Local Education Authority are subject to the rule of law and must comply with it, just like everyone else. Even if chaos would result, still the law must be obeyed and at "Page 1325 *Darkwerts L.*, said "It is imperative that the procedure laid down in the relevant statutes should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty's subjects. Public bodies and Ministers must be compelled to observe the law; and it is essential that the bureaucracy should be kept in its place."

Counsel quoted many foreign authorities which he could not produce nor could they be found in Saint Lucia to support his argument that the words shall was mandatory and word may permissible.

He quoted the Australian case of *Johnson Tyne Foundry vs Shire of Maffra* 1949 Page 89 at Page 107 which states that:

"May unlike Shall is not mandatory but a permissive word, although it may acquire a mandatory meaning from the context in which it is used just like shall which is a mandatory word, may be deprived of its obligatory force and become permissive in context. He quoted a few cases in which the word 'may' was held to be obligatory.

He argued that there were 563 instances in which the word shall was mentioned in the Constitution and 152 instances where the word may was mentioned and therefore should not be regarded as synonymous with each other. He quoted the following cases:

London Clydeside Estates Ltd vs Aberdeen District Council and another 1980 1 WLR Page 182.

Coney v Hoyle 1975 1 WLR Page 422.

Learned Counsel vociferously and strenuously argued that "the laying of the Estimates is an important procedural mechanism which should not be contravened at any cost since it falls within the parameters of certain nation's concern which are as follows:

- (1) To protect the Society;
- (2) To inform the public as to their rights and freedoms;
- (3) To regulate the process of Government;
- (4) To establish parameters within which Government processes can be executed and how;

(5) To establish the conditions under which good Government and order can be achieved more particularly and in relation to the finances of the State.

(6) to provide definite unambiguous and strict guidelines for the proper management of a country's financial resources which includes the financial input of every Tax payer."

He said that it was an absolute and positive duty placed on the Government through the Minister of Finance to which he had to adhere.

He concluded his arguments on the contravention of Section 79 (1) of the Constitution in those words:

"In this regard the Applicant is not inconvenienced nor suffers any injustice but nevertheless has substantial and perturbing concerns as regard a seeming violation of Constitutional provisions by public officers with impunity and conjunction therewith the Applicant wonders where this country and its finances are going and where the finances which includes tax payers contributions are heading to and to what extent physical accountability is being realised or disregarded as salubrious."

Counsel's arguments on the contravention of Sections 110 (1) and 118 (1) of the Constitution of Saint Lucia were brief in comparison with that under Section 79(1) of the said Constitution.

He quoted Section 118 of the Constitution which reads as follows:

(1) "There shall be an Integrity Commission for Saint Lucia (hereafter in this section referred to as the Commission) which shall consist of a chairman and not less than two nor more than four other members, who shall be appointed

by the Governor-General, acting in accordance with the advice of the Prime Minister."

He said that the Section has been violated by the Government of Saint Lucia and its functionaries and they should not be allowed to do so.

He referred to the case of *Sheffield City Council vs Grangers Wines Ltd* 1979 1 WLR Page 1119 and quoted Scarman L. J. at Page 1125.

"It is quite clear that when Parliament indicates a manner and time in which a subordinate authority may exercise a power of imposing a monetary burden upon the citizen Parliament will expect and intend that the conditions for the exercise of that power be strictly complied with."

Learned Counsel said that paragraph 4 of the Honourable Attorney General's Affidavit in reply was horrifying.

Paragraph 4 reads:

"I am advised further by Counsel for the Respondents and verily believe that because the variables as aforesaid it is not always possible to comply strictly with the letter of the Constitution in this regard."

He said that the Throne Speech alluded to the appointment of a Parliamentary Commissioner and an Integrity Commission but to date no appointments have been made.

The Applicant, Thomas Walcott was Cross-examined by the Solicitor General ^{Counsel} for the Respondent. The Applicant said that the island of Saint Lucia has been without an Integrity Commission for about 12 - 13 years and a Parliamentary Commissioner for about 2 - 3 years.

The Solicitor General commenced his arguments by informing the Court that since the last adjournment a Parliamentary Commissioner and an Integrity Commission have been appointed and presented two copies of the Saint Lucia Gazette Vol. 164 No. 47 dated 7th October 1995 which shows that Miss Laurence Laurent has been appointed as Parliamentary Commissioner and Vol. 164 No. 48 which states that four persons had been chosen to serve on the Integrity Commission.

He urged the Court to bear in mind the equitable maxim that the Court does not act in vain.

He then quoted from de Smith's Judicial Review of Administrative Action 4th Edition Pages 508 and 509 which reads:

"An issue that could have been made the subject of an action for a declaration may cease to be justiciable because the situation on which a claim might have been founded no longer exists. The Courts will concern themselves only with living issue." and

Halsbury's Laws Vol 1 (1) paragraph 108 4th Edition.

He also quoted C. O. Williams Ltd vs Donald George Blackman and another 1 W L R Page 102 at Page 109 letter E.

The Learned Solicitor General argued that the word 'shall' in Section 79 (1) of the Constitution should be construed along the lines

as stated by Jackson J in Inland Revenue Commissioner and the Attorney-General vs Lilleyman and others 1964 7 WLR Page 496 at Page 506 Letter I.

"It is true that a Constitution must not be construed in any narrow or pedantic sense. The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered as the years go on, in relation to the vicissitudes of fact which from time to time

emerge. It is not that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning. It has been said that 'in interpreting a constituent or organic statute such as the Act (i.e. the British North America Act), that construction most beneficial to the widest possible amplitude of its powers must be adopted.'

Learned Counsel argued that the affidavit of Marina Henry-Yarde should be considered along the lines of the abovementioned. He said that Section 5 of the Finance Act 1988 gave the Minister of Finance authority to issue money before the passing of the Appropriation Law - Estimates of Expenditure).

Section 5 of the Finance Act reads as follows:-

"It shall be lawful to issue from the public funds of the State, in pursuance of warrants under the hand of the Minister such sums as may be necessary for carrying on the Government of the State, during any period not exceeding four months between the end of the financial year and the coming into force of the law authorising the appropriation for the next financial year."

He noted that it was not without significance that Section 80 of the Constitution quoted earlier at pages 14 and Section 5 of the Finance Act are drafted in almost identical language and must be read together.

He argued that this being so the Government of Saint Lucia was therefore empowered by these two Sections to lay the Estimates of Expenditure before Parliament anytime before the thirty first 31st day of July 1995 and therefore had one month and sixteen days to spare.

Learned Counsel said that in order to decide whether the word **shall**

is mandatory or directory the recent decision delivered by Sir Vincent Floissac in **Randolph Russel and others vs The Attorney-General for Saint Vincent and the Grenadines** and (2) **The Supervisor of Elections (Ormond V. Robertson) Civil Appeal No. 14 of 1994**. should be considered carefully.

In that case the Appellants were seeking that the elections held on the 21st February 1994 was a contravention of the Constitution and therefore null and void since there had not been any appointment of the Constituency Boundaries Commission and review of the boundaries of the Constituencies. The Appellants contended that the word **shall** in **Section 33 of the St. Vincent Constitution** was to be held as being mandatory and that failure to comply therewith invalidated the general elections. Sir Vincent Floissac at Page 6 of the Judgment had this to say.

"The question therefore arises as to whether it is concordant with judicial practice or principle to construe a constitutional or statutory provision as being mandatory in circumstances where (1) the provision prescribes the formalities to be observed before or during the performance of an act in the execution of a public duty (2) the act was performed without those formalities or in violation of the provision (3) the nullification of the act would result in serious general public inconvenience and in injustice to persons who had no control over those entrusted with the public duty and (4) the nullification of the act would not promote the main object of the provision."

That question was answered by the Privy Council in **Montreal Street Railway Company v Normandin (1917) A.C. 170**. There, Sir Arthur Channel (delivering the judgment of the Board said at p. 176)

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general

inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done. This principle has been applied to provisions for holding sessions at particular times and places (2 Hale, P. C., p 50, Rex v Leicester Justices, and Parke B. in Gwynne v Burnell); to provisions as to rates (Reg. v Inhabitants of Fordham and Le Feuvre v Miller); to provisions of the Ballot Act (Woodward v Sarsons and Phillips v Goff); and to justices acting without having taken the prescribed oath, whose acts are not held invalid (Margate Pier Co. v Hannam). In the case now before the Board it would cause the greatest public inconvenience if it were held that neglect to observe the provisions of the statute made the verdicts of all juries taken from the list ipso facto null and void, so that no jury trials could be held until a duly revised list had been prepared."

The Montreal Street Railway Case was concerned with Statutory provisions. But I discern no good reason why the judicial practice or principle expounded in that case should not be equally applicable to a constitutional provision."

Learned Counsel said that the Affidavit of Jacinta St. Helene noted earlier on pages 7 -8 and in particular paragraph 4 (a) (b) and (c) states the reasons for the late laying of the Estimates (e.g. rehabilitation after Tropical Storm Debbie, on-going negotiations with Unions, Industrial action by certain public officers).

He argued strenuously and persuasively that the principle as expounded by Sir. Vincent Floissac in the **St. Vincent and the Grenadines Case** Civil noted above Civil Appeal No. 14 of 1994 should be applied. He said that the nullification of the laying of the Estimates would result in general public inconvenience.

Based on the above he argued that the word **shall** in Section 79 (1) of the Saint Lucia Constitution 1978 should be construed as being directory.

He concluded his arguments by quoting **Coney v Choyce and others** 1975 1 WLR Page 422.

Learned Counsel for the Applicant replied contending that even if the Parliamentary Commissioner and the Integrity Commission have been appointed and that the Courts do not act in vain; these do not degrogate from the fact that there has been a violation of the law of the land and continue to be violation of the law and that it was incumbent on this Court in its supervisory and judicial capacity to send a clear and strong message to those who dare violate or intend to violate the Constitution of this country."

He argued most vehemently that the violation of the Constitution in 1995 could never be a dead issue and that there must be redress for such a violation. He concluded by reiterating that the Laying of the Estimates in June 1995 was in contravention of Section 79 (1) of the Constitution which states that the "Minister for the time being responsible for Finance shall cause to be prepared and laid before the House before, or not later than 30 days after, the commencement of each financial year estimates of the revenues and expenditure of Saint Lucia for that financial year."

He said that Section 5 of the Finance Act does not degrogate from the provisions of Section 79 (1) of the Constitution. He said that the Section was contravened and therefore the laying of the Estimates of Expenditure for the year 1995/1996 was null and void.

CONCLUSION

By the Saint Lucia Gazette Vol 164 Number 47 a Parliamentary Commissioner in the person of Miss Laurence Laurent has been appointed; and by Number 48 an Integrity Commission has also been

appointed naming Mr. George Theophilus, Chairman, Mr. Nathalbert Husbands, Mrs. Muriel Gill, J. P., Pastor Cornelius Robinson, as its members. Therefore the declaration and order sought viz

- (1) A Declaration that the Respondents contravened Sections 110 (1) and 118 (1) of the Constitution of Saint Lucia by failing to appoint and to establish a Parliamentary Commissioner and an Integrity Commission respectively.
- (2) An Order that the Governor General be ordered to conform to the said provisions of the said Constitution and to bring into existence within 60 days the Parliamentary Commissioner and the Integrity Commission.

is in my opinion a dead issue.

I now turn to consider the other declarations sought which to me revolves upon whether the word **shall** in Section 79 (1) of the Constitution is to be construed as being mandatory, the non compliance with, would cause the laying of the Estimates for the year 1995/1996 on the 8th of June 1995 to be a nullity. I have had copious citation of authority (a few of which I have noted) on the problem whether statutory provisions are to be considered as **mandatory or directory**. While it is true, that provisions of statutes and in particular the Constitution are suppose to provide safeguards for the subjects of a land i.e. the people of Saint Lucia, it is to be noted that the granting of relief by a Court when dealing with declarations is discretionary and the judge has many considerations to evaluate and analyse before arriving at a conclusion, one such consideration is, what effect the granting of the relief will have on the general public.

In this regard I note what Templeman J had to say in *Coney v Choyce* (CHD) 1974 1 WLR Page 422 at Page 433 where he quotes from de Smith's *Judicial Review of Administrative Action* 3rd Edition (1973) Page 122 and now (142 in the 4th Edition).

"When Parliament prescribes the manner or form in which a duty is to be performed or a power exercised, it seldom lays down what will be the legal consequences of failure to observe its prescriptions. The courts must therefore formulate their own criteria for determining whether the procedural rules are to be regarded as mandatory, in which case disobedience will render void or voidable what has been done, or as directory, in which case disobedience will be treated as an irregularity not affecting the validity of what has been done (though in some cases it has been said that there must be "substantial compliance" with the statutory provisions if the deviation is to be excused as a mere irregularity). Judges have often stressed the impracticability of specifying exact rules for the assignment of a procedural provision to the appropriate category. The whole scope and purpose of the enactment must be considered, and one must assess "the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act." Furthermore, much may depend upon the particular circumstances of the case in hand. Although "nullification is the natural and usual consequence of disobedience," breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature, or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced, or if serious public inconvenience would be caused by holding them to be mandatory, or if the court is for any reason disinclined to interfere with the act or decision that is impugned."

I accept the test (noted above). That test was recently applied in **St Vincent and the Grenadines in Civil Appeal No. 14 of 1994 (Randolph Russel et al vs Attorney General et al.** At Page 6 of that Judgment **Sir Vincent Floissac Chief Justice** asked the question "whether it is concordant with judicial practice or principle to

construe a Constitutional or Statutory provision as being mandatory in circumstances where

- (1) the provision prescribes the formalities to be observed before or during the performance of an act in the execution of a public duty;
- (2) the act was performed without those formalities or in violation of the provision;
- (3) the nullification of the act would result in serious general public inconvenience and in injustice to persons who had no control over those entrusted with the public duty and;
- (4) the nullification of the act would not promote the main object of the provision.

Sir Vincent Floissac answered the question by quoting the Case of **Montreal Street Railway Company v Normandin** 1917 A. C. 170. He said "I discern no good reason why the judicial practice or principle expounded in that case should not be equally applicable to a Constitutional provision."

I respectfully adopt this diction of Sir. Vincent Floissac, Chief Justice.

In my judgment Section 79 (1) and Section 80 of the St. Lucia Constitution 1978 are to be read in conjunction with each other. I am indeed at a loss to understand what other interpretation could be given to Section 80 of the said Constitution.

It is my view that the explanation given by Jacinta St. Helene in paragraph 4 of her affidavit on pages seven and eight is exactly one of the situations envisaged by the framers of the Constitution hence the provision empowering the Government through its Minister

of Finance to withdraw monies "until the expiration of four months from the beginning of that financial year or the coming into operation of the law whichever is the earlier."

Based on the above I find that the word **shall** in Section 79 (1) of the St. Lucia Constitution 1978 is to be construed as being directory and not mandatory.

In the result, I dismiss the two motions.

There will be no order as to costs.

SUZIE D'AUVERGNE

PUISNE JUDGE