

COURT OF APPEAL SITTING

**GRENADA
28th – 30th January 2013**

JUDGMENT

Case Name: Phillip Abbott v Aziz Hadeed

**[High Court Civil Appeal No. 41 of 2010]
(Antigua and Barbuda)**

Date: Monday, 28th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Dwight Horsford holding papers for Mr. Anthony Astaphan, SC

Respondent: Mr. Ruggles Ferguson holding papers for Hill & Hill

Issues: Civil appeal – Defamation – Libel – Fair comment on a matter of public interest – Alleged defamatory statements made by appellant found to be comment on matter of public interest in court below – Whether learned trial judge erred in applying incorrect test in determining fairness of such comment – Whether learned judge erred in making finding that defence had proven substratum of fact on which comment was based – Whether opinion evidence is admissible as proof of facts on which comment is based

Result & Reason: Held: allowing the appeal and dismissing the cross appeal and awarding costs of this appeal and in the court below to the appellant, that:

1. The statements complained of by the respondent were comment on a matter of public interest as found by the trial judge.
2. The touchstone in determining whether a comment is fair is objective, namely whether the maker of the comment had an honest belief in the view that he has expressed. Provided that the views expressed are honestly held and are germane to the subject matter on which it is made, it matters not how prejudiced or exaggerated they are. Although the learned trial judge made no specific finding on whether the appellant honestly held the views he had expressed, his finding that there was no malice implies that he found that the views were honestly held as the test for malice is the lack of honesty.
3. However, in determining whether the comments were fair, the learned judge erred in principle as he applied an incorrect subjective value judgment as to fairness, rather than the objective test, which is not justified on the authorities.

Tse Wai Chun Paul v Albert Cheng [2001] EMLR 31 applied; Reynolds v Times Newspapers Ltd. and others [2001] 2 AC 127 cited.

4. Notwithstanding the substantial abolition of the hearsay rule by English Civil Evidence Act 1995 that has been incorporated into the laws of Antigua and Barbuda, a distinction remains between evidence of opinion and evidence of fact. It is not open to a defendant to discharge the burden of proof of the substratum of fact on which his comments are based by reference to opinion evidence. This burden can only be discharged by reference to evidence of fact which may now include hearsay evidence.

Shenkman v O'Mally (1956) 157 NYS (2d) 290
cited.

STATUS HEARING

Case Name:

[1] Samuel La Touche

[2] William Noel

V

[1] Commissioner of Police

**[2] Chief Magistrate Southern Magisterial
District**

[High Court Civil Appeal No. 5 of 2004]

Date:

Monday, 28th January 2013

Before:

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Mr. Darshan Rhamdani

Issue:

Status of the matter

Result / Order:

No order was made.

Reason:

**The Court noted that the matter was determined
by the Court of Appeal since 1st July 2004.**

Case Name:

Callistus Pierre

V

Royston Pierre

[High Court Civil Appeal No. 8 of 2004]

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of the matter

Result / Order: No order was made.

Reason: The Court noted that the matter was determined by the Court of Appeal since 30th June 2004.

Case Name:

[1] Phinsley St. Louis
v
[1] The Attorney General
[2] P.C. Rennie Rennie

[High Court Civil Appeal No. 11 of 2007]

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Darshan Rhamdani

Issue: **Status of the matter**

Result / Order / Reason: **[Oral delivery]**
There having been no compliance with the faxed notice of the Chief Registrar dated 14th November 2012, this appeal stands dismissed.

Case Name: **Grenada Today Limited**
v
The Attorney General

[High Court Civil Appeal No. 8 of 2008]

Date: **Monday, 28th January 2013**

Before: **The Hon. Mr. Don Mitchell, Justice of Appeal**
[Ag.]

Appearances:
Appellant: **Mr. Anslem Clouden**
Respondent: **Mr. Darshan Rhamdani**

Issue: **Status of the matter**

Result / Order / Reason: **[Oral delivery]**
A notice of discontinuance having been filed on 10th December 2012, this appeal stands dismissed.

Case Name: **[1] Mounir Bouaita**
[2] Samor Othman
v

[1] Lloyd's Corporation

[High Court Civil Appeal No. 15 of 2008]

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Anslem Clouden
Respondent:	Mr. James Bristol

Issue: Status of the matter

Result / Order / Reason: [Oral delivery]
A notice of discontinuance having been filed since 11th December 2012, this appeal stands dismissed.

Case Name:

[1] Simon Williams
V
[1] Cuthbert Batson
[2] Evelyn Batson

[High Court Civil Appeal No. 6 of 2009]

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	In person
Respondent:	Mr. Anslem Clouden

Issue:	Status of the matter
Result / Order:	[Oral delivery] The appellant is to comply with the rules of Court for the perfecting of his appeal on or before Wednesday, 27th February 2013, failing which this appeal stands dismissed.
Reason:	The Court noted that the notes of evidence were ready for the appellant to collect and that he had been notified of their availability since 23rd September 2011. The Court was of the opinion that there existed no reason why the appellant did not perfect his appeal if he really intended to proceed with it.
Case Name:	[1] Phillip Alexander [2] Harrison Alexander v [1] Cosmos Forrester [2] Johnny Jeffery aka Forrester [High Court Civil Appeal No. 3 of 2009]
Date:	Monday, 28th January 2013
Before:	The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	
Appellant:	No appearance
Respondent:	No appearance
Issue:	Status of the matter

**Result / Order /
Reason:**

[Oral delivery]

The notice of appeal not having been served on the respondents and there being no compliance with the notice from the Chief Registrar of 14th November 2012, this appeal stands dismissed.

Case Name:

Daniel Andrew Dubisette

V

Grenada Cooperative Bank Limited

[High Court Civil Appeal No. 12 of 2009]

Date:

Monday, 28th January 2013

Before:

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Cajeton Hood

Respondent:

Ms. Deborah St. Bernard

Issue:

Status of the matter

Result / Order:

[Oral delivery]

The Registrar is directed forthwith to refer the matter to the Chief Registrar.

Reason:

The Certificate was filed on 27th October 2009 and the Registrar did not refer the matter to the Chief Registrar pursuant to Part 62.6(2) of the Civil Procedure Rules 2000.

Case Name:

George F. De Bourg

V
Sheldon Thomas

[High Court Civil Appeal No. 6 of 2010]

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Cajeton Hood
Respondent:	Mr. Darshan Rhamdani

Issue: Status of the matter

Result / Order / Reason: [Oral delivery]
By consent, the appeal is hereby withdrawn and accordingly dismissed.

Case Name:

[1] Lennie de Gale
V
[1] Louise Mattias
[2] Dorothy Gilsttrap

[High Court Civil Appeal No. 13 of 2010]

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Ian Sandy

Issue:

Status of the matter

Result / Order

[Oral delivery]

- 1. Appellant is to file the Record of Appeal by 25th February 2013 and thereafter the rules of Court are to apply.**
- 2. In the event that the appellant fails to file the said record as referred to in paragraph 1 above, the appeal herein will stand dismissed and the stay granted by Price Findlay J on the 16th November 2010 will be discharged.**
- 3. The Registrar of the High Court to prepare and serve a copy of this order on the parties with evidence of service.**

Reason:

Appellant failed initially to take steps to comply with the Rules of the Court of Appeal.

Case Name:

Eudine John nee Amade

v

Everol Amade

[High Court Civil Appeal No. 3 of 2012]

Date:

Monday, 28th January 2013

Before:

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Ian Sandy holding papers for Ms. Nicola Byer

Respondent:

Ms. Anyika Johnson

Issue:

Status of the matter

**Result / Order /
Reason:**

**[Oral delivery]
Notice of discontinuance having been filed on
24th January 2013, this appeal stands
dismissed.**

Case Name:

**Jude Hakim
v
The Queen**

**[High Court Criminal Appeal No. 2 of
2008]**

Date:

Monday, 28th January 2013

Before:

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Cajeton Hood appearing Amicus

Respondent:

Ms. Dionne Lawrence-Pivotte

Issue:

Status of the matter

Result / Order:

**[Oral delivery]
1. It is directed that the Registrar of the High
Court request from the Court Reporter a
transcript of the proceedings no later than
25th February 2013.
2. It is further directed that upon receipt of the
request from the Registrar that the transcript
of the proceedings be prepared and notice of
the availability given to the appellant no later
than 4th March 2013.
3. Thereafter that the appeal is to proceed in
accordance with the rules of the Court.**

Reason:

The Court noted that the production of the

Court transcripts has been pending since 2008.

Case Name: Earl Roche
v
The Queen

**[High Court Criminal Appeal No. 5 of
2009]**

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: No Appearance

Respondent: Ms. Dionne Lawrence-Pivotte

Issue: Status of the matter

**Result / Order /
Reason:** [Oral delivery]
Notice of abandonment having been filed on
30th July 2012, this appeal stands dismissed.

Case Name: Durant Patrice
v
The Queen

**[High Court Criminal Appeal No. 9 of
2009]**

Date: Monday, 28th January 2013

Before: The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Cajeton Hood appearing Amicus

Respondent: Ms. Dionne Lawrence-Pivotte

Issue: Status of the matter

Result / Order: [Oral delivery]

1. It is directed that the Registrar of the High Court request from the Court Reporter a transcript of the proceedings no later than 25th February 2013.
2. It is further directed that upon receipt of the request from the Registrar that the transcript of the proceedings be prepared and notice of the availability given to the appellant no later than 4th March 2013.
3. Thereafter that the appeal is to proceed in accordance with the rules of the Court.

Reason: The Court noted that the production of the Court transcripts has been pending since 2009.

APPLICATIONS AND APPEALS

Case Name: Janin Caribbean Construction Limited
v
Ernest C. Wilkinson

[High Court Civil Appeal No. 1 of 2010]

Date: Monday, 28th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: **Mr. Dwight Horsford**

Respondent: **Mrs. Celia Edwards, QC standing as a friend of the Court**

Issue: **Final leave to appeal to Her Majesty in Council**

Result / Order: **[Oral delivery]**
The application for final leave to appeal to Her Majesty in Council is deferred pending proof of service of the order of substitution of parties made on the 25th September 2012 and the motion for final leave to appeal together with the affidavit and exhibit in support thereof.

Reason: **Notice ought to be given to the proper parties. In addition, there ought to be proof provided to the Court of same.**

Case Name: **[1] Donald Frederick**
v
[1] Choo Loi Poi
[2] Choo Liu Yue Xin

[High Court Civil Appeal No. 5 of 2012]

Date: **Monday, 28th January 2013**

Coram: **The Hon. Mde. Janice M. Pereira, Chief Justice**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Dickon Mitchell with him Ms. Nadia de Chabert

Respondent: Mrs. Celia Edwards, QC with her Ms. Shireen Wilkinson

Issue: Application to set aside the order of a single judge

Result / Order:

[Oral delivery]

1. The order of Mitchell, JA [Ag.] made on 27th June 2012 is hereby set aside.
2. Having considered the arguments in the substantive appeal, the order of Cumberbatch J made on 21st January 2011 extending the time for filing and serving witness statements by the claimant is hereby set aside.
3. Costs to the appellant agreed in the sum of \$1,000.00.

Reason:

It was clear from the documents and the agreed position of the parties, that the learned trial judge had no material before him on which he could exercise his discretion to grant relief from sanctions pursuant to CPR 29.2 which incorporated by reference CPR 26.8.

Case Name:

**Ian St. Bernard
v
Nardia Wellington**

[Magisterial Civil Appeal No. 18 of 2012]

Date:

Monday, 28th January 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of**

Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Ms. Claudette Joseph with her Mr. Ian Sandy

Respondent: Ms. Karen Samuel with her Mrs. Afi Ventour De Vega

Issue: Application to vary order of a single judge

Result / Order:

[Oral delivery]

- 1. The order of Michel JA made on the 18th day of December 2012 is hereby set aside.**
- 2. That there be a stay of execution of the Magistrate's order made on the 17th September 2012 on condition however that the appellant pays the monthly sum of \$800.00 to the respondent by way of maintenance for the children plus school fees until the hearing and determination of the appeal herein.**
- 3. There shall be no order as to costs on this application.**

Reason:

CPR 26.2(2)(q) does not permit an order to be made staying an appeal as a punishment or as a derogation from any right a party may have under an enactment.

Case Name:

Anthony George
V
The Commissioner of Police

[Magisterial Civil Appeal No. 1 of 2013]

Date:

Monday, 28th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Mr. Darshan Remdhani, Solicitor General

Issues: Case Management of appeal – Application for adjournment

Result / Order: [Oral delivery]
1. Matter adjourned to the next sitting of the Court of Appeal in Grenada.
2. Notice of appeal to be served by the Registrar.

Reason: The appellant needed time to consult with an Attorney at Law to obtain advice as to the way forward.

Case Name: Carlyle Glean
v
Olive Hankey

[Magisterial Civil Appeal No. 2 of 2012]

Date: Monday, 28th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. Raphael Baptiste

Respondent: Ms. Thandiwe Lyle with her Mr. Alban John

Issue: Application for notice of appeal be struck out

Result / Order: [Oral delivery]
1. The notice of appeal and reasons served on the respondent on 25th January 2013 is hereby deemed to have been properly served.
2. The application to strike the notice of appeal is refused but in the circumstances the appellant shall bear the costs of the application to strike agreed in the sum of \$500.00.

Reason: The Court noted that verbal notice of the appeal was given but written notice was not served on the respondent.

Case Name: Manufacturing Investment (Grenada)
Limited
v
Nichol Williams

[Magisterial Civil Appeal No. 1 of 2012]

Date: Monday, 28th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Raphael Baptiste

Respondent: Ms. Shireen Wilkinson

Issue: Application to strike the notice of appeal

Result / Order: [Oral delivery]

1. The Magistrate is ordered to execute the recognizance to prosecute the appeal mandated by Section 5(1) of the Magistrate's Judgments Appeal Act and also to furnish his reasons for decision required under section 15(3) of the said Act and to produce the same to the Registrar of the Supreme Court of Grenada with a copy to the appellant no later than Friday, 15th February 2013. Failing which, parties are to file skeleton arguments upon which the Court will proceed with the appeal.
2. Respondent to be served with written reasons by 1st March 2013.
3. The parties to file and exchange skeleton arguments by 11th March 2013 and thereafter the appeal would be heard.

Reason: The judicial officer failed to comply with the statute. The Court was of the opinion that no judicial officer ought to place the Court in this kind of position. It amounts to a denial of justice.

Case Name: [1] Capital Bank International Limited
v
[1] Nazim Burke (Minister of Finance of the Government of Grenada)
[2] The Attorney General

[High Court Civil Appeal No. 25 of 2010]

Date: Monday, 28th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Cajeton Hood with him Mr. Ian Sandy

Respondent: Mr. Darshan Ramdhani, Solicitor General

Issues:

Banking Act of 1993 – Exclusive remedy –
Exclusive relief – Default judgment be entered

Result / Order:

[Oral delivery]

1. The respondent shall file and serve written submissions together with authorities relied upon no later than 12th February 2013.
2. The appellant may file and serve written submissions in reply no later than the 22nd February 2013.
3. Thereafter the matter shall be determined by a single Jjidge on the written submissions.

Reason:

The parties agreed that the matter could be dealt with as a summary appeal.

Case Name:

**Carlyle Glean
v
Olive Hankey**

[Magisterial Civil Appeal No. 2 of 2012]

Date:

Monday, 28th January 2013

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Raphael Baptiste

Respondent: Ms. Thandiwe Lyle with her Mr. Alban John

Issue: Repairs to vehicle – Liability – Allegation of improper repairs

Result / Order: [Oral delivery]
The matter be retried anew by another Magistrate.

Reason: The Court of Appeal was not provided with any reasons for decision by the Magistrate and the appeal before the Court is exclusively in relation to matters of fact which are within the exclusive purview of the trier of the facts and to which this Court is not in an advantageous position not having had the benefit of seeing and hearing witnesses and therefore cannot determine whether the Magistrate erred on coming to a decision.

Case Name:

Michael Stewart

v

The Queen

[High Court Criminal Appeal No. 13 of 2009]

Date: Tuesday, 29th January 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Dionne Lawrence–Pivotte

Issues: Criminal appeal against conviction –
Housebreaking – Arson

**Result / Order /
Reason:**

[Oral delivery]
Matter is adjourned to the next sitting of the Court of Appeal in Grenada in order for the appellant to be able to retain the services of a lawyer, there being no objection by the Crown to this application.

Reason: The appellant requested an adjournment to be given time to retain Counsel.

Case Name:

Andrew Marryshow

v

The Queen

**[High Court Criminal Appeal No. 12 of
2010]**

Date: Tuesday, 29th January 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ruggles Ferguson with him Ms. Anyika Johnson

Respondent: Ms. Dionne Lawrence–Pivotte with her Ms. Crisan Greenidge

Issues: Criminal appeal against conviction and sentence – Housebreaking – Unlawful carnal knowledge

Result / Order: [Oral delivery]
The appeal against conviction and sentence is dismissed and the conviction of the Jury and sentence imposed by the trial Judge are upheld.

Reason: There was overwhelming evidence that a jury could have arrived at the conclusion that they did. There was no doubt that the learned trial judge placed the relevant evidence before the jury in a fair and balanced manner. The judge made it clear that the doctor's evidence could not have implicated the accused man.

Furthermore, the Court was not of the view that there was any merit in the appeal against corroboration. The learned trial judge indicated that there was no corroboration after having explained to the jury the meaning of corroboration.

With regard to sentence, the Court was of the view that the sentence imposed was not excessive or outside the plentitude of justice. The Court of Appeal would have imposed a similar sentence.

The Court concluded that having regard to totality of the circumstances, there was no miscarriage of justice.

Case Name: Gabriel Ranger
v

Commissioner of Police

**[Magisterial Criminal Appeal No. 2 of
2012]**

Date: Tuesday, 29th January 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Dionne Lawrence–Pivotte

Issues: Criminal appeal against conviction – Failure to remain stationery – Taking on passengers

Result / Order: [Oral delivery]
1. Matter is traversed to the next sitting of the Court of Appeal in Grenada.
2. Service to be effected on the appellant.

Reason: Notice of hearing from the Court of Appeal was received on Friday, 25th January 2013. Owing to this fact the Registrar had difficulty in locating the appellant in time for the sitting of the Court of Appeal and further for the hearing of the matter.

Case Name: Winston Smith
v
The Commissioner of Police

[Magisterial Criminal Appeal No. 4 of

2012]

Date: Tuesday, 29th January 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ruggles Ferguson appearing Amicus

Respondent: Ms. Dionne Lawrence–Pivotte

Issues: Criminal appeal against conviction – Possession of an offensive weapon

Result / Order / Reason: [Oral delivery]
The matter is traversed to the next sitting of the Court in Grenada in order to enable Counsel who appears amicus to be properly instructed.

Case Name: Simon Corion
v
The Commissioner of Police

[Magisterial Criminal Appeal No. 5 of 2012]

Date: Tuesday, 29th January 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ruggles Ferguson
Respondent: Ms. Dionne Lawrence–Pivotte

Issues: Criminal appeal against conviction – Unlawful Assault

Result / Order: [Oral delivery]
Leave to withdraw the appeal is granted and the appeal stands dismissed.

Reason: The appellant indicated that he has already served the sentence which is the subject of this appeal.

Case Name: British American Insurance Company
Limited
v
Madonna Nelson

[High Court Civil Appeal No. 11 of 2012]

Date: Tuesday, 29th January 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:
Appellant: Mr. James Bristol with him Ms. Ria Marshall and Ms. Dennies Burris
Respondent: Ms. Celia Edwards, Q.C. appearing with her Ms. Nicola Byer

Issues: Failure to consider all facts in exercise of discretion – Company under judicial management – Failure to impose condition – Set aside judgment of lower Court – Application for leave be dismissed

Result / Order: [Oral delivery]
Appeal allowed with no order as to costs.

Reason: The trial judge erred in principle by failing to take into account relevant matters and factors deposed to by the Judicial Manager. In exercising discretion too much weight was given by the learned trial judge to the age of the respondent and the fact that the policy was void and the fact that the respondent needed money.

Case Name: Andre Bernard
v
James Bristol

[High Court Civil Appeal No. 21 of 2011]

Date: Tuesday, 29th January 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Ruggles Ferguson with him Ms. Anyika Johnson
Respondent:	Mr. Alban John with him Ms. Thandiwe Lyle

Issues: Motor vehicular accident – Contributory

negligence

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. Costs agreed in the sum of \$20,000.00.**

Reason:

The Court was not of the view that this was a matter in which the Court can properly overturn the judgment of the learned trial judge. Matters referred to by Counsel for the appellant are matters exclusively within the purview of the trial judge to determine the facts, having had the opportunity to see the witnesses, observe their demeanour and give due regard to the physical evidence.

Only in exceptional circumstances does an Appellate Court interfere with the findings of fact and exercise of discretion of the learned trial judge. There was no basis upon which this Court could properly interfere with the learned trial judge's decision. See (Powell v Streatham Manor Nursing Home [1935] AC 243) and (Rupert Ritchie & Anr. v Raquel Rodriguez & Anr. [Belize High Court Civil Appeal No. 12 of 2001]).

Case Name:

Warren Cassell

v

The Queen

**[High Court Criminal Appeal No. 1 of
2012]**

Cassell & Lewis Inc.

v

The Queen

**[High Court Criminal Appeal No. 2 of
2012]
(Montserrat)**

Date: Wednesday, 30th January 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. David Brandt

Respondent: Ms. Anesta Weeks, QC with her Mr. Oris Sullivan

Issues: Criminal appeal – Conspiracy to defraud – Money Laundering – Whether or not indictment on which the accused were tried was a nullity – Whether or not a jury properly directed in relation to mens rea would inevitably have arrived at the same verdict – Whether or not an accused charged under an incorrect Act is deprived of an opportunity to mount a defence available to him under the correct Act – Proceeds of Crime Act, 1999 – Proceeds of Crime Act, 2010

Result / Order / Reason: Having considered the transcript and what transpired at the trial, and the submissions of learned counsel for both the appellants and the respondent, the Court was not of the view that the indictment on which the accused were tried was a nullity as they were satisfied that leave was properly applied for an amendment to the indictment, leave was properly granted, and the amended indictment was filed in accordance with the leave given and in accordance with the Code, and no unfairness has been shown to the defendants. Accordingly, they found no merit in that ground of appeal and it was dismissed.

Concerning the grounds dealing with the intent for conspiracy, this ground alleged that the learned trial judge omitted to direct the jury on the requisite *mens rea* for the offence as charged. While the respondent conceded that there was an omission, it was urged that the Court of Appeal must look at the evidence that was before the jury and determine if a jury properly directed on the necessary *mens rea* would inevitably have come to the verdict of guilt. Learned Queens' Counsel pointed the Court to the transcript in which there are several instances which indicated overwhelming evidence which went to show that the appellants, Warren Cassell and Cassell & Lewis Inc., possessed the necessary *mens rea*, and that a jury properly directed in relation to the *mens rea* would inevitably have arrived at the same verdict. Some of the evidence going to show the required intent include, Cassell and his firm's ignoring the existence of director and shareholder Owen Rooney even after Cassell had spoken to Rooney's lawyer who informed him that Rooney was alive and well and did not want to sell his shares or land. Even after Rooney obtained a judgment in a Virginia Court against Cassell and the firm of Cassell & Lewis Inc. deeming the transfer of the shares to Cassell null and void, and the judgment was served on Cassell, Cassell continued to deal with the land of the company in question in this case. These are but examples of the instances which show the *mens rea* of the accused. The Court agreed with learned Queens Counsel therefore that in view of the overwhelming evidence had the trial judge properly directed the jury on the issue of *mens rea*, the jury would have inevitably have convicted of the offences as charged. That ground was therefore dismissed.

The other ground concerns the charges of money laundering being brought under the wrong Act. Cassell was convicted of offences of money laundering contrary to the Proceeds

of Crime Act, 2010 (“the 2010 Act”). Given the date of the alleged commission of the offences, the transitional provisions of this Act required that the charges be brought under the Proceeds of Crime Act, 1999 (“the 1999 Act”). The 1999 Act required that the prosecution prove an intent either to evade confiscation hearings or to avoid criminal prosecution. By contrast, the 2010 Act creates an offence which does not require such an intent. The appellant submitted that by charging the 2010 Act offences, he was deprived of the opportunity of putting forward defences that would have been available to him under the 1999 Act. The respondent’s counsel quite properly conceded that the accused ought to have been charged under the 1999 Act. The Court was of the view that the bringing of this charge under the incorrect Act deprived the accused of the opportunity of mounting a defence available to him under the 1999 Act, resulted in injustice to the appellant, and rendered his conviction on this count unfair. This was not the sort of matter to which the proviso can be applied. The appeal was therefore allowed, and Cassell’s conviction on this count was quashed.

The Court decided that the interests of justice will only be served if a retrial was ordered. The Court noted two good reasons why it should order a retrial. The offence is of a very serious nature, and it is generally in the public interest that those reasonably suspected of committing serious crimes be brought to trial. They were also of the view that the prosecution could be conducted without unfairness to, or oppression of, the defendant. They concluded that it was open to the DPP to institute the proper charges against the accused.

The Court further found that the ground of appeal complaining that some of the counts were duplicitous was misplaced. They were satisfied that the counts as amended were not duplicitous and dismissed that appeal ground.

The ground of appeal with respect to sentencing complained that the judge had not inquired whether the firm could afford to pay the fine of \$125,000.00. However, during the actual hearing of the appeal, attorney for the appellant, Mr. Brandt did not actively pursue that ground, and the Court found no reason to upset the judge's sentence.

Case Name: **Enroy Champ Williams**
v
The Commissioner of Police
[Magisterial Criminal Appeal No. 3 of 2012]

Date: **Wednesday, 30th January 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: **Mr. Cajeton Hood**
Respondent: **Ms. Dionne Lawrence–Pivotte**

Issues: **Criminal appeal against sentence – Stealing**

Result / Order: **[Oral delivery]**
1. The appeal against sentence is allowed and the sentence is varied as follows:
(a) The appellant, Enroy Champ Williams is sentenced to two consecutive sentences of ten (10) months each to take effect from the date of incarceration that is 25th May 2012.

Reason:

Discussions were held between the parties and they agreed to a variation of the order.