

11, 1960

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IN THE PRIVY COUNCIL

No. 34 of 1958

ON APPEAL FROM THE
SUPREME COURT OF TRINIDAD AND TOBAGO

IN THE MATTER of an APPLICATION by AUGUSTUS
PATTERSON for an INJUNCTION against DR.
PATRICK VINCENT JOSEPH SOLOMON

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

50876

B E T W E E N :

AUGUSTUS PATTERSON (Applicant) Appellant

- and -

DR. PATRICK VINCENT JOSEPH SOLOMON
(Respondent) Respondent

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CASE FOR THE APPELLANT

1. This is an appeal by Special Leave from a Judgment and Order of the Full Court of the Supreme Court of Trinidad and Tobago, dated the 13th November, 1957 (Sir J.L. Mathieu-Percy C.J., Camacho Ag. S.P.J., and Archer J.), affirming a Judgment of the Hon. Mr. Justice Watkin-Williams given in the Supreme Court of Trinidad and Tobago, dated the 11th June, 1957, and dismissing with costs the appeal to the said Full Court of the Appellant from the latter Judgment whereby Watkin-Williams J., dismissed with costs the Appellant's application for an injunction restraining the Respondent from claiming to be or in any way acting as (a) Minister of Education and Culture of the Government of Trinidad and Tobago (b) a member of the Executive Council of the Colony of Trinidad and Tobago and (c) a member of the Legislative Council of the Colony of Trinidad and Tobago.

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Record
pp.24-28;
p.28, 11.17-44
pp.11-20.
p.20, 1.23 -
p.21, 1.32.

Record
pp. 7-8
pp. 1-4

2. The facts leading to and upon which the said application was based and which formed the grounds thereof, as deposed to in his supporting affidavit by the Appellant, and none of which, particularly that set forth in sub-paragraph (f) hereunder, were challenged, or upon which issue was taken, by the Respondent are as follows :-

(a) The Appellant is a Mattress Maker and a registered elector in the Colony of Trinidad and Tobago. 10

(b) On the 24th September, 1956, the Respondent was elected a member of the Legislative Council of the said Colony.

(c) On the 26th October, 1956, the Respondent took his seat in the said Legislative Council.

(d) On the same day the Respondent was elected to be a member of the Executive Council of the said Colony.

(e) Shortly thereafter the Respondent took office as Minister of Education and Culture of the Government of the said Colony. 20

(f) Very soon thereafter, namely on the 19th December, 1956, the Respondent entered into a Mortgage Bill of Sale with the Accountant General of the Colony, whereby the Respondent assigned to the said Accountant General a certain Opel Kapitän Motor Car to secure the sum of 3,500 dollars lent by the said Accountant General acting for and on behalf of the Government; and the Respondent thereby agreed to repay the said sum of 3,500 dollars to the Government free of interest by a payment of \$22.00 on the 31st January, 1957, and thereafter by fixed instalments spread over approximately four years. 30

(g) The said Mortgage Bill of Sale is a contract for or on account of the public service within the meaning of section 38(3)(e) of the Trinidad and Tobago (Constitution) Order-in-Council, 1950, as amended by the Trinidad and Tobago (Constitution) (Amendment) Order-in-Council, 1956, (hereinafter called the Order-in-Council), and the Respondent thereby, in having 40

become a party to such contract without having prior thereto disclosed to the Legislature his intention to do so nor having been exempted from the consequences thereof by the Legislature, by reason thereof, his seat in the said Legislative Council had become vacant.

10 (h) The said seat in the said Legislative Council of the Respondent having as aforesaid, become vacant the Respondent was no longer entitled to be a member of the Executive Council of the said Colony or to be Minister of Education and Culture in the Government thereof.

3. Section 38(3)(e) of the Order-in-Council, so far as material, provides as follows :-

"The seat of a Nominated or Elected Member of the Legislative Council shall become vacant....

(e) if he shall become a party to any contract with the Government of the Colony for or on account of the public service,

20 Provided that, if in the circumstances it shall appear to him or them to be just so to do, the Governor, acting in his discretion, may exempt any Nominated Member and the Legislative Council may exempt any Elected Member from vacating his seat under the provisions of this paragraph, if such Member shall, before becoming a party to such contract as aforesaid disclose to the Governor or to the Legislative Council, as the case may be, the nature of such contract and his interest therein."

30 4. Section 40 of the Order-in-Council is in these terms :-

"40. (1) All questions which may arise as to the right of any person -

(i) not being an Elected Member of the Legislative Council to be or remain a Member of the Legislative Council as Speaker, or

40 (ii) to be or remain an Elected Member of the Legislative Council, shall be referred to the Supreme Court of the Colony in accordance with the provisions of any law in force in the Colony.

Record

(2) All questions which may arise as to the right of any other person to be or remain a Member of the Legislative Council shall be referred to the Governor and shall be determined by the Governor acting in his discretion."

pp.4-5; p.5,
11.8-18.

5. On the 31st May, 1957, on the application of the Appellant made ex parte Blagden J., granted leave to the Appellant to issue a notice of motion for the relief set forth in paragraph 1 hereof.

p.5, 1.22-p.6.
pp.9-11.
pp.11-20.

6. Notice of motion having been, accordingly, given the same was heard before Watkin-Williams, J., who gave Judgment on the 11th June, 1957.

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p.9, 11.7-14.

The Respondent did not, as might have been expected of a person challenged as to his holding an important public office, seek to answer the Motion at once on its merits nor to be acquitted of the misconduct impugned against him, therein, but took what have been described as two preliminary objections which were in reality three. Two of these, that the procedure by way of application for injunction was incorrect, and that the Appellant had no sufficient interest to maintain the motion, were rejected by the learned Judge. The remaining objection was that the proceedings were not maintainable because the offices held by the Respondent were not subject to an order by way either of injunction or quo warranto.

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p.13, 11.10-35;
p.19, 1.1 -
p.20, 1.18.

p.13, 1.46 -
p.14, 1.18.

7. In deciding this last mentioned objection, the learned Judge, as the Appellant respectfully submits, correctly began by considering the case of Regina v. Darley (12 Cl. and F.336; 12 E.R. 1536) wherein the House of Lords held that proceedings in the nature of quo warranto will lie for usurping any office, whether created by charter alone or by the Crown with the consent of Parliament, provided the office be of a public nature and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others.

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p.14, 1.33 -
p.18, 1.38.
p.18, 11.39-48.

He then proceeded to consider whether the Respondent held an office of this kind. He arrived at the conclusion that a Member of the Legislature does not, as such, hold such an office, and that the provisions of section 40 of the Order-in-Council (set forth in paragraph 4 supra) cannot be set in

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motion by anyone other than the Legislature itself.

Record

8. The learned Judge gave no consideration, unfortunately, to the point that, whatever might be the position in relation to the Respondent's membership of the Legislative Council, his office as Minister was and is, the Appellant submits, clearly within the ruling in Regina v. Darley (supra). Had the learned Judge considered this point, the Appellant submits that he would have decided -

10 (1) That the office of Minister can properly be challenged by proceedings in the nature of quo warranto;

20 (2) That any member of the Legislative Council who becomes a party to a contract with the Government for or on account of the public service without prior disclosure to the Legislature thereby, as is provided by section 38 (3)(e) of the Order-in-Council (set forth in paragraph 3 supra), vacates his seat in the Legislature; that if the contract stated in paragraph 2(f) hereof falls within that description the Respondent was no longer a Minister, since only a member of the Executive Council can be a Minister, and only an elected member of the Legislative Council can be elected to be a member of the Executive Council.

9. The learned Judge without having considered this aspect of the matter dismissed the Appellant's motion.

30 10. The Appellant appealed from the said Judgment to the Full Court of the Supreme Court and on the 13th November, 1957, that Court gave judgment dismissing the appeal.

p.21, 1.33 -
p.23.
p.28, 11.7-9.

40 11. The Court gave consideration only to the preliminary objection on which Mr. Justice Watkins-Williams had as aforesaid relied and held that proceedings by way of quo warranto would not lie, and that the method of testing the right of any person to be or remain an Elected Member of the Legislative Council under the said section 40 was available only on reference by the Legislature itself.

12. The position which has thus arisen is, the Appellant submits, both of great importance and

Record

highly regrettable from the point of view of the public interest. If the Appellant's contentions are correct, the Respondent has not merely held office as a Minister and membership of the Legislative and Executive Councils illegally for many months, and has succeeded in two Courts in preventing the merits of the matter being tested, but in addition the final Court in the Colony has in effect ruled that there is no means of testing such an alleged disqualification unless the Legislature itself chooses, to ask the Court to consider it.

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13. The Appellant respectfully submits that the said Judgment of the Full Court of the Supreme Court is wrong and ought to be reversed and set aside and that Judgment should be given in favour of the Appellant and the relief as prayed in the said application by the Appellant granted for the following amongst other

R E A S O N S

1. BECAUSE whatever might be the position in relation to the Respondent's membership of the Legislative Council, his office as Minister was and is, clearly within the ruling in Regina v. Darley.
2. BECAUSE the office of Minister can be challenged by proceedings in the nature of quo warranto.
3. BECAUSE the Respondent having become a party to a contract in terms of the provisions of section 38(3)(e) of the Order-in-Council his seat in the Legislature had become vacant and he was therefore no longer a Minister.
4. BECAUSE the Appellant had established his right to be granted the relief prayed by him.
5. BECAUSE the respective Judgments of the learned trial Judge and the Full Court of the Supreme Court were wrong, having regard to the unchallenged facts deposed to by the Appellant in support of his application and the law to be applied thereto.

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S.N. BERNSTEIN.

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AUGUSTUS PATTERSON for an INJUNCTION
against DR. PATRICK VINCENT JOSEPH
SOLOMON

P A T T E R S O N
Appellant

- v -

S O L O M O N
Respondent

CASE FOR THE APPELLANT

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Solicitors and Agents for the
Appellant.