THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMONICA

DOMINICA HIGH COURT CIVIL CLAIM NO. 6 OF 2010

IN THE MATTER OF THE HOUSE OF ASSEMBLY (ELECTION) ACT CAP2:01

AND

IN THE MATTER OF A PARLIMENTARY ELECTION FOR THE CONSTITUENCY OF LA PLAINE HELD ON THE 18TH DAY OF DECEMBER 2009

BETWEEN:

RONALD A.K.A. "RON" GREEN

Petitioner

V

PETTER SAINT JEAN

MERINA WILLIAMS

MARCELLA AUGUSTINE

EARL BLACKMORE

GERALD BURTON (Chairman of the Electoral Commission)

ALICK LAWRENCE (Member of the Electoral Commission)

KONDWANI WILLIAMS (Member of the Electoral Commission)

DON CHRISTOPHER (Member of the Electoral Commission)

DOMINICA BROADCASTING CORPORATION

ATTORNEY GENERAL OF DOMINICA

Respondents

AND

DOMINICA HIGH COURT CIVIL CLAIM NO. 7 OF 2010

IN THE MATTER OF THE HOUSE OF ASSEMBLY ELECTION FOR THE CONSTITUENCY OF VIEILLE CASE HELD ON THE 18TH DAY OF DECEMBER 2009.

AND

IN THE MATTER OF THE COMMONWEALTH OF DOMINICA CONSTITUTION ORDER (1978) SECTIONS 31, 32(1) (a), 40 AND 103.

AND

IN THE MATTER OF THE HOUSE OF ASSEMBLY (ELECTION) ACT CHAPTER 2.01.

BETWEEN

MAYNARD JOSEPH

AND

ROOSEVELT SKERRIT

THERESA ROYER (Returning officer for the Constituency of Vieille Case)

GERALD BURTON (Chairman of the Electoral Commission)

ALICK LAWRENCE (Member of the Electoral Commission)

KONDWANI WILLIAMS (Member of the Electoral Commission)

DON CHRISTOPHER (Member of the Electoral Commission)

BERNIE DIDIER (Member of the Electoral Commission)

DOMINICA BROADCASTING CORPORATION

ATTORNEY GENERAL OF DOMINICA

Respondents

Appearances: Mr. Douglas Mendes S.C., Mr. Stuart Young and Mr. Geoffrey Letang for the Petitioners.

Mr. Anthony Astaphan S.C. and Mrs. Heather Felix-Evans for the first Respondents.

2011:	September	5, 6, 7, 8, 13, 14
	September	15, 29
	October	3
2012:	January	10

JUDGEMENT

[1] **THOM, J**: On the 18th December 2009 General Elections were held in the Commonwealth of Dominica (Dominica). Nomination day was on December 2, 2009.

[2] Mr. Ronald 'Ron' Green and Mr. Maynard Joseph were candidates for the United Workers Party (UWP) in the Constituency of LaPlaine and Vieille Case respectively. They were both unsuccessful.

[3] Mr. Petter Saint Jean and Mr. Roosevelt Skerrit were candidates for the Dominica Labour Party (DLP). Mr. Saint Jean was elected as the Member of Parliament for the LaPlaine Constituency and Mr. Roosevelt Skerrit was elected as the Member of Parliament for the Vieille Case Constituency.

[4] On January 8, 2010 Mr. Ron Green filed an election Petition against Mr. Petter Saint Jean and others and on that same day Mr. Maynard Joseph filed an Election Petition against Mr. Roosevelt Skerrit and others.

[5] On August 25, 2010 His Lordship Justice Mr. Errol Thomas struck out several parts of the Petitions. His Lordship ordered that the only issue which should proceed to trial is whether Mr. Petter Saint Jean and Mr. Roosevelt Skerrit were disqualified from nomination or election as a Member of Parliament by virtue of the provision of Section 32 (1) (a) of the Constitution of Dominica. This aspect of both Petitions were heard together on the dates mentioned above.

[6] In the Petition of Mr. Ron Green the pleading relating to disqualification of Mr. Saint Jean is outlined in paragraphs 9, 10, and 11. They read as follows:

> "**DISQUALIFICATION FOR ELECTION**
> 9. The First Respondent is and was at all material times by virtue of his own act, under acknowledgement of allegiance, obedience and/or adherence to a foreign power or State, namely the Republic of France, of which he was at all material times a citizen and the holder of a passport issued to him between 2000 and 2002 or thereabouts and was thus incapacitated and disqualified from being nominated and elected as a Representative in the said election.
>
> 10. Prior to his nomination, the First Respondent, pursuant to Section 15 of the House of Assembly (Election) Act Chap.2:01, falsely declared in a Statutory Declaration, that he was not by virtue of his own act under any acknowledgement of allegiance, obedience or adherence to a foreign

power or State and that he was qualified to be nominated as a candidate for election to the House of Assembly for the Constituency of LaPlaine.

11. That by oral notice in a public meeting in the villages of Boetica and LaPlaine respectively in the LaPlaine Constituency given on the 8th and 17th day of December 2009 respectively by Mr. Edison James the President of the United Workers Party, the First Respondent was reminded, and the electors of the Constituency of LaPlainie specifically duly informed, that because of his dual citizenship, the First respondent was not qualified for nomination as a candidate in the said election."

[7] In the Petition of Mr. Maynard Joseph, the pleading relating to the disqualification of Mr. Skerrit is outlined in paragraph 7. It reads as follows:

"**DISQUALIFICATION FOR NOMINATION AND ELECTION**

(1) The said Roosevelt Skerrit at the time of his nomination and at all other material times, was a person by his own act under an acknowledgement of allegiance and/or obedience and/or adherence to a foreign power or State, namely the Republic of France, and thus was not qualified and was disqualified from being nominated, and from being elected and/or returned as a member of the House of Assembly for the said Constituency of Vieille Case in the said election.

(2) The said Roosevelt Skerrit, by his public pronouncement made on the 2nd day of December 2009, published through radio and other media, declared that he is a citizen of France, a foreign power or State, since June 1972 and further declared that he is the holder of a passport issued by the Government of France.

(3) The Petitioner because of the said pronouncement by the First Respondent and other facts relied upon, verily believes that the first Respondent is in fact and by French law, a citizen of France, that he has used the said French passport on the basis of that citizenship in acknowledgement of allegiance and/or obedience and/or adherence to a foreign power or State, and to perform the duties and enjoy privileges and benefits of a citizen of France.

(4) The said Roosevelt Skerrit, being aware of the provisions of Section 32 of the Commonwealth of Dominica Constitution before his nomination by his said public pronouncement declared on the 2nd day of December 2009 that no law, no Constitution, no lawyer could prevent him from being nominated as candidate in the said election.

(5) Also prior to his nomination the first Respondent pursuant to Section 15 of the House of Assembly (Election) Act Chap. 2:01 falsely declared in a Statutory Declaration that he was not by virtue of his own act under any

acknowledgment of allegiance, obedience, or adherence to a foreign power or State and that he was qualified to be nominated as a candidate for election to the House of Assembly for the Constituency of Vieille Case.

(6) On the 30th day of November 2009, Mr. Edison James, the President of the UWP, through Q-95 Radio and other media, gave and published oral notice to the public inclusive of electors of the Vieille Case Constituency, of dual citizenship of the First Respondent and warned them of its effect on his nomination in the said election.

(7) By written notice published in an issue of the Sun Newspaper dated December 16, 2009, on the Petitioner's behalf and prior to the nomination of the First Respondent, the First Respondent was reminded and the electors of the Constituency of Vieile Case duly informed that because of his dual citizenship the First Respondent was not qualified for nomination as a candidate in the said election.

(8) Also before nomination day, the Petitioner personally delivered and caused to be delivered to electors of the Constituency of Vieille Case, copies of the said notice published in the Sun Newspaper.

(9) By letter, dated the 17th day of December 2009, signed by the first Respondent and distributed by or for him, the First Respondent further informed the electors of the said Constituency, that it was alleged by persons in the local media, that because of his dual citizenship and his possession of a foreign passport, he was not qualified to be elected as a member of Parliament for the said Constituency and consequently any votes cast for him in the said election would be thrown away. The Petitioner verily believes that by the contents of the said letter, the First respondent further confirmed to the electors of the said Constituency, that in spite of his dual citizenship and possession of the said passport he would stand for election."

ISSUES

[8] The issues to be determined by the Court are:

(i) Whether Mr. Saint Jean and Mr. Skerrit were disqualified from being elected as members of the House of Assembly by virtue of the provision of Section 32 (1) (a) of the Constitution of Dominica.

(ii) If Mr. Saint-Jean and Mr. Skerrit were so disqualified whether the votes cast in their favour were votes thrown away.

[9] Section 32 (1) (a) of the Constitution of Dominica reads as follows:

"A person shall not be qualified to be elected or appointed as a Representative or Senator (hereinafter in this section referred to as a member) if he

(a) Is by virtue of his own act under any acknowledgment of allegiance, obedience or adherence to a foreign power or State."

[10] Both sides agree that the relevant time of disqualification pursuant to Section 32 (1)(a) is on nomination day – see **Peters v Chaitan** where M De la Bastide C.J said:

"In my view, the qualification for election to the House of Representatives must be satisfied at the commencement of the election process which is nomination day. Accordingly, if a person is disqualified under Section 48 (1)(a) on nomination day, the subsequent removal of the ground of disqualification even if it occurs before polling day will not render him qualified to be elected."

And Nelsen J.A referring to **Tromp v Steen Kemp** 1920 C.P.D. 284 stated:

"The nomination is essential to the right to be elected, it is part of the election and if a person had no right to be nominated because he was ineligible to be elected, then he has no legal right to be elected, in the absence of provisions to the contrary."

[11] Mr. Green and Mr. Maynard contend that Mr. Saint-Jean and Mr. Skerrit were on nomination day by virtue of their own act under acknowledgement of allegiance, obedience or adherence to a foreign power or State being the State of France.

[12] It is not disputed that Mr. Saint-Jean and Mr. Skerrit were born in Dominica and became French citizens by affiliation since both mothers are French citizens.

[13] It is not disputed that disqualification under Section 32(1)(a) relates to acknowledgement of allegiance, obedience or adherence by the voluntary act of the person see **Sykes v Cleary** [1982] 176CLR p.77; and **Dabdoub v Vaz** C.A. Jamaica No. 45 of 2008.

BURDEN OF PROOF

[14] It is agreed that the burden of proving that Mr. Saint-Jean and Mr. Skerrit were disqualified pursuant to Section 32(1) (a) rest on Mr. Green and Mr. Joseph.

STANDARD OF PROOF

[15] Mr. Mendes S.C. submitted that the standard of proof is proof on a balance or probabilities. Learned Counsel referred the Court to the cases of **Walcott v Hinds** [1967] 10WIR 521; **Re H and others (Minors)** [1986] 2WLR p.8; and **Jugnautn v Ringadoo** No. 58 of 2007.

[16] Mr. Astaphan S.C. in response submitted that the standard of proof is the criminal standard of proof beyond a reasonable doubt. Learned Senior Counsel referred the Court to the case of **R v Muhummed Afzal and the Election Court** [2005] EWCA Civ 647; and **R v Rowe exparte Mainwaring** [1992] 1WLR 1059. Learned Senior Counsel further submitted that if the Court accepts that the standard of proof is the civil standard then strong evidence is required bearing in mind the gravity of the issue and the consequences attendant on any adverse finding against Mr. Saint-Jean and Mr. Skerrit.

FINDINGS

[17] I am in agreement with the submission of Mr. Mendes S.C. that the standard of proof is proof on a balance of probabilities and not the criminal standard of proof beyond a reasonable doubt. The cases referred to by Mr. Astaphan S.C. are cases of corrupt practices which were based on the specific wording in the UK legislation. The main issues in these cases which are whether Mr. Saint-Jean and Mr. Skerrit were disqualified from being elected to the House of Assembly and whether votes cast in their favour were votes thrown away are not criminal in any nature, commission of an election offence is not alleged.

[18] Further the issue of the standard of proof in election petitions was considered by the Privy Council in **Jugnauth v Ringadoo** an appeal from the Court of Appeal of Mauritius where the allegation was one of corrupt practice. In finding that the standard of proof was the civil standard Lord Rodgers in delivering the judgment of the Court said at p.14:

> "The parallels with the United Kingdom legislation are not hard to see, but in one material respect, the legislation is different. Section 45(1) does not refer to the Election Court finding the person guilty of bribery but simply to the election being avoided by reason of bribery. In short unlike the UK legislation it does not use the language of the criminal law to describe the determination of the Election Court."

Lord Rodgers in confirming that the civil standard of proof is none other than proof on the balance of probabilities referred to the passage from Lord Hoffman in **Secretary of State for the Home Department v Rehman** [2003] 1 A.C 153 at para 55:

> "The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But as Lord Nicholls of Birkenhead explained in **In re H (Minors)** (Sexual Abuse: standard of proof) (1996) A.C. 563, 586, some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not."

SUBMISSIONS

[19] Mr. Mendes SC submitted that Mr. Saint-Jean and Mr. Skerrit are disqualified to be members of the House of Assembly pursuant to Section 32(1) (a) of the Constitution for the following reasons:

> (a) Mr. Saint-Jean and Mr. Skerrit were voluntarily under acknowledgment of allegiance, obedience or adherence to France because they acquired French Passports.
>
> (b) Mr. Saint-Jean and M. Skerrit applied to the relevant judicial authorities in France to be declared French citizens.

FRENCH PASSPORTS

[20] Mr. Mendes S.C. Submitted that the acquisition of a French Passport is an act of acknowledgment of allegiance, obedience or adherence to a foreign power or State within the meaning of Section 32(1) (a) of the Constitution. Whether a person is a citizen of a foreign country is a question of the law of the foreign country. Learned Senior Counsel referred the Court to the case of **Sykes v Cleary** at p. 112 where Brennan J stated:

> "When the issue in an Australian Court is simply whether an individual is a national of a foreign power, that issue is ordinarily determined by reference to the municipal law of the foreign power."

Mr. Mendes S.C. submitted that this general rule stated in **Sykes v Cleary** is subject to the rule that where no evidence of foreign law is adduced, then it is to be presumed that the law of the foreign State is the same as the local law. In the present case, the law of France is to be presumed to be the law of Dominica. Learned Senior Counsel referred to the case of **El Ajou v Dollar Land Holdings plc** [1993] B.C.C. 698, 715 where Millet J said:

> "Foreign law is a question of fact. It must be pleaded and proved by expert evidence. The Court cannot take judicial notice of foreign law, though it be notorious: **Lazard Bros & Co. v Midlerd Bnk Ltd** [1933] A.C. 289 at 297. In the absence of evidence, foreign law is presumed to be the same as English Law."

And in **Societe, Eram Shipping Company Ltd v Compagine International De Navigation & Others** [2001] EWCA Civ 1317 at Para 45:

> "The usual principle is that absent proof of foreign law, any otherwise applicable foreign law is presumed to be the same as English Law (or, putting the point in a way which is perhaps preferable, English law is applied)."

Also in **Dicey, Morris & Collins, the Conflict of Laws** 14th Ed, volume 1 Para 9 – 025 it is stated:

> "The burden of proving foreign law lies on the party who bases his claim or defence on it. If that party adduces no evidence, of the foreign law, the Court applies English Law. This principle is sometimes expressed in the form that foreign law is presumed to be the same as English law until the contrary is proved."

[21] Mr. Astaphan S.C. in response submitted that proof of foreign law of the facts which create the alleged allegiance or obedience is in those circumstances mandatory, and therefore Mr. Green and Mr. Joseph are not permitted to rely on any presumption that Dominica law is the same as French law particularly as French law is the civil code, a code unknown to the law of Dominica. No evidence of foreign law was led, accordingly Mr. Green and Mr. Joseph have failed to prove any act of Mr. Saint-Jean and Mr. Skerrit under French law which caused any disqualification as alleged or at all. Learned Senior Counsel referred the Court to the text Foreign Law in English Court, Pleading Proof and Choice of Law by Richard Kentimer at pp.146 - 150.

[22] Mr. Astaphan S.C. further submitted that Madame Duhamel was not produced as an expert witness, in any event Madame Duhamel was not requested to advise on what would constitute an act of allegiance under French law. No evidence was produced of what are the contents of a French passport, or whether in applying for a French passport a person would acknowledge allegiance to France. In **Dabdoub v Vaz** expert evidence of American law was adduced which showed that an applicant for a passport had to acknowledge allegiance to the United States of America. If the question of allegiance is to be determined in accordance with foreign law especially French law, that created a mandatory requirement for evidence of French Law to be produced. In the absence of evidence of French law it would be manifestly unfair if not irrational to apply English Law.

FINDINGS

[23] The purpose of Section 32(1)(a) is to prevent persons who have chosen to be loyal to a foreign power or state from serving in the Parliament of Dominica. Parliamentarians must not have divided loyalty. Whether a person is under acknowledgment of allegiance, obedience, and/or adherence to a foreign power or state is determined by the laws of the foreign country - see **Sykes v Cleary**. **Sykes v Cleary** was applied by the ECCA in **Cedric Liburd v Eugene Hamilton et al**, HCVAP 2010/017. Mr. Saint Jean and Mr. Skerrit would be disqualified under Section 32(1)(a) if in accordance with the laws of France they are under acknowledgment of allegiance, obedience, and/or adherence to France. The Petitioners on whom the burden of proof lies did not lead any evidence to show that under the laws of France the Respondents were so disqualified. In the **Societe Eram Shipping Case** referred to by the Petitioners, the UKCA assumed that whether a restitutionary right arose in favour of the Respondent was to be determined by Hong Kong Law. No evidence of Hong Kong Law to this effect was adduced. The Court in applying English Law stated:

> "The usual principle is that, absent proof of foreign law, any otherwise applicable foreign law is presumed to be the same as English Law (or, putting the point in a way which is perhaps preferable, English Law is applied): Dicey & Morris, para 9 - 025. Applying this principle, the law of Hong Kong is to be treated as the same as English law. The fact that it is well known that the law of Hong Kong is based on the common law merely

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> "The usual principle is that, absent proof of foreign law, any otherwise applicable foreign law is presumed to be the same as English Law (or, putting the point in a way which is perhaps preferable, English Law is applied): Dicey & Morris, para 9 - 025. Applying this principle, the law of Hong Kong is to be treated as the same as English law. The fact that it is well known that the law of Hong Kong is based on the common law merely

> adds comfort as to the underlying reality of that approach, as well as a likely explanation why the evidence of Hong Kong law before us is limited. For reasons which will appear, we see no ground for departing from the usual approach in the present context."

The case clearly shows that in appropriate cases the Court may depart from the usual principle. The question that arises is whether the Court should depart from the usual principle in the present cases. In similar cases whether provisions similar to Section 32(1) (a) were in issue, evidence of foreign law was adduced - see **Dabdoub v Vaz** and **Cedric Liburd v Eugene Hamilton**. In the text **Foreign Law in English Courts** referred to by Mr. Astaphan S.C. the Author at pp 146-147 referred to circumstances in which the usual approach may be departed from as follows:

> "The presumption of similarity between English law and foreign law is common currency amongst English lawyers and is regularly endorsed in the cases. Indeed, the Court of Appeal has re-affirmed the principle, going so far as to hold that even foreign conceptions of public policy are presumed to be similar to those of English law. But the argument for relying upon such an unlikely fiction has always been insecure. To speak of such a presumption at all, rather than admitting that English law applies as the lex causae where no other is proved, may rest on a conceptual mistake. And the inappropriateness of deeming English and Foreign law to be the same in all situations has long been recognized. Certainly there are cases in which courts have declined to do so where this would strain credibility. Courts have in the past refused to apply it where the rules of the lex fori are statute-based, or where the foreign law is not that of a common law system, or where the relevant concept in English law is perceived to be of a unique character. Nor has the presumption been applied in circumstances where the relevant English rule is territorially limited to claims arising within the jurisdiction of the English Courts. It cannot be assumed, for example, that the law of copyright of a foreign country is the same as that of England because the relevant English legislation applies only to infringements in England. The role of the presumption has also been doubted where fairness requires a claimant to establish its case positively, as where an allegation of fraud has been made."

And in Dicey, Morris and Collins in **The Conflict of Laws** 14th ed. para 9 - 025 the Learned Authors stated:

> "**Burden of proof** - The burden of proving foreign law lies on the party who bases his claim or defence on it. If that party adduces no evidence, or insufficient evidence, of the foreign law, the Court applies English law.

> This principle is sometimes expressed in the form that foreign law is presumed to be the same as English law until the contrary is proved. But this mode of expression has given rise to uneasiness in certain cases. Thus in one case the Court refused to apply the presumption of similarity where the foreign law was not based on the common law, and in others it has been doubted whether the Court was entitled to presume that the foreign law was the same as the statute law of the forum."

The main reason advanced by Mr. Astaphan S.C. for the Court to depart from the usual principle is that the legal system of France is based on the Civil Code. However there is no general rule that merely because a system of law is different the usual principle should not apply. The issue in the present cases does not relate to any unique principle or concept of the Civil Code, or any particular rule of construction applicable only to the Civil Code. Having regard to the circumstances of the present cases I find no need to depart from the usual principle.

EVIDENCE OF DISQUALIFICATION

[24] I will deal with each case separately.

MR. SAINT-JEAN

[25] The evidence on which Mr. Ron Green relied to prove that Mr. Saint-Jean was a holder of a French Passport between 2000 and 2002 or thereabouts are as follows:

(a) Admission by Mr. Saint-Jean that he was in possession of a French passport which is evident from a letter he wrote on the subject of his French citizenship.

(b) Mr. Saint-Jean's failure to deny possession of a French passport in circumstances where such denial if truthful, would have been expected.

(c) The repeated contention of Mr. Saint-Jean that any order compelling him to produce his French passport would incriminate him.

(d) The evidence of Mr. Felix Prosper.

(e) Mr. Saint-Jean applied to the relevant judicial authorities in France to be declared a French Citizen.

(f) Registration of Mr. Saint-Jean as an overseas French citizen.

(g) Mr. Saint-Jean's failure to testify at the trial.

ADMISSION

[26] Mr. Mendes S.C. referred the Court to the letter of Mr. Saint-Jean dated November 30,2009 to the French Ambassador and submitted that by that letter Mr. Saint-Jean implicitly admitted that he had obtained a French passport by his own act and may even have travelled on it. There is no other reasonable inference which could be drawn. Mr. Saint-Jean's concern as expressed in the letter was based on the Jamaican case of **Dabdoub v Vaz** that the obtaining of a foreign passport would render him disqualified from being elected a member of the House of Assembly. **Dabdoub v Vaz** does not decide that if you acquire citizenship involuntarily that you are disqualified, but rather the case decided that if as an adult you obtain a foreign passport, you renew that passport or travel on it you are disqualified.

[27] Mr. Astaphan S.C. in response submitted that Mr. saint-Jean's letter of renunciation does not amount to an admission for the following reasons:

(i) Mr. Saint-Jean is not an Attorney and the letter was not signed by an Attorney.

(ii) No reference was made to the case of **Dabdoub v Vaz**. In any event the reference was only to dual citizenship. Mr. Saint-Jean may have been ill advised or did not understand what was decided in **Dabdoub v Vaz**.

(iii) The facts in **Dabdoub v Vaz** are different.

(iv) There is no evidence from Mr. Green of French law or that American and French Law are the same.

(v) The renunciation could have been out of an abundance of caution as described by Mr. Green.

FINDINGS

[28] The letter of Mr. Saint-Jean dated November 30, 2009 reads as follows:

"H. E Mrs. Michel Sauterand

Ambassador of France to the OECS Member States
Nelson Mandela Drive
Vigie Private Box
General Post Office
Castries
St.Lucia,

Dear Ambassador,
I regretfully make a formal request for renunciation of my French citizenship.

My decision is based solely on my desire to represent the people of LaPlaine and Dominica in the Parliament of Dominica.

A recent court decision in Jamaica has raised some new questions about dual citizenship and I therefore would not want to cause myself to be disqualified to contest the 2009 General Election in my country.

Excellency, I would be most grateful if special urgent attention could be given by the French Government to my request as I would need a favourable response by Tuesday 1st December, 2009.

I wish to apologise to your Excellency and to the French Government for my late request.

Thanks for your usual kind cooperation and assistance.

Hon. Petter Saint-Jean."

[29] While Mr. Saint-Jean's letter did not specifically mention the case of **Dabdoub v Vaz**, the only reasonable inference that could be drawn is that Mr. Saint-Jean was referring to **Dabdoub v Vaz** as that was the most recent decision (dated March 13, 2009) prior to Mr. Saint-Jean's letter of November 30, 2009 in which the Jamaican Court dealt with the issue of disqualification to be elected as a Member of Parliament. I therefore agree with Mr. Mendes S.C. that Mr. Saint-Jean must have been referring to the case of **Dabdoub v Vaz.**

[30] The letter was signed by Mr. Saint-Jean. There is no evidence which shows that the letter was prepared by an Attorney or on advice of an Attorney. Mr. Saint-Jean seeks to renounce his French Citizenship on the basis that his dual citizenship may cause him to be disqualified in view of the decision of the Jamaican Court. I bear in mind that it is not

disputed that Mr. Saint-Jean's French Citizenship is by affiliation. Mr. Green's pleaded case is that Mr. Saint-Jean obtained a French passport between 2000 and 2002 or thereabouts. There is nothing in the letter on which an inference could be drawn that Mr. Saint-Jean admitted that he obtained a French passport between 2000 and 2002 or thereabouts, or for that matter at any time. The admission made by Mr. Saint-Jean is that he has dual citizenship. It is settled law that dual citizenship simpliciter is not a disqualification pursuant to Section 32(1) (a) of the Constitution.

FAILURE TO MAKE DENIAL

[31] Mr. Mendes S.C. Submitted that Mr. Saint-Jean's failure to deny that he was in possession of a French passport in circumstances where a denial was expected is evidence from which the Court could infer that Mr. Saint-Jean was indeed in possession of a French passport. Learned Senior Counsel relied on the cases of **Bessela v Stern** [1877] 2CPD 265 at P.272; **R v Mitchell** [1892] 17 cased C.C. P.503; and **Parkes v R** [1976] 1WLR P.585.

[32] Mr. Mendes S.C. submitted that the following were circumstances in which Mr. Saint-Jean was expected to make a denial:

(i) during the political campaign leading to the General Election;

(ii) in his affidavit in support of his application to strike out the Petition;

(iii) in response to the Petitioner's Attorney request for disclosure, and during the hearing of the application of the Petition for disclosure and Mr. Saint-Jean's opposition to the subpoena.

[33] Mr. Mendes S.C. submitted that during the political campaign in the course of speeches given by Mr. James at political meetings the people were warned that Mr. Saint-Jean did not qualify because he was the holder of a French passport. Also there was discussion of this in the media and by persons generally. The evidence is that at no time during the campaign did Mr. Saint-Jean deny these allegations. His silence in the face of such allegations created the inference that he did in fact possess a French passport and that is the reason why he did not deny it.

[34] Mr. Mendes S.C. also submitted that Mr. Saint-Jean in his affidavit in support of his application dated March 30, 2010 to strike out the Petition in which it is alleged that he is the holder of a French passport deposed that Mr. Green was an American citizen and had travelled on an American passport. Mr. Saint-Jean however did not deny the allegation in the Petition that he was in possession of a French passport. If Mr. Saint-Jean did not have a French passport it would have been convenient and appropriate for him to use the occasion to say so. His silence in those circumstances where one would expect otherwise is implicit acceptance that he did have a passport.

[35] Further Mr. Saint-Jean's failure to deny he had a French passport in response to Mr. Green's Attorney where by letter dated December 21, 2010 the Attorney requested disclosure of any French passports which Mr. Saint-Jean had or once had in his possession and his further failure to deny that he did not have a French passport when application for disclosure was made by Mr. Green to the Court and in his opposition to the subpoena is consistent only with Mr. Saint-Jean being in possession of a French passport.

[36] Mr. Astaphan S.C. in response submitted that there is no evidence to show that the allegations made at political meetings, and discussion by press or the media were ever made known to Mr. Saint-Jean. There is no evidence that Mr. Saint-Jean heard anything said by Mr. James or any one during the political campaign that he was the holder of a French passport. A politician has no obligation to respond to rhetorical questions or mere allegations made by his opponents in the course of an election campaign especially where there is no authoritative basis for the allegations.

[37] In relation to the affidavit in support of the application to strike Mr. Astaphan S.C. submitted that Mr. Saint-Jean in his application was alleging that as a matter of fact and or law that the Petition was deficient and did not disclose a cause of action. Therefore failure to deny an allegation in the Petition cannot amount to an admission of it.

[38] In relation to the request and opposition for disclosure and the subpoena Mr. Astaphan S.C. submitted that on a request for disclosure an argument that documents requested are not relevant and therefore the applicant is not entitled to them cannot amount to an admission by failing to deny that you have them in your possession. Further Mr. Saint-Jean had a legal right to challenge the application for disclosure and subpoena on legal grounds. The fact that in his challenge he did not deny having a French passport cannot amount to an admission.

FINDINGS

[39] The cases of **Bessela v Stern; R v Mitchell; Parkes v R**; and **R v Chandler** referred to by Mr. Mendes S.C. are all based on the fact that the allegation was made to the person and he remained silent.

[40] In **Bessela v Stern** which was a case for a breach of promise of marriage, the accusation of the promise to marry was made to the Defendant and he did not respond to the accusation, but suggested a proposal for the plaintiff to leave. In **R v Chandler** the accusations were put to the Defendant in an interview and the Defendant remained silent. Similarly in **Parkes v R** the accusation that the Appellant had murdered the deceased was made to the Appellant by the deceased mother.

[41] In relation to the political campaign the evidence of Mr. Green in his witness statement at paragraph 10 is that:

> "Mr. Edison James stated to those present that Petter Saint-Jean was not eligible to stand as a candidate to be elected to the House of Representative for the LaPlaine Constituency as he held allegiance, obedience, or adherence to France by virtue of the fact of his holding French Citizenship and a French passport."

[42] The witness Mr. Conil Athanaze, Mr. Marley Hurtult, Mr. Xavier Jules, Mr. Fabien Antoine and Mr. Julien Newton all made similar statements. Mr. James in his testimony at paragraph 5 of his witness statement stated that at meetings at Boetica and LaPlaine he said:

> "I said words to the effect calling on Mr. Saint-Jean to come clean with the electorate, the public of Dominica and to inform us whether he was a French Citizen by virtue of his being the holder of a French passport. I told those assembled at the meeting that Mr. Saint-Jean was not qualified to be elected by virtue of his French Citizenship obtained by his own hand."

[43] Mr. James based on his evidence did two things, he posed a rhetorical question to Mr. Saint-Jean, then he made an allegation that Mr. Saint-Jean was a French Citizen by virtue of his own hand. There is no evidence to show that Mr. Saint-Jean was present at any of those meetings referred to by Mr. James in Boetice or in LaPlaine or that Mr. Saint-Jean ever became aware of the allegations during the political campaign. Further I am of the opinion that Mr. Saint-Jean had no obligation to respond to statements of his opponents during the political campaign. The Court cannot infer that Mr. Saint-Jean's non-response to the allegations of his political opponents during a political campaign amounts to an admission of the allegations made.

[44] In relation to the Application to strike out the Petition it is not disputed that Mr. Saint-Jean did not deny Mr. Green's allegation in the Petition that he was issued with a French passport between 2000 and 2002 or thereabouts. Mr. Saint-Jean's application to strike was based on inter-alia the grounds that no cause of action was disclosed and a failure to plead material facts. Mr. Green in his Petition at paragraph 1 asserted that he had a right to be elected and returned as a representative for the Constituency of LaPlaine. Mr. Saint-Jean disputed this claim and provided evidence in his affidavit that Mr. Green was disqualified on nomination day. Where a person is seeking to get a Petition struck out on the basis that no cause of action is disclosed in my opinion a failure on his part to deny allegations in the Petition cannot be inferred as an admission of those allegations.

[45] In relation to the disclosure and subpoena the letter of Mr. Saint-Jean's Attorney to the request from Mr. Green's Attorney merely questions the authority of Mr. Green to request disclosure of documents. The Court heard the application in relation to disclosure and subpoena and ruled in favour of Mr. Saint-Jean. The fact that Mr. Saint-Jean sought to exercise his legal rights to challenge the applications and in so doing did not respond to

Mr. Green's allegations cannot in my opinion be deemed to be an admission of the allegations.

SELF INCRIMINATION

[46] Mr. Mendes S.C. submitted that Mr. Saint-Jean's claim that a requirement to comply with an order for disclosure, and subpoena would tend to incriminate him is a clear admission that he did have a French passport.

[47] Mr. Astaphan S.C. submitted in response that Mr. Saint-Jean had every right to assert his legal rights and an adverse inference cannot be drawn against him for doing so.

FINDINGS

[48] I agree with the submission of Mr. Astaphan S.C. in the circumstances an adverse inference cannot be drawn against Mr. Saint-Jean.

FELIX PROSPER

[49] Mr. Mendes S.C. submitted that the Court should accept Mr. Prosper's evidence that in June or July 2009, Mr. Saint-Jean told Mr. Prosper that he had a French passport and indeed went on to show it to him. This is sufficient prima facie evidence that Mr. Saint-Jean had obtained a French passport.

[50] Mr. Astaphan S.C. submitted that even if Mr. Prosper's evidence is taken at face value it does not prove the allegations made in the Petition that Mr. Saint-Jean is disqualified because he was issued with a French passport between 2000 and 2002 or thereabouts, or that Mr. Saint -Jean was by virtue of his own act under an acknowledgment of allegiance, obedience, or adherence to a foreign power or State on nomination day.

[51] Mr. Astaphan S.C. also submitted that Mr. Prosper was not a reliable witness. Mr. Prosper could not even recall when he approved his witness statement, not the year or the month.

Mr. Prosper testified that when he heard Mr. James spoke on November 30, 2009 about Mr. Skerrit having a French passport he recalled that Mr. Saint-Jean had showed him his French passport and the very next day December 1, 2009 he reported the matter to Mr. Green. Indeed the transcript of what Mr. James said on November 30, 2009 in relation to Mr. Skerrit was put into evidence and it showed that Mr. James made no mention that Mr. Skerrit had a French Passport. Also Mr. Prosper's testimony contradicts Mr. Green's testimony that Mr. Prosper only reported the matter to him after the Petition was filed in January 2010. Mr. Green admitted that Mr. prosper was part of his team that discussed the filing of the Petition. Further Mr. Prosper was adamant that he did not go to Guadeloupe in 2009. He subsequently stated he could not recall going to Guadeloupe in 2009. He could not recall visiting his sister in Guadeloupe in 2009. He could not recall if he was one of the persons cutting cane for his sister in Marie-Galante in July 2009. It was only when it was put to him that he was deported from Guadeloupe in 2009 that he admitted that he was in Guadeloupe in 2009. He subsequently admitted that it was in September 2009 that he was deported from Guadeloupe. He agreed that prior to the deportation he had spent eight months in Guadeloupe so he could not have been in Dominica at the time he alleged Mr. Saint-Jean showed him a French passport. Further the only thing Mr. Prosper testified about the French Passport that he said was shown to him by Mr. Saint-Jean is that it looked like other French passports he had seen while in Guadeloupe and he saw Mr. Saint-Jean's picture in the passport. A picture is a common feature of every passport. Mr. Saint-Jean who was a Government Senator knowing Mr. Prosper and his family were supporters of Mr. Green would not have had the conversation alleged by Mr. Prosper with Mr. Prosper.

FINDINGS

[52] Mr. Prosper testified that he knows Mr. Saint-Jean very well. Mr. Saint-Jean taught him at school. He also for some time attended church where Mr. Saint-Jean was the Deputy Pastor. He also at one point transported bananas for Mr. Saint-Jean from LaPlaine to town. Under cross-examination Mr. Prosper agreed that himself his siblings and his family are all supporters of Mr. Green. He is a key campaign person for Mr. Green. He spoke on

the political platform in support of Mr. Green during the 2005 campaign and Mr. Green won his seat.

[53] The material aspect of Mr. Prosper's evidence in chief is to be found in paragraph 4 of his witness statement. It reads:

> "I know Petter Saint-Jean. In or about June/July of 2009, I met Mr. Saint-Jean at the Junction of Hartman Cuffy in LaPlaine. We were discussing the state of things in Dominica, how the economy was bad and how it did not appear to be getting better, and how it was difficult to make a living. Mr. Saint Jean told me that he did not have a problem because he could always go abroad to work since he had a French Passport. He said he had two passports, a Dominican one and a French one. He then took out his French passport and showed it to me. He opened it and I saw his picture in it. He told me it was a French passport and that each of his children had one as well. The passport he showed me was a brownish red. I had seen a French passport many times before as I had spent about eight months in Guadeloupe. The passport which Mr. Saint-Jean showed me looked like the French passports I had seen in the past. In any event I had no reason to disbelieve him when he told me he had a French passport and proceeded to show it to me."

[54] Mr. Prosper when he was cross-examined could not recall several matters. He testified that he gave a statement to Mr. Green's counsel before he left in March 2010 to go and work on a ship. The witness statement was sent to him by email he agreed it and sent it back. However, he does not recall when he agreed and sent back the statement. He could not recall whether it was in 2010 or before March 2011. His witness statement was undated. Mr. Prosper testified that after he reported the matter of Mr. Saint-Jean's French passport to Mr. Green on the advice of Mr. Green he wrote a statement of what transpired. He could not recall what happened to the statement.

[55] Mr. Prosper was adamant that he did not go to Guadeloupe in 2009, he subsequently stated he could not recall if he went to Guadeloupe in 2009, that he visited his sister in Guadeloupe in 2009, that he was working for his sister cutting cane in 2009. He only admitted that he went to Guadeloupe 2009 when it was put to him that he was deported in September 2009 which he agreed. It was only then that Mr. Prosper agreed that he was working until he got caught working without the necessary documents and as a result he was deported. Mr. Prosper however testified that he could not recall when he went to

Guadeloupe before he was deported, but agreed under cross-examination, when the following was put to him that it was approximately eight months prior to him being deported:

> "Q. Is 2009, take my word for it, 2009. Now, in your witness statement you said you spent eight (8) months in Guadeloupe, correct?. It right there; 'Before I had spent some eight months in Guadeloupe', it there.
> A. Yes, Sir.
> Q. And you spent these times until you were caught working without papers and you were deported?
> A. Yes, Sir."

Under re-examination Mr. Prosper testified that he went to Guadeloupe in 2008 and returned to Dominica in May 2009 that was when he spent the first eight months. He could not recall when in 2008 he went to Guadeloupe before returning in May 2009.

[56] I find Mr. Prosper's testimony to be conflicting in relation to the period he was in Guadeloupe. Under cross-examination he agreed that he had spent eight months in Guadeloupe working with his sister prior to him being deported in September of 2009. Under re-examination he confirmed that he was deported in September 2009. He also testified that he went to Guadeloupe in 2008 he could not recall the date he went in 2008 but he testified that was the first time he spent eight months in Guadeloupe and he returned in May 2009. If Mr. Prosper's testimony in relation to his deportation under cross-examination and which he confirmed in re-examination is correct, then Mr. Prosper would not have been in Dominica in June/ July of 2009 and could not have has a conversation with Mr. Saint-Jean and be shown a French passport at Hartman Cuffy Junction. Based on his testimony in re-examination I find it incredible that Mr. Prosper returned to Dominica in May 2009, he spoke to Mr. Saint-Jean in June/ July 2009, and was deported in September 2009 but be could not recall when he went to Guadeloupe before he was deported.

[57] Mr. Prosper in his testimony does no give any details of the passport that he saw other than it was a brownish red like other French passports that he saw in Guadeloupe and that he saw Mr. Saint-Jean's picture in the passport. Mr. Prosper could not say when the

passport was issued to Mr. Saint-Jean or if it was renewed while Mr. Saint Jean was an adult.

[58] Mr. Prosper's testimony also conflicted with Mr. Green's testimony. Mr. Prosper testified that he reported the matter of Mr. Saint-Jean's French passport to Mr. Green on December 1, 2009 the day after Mr. James' speech and after the Petition was filed. Mr. Green's testimony is that the matter was reported to him after the Petition was filed. I believe Mr. Green's testimony since Mr. Green made no mention of Mr. Saint-Jean exhibiting a French passport in his Petition or in his Application for disclosure. Further it cannot be disputed that Mr. James in his speech on November 30, 2009 made no mention of Mr. Skerrit having a French passport. Also Mr. Prosper a key campaign person for Mr. Green who was present when the filing of the petition was discussed which included allegations of disqualification of Mr. Saint-Jean because he was issued with a French passport between 2000 and 2002 or thereabouts but Mr. Prosper's testimony is during these discussions he made no mention of Mr. Saint-Jean showing him his French passport. For all of the reasons mentioned above I do not find Mr. Prosper to be a reliable witness.

REGISTRATION TO VOTE

[59] Mr. Green exhibited a document dated December 22, 2010 from the Assistant French Consulate in Castries addressed to Mr. Saint-Jean notifying him of the need to renew his registration on the database of French nationals residing outside of France. Should he fail to do so then he would be struck off the electoral list. Mr. Mendes S.C. submitted that this shows that Mr. Saint-Jean registered as an overseas French National and he was once registered to vote in French elections; this is therefore a clear acknowledgement of allegiance to France.

[60] Mr. Astaphan S.C. in response submitted that this was not pleaded as a ground of disqualification and Mr. Green cannot rely on it. Further there is no evidence of French law to show that registration to vote amounts to an act of acknowledgement of allegiance, obedience, or adherence to France.

FINDINGS

[61] I agree with the submission of Mr. Astaphan S.C. that this issue was not pleaded and Mr. Green cannot rely on it to prove acknowledgement of allegiance to France on the part of Mr. Saint-Jean. It cannot be disputed that no evidence of French law was led to show that registration to vote amounts to acknowledgement of allegiance, obedience or adherence to France. Under the Laws of Dominica registration to vote in Dominica does not amount to an act of acknowledgement of allegiance, obedience or adherence. Registration to vote by Commonwealth citizens for example do not require such citizens to take an oath of allegiance or any act of acknowledgement of allegiance, obedience or adherence to Dominica. Further there is no evidence to show that Mr. Saint-Jean was registered as a French overseas citizen while as an adult or that as an adult he renewed such registration, in other words, that the registration was his own act. No evidence was led to show when Mr. Saint-Jean was registered or for what period registration is valid.

APPLICATION FOR DECLARATION AND FAILURE TO TESTIFY AT THE TRIAL

[62] These two issues were also raised in relation to Mr. Roosevelt Skerrit. The arguments are the same in both cases so I will deal with these issues when dealing with the case against Mr. Skerrit.

MR. ROOSEVELT SKERRIT

[63] The evidence on which Mr. Maynard Joseph relied to prove that Mr. Roosevelt was disqualified from being elected a member of the House of Assembly are as follows:

(a) Admission by Mr Skerrit that he was in possession of a French Passport which is evident from a letter he wrote on the subject of his French citizenship.

(b) Mr. Skerrit's failure to deny possession of a French passport in circumstances where such denial if truthful, would have been expected.

(c) The repeated contention of Mr. Skerrit that any order compelling him to produce his French passport would incriminate him.

(d) Mr. Skerrit applied to the relevant judicial authorities in France to be declared a French citizen.

(e) Mr. Skerrit's failure to testify at the trial.

ADMISSIONS

[64] The submissions made by both Learned Senior Counsel for the Petitioner and Learned Senior Counsel for the Respondent are the same as in the case against Mr. Saint-Jean. The letter by Mr. Skerrit is in similar terms to the letter by Mr. Saint-Jean. My findings are also the same.

FAILURE TO MAKE DENIAL

[65] Mr. Mendes S.C. Submitted that the following were circumstances in which Mr. Skerrit was expected to make a denial:

(i) during the political campaign leading to the general election;

(ii) in his affidavit in support of his application to strike out the Petition;

(iii) in response to the Petitioner's Attorney request for disclosure and during the hearing of the application of the Petition for disclosure and Mr. Skerrit's opposition to the subpoena.

[66] Mr. Mendes submitted that during the political campaign in the course of speeches given by Mr. James and Mr. Joseph at political meetings the people were warned that Mr. Skerrit did not qualify because he was the holder of a French passport. The evidence on which Mr. Joseph relies are as follows:

(i) The evidence of Mr. Joseph in his witness statement at paragraphs 6, 7, and 8; and Mr. James at paragraphs 4, 5, 6, of his witness statement.

(ii) Statements in radio broadcast and the print media that Mr. Skerrit was the holder of a French Passport.

(iii) Publication of Notice of Disqualification in the Sun Newspapers.

(iv) Printed copies of the Notices of Disqualification.

[67] Mr. Astaphan S.C. in reply submitted that Mr. Skerrit was not required to respond to false statements made during the political campaign and there was no evidence that Mr. Skerrit was aware of any of the statements made by Mr. James, Mr. Joseph, or the statements in the print media of those broadcasted on the airwaves.

FINDINGS

Evidence of Mr. Joseph and Mr. James

[68] Mr. Joseph in paragraph 6 of his witness statement states as follows:

> "Prior to polling day I attended and spoke at a number of public meetings held in various parts of the Vieille Case Constituency by the UWP. The meetings were held at Penville, Thibaud and Vieille Case which all form part of the Vieille Case Constituency. At these meetings, I heard the former Prime Minister Mr. Edison James, who was the UWP candidate for the Marigot Constituency; speak to the general public and voters in attendance at these meetings. I heard him directing a question to Roosevelt Skerrit, whether he is a French Citizen by virtue of his own free will and whether he is under an acknowledgement of allegiance,, obedience and adherence to a Foreign Power or State."

[69] In paragraph 7 Mr. Joseph sets out the transcript of Mr. James' statement on November 30, 2009 at a public meeting and in paragraph 8 he sets out the transcript of radio discussion Mr. Skerrit had on December 2, 2009, nomination day on Kairi FM Radio.

[70] Mr. James in paragraph 4 of his witness statement referred to the transcript of his statement at the meeting of November 30, 2009 which reads as follows:

> "Ladies and Gentlemen, under our constitution, if a person becomes a national, a citizen of a foreign land and is under allegiance to that foreign country and that he became a citizen of that country of his own free will, that he took his hand and became a citizen of that foreign country, it is not his parents who did it for him, then that person cannot be eligible to be a candidate. Tonight I ask therefore, Mr. Skerrit, are you a citizen of a foreign country and did you become a citizen of that foreign country of your own free will? I invite you - I invite you to answer that question by Wednesday morning, nomination day. And if he does not answer, Ladies and Gentlemen I urge the people of Vieille Case; I warn the people of Vieille Case do not waste your vote."

[71] In paragraph 6 Mr. James states that at meetings in Vieille Case he told the persons attending that Mr. Skerrit was a French Citizen and as such was under acknowledgement of allegiance, obedience and adherence to a Foreign Power or State and if they voted for him their vote would be wasted.

[72] When the statement of Mr. James on November 30, 2009 is examined, what Mr. James did was to pose a question to Mr. Skerrit whether he was a citizen of a foreign country by his own free will. It is not disputed that Mr. Skerrit became a citizen of France by affiliation and not by his own free will. Mr. James himself admitted under cross-examination and indeed the transcript shows that Mr. Joseph made no mention of Mr. Skerrit being the holder of a French passport which he had acquired or renewed by his own act, and or had travelled on such passport. Also at the meetings held in the Constituency of Vieille Case referred to by Mr. James in paragraph 6 of his witness statement Mr. James also made no reference to Mr. Skerrit being the holder of a French passport. In fact Mr. James stated in paragraph 6 that Mr. Skerrit was a French citizen and as such he was under acknowledgement of allegiance, obedience and adherence to a foreign power or State.

[73] Mr. Skerrit on nomination day December 2, 2009 in a radio discussion the transcript of which was put into evidence by Mr. Joseph stated that he was a French citizen by affiliation; bearing in mind the question posed by Mr. James was whether Mr. Skerrit was a citizen of a foreign country and whether he had become such citizen by his own free will. The question posed was not whether he had applied or renewed a French Passport, or travelled on such passport. In any event I am of the opinion that even if such a question was posed during the political campaign Mr. Skerrit was not required to answer such question. After outlining that he became a French citizen by affiliation Mr. Skerrit denied he owed allegiance to France in the following manner:

> "By virtue of the fact that my mother is French and when she moved to Guadeloupe she declared me as her son, as her child and by virtue of that act I became a French Citizen, okay. **So, and I have not pledged allegiance to any Sovereign Government or any Sovereign Flag.**

Media Statements

[74] Mr. Mendes S.C. referred to reports in the Newspapers that Mr. Skerrit had admitted he had a French passport. Mr. Mendes S.C. conceded that the reports were false. However Learned Senior Counsel submitted that the fact that it was said and Mr. Skerrit did not deny that he made such admission, he did not deny that he had a French passport, the inference must be drawn that he had such passport. Also a Notice of Disqualification was

published in the Sun Newspapers and copies of the notice were circulated in the Constituency of Vieille Case and Mr. Skerrit made a response by way of a letter dated December 17, 2009 and in that letter Mr. Skerrit did not deny he had a French passport.

[75] Mr. Astaphan S.C. in response submitted that where the statement made is admittedly false there is no requirement to respond and failure to respond to an admitted false statement cannot amount to an admission that the statement is true.

FINDINGS

[76] I agree with the submission of Mr. Astaphan S.C. It is admitted by the Petitioner that the statements in the media were false Mr. Skerrit never admitted that he was the holder of a French Passport. Where a statement is admittedly false as is conceded in this case by the Petitioner and the Respondent fails to state that the statement is false, his failure to so state cannot amount to an admission on his part that the false statement is true nor can an inference be drawn that Mr. Skerrit has a French passport.

[77] In relation to the Notice of disqualification published in the Sun Newspaper it is stated in the notice that Mr. Skerrit is the holder of a French passport issued to him. Mr. Astaphan S.C. submitted that no allegation was made in the Notice that as a matter of fact Mr. Skerrit applied for, renewed or travelled on a French passport.

[78] Under section 32(1) (a) disqualification is by virtue of an act of the person. Thus having a passport simpliciter does not disqualify a person. The disqualification only arises where the person by his own act has acquired or renewed or travelled on such a passport. The Notice in the newspapers simply states that Mr. Skerrit was the holder of a foreign passport. In my opinion there was no requirement for Mr. Skerrit to deny the statement. His non-denial does not lead to the inference that by his own act he acquired renewed or travelled on a French passport that he acquired or renewed. There was no statement in the notice which alleged disqualification within the meaning of Section 32(1) (a) of the Constitution.

[79] On December 17, 2009 Mr. Skerrit caused several copies of a letter dated December 17, 2009 to be distributed in the Constituency of Vieille Case. The letter reads as follows:

> "It has been brought to my attention that there are allegations circulating in some local media and among certain people that by virtue of my dual citizenship and or my possession of a foreign passport, I am not qualified to be elected as a Member of Parliament for the Vieille Case Constituency and as a result any votes cast for me in the 18th December elections shall be thrown away.
>
> Despite what you have heard I am validly nominated and your votes for me will not be thrown away.
>
> These allegations and threats are further efforts by the Opposition to discredit me and to prevent you the people of Vieille Case Constituency from voting for me. I have every confidence that this attempt will be firmly resisted and that you will bestow on me a majority which is even greater than that which you gave me in the last election.
>
> I take this opportunity to thank you for your continued support and prayers and pledge my unwavering commitment to serve you to the best of my ability.
>
> Your Servant and Friend
> Roosevelt Skerrit."

[80] Mr. Mendes S.C. submitted that this letter amounts to an admission since Mr. Skerrit did not deny that he was the holder of a French Passport. This letter was in response to the Notice of Disqualification in the Sun Newspaper of December 14, 2009 which specifically stated that Mr. Skerrit was the holder of a French passport and Mr. Skerrit did not deny it in his response.

[81] Mr. Astaphan S.C. in response submitted that the letter does not state that it was a response to the Notice of Disqualification published in the Sun Newspapers. There is no reference to the said Notice of Disqualification in the letter. The letter refers to allegations made by others; it does not amount to an admission of those allegations but a denial of them. Learned Senior Counsel referred to paragraph 7 of the witness statement of Mr. Joseph's witness Ms. Jane Giet Bellot where she stated as follows:

"..... Chris Walter and Gertrude Thomas drove around Upper Penville and Monpajean distributing letters from the Dominican Labour Party stating that the Notice of Disqualification was a lie and that Mr. Skerrit did not have French Citizenship."

FINDINGS

[82] Mr. Skerrit did not make a specific mention to the Notice of Disqualification. Mr. Skerrit's letter was a general response to statements in the local media which in my opinion includes the Notice of Disqualification in the Sun Newspapers, and statements made by persons that he was not qualified to be elected. When the letter is read carefully it shows that in the first paragraph Mr. Skerrit outlines what were the allegations made against him in the media and by certain persons that:

(a) he is not qualified to be elected because he has dual citizenship and/or because he is the holder of a French passport and;

(b) those who voted for him their votes would be wasted.

In the second paragraph Mr. Skerrit addresses both allegations he said he was validly nominated and the votes cast for him would not be thrown away. I agree that Mr. Skerrit did not use the words, "I do not have a French Passport". In my opinion a specific set of words was not required to deny the allegations. Mr. Skerrit clearly stated that despite the allegations that he was not qualified he was in fact validly nominated. In so stating Mr. Skerrit was saying that he was not disqualified as alleged in the local media and by certain persons. Mr. Skerrit continued in the third paragraph to state that the allegations and threats were only efforts by the opposition to discredit him. When the letter is read as a whole it clearly shows that Mr. Skerrit was denying the allegations made against him. It cannot be inferred that the letter amounts to an admission of the allegations made in the Notice of Disqualification Sun Newspaper, or the local media.

[83] In the legal opinion attached to the Notice it is stated that Mr. Skerrit was born in Dominica and Mr. Skerrit admitted in his statement on nomination day that he obtained citizenship involuntarily through his mother. The opinion then outlines the circumstances under which a child born in France to foreign parents may acquire a French citizenship. Mr. Skerrit having been born in Dominica does not fit into any of the categories listed. The opinion

then outlines how a person could obtain citizenship by naturalization. It is however not disputed that Mr. Skerrit obtained French Citizenship by affiliation, Mr. Joseph's witness Madame Duhamel testified to this. The opinion then states:

> "Based on the French Law a person can obtain citizenship by birth or naturalization. Pursuant to the said certificate of Birth of Roosevelt Skerrit, Mr. Skerrit did not acquire citizenship by birth and cannot be said to have acquired French citizenship by birth involuntarily, meaning, 'not by his own act'.
>
> If Roosevelt Skerrit has acquired French Citizenship by naturalization based on the facts and the application of the French Laws governing citizenship by naturalization, Roosevelt Skerrit would have acquired citizenship by virtue of his own act and as such did not qualify to be elected a member of the House of Assembly pursuant to Section 32(1) of the Constitution ------."
>
> .... From the said Trinidad case cited above, the Court also held that if a mother or parent applies for a passport for her/his child but when that child becomes an adult he took active steps to apply, maintain and travel on his passport that said child who is now an adult would thereby obtain the benefits of travelling as a citizen of that foreign power. The active steps taken by the said adult would be tantamount to by his own voluntary act."

[84] On the issue of Mr. Skerrit being French by naturalization, Mr. Skerrit had already responded publicly on radio on December 2, 2009 outlining that he was a French citizen by affiliation. The opinion does not refer to any active steps taken by Mr, Skerrit while as an adult to apply, maintain or travel on a French passport. There was therefore nothing for Mr. Skerrit to respond to or deny.

[85] In relation to the issue of Mr. Skerrit's failure to deny that he was the holder of a French passport in his affidavit in support of his application to strike out the Petition and in his response to the Petitioner's Attorney's request for disclosure and during the hearing of the application for disclosure and Mr. Skerrit's opposition to the subpoena, the submissions made by both Learned Senior Counsel for the Petitioner and the Respondent are the same as the case for Mr. Saint-Jean. My findings are also the same.

APPLICATION FOR DECLARATION.

[86] Both parties agreed that there was no need for Madame Duhamel the witness for Mr. Joseph and Mr. Ron Green to attend the trial since Mr. Saint-Jean and Mr. Skerrit did not wish to cross-examine Madame Duhamel. Madame Duhamel's witness statement and the exhibits attached thereto were admitted into evidence. Among the exhibits so admitted are two forms entitled Certificates of Nationality, one in relation to Mr. Saint-Jean dated January 1992 and one in relation to Mr. Skerrit dated October 20, 2006.

[87] Mr. Mendes S.C. submitted that the certificate is evidence that both Mr. Saint-Jean and Mr. Skerrit applied to the French Government for a declaration that they were citizens of France. The natural inference is that Mr. Saint-Jean and Mr. Skerrit applied to the Court for declaration and provided the necessary documentation for the purpose. By this act they both acknowledged their allegiance to France. The only inference that could be drawn is that they were seeking to be issued with French passports hence the declarations of French Nationality.

[88] Mr. Astaphan S.C. submitted that the documents were put into evidence in support of Madame Duhamel's attestation that she examined the various documents including the certificate of French Nationality and determined both were French citizens by affiliation. They were never pleaded as specific acts of allegiance, obedience or adherence to France and so Mr. Ron Green and Mr. Joseph cannot now rely on this evidence to raise a new issue.

FINDINGS

[89] It is settled law that a party is bound by his pleadings - see Rawlins C.J in **Quinn-Leandro v Dean Jonas**. In neither the Petition against Mr. Saint-Jean or Mr. Skerrit is it pleaded that they were disqualified based on acknowledgement of allegiance obedience or adherence by application for a certificate of French nationality. Mr. Green and Mr. Joseph cannot now seek in their submissions to raise this issue which was not pleaded.

[90] Mr. Mendes S.C. asked the Court to infer that the certificate of nationality was for the purpose of obtaining a French Passport. However no evidence was put before the Court

of requirements under French Law for the obtaining of a French Passport. Certainly under the Laws of Dominica, and I was referred to the Citizenship Act of Dominica a person who is a citizen by affiliation does not need a certificate of nationality to apply for a passport. The Court can only draw inferences based on facts. In the circumstances the court would be speculating in finding that a certificate of nationality was issued for the purpose of obtaining a passport. Further there is no evidence that Mr. Saint-Jean and Mr. Skerrit applied for the certificate of nationality. No evidence was adduced that under French Law only the person to whom the certificate relates could apply for a certificate nor is there such legislative provision in Dominica.

FAILURE TO GIVE EVIDENCE

[91] Mr. Mendes S.C. submitted that an inference could be drawn from the evidence led by Mr. Green and Mr. Joseph that Mr. Saint-Jean and Mr. Skerrit did obtain and have in their possession and even travelled on French Passports. The failure of Mr. Saint-Jean and Mr. Skerrit to testify at the trial to contradict the inference that has arisen confirms and strengthens the inference and entitles the Court to find that it is more likely than not that Mr. Saint-Jean and Mr. Skerrit did obtain passports of their own volition. Learned Senior Counsel referred the court to the case of **T.C. Coombs v IRC** [1991] 2.A.C. 283; **Wieniewski v Central Manchester Health Authority** [1998] EWCA Civ. 596.

[92] Mr. Astaphan S.C. submitted that there was no case for Mr. Saint Jean to answer so there was no need for them to give evidence. There is no circumstantial evidence. Mr. Green and Mr. Joseph are asking the Court to draw adverse inferences from a collection of political posturing, naked allegations, and inaccurate reporting. The evidence does not meet the threshold required under the standard of proof. The evidence taken separately or cumulatively does not establish a case capable of proving on a balance of probabilities that Mr. Saint-Jean and Mr. Skerrit had by their own act acquired French citizenship or applied for, held, renewed, used or travelled on a French passport and were therefore disqualified on Nomination Day.

FINDINGS

[93] It is settled law that the Court may draw inferences based on facts found on the evidence. Neither Mr. Saint-Jean nor Mr. Skerrit testified at the hearing of the Petitions and no witnesses were called in relation to the issue of disqualification.

[94] The effects of the absence of evidence from a defendant was reviewed by the UK Court of Appeal in **Wisniewski v Central Manchester Health Authority.** Brookes LJ in delivering the judgment of the Court reviewed the authorities on this issue including **McQueen v Great Western Railway Company** [1875] L.R. 10Q.B. 569 where Cockburn CJ said at p.574:

> "If a Prima Facie case is made out capable of being displaced and if the party against whom it is established might by calling particular witnesses and producing particular evidence displace that prima facie case and he omits to adduce that evidence, then the inference fairly arises, as a matter of inference for the jury, and not a matter of legal presumption, that the absence of that evidence is to be accounted for by the fact that even if it were adduced it would not displace the prima facie case. But that always presupposes that a prima facie case has been established, and unless we can see our way clearly to the conclusion that a Prima facie case has been established, the omission to call witnesses who might have been called on the part of the defendant amounts to nothing.

[95] Also in the Australian Case of **O'Donnell v Rochard** [1975] VR 916 at 920 Gillard J said:

> "Of course, patently there must be some limitation imposed upon the application of this rule. For example any party upon whom the burden of proof on any issue is imposed must always adduce a prima facie case on such issue to go to the jury, and the failure of the other party to the litigation to call witnesses who may be expected to elucidate the matter cannot fill in any gaps in the proof required (see per Dixon DJ in **Hepton Court Ltd v Crooks** [1957] 93 CLR 367 at p. 371; and **Tyne v Rutherford** [1963] 36 ALJR 333.

[96] In **T.C. Coombs v IRC** [1991] 2 A.C. 283 Brookes LJ set out the applicable principles as follows:

> "(1) In certain circumstances a Court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a Court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence if any adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however have been some evidence, however weak adduced by the former on the matter in question before the Court is entitled to draw the desired inferences; in other words there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the Court then no such adverse inference may be drawn. If on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified. "

[97] Based on the above principles it is a condition precedent that before the court could draw adverse inferences from the absence or silence of a witness there must be a case to answer on that issue.

[98] The question in the present cases is whether there is a case to answer on the issue of disqualification pursuant to Section 32(1) (a) of the Constitution of Dominica.

[99] Mr. Green and Mr. Joseph were required to establish a prima facie case that Mr. Saint-Jean and Mr. Skerrit had by their own acts acquired French passports, renewed, used or travelled on French Passports.

[100] The pleaded case in both instances is that Mr. Saint-Jean and Mr. Skerrit were disqualified because they had by virtue of their own act obtained French passports. In the case of Mr. Saint-Jean the allegation is that he did so between 2000-2002 or thereabouts. The evidence adduced by Green was the evidence of Felix Prosper which I discussed earlier and found was unreliable. The evidence of admission and failure to deny did not amount to an admission.

[101] In relation to Mr. Skerrit it was conceded that his statement in December 2, 2009 was not an admission that he had a French passport. The non-denial of the admittedly false statement in the media reports, , and statements at political campaigns and the Notice of Disqualification which merely alleged that Mr. Skerrit was the holder of a French passport was not evidence that Mr. Skerrit had a French Passport. No such inference could be drawn. The letter of December 17, 2009, and the letter of November 30, 2009 to the French authorities also do not amount to an admission.

[102] When all of the evidence is taken together in each Petition, there is simply no evidence which establishes a prima facie case that Mr. Saint-Jean and Mr. Skerrit applied for a French passport, held, renewed or travelled on a French passport. No evidence was adduced to substantiate the allegations. I find that in each case the Petitioner failed to establish a prima facie case. There was therefore no need for the Respondent to lead any evidence, and no adverse inference could be drawn against them.

RENUNCIATION

[103] During his submissions Mr. Astaphan S.C. submitted that the letters of renunciation of Mr. Saint Jean and Mr. Skerritt amounted to renunciation and or withdrawal of acknowledgement of allegiance, obedience and or adherence to France prior to nomination day. Under the Constitution of Dominica, a person may by his own act acquire an allegiance to a foreign power or state. Consequently a person ought by his own act to be able to withdraw from or renounce that allegiance by his own act. Renunciation does not require consent or agreement. Learned Senior Counsel relied on the cases of **Joyce v DPP**, **Nile v Wood** [1982] 76, ALR p. 90; **Sykes v Cleary**; and **Sue v Hill** [1999] 163 ALR p. 648. Learned Senior Counsel further submitted that there was no evidence that the letters were not in accordance with French law, rather the letters were in accordance with French law because the evidence shows that the requests were subsequently granted. Learned Senior Counsel also submitted that the letters were put into evidence and Mr. Saint Jean and Mr. Skerritt were entitled as a matter of law to submit that the letters amounted to a renunciation of their citizenship and withdrawal of allegiance to France.

[104] Mr. Mendes S.C. in response submitted that Mr. Saint Jean and Mr. Skerritt cannot rely on the submission that the letters amount to renunciation since this was not pleaded by them and it would be unfair for the Court to consider this issue. Learned Senior Counsel submitted further that the mere writing of a letter does not amount to renunciation. Learned Senior Counsel referred the Court to the case of **Sykes v Cleary** and submitted that Mr. Saint Jean and Mr. Skerritt have not taken all reasonable steps to renounce their citizenship since no evidence was adduced in relation to the requirements of the foreign law and whether those requirements were met by Mr. Saint Jean and Mr. Skerritt. The Court should not apply Dominica law in the absence of French law where the matter relates to a statute. Learned Senior Counsel referred the Court to the passage in Dicey and Morris on **Conflict of Laws** referred to above. Even if Dominica law is applied Mr. Saint Jean and Mr. Skerritt have not met the requirements as there is no evidence that they have signed a Declaration of renunciation as required by the Citizenship Act of Dominica.

FINDINGS

[105] The issue of what amounts to renunciation was discussed in the cases referred to by both Senior Counsel. I agree with the submission of Mr. Mendes S.C. that Mr. Saint Jean and Mr. Skerritt having not filed a defence, they cannot rely in their submissions on the letter to raise the issue that they had renounce their French citizenship or withdrawn their allegiance to France and were therefore not disqualified on nomination day. In the event that I am wrong I will consider whether the letters amounted to renunciation or withdrawal of acknowledgment of allegiance to France.

[106] In **Sykes v Cleary** the Australian High Court considered whether the Respondents had renounced their foreign citizenship and were therefore not disqualified under Section 44(1) of the Australian Constitution. This provision is similar to Section 32(1)(a) of the Dominica Constitution and reads as follows:

> "Any person who -
> (i) Is under any acknowledgement of allegiance, obedience or adherence to a foreign power or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power...

.....
shall be incapable of being chosen as a Senator or a member of the House of Representatives."

[107] The majority of the Court in **Sykes v Cleary** found that a person would not be disqualified under Section 44 (i) if he took all reasonable steps that can be taken to renounce the foreign citizenship. The Court explained what would amount to all reasonable steps in the following manner at p.108:

> "What amounts to the taking of reasonable steps to renounce foreign nationality must depend upon the circumstances of the particular case. What is reasonable will turn on the situation of the individual, the requirements of the foreign law and the extent of the connexion between the individual and the foreign statute of which he or she is alleged to be a subject or citizen."

[108] Bearing in mind Mr. Saint Jean and Mr. Skerritt did not testify or call any witnesses in relation to the issue of disqualification, the evidence to show whether they took all reasonable steps would be evidence from Mr. Green and Mr. Joseph and their witnesses. While the evidence shows that Mr. Saint Jean and Mr. Skerritt were born in Dominica and they became French citizens by affiliation and they have been living and working in Dominica for several years, there is no evidence of the requirements of French law for renunciation of citizenship. The onus is on the person relying on French law to adduce evidence of French law. There is nothing in the evidence of Madame Duhamel either expressly or impliedly which indicates the requirements of French law for renunciation of citizenship. The fact that the renunciation was subsequently granted some weeks later is not conclusive that no other steps were taken by the respondents after nomination day to effect the renunciation. In the text **Conflict of Laws** referred to earlier, the Authors expressed doubt whether the Court was entitled to presume that the foreign law was the same as the statute law of the forum. Even if the laws of Dominica are assumed to apply in the absence of French law, the laws of Dominica require the person to make a declaration of renunciation before a Justice of the Peace, Commissioner or Notary Public and the Declaration must be registered - see Section 11 of the Citizenship Act of Dominica Chapter 1:10 and regulation 15 of the Regulations made under the Act. A letter requesting renunciation would not suffice. In view of the above I find that the letter sent to the French

Ambassador by Mr. Saint Jean and Mr. Skerritt did not amount to renunciation of their French citizenship.

VOTES THROWN AWAY

[109] During the submissions Mr. Mendes S.C. informed the Court that Mr. Green was not seeking an order of the Court that he should be declared the elected member for the LaPlaine Constituency on the basis that the votes cast for Mr. Saint-Jean are to be regarded as votes thrown away.

[110] Mr. Mendes S.C. submitted that if Mr. Skerrit is not qualified then Mr. Maynard Joseph is entitled to be returned as the Member of Parliament for the Constituency of Vieille Case. Mr. Mendes based this submission on the premise that notice of Mr. Skerrit's disqualification was given to the electors of the Constituency of Vieille Case prior to polling day. Learned Senior Counsel relied on the case of **Dabdoub v Vaz** in support of his submission.

[111] Mr. Astaphan S.C. in response submitted that the Notice of Disqualification was deficient; it contained facts which were untrue. The Press Release by the Electoral Commission contradicted the Notice of Disqualification. The short form of the Notice of Disqualification was not pleaded and further the evidence showed that they were not circulated to the electors. The evidence of oral notice given by Mr. Edison James is insufficient; it does not satisfy the legal requirements as outlined in **Dabdoud v Vaz.**

FINDINGS

[112] For Centuries it has been a principle of common law that if an elector votes for a candidate he knows is disqualified then that elector's vote is thrown away. This principle was applied by the Eastern Caribbean Supreme Court in **Nedd v Simon** [1972] 19 WIR p. 347. St. Bernard JA stated at p. 375:

> "The principles enunciated in the above case shows quite clearly that as far back as 1717, when **R v Boscawen** [1714], Easter, 13 Anne, cited 2 Cowp 537 was decided, the doctrine of notice to the electors of the disqualification of a candidate for election to an office, was already established by the Courts of the common law

and that the English Courts of Commonwealth have been applying that doctrine to all meetings assembled to deliberate and vote on the performance of a duty. In my view it is a general rule of law to be applied to all meetings assembled to deliberated and vote for candidates who offer themselves as persons fit and proper for holding certain officers but who are in fact disqualified owing to some rule or otherwise. It does not matter whether the meeting is one for the election of a chairman of a friendly society, a club or candidate at a general election for membership of the House of Representatives.... I hold that the doctrine of notice to the electors of the disqualification of a candidate for any election is a part of the common law and it applies to this State."

[113] In order for the votes to be regarded as thrown away the electors must have known the facts which created the disqualification of the candidate. The rationale for this rule was explained in the case of **Peiris v Pereira** [1969] 72 New Law Reports of Ceylon p. 232 at p. 271 as follows:

> "Essential to the proper conduct of elections is the requirement that only candidates qualified in law to be Members of Parliament should offer themselves to the electorate. Those who already labour under a disqualification which by law prevents them from taking their seat in Parliament go to the polls at their peril and those who vote for them with knowledge of the facts grounding such a disqualification record their votes in vain. This is a principle now ingrained in the law relating to elections and ingrained for the very good reason that the dignity and decorum which mush attend the Parliamentary process are at all costs to be preserved."

[114] Also in **Halsbury Laws of England** Vol 15 4th Ed. Paragraph 835 it is stated:

> "Votes given for a candidate who is disqualified may in certain circumstances be regarded as not given at all or thrown away and to decide this scrutiny is not necessary.
>
> The disqualification must be founded on some positive and definite fact existing and established at the time of the poll so as to lead to the fair inference of wilful perverseness on the part of the electors voting for the disqualified person."

[115] The authorities all state that the facts alleged to ground the disqualification must be clear, definite and certain. In **Peiris v Pereira** Weeramanty J stated this principle in the following manner:

> "Our law following the English law on this matter provides that the seat may be awarded to the candidate next at the poll in cases where the votes cast for the successful candidate are regarded as having been thrown away. It is clear that where a vote is cast by a voter with knowledge of a disqualification which is definite and certain at the time, that the vote must be regarded as thrown away so that it would be treated as not cast, and that upon the elimination of such votes the seat will be awarded to the candidate next at the poll. In order that a disqualification be regarded as definite and certain, it must in the first case be based on facts which are definite and certain. If the facts grounding the disqualification are not definite then the vote cannot be regarded as thrown away. For instance if there is an allegation of fact at the time of the election which became definite and certain only at a later point in time in as much as those facts have not been adjudicated upon at the date of the election, they remain, so far as the voter is concerned more unproved allegation. In such cases, although the candidate may be declared disqualified and the election avoided, the seat cannot be awarded to the next candidate for there is no definiteness about the facts grounding the disqualification, which would be essential if the votes are to be treated as thrown away. ...
> The principle underlying such a rule is self evident and needs no elaboration, for a vote cannot be treated as thrown away merely because there was an allegation of fact about the candidate for whom they were cast (sic) which at the time of the voting may have been true or untrue, and which the voter could not in most cases be able to verify."

[116] In **Dabdoub v Vaz** Smith JA outlined the circumstances in which facts establishing disqualification would be clear, definite and certain as follows:

> "1. Obvious or notorious so that they admit of no uncertainty - **Peiris v Pereira** (Supra) at p. 251 and **Country of Tipperary** [1875] 3; **O'Malley and Handcastle**; or
>
> 2. Unchallenged or uncontradicted or admitted. For example, in **R v Hawkins** [1808] 103 ER 755, 757 the candidate admitted that he had not taken the Holy Sacrament within a year. It was held that all the votes given for the candidate after such notice were thrown

away and the other candidate having the greatest number of legal votes, was duly elected; or

3. Proved. For example, where the candidate is a minor and his age is proved."

[117] The question is whether the electors of Vieille Case were notified of Mr. Skerrit's disqualification on facts which were, definite and certain. Mr. Joseph relied on a Notice of Disqualification published in the Sun Newspaper on December 14, 2009, and evidence of several witnesses of a notice circulated in the Constituency, posted on trees, lamp posts, bus stops, Church buildings, and distributed by house to house visits and at public meeting and discussions in the media.

[118] The Notice of Disqualification in the Sun Newspaper reads as follows:

> "Date of Election: Friday 18th December 2009
> Constituency of Vieille Case
> 'Whereas Roosevelt Skerrit, a person nominated as a candidate at the General Election mentioned above is a citizen of a foreign power or State namely, France and is the holder of a passport issued to him by the French Government, the said Roosevelt Skerrit is not by virtue of the provisions of Section 32 (1) (a) of the Constitution of the Commonwealth of Dominica qualified to be elected a Member of Parliament for the Constituency of Vieille Case.
> NOW TAKE NOTICE that all votes given or cast for the said Roosevelt Skerrit to be elected at the said election to be held on the 18th December 2009 will by reason of the said disqualification and incapacity be thrown away, and will be null and void.
> Dated this 13th day of December, 2009.
> Maynard Joseph
> A candidate at the said election
> Vieille Case."

[119] Attached to this notice was a legal opinion by the law chambers of Letang & Ducreay.

[120] The Notice of Disqualification simply states that Mr. Skerrit is disqualified because he is the holder of a French passport. No facts are given of any act by Mr. Skerrit by which he acknowledges allegiance, obedience, or adherence to the Government of France. Further,

that Mr. Skerrit was the holder of a French passport was not a definite fact established at the time of the poll. No details of the French passport alleged to be held by Mr. Skerrit was given. Mr. Skerrit did not make an admission that he was the holder of a French passport. There was no evidence to show that the fact that Mr. Skerrit acquired, renewed or travelled on a French passport was obvious or notorious.

[121] The legal opinion was based on misinformation. At paragraph 6 it states that Mr. James asked the Prime Minister in the evening of November 30, 2009 "... whether he is a French citizen by virtue of being the holder of a French passport and as such is under acknowledgement of allegiance, obedience and adherence to a Foreign Power or State..." The transcript tendered in evidence by Mr. Joseph and his witnesses Mr. James and Mr. Bruney clearly shows Mr. James made no mention that Mr. Skerrit was the holder of a French passport. The legal opinion also states if Mr. Skerrit obtained French citizenship by naturalization he would have acquired citizenship by his own act and therefore be disqualified pursuant to Section 32(1)0 (a), however the Petitioner through the evidence of Madame Duhamel established that Mr. Skerrit was a French citizen by affiliation.

[122] The legal opinion also does not refer to any act of Mr. Skerrit by which he acknowledges allegiance, obedience or adherence to a Foreign Power or State. Further there is no evidence to show that the Attorneys or any of the Attorneys at Letang and Ducreay are experts in French Law.

[123] Mr. Joseph led evidence through various witnesses including Vernice Bellony and Julien Royer that copies of the Notice of Disqualification , not the legal opinion were circulated widely in the Constituency of Vieille Case. The witnesses for Mr. Joseph were supporters of Mr. Joseph likewise the witnesses for Mr. Skerritt were persons who supported him. The witnesses for Mr. Joseph with the exception of Desmond Thomas who did not seem to have a good memory and who testified that he saw notices of disqualification on December 2, 2011, and who I did not find to be reliable, all maintained that they saw notices of disqualification in relation to Mr. Skerritt posted at several places in the Constituency of Vieille Case and some witnesses testified that they participated in the

distribution and placement of the notices. The witnesses acknowledged that after they had placed notices of disqualification in the Constituency they saw supporters of Mr. Skerritt distributing the December 17 letter in the Constituency. The witnesses for Mr. Skerritt testified that they had not seen any notice of disqualification in the Constituency, but they circulated approximately 3000 copies of the letter of December 17 in the constituency. Having reviewed the evidence I believe the testimony of the witnesses of Mr. Joseph that the notice was circulated in the Constituency. It was not disputed that Mr. Joseph had published the notice of disqualification in the Sun Newspapers on December 14, 2009 along with a legal opinion from Attorneys in Dominica. It was after the notice was circulated in the Constituency that Mr. Skerritt caused approximately 3000 copies of his December 17, letter to be circulated in the Constituency.

[124] However, even though the Notice was circulated, being in the same form as the Notice in the Sun Newspaper I also find that it does not meet the legal requirement of being clear definite and certain.

[125] Mr. Joseph also relied on oral Notice given by speakers at political meetings during the campaign. Ms. Vernice Bellony an elector in the Constituency of Vieille Case who testified on behalf of Mr. Joseph stated at paragraphs 5 and 8 of her witness statement as follows:

> "(5) During the pre-election period I attended the UWP Public meetings in the Vieille Case Constituency at Thibaud, Penville and Vieille Case. I heard Mr. Edison James and Mr. Norris Prevost talk about Roosevelt Skerrit's dual citizenship and the fact that according to the Constitution, this disqualified him from standing as a candidate. We were warned that voting for Mr. Skerrit would mean a waste vote for this reason
>
> (8) I was aware that prior to Election Day on December 18, 2009, there was as issue to whether the respondents Roosevelt Skerrit and Petter Saint-Jean, had French Passports and/or that there was an issue with respect to them being dual citizens and whether or not they qualify to stand as candidates in the coming election.

[126] Mr. Jane Giet Bellot another witness who testified on behalf of Mr. Joseph and who is also an elector in the Constituency of Vieille Case stated at paragraph 4 of his witness statement as follows:

> "During the same period I attended around three or four of the UWP meetings in the Vieille Case Constituency and I heard Mr. Edison James and Mr. Maynard Joseph talking about Roosevelt Skerrit's dual citizenship. Mr. James was calling on the people of Penville, warning them not to vote for Roosevelt Skerritt as he has a French passport and it is against the Constitution to vote in the Dominica elections for someone with French citizenship".

[127] Several other witnesses who testified on behalf of Mr. Joseph testified in similar terms.

[128] Mr. James in his witness statement stated at paragraph 6:

> "Between nomination day and election day on 18th December 2009 I attended and spoke at, at least three public meetings in the Constituency of Vieille Case, more particularly, in the village of Thibaud, Upper Penville and Vieille Case. At those meetings, I told those attending that Mr. Skerrit was a French citizen and as such was under acknowledgement of allegiance, obedience and adherence to a Foreign Power or State. I informed those present that if they voted for Roosevelt Skerrit they would be wasting or throwing away their vote. I stated this at every public meeting that I spoke at in the Vieille Case Constituency. At each of these meetings I estimated the crowd to have been somewhere in the area of 250 to 300 people. When I spoke, I was using a public address system so that people in their houses in the vicinity would have heard what I said as well"

[129] Mr. James contrary to what the witnesses testified made no mention that he stated that Mr. Skerrit was the holder of a French passport. The evidence was inconsistent. No transcript was adduced to show the exact words of the notice given by Mr. James or any other person A mere allegation of disqualification is not enough, the basis of the disqualification must be factual, the fact must be clear, definite and certain. Simply being a French Citizen is not a disqualification pursuant to Section 32(1) (a) of the Constitution of Dominica. I therefore find that the oral notice given was not clear, definite and certain.

[130] Mr. Skerrit through his witnesses put into evidence a Press Release made by the Election Commission and which was published on the 17th day of December 2009, the day before the Election.

[131] Mr. Mendes S.C. submitted that the Press Release of the Electoral Commission is of no effect. It is very different from the Press release and statement by the Director of Elections in **Dabdoub v Vaz**. The Press Release of the Commission was published the afternoon before the election so there was only a narrow window for creating any confusion if any was created. The Electoral Commission consists of persons nominated by the political parties. The Commission did not identify the candidate nor what the specific objection is. The release is not a statement that the candidates are validly nominated. The Press Release is simply stating the procedure was followed. The Release does not in any way disrupt the impact of the notice that Mr. Skerrit has a French Passport. The statement in **Vaz** was much more detailed. The Release did not go as far as **Vaz** to say that the allegations were false.

[132] Mr. Astaphan S.C. in response submitted that the implication from the Notice was that all the candidates were properly nominated, there was no issue affecting the validity of the nomination of any of the candidates. The electors could vote for any of the candidates.

[133] The Press Release deals with two issues, overseas voters which is not relevant to the issues in this case and nomination of candidates. I will therefore set out that portion of the Press Release that deals with nomination of candidates. It reads as follows:

> "PRESS RELEASE
> In view of recent media statements, the Electoral Commission has determined that it is appropriate to certify certain matters for the benefit of the general public.
> 1. Overseas Voters .....
> 2. Nomination of Candidates.
> It has also been brought to the attention of the Commission that some concern has been expressed about the validity of the nomination of some of the candidates for the December18, General Elections.
> Section 15 of the House of Assembly (Election) Act, sets out the procedure by which candidates may be nominated to contest elections for the House of Assembly. As far as the Electoral

> Commission is aware, this procedure has been followed in respect of all of the nominated candidates and the names of these candidates shall appear in the ballot paper and therefore be available for election.
> It is hoped that the foregoing serves to clarify these matters.
> Electoral Commissioner."

[134] It is not disputed that this Press Release from the Electoral Commission was broadcasted to the General Public on the afternoon and the evening before the General Election. There was no evidence to show that the electors were not aware of the broadcast.

[135] The Press Release commences by referring to media statements and then stated that the Commission decided to clarify certain matters for the benefit of the general public. I agree that the Commission did not identify the media statements it was referring to, the matters the Commission stated it would clarify are overseas voters and nomination of candidates. In relation to nomination of candidates it stated that concern was expressed about the validity of nomination of some candidates. The Commission did not name the candidates about which concern was expressed but after referring to Section 15 of the House of Assembly Act which deals with the procedure for nomination the release states "that the name of all nominated candidates shall appear on the ballot paper and therefore be available for election." The Commission ended its release by stating that it hoped what was stated had clarified the matter.

[136] The Electoral Commission in unequivocal terms informed the general public, the electors in Dominica that all nominated candidates were available for election. Bearing in mind the Commission said at the commencement it would clarify certain matters for the benefit of the public. It gave a clarification in relation to the validity of the nomination of candidates. The Commission categorically stated that all of the nominated candidates were available for election. While I agree that the Release was not in the exact terms as in **Dabdoub v Vaz,** I find that the effect is the same.

[137] Having regard to the Press Release of the Electoral Commission that all the nominated candidates were available for election there was no sufficient notice to the electors of the

Constituency of Vieille Case that was based on facts that were clear, definite and certain. The allegations of disqualification by Mr. Joseph was contradicted by the Commission who said to the electors that all nominated candidates were available for election.

[138] I am reminded of the statement of the law on this issue in **Halsbury's Law of England** 4th Ed. at paragraph.....that:

> "The disqualification must be founded on some positive and definite act existing and established at the time of the poll so as to lead to the fair inference of wilful perverseness on the part of the electors voting for the disqualified person."

[139] In view of the Press Release from the Electoral Commission that all nominated candidates were available for election, an inference of wilful perverseness on the part of the electors of Vieille Case cannot be drawn.

CONCLUSION

[140] In relation to the case against Mr. Saint-Jean I find that Mr. Green has failed to establish a prima facie that Mr. Saint-Jean was by virtue of his own act under acknowledgement of allegiance, obedience or adherence to a foreign power or State. I found the evidence of Mr. Felix Prosper to be unreliable. There was no admission by Mr. Saint-Jean either expressly or implicitly that he had acquired, renewed, or traveled on a French passport. I find that Mr. Saint-Jean was not on nomination day, December 2, 2009 disqualified pursuant to Section 32 (1) (a) of the Constitution of Dominica from being elected as a Member of Parliament.

[141] In relation to the case against Mr. Skerrit I find that Mr. Joseph has failed to lead any evidence to show that Mr. Skerrit was by virtue of his own act under acknowledgement of allegiance, obedience or adherence to a foreign power of State. Mr. Joseph did not lead any evidence to show that Mr. Skerrit by his own act applied for, renewed, or traveled on a French passport. The notice of disqualification in the Sun Newspaper and the notice circulated in the Constituency of Vieille Case made no mention of any voluntary act of Mr. Skerrit which amounts to an acknowledgement of allegiance, obedience or adherence to a

foreign power or State. The oral notice of Mr. James on November 30, 2009 as shown in the transcript was based on the false premise that Mr. Skerrit was a French citizen by his own free will. I find the notices of disqualification did not meet the legal requirement of being clear, definite and certain. I find that Mr. Skerrit was not on nomination day December 2, 2009 disqualified pursuant to Section 32(1) (a) of the Constitution of Dominica from being elected as a Member of Parliament.

[142] In view of the above I will dismiss both the Petition against Mr. Saint-Jean and Mr. Skerrit.

COSTS

[143] The general rule is that the successful party is awarded costs. However I am of the view that having regard to the nature of these matters, the issues of law that were raised which were of national importance, I find that it is appropriate to depart from the general rule and not award costs to the Respondents.

ORDER

It is ordered that:

(a) The Petition filed by Mr. Ronald 'Ron' Green against Mr. Petter Saint-Jean is hereby dismissed.

(b) The Petition filed by Mr. Maynard Joseph against Mr. Roosevelt Skerrit is hereby dismissed.

(c) No order as to costs.

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Gertel Thom

HIGH COURT JUDGE