JAMAICA

IN THE COURT OF APPEAL FOR THE CAYMAN ISLANDS

CAYMAN ISLANDS CIVIL APPEAL NO. 3/83

BEFORE : THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE ROWE, J.A.
THE HON. MR. JUSTICE WHITE, J.A.

IN THE MATTER OF THE CAYMANIAN PROTECTION LAW, 1971

AND

IN THE MATTER OF THE PETITIONS FILED PURSUANT TO SECTION 16 OF THE SAID LAW BY ROBERT CLARKE HANNA AND ELEANOR HANNA - APPELLANTS

AND

THE ATTORNEY GENERAL FOR THE CAYMAN ISLANDS - RESPONDENTS

Mr. Ramon Alberga, Q. C. and Mr. John McDonald for appellants.

Mr. David Muirhead, Q. C. and Mr. John Martin for respondents.

June 7 - 10 and November 11, 1983

KERR, J.A. :

These appeals by the Petitioners were from a decision of the learned Chief Justice, Sir John Summerfield, dismissing the petitions of the appellants who sought thereby declarations that they were domiciled in the Cayman Islands at the relevant time and were thereby entitled to Caymanian status by virtue of the pertinent provisions of Section 15 of the Caymanian Protection Law. The original law (Law 23 of 1971) came into effect on 29th March, 1972 and the pertinent provisions of Section 15 read :

"Every British subject who -

(a) was born in the Cayman Islands or of parents at least one of whom at the time of his birth was domiciled or ordinarily resident in the Cayman Islands; or

(b) was domiciled in the Cayman Islands at the time of the coming into effect of this law and has been declared to be domiciled under subsection (1) of Section 16; or

(c) .....

(d) .....

(e) is the child, or a step-child or an adopted child under the age of eighteen years, of a person to whom any of the foregoing paragraphs of this section apply, provided that in the case of an adopted child such adoption has been in a manner recognized by the law of the domicile of such person at the time of such adoption;

is a person of Caymanian status as of right".

Subsection 1 of Section 16 reads:

> "Any British subject claiming to be of Caymanian status by virtue of paragraphs (a) or (e) of Section 15 or claiming to be ordinary resident or domiciled in the Cayman Islands for any purposes of this law may at any time apply to the Grand Court for a declaration to that effect and the declaration of the Grand Court in that behalf shall be final and binding for all purposes of this Law."

The appellants are British subjects with domicile of origin in Canada. They were married in the Cayman Islands in 1970 and spent about three weeks there. They left but returned to reside there in December, 1971 and lived there until October 1976. During that time they bought land and built their home. In 1976 they returned to Canada for personal and domestic reasons - specialised treatment for a sick child and the facilities for higher education of other children.

These petitions were filed in August, 1972 but only came up for hearing on February 7, 1983. The protracted treatment of the proceedings and the probable reasons for the delay were summarised by the learned Chief Justice thus:

> "It would appear that they were listed for hearing in September 1972 but somehow the machinery snarled up. Part of the delay no doubt came about as a result of waiting for the result of what were test case involving the wife's father, namely, Re James David MacDonald 1973 20 W. I. R. 314 (which I will refer to as MacDonald No. 1) and Re James MacDonald (No. 2) 1975 23 W. I. R. 332 (which I will refer to as MacDonald No. 2). Thereafter, no serious effort appears to have been made to have the matter heard until December, 1980 after which several unavoidable postponements led to further delay until the hearing date of 7th February 1983. The delay between December 1980 and February 1983 is of no consequence to the decision in this case as no relevant amendment was enacted during this period. The petitioners place part of the blame for delay on the belief that the petitions were mislaid in the Registry and on the fact that they thought that the initiative for fixing a hearing lay with the Court as set out in the earlier practice direction.

> "That direction did not stand in the way of other petitions being heard or later efforts by counsel for petitioners to assume the initiative for a hearing date (from 1980 onwards)."

Between the date of filing of the petition and the date of hearing, amendments to the original Act and in particular Section 15 resulted in important and substantial changes in the Law. Among the amendments perhaps the most important as far as this appeal is concerned is Law 32 of 1977 - The Caymanian Protection (Amendment) (No. 3) Law 1977. Accordingly to the Memorandum of Objects and Reasons:

> "the amendments made by this Law seek to clarify and make certain and stable certain provisions of the principal Law and to grant a right of appeal from declarations made by the Grand Court".

The relevant provisions of the Law are Sections 2 and 3 which read:

> 2. In this Law unless the context otherwise requires:-
>
> > "Revised Law" means the Caymanian Protection Law, revised. Original Law means the Caymanian Protection Law 1971.
>
> 3. Section 15 of the Revised Law is amended by inserting immediately after subsection (2), the following new subsection (3)-
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> "(3). For the ~~avoidance~~ avoidance of doubt (any provision of this or any other Law to the contrary notwith standing) the term "domiciled" where it appears in paragraphs (a) and (b) of Section 15 of the Original Law and in paragraphs 15 of the Revised Law shall bear the meaning ascribed to that term in subsection (1) of Section 2 of the Immigration Restriction (British Subjects) Law (repealed) and such definition shall be deemed to be, and always to have been, the proper definition for the purpose of the interpretation of the said paragraphs since their first enactment in the Original Law on the 27th of March, 1972 and as amended and revised: Provided that nothing in this subsection shall affect any existing Caymanian Status declared by the Grand Court under Section 16 (1)."

The definition in Subsection 1 of Section 2 of the Restriction (British Subjects) Law (Repealed) reads:

> "In this Law -
>
> > 'domicile means the place in which a person has his present home or in which he resides or to which he returns as his place of present permanent abode and not for a mere special or temporary purpose and a British

> "subject shall not be deemed to have a domicile within the Islands for the purposes of this Law unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted by this Law or any other law in force in the Islands or as a person under detention in a prison, reformatory, orphanage, mental hospital or leper asylum...."

Law 32 of 1977 came into effect on 15th December, 1977).

The learned Chief Justice after considering a number of decided cases including the decision of this Court in Collins and Collins, Civil Appeal No. 1 of 1978 and the effects of the amendment held in effect, that in the light of the amendments and in particular Law 32/77 which introduced a 'new dimension', the law applicable was that in existence at the time of the hearing of the applications and accordingly the appellants did not satisfy the criteria of that Law in respect to domicile.

In deference, however, to the arguments of Mr. Alberga who appeared for the petitioners, the learned Chief Justice went on to say:

> "Had I been deciding these cases in 1972 as the law then stood (as set out above) I would have had no difficulty in granting a declaration in favour of the petitioners. The test, in my view, would have simply been whether, on 27th March, 1972, the husband (and, accordingly, the wife) was domiciled in these Islands as understood by the Common Law concept of domicile. That seems to me to be the clear meaning if the relevant provisions at that time."

This finding is the fulcrum of Mr. Alberga's argument on appeal. He contended that while the learned Chief Justice was right in his interpretation of domicile in the original Law he erred in holding that the Law applicable was the Law as it existed at the hearing of the application.

This contention was set out with concise clarity in the following grounds of appeal:

> "Having found a) that had the Petitions been heard in 1972 he would have had no difficulty in making the declarations sought and b) that the Petitioners were domiciled in the Cayman Islands according to the common law concept of Domicile on 27th March, 1972 and immediately before that date for about three months (see paragraphs 3 - 5 of the Judgment), the learned Chief Justice erred in law in refusing to grant the declarations prayed for by the Appellants. That the learned Chief Justice was wrong in holding that the qualifications for a declaration are those provided by the law at the time the

"Declaration is actually made and not at the time when the Petition for such Declaration is filed. That the learned Chief Justice was wrong in holding that dicta at page 4 of the Court of Appeal's decision in Re Collins - Civil Appeal 10 of 1978 to the effect that the matter should be considered in the light of the law as it stood in 1972 and not in the light of the amendments thereto were not binding on him because the saving provisions had no application in considering these Petitions and because in Re Collins the Court of Appeal was considering a different section of the law. That the original law that is to say the provisions of the Protection Law 23 of 1971 were applicable in considering these Petitions and the Appellants were entitled thereunder to the declarations sought and such declarations ought to have been granted. That the failure to hear the Petitions filed in 1972 within a reasonable time was not the fault of the Petitioners and the learned Chief Justice failed to take this into account in arriving at his decision to refuse the declaration sought. That under the procedure laid down by the Judge of the Grand Court on or prior to the 21st June 1972 the Petitioners had a right to the declaration prayed for.
That the learned Chief Justice erred in finding that the filing of these Petitions did not in any way vary or acquire or crystalise any rights."

He submitted that when the Law is altered during the pendency of proceedings , the rights of the parties should be decided according to the Law as it existed when the proceedings began, unless there is the clearest indication to the contrary in the statute which changed the Law. Therefore the filing of the petitions in 1972 crystalized the rights of the Petitioners to have their entitlement to the declaration prayed for, determined in accordance with the Law as it then stood.

Further there was nothing in the amending statute that can be said to affect pending proceedings. He contended that the Act 32/77 was not a declaratory statute. He deduced from Law 7 of 1977 - Section 15 (a) - that the legislature made it abundantly clear that pending proceedings and existing rights under the original Law should be preserved.

This he submitted was in harmony with ethical principles and worked no injustice to anyone. He sought support for this aspect of his argument in the Collins' case (post).

Alternatively even if the provisions of Law 7 of 1977 and Law 32 of 1977 are to be applied to those applications he would rely on the reasoning of Graham-Perkins, J.A. in the MacDonald's (No. 1) case (post). That the definition in Law 32 of 1977 is

not substantially different from the common law concept and accordingly the finding that the appellants were domiciled in the Cayman Islands according to the common law concept of domicile would entitle them to the declaration sought. As illustrative he adverted attention to the judgment of Moody, C. J. in the case of

Re Malcolm Stephenson (1976) delivered 28th June, 1976.

Mr. Muirhead replied to the effect that once a statute had retrospective effect then for pending actions to be affected the enactment need not expressly so state if the language is such that it applied by necessary implication. He contended that the petitioners acquired no rights in the filing of the petition. Further, that the legislature has power to affect vested rights even when those rights have been conferred by a judgment of the Court as long as the provisions are clear and the statute retrospectively gave such an effect. For this he relied on the following amongst other authorities - Re. Attorney-General v. Vernazza (1960) 3 All E. R. page 100 and Zainal bin Hashim v. Governor of Malaysia (1979) 3 All E. R. page 241. He concluded that in the light of these authorities from the language of the Laws - 7/77 and 32/77 it is an inescapable interpretation that the legislature intended them to have such retroactive effect. As regards the Collins' case he submitted that the Court was primarily concerned with an entirely different question and that the ambit of the decision therein could not be enlarged to bind this Court in the determination of the question arising in the instant case.

As regards the Chief Justice's opinion that had he been deciding the matter before the amendment he would have granted the declaration, Mr. Muirhead submitted that not only was this opinion obiter dicta but having regard to the decision of the Court of Appeal in the MacDonlad cases it was not open to him to give to domicile the common law interpretation.

These contending arguments, I will now consider against the background of the authorities cited:

The original 15 (b) was amended by Law 7/77 which came into

effect on May 12, 1977. It deleted the definition "Caymanian Status as of right" and replaced Sections 15 and 16. The relevant replacements read:

> "15 (1) Any British Subject who, prior to the 27th day of March, 1972:
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> (a) .....
>
> (b) was domiciled in the Cayman Islands in accordance with the provisions of any then existing Immigration Law of the Islands and has been declared to be so domiciled under subsection (1) of Section 16; or
>
> (c) .....
>
> (d) .....
>
> shall, as from the coming into operation of this Law, be deemed to possess Caymanian status for the purpose of this Law."
>
> Section 16(1):
>
> " Any person claiming to be of Caymanian status by virtue of paragraphs (a) or (d) subsection (1) of section 15 or claiming to be domiciled or ordinarily resident in the Cayman Islands for the purposes of paragraphs (b) or (c) of the said subsection may apply to the Grand Court for a declaration to that effect and the declaration of the Grand Court in that behalf shall be final and binding for all purposes of this Law."

The Caymanian Protection Laws were consolidated and revised and are referred to herein as the Revised Laws. In the main the changes by revision as to be expected are mainly cosmetic but any exceptional change that is urged as relevant will be considered.

The first question which arises for consideration is the nature of the amendments introduced by Law 7/77 and Law 32 of 1977. Are those enactments Declaratory Acts?

The following passages from Craies - Statute Law - 7th Edition at page 58 provide a useful definition:

> "..... An Act is said by Blackstone to be declaratory" where the old customs of the realm is almost fallen into disuse or become disputable, in which case Parliament has thought proper, in perpetuum rei testimonium, and for avoiding all doubts and difficulties, to declare what the law is, and ever hath been."

> " For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective."

I would think that an Act dealing with immigration and citizenship would from its very subject-matter be declaratory. Further the very words of the amending Acts and in particular Section 3 of Law 32 of 1977: "For the avoidance of doubt" and the incorporation of the definition in subsection (1) of Section 2 of the(repealed) Immigration Restriction (British Subjects) Law and the provision that it should "be deemed to be, and always to have been the proper definition" put the matter beyond debate.

Therefore the general principle that in the interpretation of an Act the Court should lean against retroactivity is inapplicable - here, not only because of the declaratory nature of the amendments, but the Acts themselves in unambiguous language proclaim their retroactivity. The debateable question must therefore be confined to the extent and scope of such retroactivity.

The general principle with respect to the retroactive scope of an Act is one of respectable antiquity. In Hitchcock against Way, (1837) 6 Ad. & E. page 360 - It was stated thus:

> "Where the law is altered by statute, pending an action, the law as it existed when action was commenced must decide the rights of the parties, unless the Legislature by the language used, show a clear intention to vary the mutual relation of the parties."

In re Joseph Suche & Co. Limited (1875) 1 Ch. D. page 48 - the provisions of Section 10 of the Judicature Act, 1875 directed that in the winding up of any company whose assets may prove insufficient for the payment of its debts the same rules shall be observed as may be in force under the Law of bankruptcy. This provision was held not be retrospective and did not apply to the case of a winding up which commenced before the Act came into force. Accordingly, where a supervision order had been made before the commencement of the Act the secured creditors, although their claims had not been ascertained

or admitted, were entitled to prove for the full amount of their debts without deducting the value of their securities which they would have been obliged to do had the Act retrospective effect. In his judgment Jessel, M. R. said :

> " I so decide because it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them."

This statement of Jessel, M. R. was considered in Hutchinson v. Jauncey(1950) 1 K.B. 574: The facts as set out in the headnote are illustrative:

> "In October, 1945, the tenant of a house within the protection of the Rent Restriction Acts sub-let two rooms in it, sharing the use of the scullery for cooking with the sub-tenant. The sub-tenant subsequently bought the house subject to the tenancy, and in his capacity as landlord served a valid notice to quit on the tenant expiring on April 25, 1949, and, on the tenant's refusing to comply with it, on May 25 issued a plaint claiming possession. On that date as the law then stood the tenancy was not within the protection of the Rent Restriction Acts owing to the sharing of the use of the scullery. On June 2, 1949, the Landlord and Tenant (Rent Control) Act, 1949, came into force which by ss. 7, 8 and 9 extended the protection of the Rent Restriction Acts to the various cases where the tenant "shared" accommodation with others, and by s. 10 those three sections "shall apply whether the letting in question began before or after the commencement of this Act, but not so as to affect rent in respect of any period before the commencement thereof or anything done or omitted during any such period." The case was heard on July 22, 1949, when the county court judge, applying the rule enunciated in Prout v. Hunter (1924) 2 K. B. 736, Leslie & Co. Ld. v. Cumming (1926) 2 K. B. 417, and Turner v. Baker (1949) 1 K. B. 605, held that the law applicable was the law applicable at the date of the issue of the plaint, and made an order for possession."

On appeal it was held:

> "(1) that those cases were distinguishable and had been misapplied by the county court judge, as they only established that in considering whether there was a letting within the Rent Restriction Acts, the law must be applied to the state of facts existing at the date of the issue of the plaint and had no bearing on the question whether the law applicable was the law as it existed at the date of the issue of the plaint or as it existed at the date of the hearing. (2) That, on the true construction of s. 10, the relevant provision of the Act applied to pending actions."

In the course of his judgment Evershed, M. R. quoted with apparent approval the following passage from Maxwell on the Interpretation

'of Statutes (9th Ed.) page 229:

> " In general, when the law is altered during the pendency of an action, the right of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

He then later observed:

> "Having examined the many cases cited for the landlord, I doubt whether the principle ought to be expressed in quite such precise language as Jessel M. R. used in In re Joseph Suche & Co.,Ld (1) In other words, it seems to me that, if the necessary intendment of the Act is to affect pending causes of action, then this court will give effect to the intention of the legislature even though there is no express reference to pending actions."

In Zainal bin Hashim v. Government of Malaysia (Supra) The headnote reads:

> " On 16th December 1971 the appellant, a police constable in the Malaysian police force, was convicted of an offence under the Malaysian Penal Code. Article 135 (1) of the Federal Constitution of Malaysia provided that no member of the police force should be dismissed by an authority subordinate to that which at the time of the dismissal had power to appoint a member of that service of equal rank. The Malaysian Police Force Commission, under power conferred on it by the Constitution, delegated to chief police officers the power to dismiss constables but not the power to appoint them. On 20th January 1972 a chief police officer made an order dismissing the appellant from the police force with effect from the date of his conviction. The appellant brought an action against the Malaysian government claiming a declaration that his dismissal was void and inoperative and an order for an account to be taken of the salary and emoluments due to him from the date of his dismissal. On 21st March 1975 the trial judge gave judgment in favour of the appellant on the ground that his dismissal contravened art 135 (1) because the Chief police officer had no power to appoint constables. On 27th August 1976 art 135 (1) was amended by adding a proviso thereto 'that this Clause shall not apply to a case where a member of (the police force) is dismissed .....by an authority in pursuance of a power delegated to it by (the Police Force Commission), and this proviso shall be deemed to have been an integral part of this Clause as from (31st August 1957)'. The Malaysian governement, relying on the amendment, appealed against the judge's decision to the Federal Court which allowed the appeal on the ground that the proviso operated to validate the appellant's dismissal and that he was consequently not entitled to the pay and emoluments which would otherwise have been due to him. The appellant appealed to the Judicial Committee of the Privy Council contending that the amendment could not apply as his action had been commenced and judgment given on his claim before the amendment came into force."

It was held:

> " (i) For pending actions to be affected by

"retrospective legislation the enactment did not have to state expressly that it applied to such actions but its language had to be such that the only possible conclusion was that the legislature had intended it to so apply.

(ii) On the true construction of the amendment to art 135 (1) of the Constitution, no actions commenced after 31st August 1957, whether proceeding or not commenced when the amendment was made, could succeed on the ground that the power to dismiss had not been exercised by someone with power to appoint. It followed that as a result of the amendment the a ppellant had been deprived of his right to maintain that his dismissal was invalid owing to the omission to delegate to chief police officers the power to appoint constables. Accordingly the appeal would be dismissed."

From these cases a well defined principle is discernible, namely, that a legislature has the competence by retrospective legislation to affect pending actions and vested rights either by express terms or inescapable implication.

Mr. Alberga's contention that such an implication ought not to be drawn from the relevant legislation in the instant case rested in the main on two grounds. First: That by certain provisions in the amending Acts certain rights are preserved. Secondly: The decision in Collins v. Collins tends to support this interpretation.

The provisions referred to were - Section 15 of the amending Act, Law 7 of 1977 which so far as is relevant reads:

" for the avoidance of doubt it is hereby declared that -

(a) nothing in section 15 (as replaced) shall be construed as conferring any right or privilege on any person which such person would not have possessed under or by virtue of section 15 as originally enacted.

(b) .....

(c) .....

(d) Nothing in this Law shall itself serve to affect the rights of any person with respect to Caymanian status as existing prior to the 27th day of March, 1977."

Mr. Alberga hopes for too much from these provisions. As regards sub-paragraph (a), I am of the view that its effect is to indicate indubitably that the amendments were not intended to lower the hurdles or widen the corridors to persons seeking Caymanian status. As regards sub-paragraph (d), clearly the rights, therein mentioned

are rights vested or determined.

The filing of a petition for a declaration under Section 15 (b) or 15 (1) (b), as the case may be, confers no right to Caymanian status. Whether the status sought by the declaration be 'as of right' as described by the original Act or 'deemed to possess Caymanian status' as in Law 7 of 1977, a declaration of domicile is a sine qua non. Until there is such a declaration the right is not in esse. Accordingly, sub-paragraph (d) is unhelpful to this aspect of the appellants cause.

I now turn to the case - Collins & Collins vs. The Crown - Civil Appeal No. 1/78, judgment delivered April 25, 1980. In this case the appellants were brothers - they were British Subjects and were born in 1943 and 1945 respectively. They sought declarations by petitions filed 6th December, 1977 under Section 15 (1) (d) of the Act as amended by Law 7 of 1977 and which reads:

> "15 (1) Any British Subject who, prior to the 27th day of March, 1972:
>
> (d) was the child, or a step-child or an adopted child under the age of eighteen years, of a person to whom any of the foregoing paragraphs of this section apply, provided that in the case of an adopted child such adoption has been in a manner recognised by the Law of the domicile of such person at the time of such adoption,
>
> shall, as from the coming into operation of this Law, be deemed to possess Caymanian status for the purposes of this Law".

Their claims were based on descent through their mother. In the words of the judgment their mother was a "Ca ymanian in every sense of the word" and " the appellants were British Subjects as defined in Law."

The real question for the Court of Appeal and the contentions on behalf of the appellants were summarised concisely in the judgment of the Court delivered by Robinson, P., thus:

> " The only question, therefore, is whether the section requires "the child" to be under the age of eighteen years, as is clearly required of "a step-child or an adopted child." The question arises largely, if not solely, because of the position of the commas which appear to make the words "under the age of eighteen years" govern only "step-child and adopted child." For this, and other reasons, it was submitted that

> "upon a proper construction of the section, the child of a person born in the Caymanian Islands enjoyed Caymanian status as of right without any qualifications whatever as to age."

With no intent to be unappreciative of the industry and erudition displayed in the judgment, on the face of the provisions the phrase "under the age of eighteen years" indicate a time - closure for the category of persons named, and who are seeking a declaration under the provisions of Section 15 (1) (d) of the Act and applicable to all three species, child, step-child or adopted child.

The other reasons advanced were based on the provisions of Section 76 (1) and (2) of the Revised Laws. These sub-sections, save for cosmetic changes, were similiar to sub-paragraphs (a) and (b) of Section 15 of Law 7 of 1977. Sub-paragraph (a) which is relevant to this appeal I have dealt with earlier.

The Collins' case is easily distinguished from the instant case. First it was concerned with a claim through descent and not on a finding of domicile. Secondly, the question to be determined was entirely different. Thirdly, it was not necessary for that decision to consider the retroactive effect of Law 32 of 1977.

It is ironic that this case upon which Mr. Alberga so heavily relied ended on this note:

> "As Lord Buckmaster said in Ormond Investment Company Limited v. Betts (1928) A. C. 143, at p. 154:
>
> > "It is of course, certain that Parliament can by statute declare the meaning of previous Acts. It would be competent for them to do so, even though their declaration offended the plain language of the earlier Act ".

And the matter is succinctly summed-up in the 12th Edition of Maxwell on Interpretation of Statutes wherein is stated at p. 224, thus:

> 'If a statute is in its nature a declaratory Act, the argument that it is not to be construed so as to take away previously vested rights is inapplicable.'"

This brings me to consider the terms and tenor of Law 32 of 1977.

In my view the legislative intent is clear. In its sweeping terms the legislation embraces (" any provision of this or any other law to the contrary notwithstanding); therefore it brooks no challenges, admits of no arguments, but enacts in the plainest

terms that its retroactivity extends to the original Law and all its amendments. It grants but one exception i.e. that a ny Caymanian status based upon declaration of the Grand Court ,even though the criteria for domicile was not met, will not be affected. In my view that category of exception as expressed in the proviso precludes any implication that there exist any other exception. Accordingly, I am in agreement with the learned Chief Justice in holding that the Law to be applied is as at the hearing of the application and, on the basis of his unchallenged finding that the appellants have not met the criteria for domicile as set out in Law 32 of 1977., I affirmed his decision.

There remains the alternative finding of the learned Chief Justice that he would have decided otherwise had the petition been heard before the original law was affected by the amendments. Although I am reluctant to pile obiter on obitier, I feel constrained to deal with this question as it formed an integral part of the submissions of Mr. Alberga and, having regard to the earnest arguments of Counsel on both sides, it would seem graceless to avoid the question.

In Re James David MacDonald (1973) 20 W. I. R. p. 314,(Smith, Edun and Graham-Perkins, JJ.A.), the appellant, a Canadian and a British Subject arrived in the Cayman Islands in October 1960 and made his home there with his wife and son. His petition and affidavit disclose that then his only home and residence have been in the Cayman Islands, and that he had no intention of making a home elsewhere, and he swore that on arrival in the Cayman Islands he abandoned his domicile of origin and that on March 1972 he was domiciled in the Cayman Islands. From a dismissal of his petition under Section 15 (b) of the Caymanian Protection Act by the Chief Justice of the Grand Court ,he appealed. All three judges allowed the appeal on the grounds that the learned Chief Justice failed to give proper consideration to the evidence tendered in proof of domicile. From the headnote of the case it appeared that both Smith and Graham-Perkins,JJ.A. were in agreement on the question of domicile but on careful reading of the judgments it is clear that Smith, and Edun, JJ.A. were in agreement and it was Graham-Perkins, J.A. who was on his own.

Smith, J.A. in a full and careful judgment considered the definition of 'domicile' in the Caymanian Protection Act, 1971, , the

context in which the word was used and the purposeful scheme of the Act and concluded at page 321:

> "In my opinion, the only conclusion that can reasonably be drawn from the examination which has been made of the historical setting of the Law of 1971 and the provisions of that law, viewed as a whole, is that the legislature intended the domicile referred to in s. 15 (b) to be one which was already established when the Law of 1971 came into operation. Both by these methods of construction and by construing the relevant provisons by themselves, the result is that a claimant of Caymanian status under s. 15 (b) must establish that he had acquired a domicile in the Cayman Islands prior to the coming into effect of the Law of 1971 and that it existed when that law actually came into operation. That domicile, in my judgment, must necessarily be established on the state of the law as it existed at the time of its alleged acquisition. I reject as untenable any contention that though the domicile is to be determined at a time prior to the Law of 1971 taking effect it must nevertheless be determined by the application of the definition contained in that Law. This would clearly be giving a retrospective operation to the Law and there is no indication either from the subject-matter or from the wording of the statute that it is to receive a retrospective construction. In my opinion, the indications are to the contrary."

Edun, J.A. - no doubt thinking that the question called for no in-depth reasoning - was content to say at p. 322:

> "The definition in s. 2 of the Caymanian Protection Law, No. 23 of 1971, says that the word "domicile and its derivatives has the meaning ordinarily a pplied to that expression at common law, " unless the context otherwise requires. The application in this matter comes within the purview of s. 15 (b) of the above-mentioned Law which provides that every British Subject who was domiciled in the Cayman Islands <u>at the time of the coming into effect of that Law</u> and has been declared to be so domiciled under sub-s. (1) of s. 16 .... is a person of Caymanian status as of right (italics mine). The context of s. 15 (b) requires a consideration of the status the applicant had before the coming into operation of Law 23 of 1971, that is, on March 27, 1972. The relevant law governing the status of the applicant before March 27, 1972, is s. 2 (1) of the Immigration Restriction (British Subjects) Law, Cap. 67. It provides as follows:
>
> > "..... A British Subject shall not be deemed to have a domicile within the Islands for the purposes of this Law unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted by this Law or any other Law in force in the Islands....."

On the other hand, Graham-Perkins, J.A. in the course of his judgment at page 327, quoted with approval the following passage from <u>Graignish v. Graignish</u> (1892) 3 Ch. at p. 192:

> place
> "That is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom."

He later considered and compared the definition of domicile in the Act of 1971 with that in Section 2 (1) of the Immigration Restriction (British Subjects) Law 1961, and came to the surprising conclusion (p. 330):

> "In my judgment the definition of "domicile in the 1961 Law does not in any way differ from the common law conception of the term."

"Domicile" in the Caymanian Protection Law, 1971, is defined thus:

> "2. In this Law, unless the context otherwise requires:"
> .....
> "domicile" and its derivatives has the meaning ordinarily applied to that expression at Common Law."

It is trite law, that at common law prolonged residence may tend to support the inference of animus manendi but that if the animus manendi is established a domicile of choice may be acquired on taking up residence. If the immigrant upon landing on foreign soil 'burnt his boats' and brought with him his 'lares and penates' a Court could properly infer a domicile of choice. See The Liverpool Royal Infirmary (1930) A. C. at page 598 where Lord MacMillan said:

> "Prolonged actual residence is an important item of evidence of such volition but it must be supplemented by other facts and circumstances indicative of intention."

In the Immigration Restriction (British Subjects) Law, the Legislature went out of its way to tack on to the section defining domicile, the purposeful requirement of two years' residence.

It is difficult to understand how in the face of this express requirement it could reasonably be said that there is no difference in this definition to the common law concept.

On the other hand, I am attracted to the reasoning of Smith, J. A. and I can do no better than quote certain relevant excerpts from his judgment at p. 318:

> "The real question for decision is, therefore, whether the context in which "domiciled" a ppears in s. 15 (b) requires that it be given a meaning other than the defined meaning. The Attorney General contends that it does and the appellant that it does not.
> In my view, this contention of the Attorney General is clearly right. This is the result of the words of para. (b) s. 15 are construed either by themselves,

> "in the context of the whole Law or with the use of external aids. The first thing to notice is that the domicile is to be ascertained at a fixed time, viz, "at the time of the coming into effect" of the Law, it is said by the appellant that that time is the day the Law came into operation. This is borne out by the allegation in his petition that he "is and was on the 27th day of March 1972 domiciled in the Cayman Islands". This has to be the appellant's contention unless the definition of "domicile" in the Law of 1971 is to be given retrospective effect."

He then considered the grammatical construction of the sub-section quoting with approval a statement of Romer, J. in Title Redemption Commission v. The Governors of the Bounty of Queen Anne (1946) 1 All E. R. at p. 154 and concluded that from the words "was domiciled at the time of coming into effect of this Law" in Section 15 (b) of the original Law that:

> ".....the legislature was saying that in order for a British subject to be qualified as of right for Caymanian status on the ground of his domicile under s. 15 (b) he must establish that at the moment of time when March 26 was going out and March 27 was coming in he already had a domicile in the Cayman Islands. His domicile in the Cayman Islands. His domicile would thus fall to be decided on the state of the law as it existed before the Law of 1971 actually came into effect."

Eschewing the dogmatic, Smith, J. A. went on to say that in the event it could be said that the meaning of domicile was obscure, resort could be had to external aids. The learned Judge of Appeal then embarked upon a scholarly analysis and review of the legislative scheme of the Act in support of his interpretation.

At the rehearing, MacDonald's petition was again denied and resulted in the appeal, Re James Macdonald (No. 2) (1975) 23 W. I. R. 332, (Edun, Graham-Perkins and Swaby, JJ.A.)

Both Graham-Perkins and Edun, JJ.A. were consistent and each was true to himself in relation to the respective interpretation of domicile in Section 15 (b) of the Act. Edun, J.A., in dismissing the appeal, held that the petitioner's presence was in breach of the Immigration Law and accordingly he did not acquire a domicile of choice. Graham-Perkins and Swaby, JJ.A., held he had acquired such a domicile and allowed his appeal. Swaby, J. A. the new-comer to this question, in the course of his judgment said at p. 346 :

> "I concur with the view of Smith, J.A. (as he then was), that the "Legislature intended the domicile referred to in s. 15(b) to be one which was already established when the 1971 Law came into operation."

and concluded :

> "Having since October, 1969, nurtured the desire and intention of making the Cayman Islands his home, he would have acquired a domicile, of choice there. From what ever angle the issue is approached it seems clear that on March 27, 1972, the date of the coming into effect of the Caymanian Protection Law 1971, the appellant would long before have acquired a domicile of choice in the Cayman Islands as he asserts, entitling him as of right to Caymanian status. I would therefore grant the declaration prayed."

Despite some dicta from Graham-Perkins, J.A. that seem to deny a ratio decidendi in Macdonald (No. 1), I a m in agreement with Mr. Muirhead that in the majority (Smith and Edun, JJ.A.) there was a clear ratio decidendi and Swaby, J.A. concurred in Macdonald (No.2) with the interpretation of domicile in Macdonald (No. 1).

For my part, I am content to hold that the statutory definition in the Act of 1971 must be applied subject to the qualification expressed in the phrase "unless the context otherwise requires". Those words indicate first, that the common law definition of domicile ought not to be applied in the face of incongruities or in the "scorn of consequence", and secondly, they raise the probability that the occasion may arise in the Act where the context demands an interpretation other than the common law definition. Accordingly, Section 15 (b) clearly contemplates the domicile pre-existing the effective advent of the Act of 1971 and that that status is to be determined by the then existing law. That Law was to be found in Section 2 (1) of the Immigration (British Subjects) Law (ante). The Act of 1971 should be considered as representing mutability rather than the origin of legislation dealing with domicile. I am therefore in agreement and accept as correct the interpretation of Smith, J.A. in Macdonald (No. 1.) His helpful highlighting of the legislative scheme of the Act fortifies that interpretation.

Since the decision in the Macdonald cases declarations have been granted by the Grand Court that are, as Mr. Alberga rightly

contended, explicable only on the basis that the Court applied the common law definition of domicile. Thus, for example, on the application of Claude Jean Beaulieu, Cause No. 531/77 heard on 28th October, 1977 - The petitioner was a British Subject born on the 27th August 1934 in Quebec, Canada. He arrived in the Cayman Islands on or about 26th Janaury, 1972 and has since made his home in the Islands with his wife and family. He averred in his affidavit in support of his petition that in 1969 he abandoned his domicile of origin for one in Bahamas. Disenchanted with conditions in that country he came to the Cayman Islands with the fixed intention of making his home there. Hercules, Ag. C. J., considered and quoted with approval the definition of domicile of choice as per Buckley, L. C. in I. R. C. v. Bullock (1976) 3 All E. R. p. 353:

It is clear that the Court in that case was considering domicile of choice in the common law concept. Hercules, Actg. C. J. then went on to hold:

> "In so far as this country is concerned it would appear to me, that the Petitioner has satisfied the only requirement necessary for the acquisition of domicile of choice, viz:
>
> (a) Residence in the country of choice
>
> (b) An intention at the commencement or during the time of residence to remain permanently in that country.
>
> As a result, therefore, I am of the view that the Petitioner has satisfied this Court as to his having adopted this country as his domicile of choice."

Thus the Acting Chief Justice applied the common law definition. No reference was made in the judgment to the Macdonald cases nor to the amending Act, Law 7 of 1977 and in particular Section 15 of that Law. This was a judgment of first instance and was not the subject of appeal.

In Re Malcolm M. Stephenson - Petition No. 7 of 1976 (Moody, J.) heard June 28, 1976, the petitioner sought a declaration from the Court that he is a British Subject who is and was on March 27, 1972 for all purposes of the Caymanian Protection Law, 1971, domiciled in Cayman Islands. The learned Judge of the Grand Court after considering the evidence tendered for and against the Petition found:

(i.) That the Petitioner was granted a work permit to practice as an architect.

(ii.) That on September 12, 1969 he was permitted to enter and remain in the Islands for no longer than six months.

(iii) That a number of extensions were granted to cover his stay to 19th March, 1975.

The petitioner in proof of domicile relied on an avernment in a successful Divorce Petition made by him that he was domiciled in the Cayman Islands in December, 1971 before the Act of 1971 came into effect.

Moody, J. held that his residence in the Islands was conditional and rejected his allegation based on the Divorce Petition that there had been a declaration of domicile for the purpose of the petition before him.

The petitioner appealed to the Court of Appeal and all that the records reveal was - "28th July, 1978 - Appeal allowed - Decision of Court below set aside. Declaration granted as prayed."

To say that this was indicative that the Court of Appeal applied the common law definition of domicile is purely speculative. I accept as a correct proposition Rule 6 on Domicile in Dicey & Morris Conflict of Laws, 9th Edition at page 89:

> "No person can at the same time for the same purpose have more than one domicile."
> (Emphasis mine)

However, it does not follow that domicile for one purpose meeting the criteria of one Law, is "domicile" for all purposes for all Laws of the country. (The Commonwealth Matrimonial Causes Act, 1959) (Australia) provides that "divorce proceedings in the state Courts shall not be instituted except by a person domiciled in Australia. It was held in Lloyd v. Lloyd (1962) v. R. p. 70, that this provision enabled a person who was domiciled in New South Wales to institute proceedings in Victoria."

The comments on this case in the same Edition of Dicey & Morris at p. 90 are illustrative and illuminating:

> "In Lloyd v. Lloyd there was no doubt that the parties were domiciled in New South Wales..... Is it necessary to establish a domicile in some country within Australia before one can be domiciled in Australia? For instance, if an immigrant husband with an English domicile of origin were to die shortly after obtaining an Australian divorce and before he had decided in which Australian state to settle, there can be no doubt that the English court would hold that he died domiciled in England; but there can equally be little doubt that the divorce would be recognised on the basis that he was domiciled in Australia. To this extent, therefore, a person can be domiciled in two different countries for different purposes at the same time. This is not really inconsistent with the well-settled rule that for the purposes of an English choice of law rule domicile means domicile in the English sense. For the Commonwealth Matrimonial Causes Act is not determining the issue of domicile; it is simply defining the law district or"country" within which a person must be domiciled for purposes of Australian divorce jurisdiction."

Accordingly, I am of the view that whether as illustration or authority Stephenson's case is woefully unhelpful.

Whatever arguments that might be advanced against the interpretation of domicile by the majority in Macdonald (No. 1), the Legislature of the Cayman Islands by a number of amendments sought to indicate that that definition was the desired one.

As the learned Chief Justice appropriately observed in the instant case:

> ".....having regard to the historical background to the amendment there is no doubt that the Legislature intended that the definition of "domicile" in section 2 (1) of the Immigration Restriction (British Subjects) Law should, in its totality, be incorporated in section 15 (1) (b) as contained in section 4 of the 7/77 Law. There could have been no other intention. It was certainly not intended to make the criteria for domicile less onerous than the Common Law criteria - which would be the effect of giving it the meaning contended for. It was a response to the interpretation given by the Courts which the Legislature decided was different from that intended and opened the gates too wide."

The Legislature gave the interpretation in Macdonald (No. 1) its final blessing in Law 32 of 1977 in language which puts the question beyond debate.

It is perhaps unfortunate that the appellants' petitions were not heard before Law 32 of 1977 came into effect and during that generous period when declarations were granted by the Court without reference to the judgments in the Macdonald cases.

The proviso to Law 32 of 1977 was obviously in deference to such unduly felicitous declarations.

Finally, I believe I express the appreciation of the Court in commending Counsel on both sides for their industry in research and for the pleasing and helpful presentation of their arguments.

For the reasons contained herein I concurred in the judgment delivered on November 11, 1983, dismissing the appeals.

We were of the view that the appeal involved questions of law exceptional public importance and it was in the public interest that this appeal should be brought. Accordingly, we made no order as to the costs of appeal.

WHITE, J. A.:

I have had the advantage of reading in draft the Judgment of Kerr, J. A. and I agree with his reasoning.

ROWE J.A.

The Caymanian Protection Law, 1971, Law 23/71 which became effective on March 27, 1972 was passed by the legislature as the expression of its desire to protect the traditional way of life of the Islanders from an influx of outsiders lured to those Islands who, but for the promise of great prosperity, would have shown no jot of interest in the welfare of the Islanders. Section 15 (b) of that Law provided that:

> "Every British subject who was domiciled in the Cayman Islands at the time of the coming into effect of this Law and has been declared to be so domiciled under subsection (1) of section 16, is a person of Caymanian Status as of right."

In that same Law the term "domicil" and its derivatives was defined as having the meaning ordinarily applied to that expression at Common Law.

An opportunity arose in the case of Re James McDonald (No. 1) (1973) 20 W.I.R. for this court (Smith, Edun and Graham-Perkins JJ.A.) to decide what was the law to be applied to determine whether a person was domiciled in the Cayman Islands when Law 23/71 became effective. Smith J.A. held at page 321H:

> "In my opinion, the only conclusion that can reasonably be drawn from the examination which has been made of the historical setting of the Law of 1971 and the provisions of that Law, viewed as a whole, is that the legislature intended the domicile referred to in section 15 (b) to be the one which was already established when the Law of 1971 came into operation: Both by these methods of construction and by construing the relevant provisions by themselves, the result is that a claimant of Caymanian Status under section 15 (b) must establish that he acquired a domicile in the Cayman Islands prior to the coming into effect of the Law of 1971 and that it existed when the law actually came into operation. That domicile, in my judgment, must necessarily be established on the state of the law as it existed at the time of its alleged acquisition. I reject as untenable any contention that though the domicile is to be determined at a time prior to Law 23 of 1971 taking effect it must nevertheless be determined by the application of the definition contained in that Law."

Edun J.A. was of the same mind. He said at page 322H

> "The application in this matter comes within the purview of section 15 (b) of the above-mentioned Law which provides that every British subject who was domiciled in the Cayman Islands at the time of the coming into effect of that Law and has been declared to be so domiciled under sub-section (1) of section 16 ..... is a person of Caymanian Status as of right.
> "The context of section 15 (b) requires a consideration of the status the applicant had before the coming into operation of Law 23 of 1971, that is, on March 27, 1972. The relevant law governing the Status of the applicant before March 27, 1972 is section 2 (1) of the Immigration (British Subjects) Law Cap. 67."

It provides as follows:

> ".... A British subject shall not be deemed to have a domicile within the Islands for the purpose of this Law unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted by this Law or any other Law in force in the Islands."

The Grand Court had not considered the state of the Law in the Cayman Islands in 1960 and therefore this Court remitted McDonald's application for re-hearing by the Grand Court. In agreeing with the order for a re-hearing, Graham-Perkins J.A., expressed the view that as at all material times the common law doctrine as to domicile was part of the general law of the Cayman Islands, the express declaration contained in Cap. 37 that certain persons were not to be deemed to have a domicile within the Cayman Islands for certain purposes, was not in any way seeking to effect any alteration in the common law doctrine as to domicile. He considered the provisions of Cap. 37 to be wholly irrelevant to the McDonald case.

Graham-Perkins J.A., introduced the latter half of his judgment with these words:

> "In view of the conclusion at which I have arrived it becomes really unnecessary for me to discuss the several submissions advanced by the learned Attorney General and Mr. Henriques touching on the meaning 'domicile' as used in section 15 (b) of the 1971 Law. Out of deference thereto, however, I desire to make one or two observations on these submissions."

Clearly therefore all that followed was obiter as it formed no part of his reasoning for his decision. And it was while the learned judge was making his observations that he truncated the definition of domicile found in section 2 (1) of the Immigration Restriction (British Subjects) Law 1961 holding that: (a) the definition of domicile was contained in the first four lines of that definition and that the deeming words which followed were no part of that definition and (b) that the definition of domicile in the 1961 Law did not in any way differ from the common law conception of the term.

To Smith J.A., the definition of "domicile" in the law of 1971 was narrower than that which previously existed in Cap. 37 and Cap. 67 as for the purposes of those Laws the animus manedi requisite at common law did not appear to be necessary. The process by which Edun J.A., arrived at his judgment showed clearly that he was relying on all the words in the definition of "domicile" in section (2) of Cap 67 and not just upon those in the first 4 lines. In the event then the obiter portion of the judgment of Graham-Perkins J.A., found no support from the other two judges.

Then came re James McDonald No. 2 (1975) 23 W.I.R. 332. Two of the judges who sat in the earlier appeal formed part of this latter bench. Smith J.A., of the earlier panel, was now Chief Justice of Jamaica, and Swaby J.A., was added to complete the panel.

Edun J.A., the presiding judge recited the provisions of sections 15 and 16 of the 1971 Law and approached his task in this definitive way:

> "Because of those provisions, I am of the view that before the Caymanian Protection Law 1971 came into operation on March 27, 1972, domicile in the Cayman Islands could not be chosen on the common law concept as was the case in England. Therefore to determine the issues raised in Mr. McDonald's petition, I will consider the matter under three heads and the relevant laws of the Cayman Islands."

He had no difficulty whatever in construing the definition of domicile in the Deportation (British Subjects) (Cayman Islands) Law Cap. 37 as embracing all the words in that definition and as to the deeming provision this is what he said:

> "There is here a definition as to the law as to domicile; no alteration of any law expressly or impliedly was ever intended by the 'deeming' provisions. In the context the word 'deemed' simply means held. See Aubyn v. Attorney General (1951) 2 All E.R. 473; (1952) A.C. 15."

The Laws of the Cayman Islands which Edun J.A., found to be in force and affecting the petitioner were the Immigration (Restriction) Law No. 9 of 1941 and the Deportation (British Subject) Cayman Islands Law Cap. 37 enacted in 1941. He found a strong supporter for this view in Swaby J.A. The Grand Court had again refused Mr. McDonald's petition on certain assumptions said to arise from an interpretation of the 1941 Law. Although Swaby J.A., did not agree with these assumptions, he appreciated the Law to be as Smith J.A., had laid it down two years earlier and in harmony with the then views of Edun J.A. After reciting the very short judgment of Horsfall J, he went on to say:

> "In order to appreciate the relevance of the 1941 law, namely, the Immigration (Restriction) Law 1941, Law 9 of 1941, reference must be made to the 1971 Law, section 15 (b) of which provides that:
>
> "Every British Subject who -
>
> (b) was domiciled in the Cayman Islands at the time of the coming into effect of this Law and has been declared to be so domiciled under subsection (1) of section 16;
>
> or .....
>
> is a person of Caymanian Status as of right"
>
> "The appellant having grounded his application for the declaration on this subsection it becomes necessary to determine what was the law applicable on the subject of 'domicile' at the time of coming into effect of the

> "1971 Law. I concur with the view of Smith J.A. (as he then was) that the 'legislature' intended the domicile referred to in section 15 (b) to be one which was already established when the 1971 Law came into operation.
> In 1960 when the appellant entered into the Cayman Islands the applicable law was Law 9 of 1941 by section 2 of which 'domicile' is defined to mean; the place in which a person has his permanent home or in which he resides or to which he returns as his place of present permanent abode and not for a mere special or temporary purpose;
> "and a person shall not be deemed to have a domicile within the Dependency for the purposes of this Law unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted by this Law or any other Law in force in the Dependency or as a person under detention in prison, reformatory, orphanage, mental hospital or leper asylum; and a person shall be deemed for the purposes of this Law to have lost his domicile within the Dependency if he voluntarily go and reside outside the Dependency (except for a special or temporary purpose) with the intention of making his home outside the Dependency; and 'domiciled' shall have a corresponding meaning."
>
> (the underlined clause is referred to hereafter as the first four lines.)

Of the greatest possible significance, however, is that, Swaby J.A., having considered the facts, showed his loyalty to the governing law when he concluded:

> "The fact of the appellant's residence for nearly twelve years up to the time of his petition, and the animus manendi to which he has sworn lead irresistibly to the conclusion that a domicile of choice had been acquired and which fulfils the requirement under Law 9 of 1941."

Predictably, having regard to his stance in the earlier McDonald appeal, Graham-Perkins J.A., focussed on the paramountcy of the common law and the impotence of a statute such as Cap. 37 or Law 9/41 to affect the acquisition of a domicile of choice on common law principles. He is reported as saying:

> "I dissent most emphatically from the proposition that the appellant was required 'to establish a domicile according to the Law' .... There is not a single word in the 1941 Law that provides for the establishment of a domicile. A man must have, in terms of Private International Law, either a domicile of orgin or a domicile of choice. The former depends upon the principles of the common law; the latter involves as well a state of mind. I am not aware of any Statute in any part of the common law world which seeks to prescribe the method by which a domicile of choice may be acquired. To say that a man must establish a domicile according to a statute is to introduce into the concept of domicile a dimension heretofore unknown either to the common law or to the legislatures of those countries in which the common law is fundamental."

What was obiter in McDonald No. 1 was raised to the level of the central ratio in McDonald No. 2, when Graham-Perkins J.A., held that the negative deeming provision was not part of the definition of domicile. For the purposes of the instant appeals the correctness of the opinion of Graham-Perkins J.A., on this interpretation of the Statute is of critical importance and merits further examination later in this judgment.

The appellants Robert Hanna and his wife Lola, entered the Cayman Islands on December 28, 1971 and lived there until October 1976. They applied on May 26, 1972 for a declaration that at the time of the coming into effect of the Cayman Protection Law 1971, they were domiciled in the Cayman Islands and were accordingly persons of Caymanian Status. Following upon a practice directive from the Grand Court, the appellants substituted "Petitions" for their "Applications" on August 23, 1972. Summerfield C.J., has said that had he been deciding those cases in 1972 he would have had no difficulty in granting those declarations as the test in his view would have been simply whether the husband and accordingly the wife was domiciled in those Islands as understood by the common Law concept of domicile. He was writing in March, 1983 and as he himself confessed relevant decided cases and the statutory provisions of 1977 would not have been available to him in 1972, had he then been called upon to decide such a question. This conclusion of law, however,

fuelled some of Mr. Alberga's arguments as to acquired rights and one detected that with such a finding in their favour, the appellants were harbouring a feeling of injustice at the outcome of their petitions before the Chief Justice.

On July 28, 1978, this court reversed the decision of Moody J, and granted the Declaration prayed for by Malcolm Stephenson in C.I.A. 15/77 Malcolm Stephenson v. The Attorney General. No reasons were given for the allowance of the appeal. Stephenson, an architect, had entered the Cayman Island on September 12, 1969 on a work permit, on condition that he remained for 6 months. He sought and obtained a series of extensionsof his conditional residence, the last extension was due to expire on March 19, 1975. In December, 1971, Stephenson filed in the Cayman Islandsa Petition for the dissolution of his marriage on the ground of his wife's adultery. In paragraph 3 of that Petition, D. 25/71, he asserted that he was domiciled in the Cayman Islands. The Petition was undefended and a Decree Nisi was granted on May 6, 1972 and it was made Absolute on September 8, 1972.

By Petition No. 7/76, Stephenson, soughta Declaration that he, a British Subject, was on 27th March, 1972, for all the purposes of the Caymanian Protection Law 1971, domiciled in the Cayman Islands. As it becomes apparent from the judgment of Moody J, Stephenson was then alleging that the Grand Court by accepting jurisdiction to hear and determine the suit in Divorce filed by him in which he asserted that he was domiciled in the Cayman Islands, had declared that Stephenson was domiciled in the Cayman Islands. Moody J., rejected that contention as in his view if any such Declaration had since been made a copy would have been easily available. Being an undefended suit in all probability the question of domicile would not have been a live issue and could have been passed over sub silento. Notwithstanding that Moody J., drew the inference from all the evidence before him that Stephenson's entry into and residence in the Islands was conditional, the Court of Appeal, reversed his decision not to grant the Declaration.

It is difficult to see on what national basis the decision of Moody J., was upset and there being no reasoned judgment of the Court of Appeal, this decision can form no finding precedent. Mr. Alberga argued that in the absence of a reasoned judgment what can clearly be deduced is that the Court of Appeal was saying that it was domicile according to the common law concept which was required for a declaration of domicile under Law 23/71. If this be the true rationale of this Court's decision in Stephenson's case, then in my opinion, it conflicted with the ratio decidendi in the two McDonald cases referred to earlier.

Smith J.A. and Edun J.A. in the plainest words stated that it was the statute laws of the Cayman Islands in existence prior to March 27, 1972, and not the common law, which governed the definition of domicile for the purpose of section 15 (b) of Law 23/71 and in my view they correctly enunciated the legal position.

At the time when the learned Chief Justice considered the petitions of the appellants, the Caymanian Protection Law, 1971 had undergone numerous amendments. For convenience I will set out the relevant portions of:

(i) Section 15 (b) in its original form;

(ii) then section 15 (b) as repealed and replaced by law 7/77;

(iii) a new Declaratory Section first enacted by Law 7/77 as section 15 of that Law but with reference to section 15 of the original Law 23/71 as repeated and replaced; and .....

(iv) finally section 15 (3) as it appears in Law 32/77

(i) <u>15 (b) Original Form in Law 23/77</u>

Every British Subject who:

(b) was domiciled in the Cayman Islands at the time of the coming into effect of this Law and has been declared to be so domiciled under subsection (1) of Section 16 is a person of Caymanian Status as of right.

(II) Section 15 (b) as repealed and replaced by Law 7/77

"Any British subject who prior to the 27th March, 1972:

(b) was domiciled in the Cayman Islands in accordance with the provisions of any then existing Immigration Law of the Islands and has been declared to be so domiciled under subsection (1) of section 16; or ..... shall from the coming into operation of this law, be deemed to possess Caymanian Status for the purposes of this Law.

(III) Declaratory Section: Section 15 of Law 7/77 (New)

15. For the avoidance of doubt it is hereby declared that:

(a) Nothing in section 15 (as replaced) shall be construed as conferring any right or privilege on any person which such person would not have possessed under or by virtue of section 15 as originally enacted.

(b) .....

(c) .....

(d) Nothing in this law shall itself serve to affect the right of any person with respect to Caymanian Status as existing prior to the 27th day of March, 1977."

(Iv) New Section 15 (3) by Law 32/77

(3) For the avoidance of doubt (any provision of this or any other Law to the contrary notwithstanding) the term 'domiciled' where it appears in paragraphs (a) and (b) of section 15 of the original law and in paragraphs (a) and (b) of subsection 1 of section 15 of the Revised Law shall bear the meaning ascribed to that term in subsection (1) of section 2 of the Immigration Restriction (British Subjects) Law (repealed) and such definition shall be deemed to be, and always to have been, the proper definition for the purpose of the interpretation of the said paragraphs since their first enactment in the original Law on the 27th March, 1972 and as amended and revised. Provided that nothing in this subsection shall affect any existing Caymanian Status declared by the Grand Court under section 16 (1)."

For the appellants it was argued that the first question for decision was whether or not the declarations prayed for should be granted under the law as it stood in 1972 when the petitions were filed or the law as it stood on the dates when the petitions were actually heard, and it was submitted that when the law is altered during the pendency of proceedings the rights of the parties should be decided according to the law as it existed when the proceedings were begun except there is the clearest indication to the contrary in the statute changing the law. This submission is in accord with ordinary good sense and fairness and with the general proposition of law that a statute speaks prospectively and not retrospectively unless it contains express words or the context clearly shows a contrary intention. Or as it is put in Maxwell on the Interpretation of Statutes, 12th Edition at 220-221.

> "In general, when the substantive law is altered during the pendency of an action, the rights of the parties are to be decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

Authority for this proposition can be found in the judgment of Lord Denman C.J., in Hitchcock v. Way 6 Ad & E 943 reported 112 English Reports 360 where he said:

> "The plaintiff argued that this enactment could only receive effect at the time of trial, and the Court was bound to act upon it at that period. And many cases were cited in which Acts of Parliament repealing and altering the Law had been so construed. But they all turned on the peculiar facts of those Acts, which appeared to the Court to compel them to give the law an ex post facto operation. It is enough to say that we found no such words in S. & S.W. 4, C. 41, and we are of the opinion in general that the law as it existed when the action was commenced must decide the rights of the parties in the suit, unless the legislature expresses a clear intention to vary the relation of litigant parties to each other."

Jessel M.R. went further than anything said by Lod Denman, when in re Joseph Suche & Co. Ltd., (1875) 1 Ch. 48, he opined for an express limitation in respect of pending actions. In that case a winding up action had been brought before the commencement of the Judicature Act., 1875, and the Master of the Rolls thought fit to lay down a general principle applicable to pending actions: He said,

> "I so decide because it is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them."

The learned Master of the Rolls went on to mention the exception where the enactment merely affects procedural matters but did not find that exception relevant to the facts before him.

Smithies v. National Association of Operative Plasters & Others K.B. 310 was decided in the Court of Appeal. An action had been brought against a Trade Union before the passing of the Trade Disputes Act 1906 for procuring the continuation of a breach of contract by striking workmen. The Trade Disputes Act of 1906 contained the words "an action against a trade union shall not be entertained." The Court of Appeal unanimously dismissed the contention that the trial court lacked jurisdiction to continue the hearing of the case begun before the effective date of the Trade Disputes Act.

Vaughn Williams L.J. said in part:

> "We are all agreed on this point. It is a proposition founded in common sense that, where vested rights have already acrued and legislation is passed which uses words expressive of futurity, such as shall 'or' 'shall not' which prima facie would appear to be meant to be applicable to future cases, it is not to be construed retrospectively so as to affect those vested rights, unless terms are used which clearly compel the Court to give it that construction."

McCardie J., in Henshall v. Porter (1923) 1 K.B. 193, on facts relating to the Gaming Acts of 1922 and 1835, which facts are not material for the purposes of this appeal said:

> "In my opinion the Act of 1922 must be considered in the light of the settled, recognized and beneficient rule of law that existing rights are not to be deemed to be destroyed by a statute unless there be express words or the plainest implication to that effect."

Twenty-seven years later came the careful judgment of Evershed M.R. in the comparatively recent case of Hutchinson v. Jauncey (1950) K.B. 574. That was a case in which a landlord had issued a plaint for the eviction of his tenant. The landlord and Tenant Act of 1949 had the effect of making such a tenant a protected tenant whereas on the previous legislation he had no such status. The landlord argued that by the issue of the plaint he had acquired a vested right, a cause of action had accrued, and he should not be and would not be deprived by the Court of that right to evict the tenant who under the old Law would have no defence to the action unless in plain terms that conclusion flowed from the terms of the new Act.

In reference to the dictum of Jessel M.R. in Re Joseph Suche & Co., (Supra) Lord Evershed M.R. said,

> "Having examined the many cases cited for the Landlord, I doubt whether the principle ought to be expressed in quite such precise language as Jessel M.R. used in re Joseph Suche & Co., Ltd., In other words, it seems that, if the necessary intendment of the Act is to affect pending causes of action, then the Court will give effect to the intention of the legislature even though there is no express reference to pending actions."

Cotton L.J. drew attention to the critical distinction between a right which has matured that is to say one which is perfected on the one hand and on the other hand one which is still inchoate. He agreed with Evershed M.R. that the clear intention to be derived from the language of section 9 of the Landlord and Tenant (Rent Control) Act 1949, was that pending actions were to be affected and continued:

> "The issue of a plaint is no doubt an act within section 10; but it is not equivalent to a judgment. Remon's case (1921) 1 K.B. 49 I think shows that nothing but delivery of possession or an order for possession can effectively deprive the occupying tenant of his possession. The plaint therefore stands as an act done ....."

By analogy it may be said that the petitions by the appellants were acts done which could lead to the grant of declarations that they were entitled to Caymanian status, but the petitions are not to be confused and equated with actual declarations.

Maxwell on the Interpretation of Statutes sums up the rule in this way:

> "If, however, the language or the dominant intention of the enactment so demands, the Act must be construed so as to have a retrospective operation, 'for the rule against the retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the Statute and the subject matter with which the statute is dealing."

Mr. Alberga was the first to submit that if a statute is in its nature a Declaratory Act, then the argument that it is not to be construed to have retrospective effect so as to take away vested rights cannot be advanced. Indeed, the generally accepted exception to the presumptive rule that a statute should be construed prospectively and not with retrospective effect, concerns Declaratory Acts. As is said in Maxwell on Interpretation of Statutes:

> "If a statute is in its nature a declaratory Act, the argument that it is to be construed so as to take away vested rights is inapplicable."

Not only did Mr. Muirhead agree with this proposition but he strongly relied upon the decision of the Privy Council in Zainal bin Hashim v. Government of Malaysia (1979) 3 All E.R. 241 for substantial judicial support. A Constable of the Malaysian police force was convicted of a criminal offence and was subsequently dismissed from office by a chief police officer to whom power had been delegated by the Police Service Commission in breach of the constitution, as a power to appoint constables had not been similarly delegated.

The dismissed Constable brought an action against the Government of Malaysia for wrongful dismissal and claimed salary and emoluments due from the date of his dismissal. The trial Court, finding that his dismissal was void as being unconstitutional gave judgment on his behalf. The government appealed. In the meantime the appropriate section of the constitution which was held to have been breached was amended by the addition of a proviso:

> "That this clause shall not apply to a case where a member (of the police force) is dismissed ..... by an authority in pursuance of a power delegated to it by (the Police Service Commission) and this proviso shall be deemed to have been an integral part of this Clause as from 31st August, 1957.)"

At the hearing of the appeal the Malaysian government relied upon this constitutional amendment for the proposition that whatever right of action had been vested in the dismissed constable had been effectively taken away by this constitutional amendment which had retrospective effect. Their contention was upheld by the Malaysian Federal Court. The Constable appealed to the Privy Council and his appeal was dismissed.

Lord Dilhorne who delivered the opinion of the Board acknowledged that without the constitutional amendment the constable would have been entitled to the pay and allowances he would have received but for his dismissal. The Judicial Committee of the Privy Council disposed of the argument founded upon the dictum of Jessel M.R. in Re Joseph Suche & Co., Ltd, (supra) that pending actions can only be affected by express terms in the statute, when Lord Dilhorne said:

> "If by his reference to 'express terms' Jessel M.R. meant that the enactment must state that it applies to pending actions, their Lordships agree with Evershed M.R.'s comment. In their view for pending actions to be affected by retrospective legislation, the language of the enactment must be such that no other conclusion is possible than that that was the intention of the legislature."

It is the method of statutory construction adumbrated by Lord Dilhorne in the passage quoted above which this Court is obliged to apply.

The Privy Council recognized that when it was dealing with a statute which undoubtedly had some retrospective effect, it was right to distinguish between three separate stages:

(a) the existence of the right,

(b) the commencement of an action to establish the right,

(c) the obtaining of a judgment on the claim,

and concluded that in certain circumstances the enactment could effect all three stages. Lord Dilhorne said:

> "The effect of the amendment was to deprive a constable dismissed for misconduct by a chief police officer, to whom power to dismiss him had been properly delegated, of the right to maintain that his dismissal was invalid owing to the omission to delegate to the Chief Police Officer power to appoint constables. If the appellant had started his action after the operative date of the amendment, their Lordships think that in consequence of the amendment it would have been bound to fail. Otherwise the reference to Merdeka Day would have no legislative content. Can the amendment be circumvented so that a different result would follow if such an action had been started by a wrongly dismissed constable before the Constitution was amended? In their Lordships opinion the answer must be in the negative. If this is right, it can make no difference that the action started had got to the stage of judgment being given for the constable and under appeal when the amendment was made. In their Lordship's view the conclusion is inescapable that the legislature intended to secure that no such actions started after Mardeka Day, whether proceeding, or not started, when the amendment was made, should succeed on the ground that the power to dismiss had not been exercised by someone with power to appoint."

Judgments had been rendered by the Court of Appeal in the two McDonald cases in 1973 and 1975 respectively. On May 12, 1977 the Caymanian Protection Law 1971 as amended by Law 7 of 1977 came into effect. It is to be recalled that by this amendment section 15 (b) had introduced the requirement that a British Subject who prior to 27th day of March, 1972 was domiciled in the Cayman Islands in accordance with the provisions of any ~~thonoxistting~~ Immigration Law of the Island could upon a declaration to that effect in accordance with the provisions of that Law be deemed to possess Caymanian Status. Notwithstanding that state of the Law, on October 28, 1977, Hercules, Acting Chief Justice, made a Declaration of Caymanian Status in favour of Claude-Jean Beualieu and for so deciding gave the following reasons:

> "In so far as this country is concerned it would appear to me, that the Petitioner has satisfied the only requirements necessary for the acquisition of a domicile of choice, viz:
>
> (a) Residence in the country of choice
>
> (b) an intention at the commencement of during the time of residence to remain permanently in that country."

In this judgment the learned Acting Chief Justice, made absolutely no mention of the definition of domicile contained in section 2 (1) of the Immigration Restriction (British Subjects) Law, Cap. 67 which inter alia provided that "a British Subject shall not be deemed to have a domicile withh the Island for the purposes of this Law unless he had resided therein for at least two years." Hercules, C.J. (Acting) was there concerned with the factual situation of a Petitioner who had entered the Cayman Islands on January 26, 1972, and had a residence qualification of only 3 months when the Caymanian Protection Law became effective. As the law then stood there was no appeal from the grant of a Declaration of Caymanian Status by the Grand Court.

A vigilant legislature took immediate action in response to this judicial decision and on December 15, 1977 passed into Law, as Law 32 of 1977 an amendment to the Cayman Protection Law (Revised) which amendment became effective on December 19, 1977. Not only did Law 32/77 introduce a new declaratory subsection to section 15 of the Caymanian Protection Law as Revised but it also removed the beneficial provision for the finality of a Declaration made by the Grand Court, thus conferring a right of appeal against such a Declaration. It may be said that the tenor and extent of this amendment is indicative of the legislature's perception that its legislative intent as enacted in Law 7/77 was being frustrated in proceedings before the Court.

No argument could possibly be advanced against giving some retrospective effect to section 3 of Law 32/77. It is drafted in the widest and most explicit terms. The legislative intent is conveyed in language which leaves no shadowy corners susceptible of ingenious interpretation by a sympathetic tribunal. Over a number of years judicial decisions on the

relevant statutory provisions had rendered their practical application unsure or uncertain and it appears that the legislature in the exercise of its sovereignity decided to choose language so plain and so all embracing that in all further litigation there would be no room for missing the mark. There was the school of thought that the common law definition of domicile should properly be applied in the interpretation of the term "was domiciled" in section 15 (b) of the Original Law of 1972. Now unless this Court has a power to ignore a relevant statute, a power which we neither crave, nor has anyone suggested that we possess, we must look to the definition of "domiciled" as it appears in subsection (1) of section 2 of the Immigration Restriction (British Subjects) Law repealed, and to that source, to the exclusion of all others, to find the appropriate definition of domicil for the purposes of the instant appeals.

I gain significant assistance from the judgment of Smith J. A, when he made it explicit that the Immigration Restriction (British Subjects) Law, Cap. 67 drew a sharp distinction between those British Subjects who were "deemed" to belong to the Cayman Islands and those who were "not deemed" to belong to the Islands and were consequently prohibited immigrants. Births, simpliciter, within the Islands did not ipso facto confer the status of a belonger. That status could be conferred upon a British Subject if his parents were at the time of his birth domiciled or ordinarily resident in the Islands. Another category of belonger was of persons who had been ordinarily resident in the Islands continuously for a period of five years or more and who had not since then been ordinarily resident in any other British territory for a continuous period of five years or more.

The only specific reference to the term domicile in Cap. 67 apart from its prominence in the definition section, is its mention in section 2 (a) and (b). Domicile is used in the Law to delineate a category of persons who belong to the Islands" and who satisfied the statutory requirements to become such a belonger.

A fair reading of the first clause of the definition of "domicile" in section 2 (1) appears to relate to three classes of residents:

"(a) where a person has his present home not for a mere temporary or special purpose; e.g. in a home of which he is the fee simple owner:

(b) where a person resides and not for a mere temporary or special purpose - e.g. in a residential hotel.

(c) A place which he once visited occassionally but now returns to as his present permanent home and not for a temporary or special purpose.

But this Statute does not require him to abandon his domicile of origin or any other domicile previously held by him before he could be said to have acquired a domicile in the Islands. The Statute's insistence is upon the fact that his residence must not be for a special or temporary purpose. So that if he intended to return to his native land as soon as he had made his fortune, or if ever he or any member of his family became ill, or if there was ever to be a change in the political government, all these factors were not provided for or contemplated by the statute so as to exclude the "lingering hope" theory known to the common law.

In lieu of the intent which the common law mandates, the statute provided a tangible and objectively measurably test, viz, a residence period of two years to which none of the statutory conditions were attached.

The acid test as to whether the whole of the definition of "domicile" in section 2 (1) should be construed or only the first clause contained in the first four lines, comes when one attempts to apply that definition to a "belonger" in section 2 (2) of Cap 67. As it could not be said that a person who entered the Islands on one of the conditions enumerated in Cap. 67 but who cherished secretly or even proclaimed by the most fullsome advertisement, that he proposed to make the Islands his permanent home, but who had not satisfied the residence qualification of two years, was a "belonger" within the meaning of section 2 (2) of Cap. 67, so also it cannot be maintained that the legislative intent contained in the deeming provisions of the definition of domicile can be denied by facile interpretation so that a non-belonger could at the same time be domiciled within the Islands.

Mr. Alberga submitted that whatever may be the interpretation to be ascribed to Law 32/77, there exists another statutory provision which when properly construed would save pending proceedings such as those of the appellants and he referred us to Section 76 (2) of the Cayman Protection Law Revised which provides that:

> "Nothing in the this Law affects the rights of any person with respect to Caymanian Status existing prior to the 27th March, 1977."

And to the decision of this Court in C.I.A. 1/78 John Patrick Collins and Keith Christian Collins vs. The Queen. The Collins' brothers had filed Petitions in the Grand Court on December 6, 1977 applying under section 16 (1) of the Caymanian Protection Law (Revised) for Declarations that they qualified for Caymanian status as the "Children of a person entitled to Caymanian Status as of right. In his judgment Robinson P. traced the several statutes under which the mother of the Petitioners undoubtedly qualified for Caymanian status as of right. The Petitioners were considerably over the age of 18 years in 1977 and the arguments in their favour was that on a true construction of section 15 (e) as "children" they were not subject to the restriction applicable to "adopted" and "step-children" who could only apply if under the age of 18 years. Robinson P. who delivered the judgment of the Court, held that notwithstanding a series of amendments to the Law 23/71, the rights of the Petitioners fell to be decided under the provisions of section 15 of the original Law 23/71. At page 4 of his judgment, he said:

> "Bearing in mind that Law 7/77 did not come into operation until 23rd May, 1977, and bearing in mind the provisions of section 15 of that Law, it is clear that regard must be had to the provisions of Law 23 of 1971 as originally enacted to determine whether or not a person had acquired Caymanian status, as of right or otherwise, or even whether he had qualified to acquire the same, prior to the 27th day of March, 1977, for if he had, section 15 (d) of Law 7 of 1977 left it in no doubt that such rights as he had already acquired with respect to Caymanian status were not to be affected by any of the amendments contained in Law 7 of 1977."

It was contended by Mr. Alberga that the passage quoted above was germane to the decision, consequently it was not obiter, and that it formed a binding precedent upon this Court. He argued that this was a clear legislative indication of its respect for the sanctity of pending proceedings especially those commenced between March 27, 1972 and March 27, 1977. Summerfield C.J., dealt with this submission fully and in my respectful view, absolutely correctly and I quote from his judgment:

> "It is clear from the background history and its wording that the revised section 15 (1) (b) was intended to vary the qualifications for the rights to a declaration that a person enjoys Caymanian status. By its wording those qualifications relate back to a period immediately prior to 27 March, 1972. They can relate to no other period. They cannot relate to a point in time after 27 March 1972 or a point in time after 27 March 1977. They are qualifications that had to exist immediately prior to 27th March 1972 in order to qualify for a declaration. Therefore, the change brought about by the revised section 15 (1) (b) directly bore on inchoate or unperfected or undeclared rights existing at the time when the Original Law was enacted. Otherwise, there could be no possible reason for introducing the revised section 15 (1) (b). In that context, the only reasonable interpretation to place on the substantive section 15 (d) of the 7/77 Law is that it saved the rights of persons who had actually acquired Caymanian status by declaration under section 15 (b) and section 16 of the Original Law or otherwise. Their status was preserved. No other rational meaning can be accorded to the substantive section 15 (d) of the 7/77 Law. The point is that until there is a declaration pursuant to section 15 (b) (before or after it was revised) and section 16 a person claiming to qualify under section 15 (b) does not acquire Caymanian status. The revised section 15 (1) (b) alters the qualifications for a declaration. So that if the declaration is made after the 7/77 Law came into force the revised qualifications govern whether a declaration can be made. Where the declaration was made before the 7/77 Law came into force section 15 (b) of the Original Law would govern whether a declaration could be made and. where a declaration could be made and, where a declaration was so made the revised qualifications do not affect it.
> It should, perhaps, be noted at this stage that the filing of a petition for a declaration does not of itself in any way vary or acquire or crystallize any rights. That is merely a preparatory step to the declaration of a right. It is the declaration which confers Caymanian status under 15 (b) or the new section 15 (1) (b). The qualifications for a

"declarations are those provided by law at the time it is made.
I have dealt with this aspect in some detail because learned Counsel for the petitioners placed great reliance on dicta in the Court of Appeal case John Patrick Collins and Keith Christian Collins v. The Crown (Civil Appeal No. 1 of 1978). There are certainly dicta supporting the view contended for on page 4 of the Court of Appeal judgment and it was urged that this Court is bound by the principles there expressed. That is a cogent argument which must be squarely faced.
In Collins case their Lordships were considering a completely different provision, namely, section 15 (1) (d) of the parent Law as contained in section 4 of the 7/77 Law or section 15 (e) of the Original Law. Their Lordships expressed the view that because of the substantive provisions 15 (a) and 15 (d), and in particular the latter, of the 7/77 Law they were obliged to consider the provisions of the Law as originally enacted to determine whether a person, inter alia, acquired Caymanian status as of right or otherwise, Accordingly, they construed the provision of the Original Law relevant to the appellants.
The first point to be made is that their Lordships in that case were construing a completely different provision.
The second point is that the relevant part of the provision under construction by their Lordships was in substantially the same terms in the version contained in the 7/77 Law and as enacted in the Original Law. The main difference was that, as originally enacted, the provision (commencing with the word "is") related to a qualification existing at the time when the Original Law came into effect whereas the version in the 7/77 Law (commencing with the word "was") related to the same qualification existing prior to that point in time. Nothing turned on that distinction in reaching the ultimate conclusion. It would not have mattered so far as the end result was concerned which provision was construed. Their observation was, therefore, not crucial to their ultimate conclusion. Furthermore, the consequences of the application of the substantive section 15 (d) of the 7/77 Law in that case were not such as to negative entirely the revised version of section 15 as contained in the 7/77 Law as would be the position in this case. More important, their Lordships were, with respect, right in principle to adopt the approach adopted in the context of that case. The provision under construction actually conferred Caymanian Status - as of right under section 15 (e) of the Original Law and "deemed it under the 7/77 Law - on persons within the category specified. If a person was within the category specified in section 15 (e) of the original law then he automatically acquired Caymanian Status on the date of the coming into force of the original law - 27th March 1972. The declarations was merely machinery for establishing that fact. As observed above, the substantive section 15 (d) of the 7/77 Law preserved that status. Nothing in the revised section 15 as contained in section 4 of that Law derogated from that acquired status. Conversely, by virtue of the substantive section 15 (a) of the 7/77 Law no additional right or privilege was

> "conferred by the revised section 15. And so, the matter under consideration in the Collins case fell to be determined by construing section 15 (e) of the Original Law. Rightly or wrongly I have taken the view for the reasons given that the position is quite different when it comes to a construction of section 15 (1) (b) as revised, a provision which was not under consideration in the Collins case. Finally, I feel sure that the observations of their Lordships in the Collins case were never intended to lead to a construction of a different provision in such a way as to completely frustrate the intention of the Legislature."

The reference to the date March 27, 1977 is obscure. That section was not specifically repealed by Law 32/77 but it appears that that latter Law dealt with the same subject matter and in so far as their provisions are inconsistent, this Court is obliged to follow the latter expression of the legislative will.

It is clear that the rights referred to in section 76 (2) are not inchoate rights but only those which have been perfected by the grant of Declarations in the Grand Court. The legislature, not wishing to be its own Court of Appeal on Declarations already actually pronounced inserted a Saving Clause in section 15 (3) of Law 32/77 that:

> "Provided that nothing in this subsection shall affect any existing Caymanian Status declared by the Grand Court under section 16 (1)"

Consequently the correctness or otherwise of Declarations made under the Caymanian Protection Law 1976 as Revised and amended can only be called into question on an appeal as provided by Law.

At the time when the proceedings out of which these appeals arise, were heard, the appellants had not been the recipients of Declarations of Caymanian Status from the Grand Court and it therefore follows that section 76 (2) can avail them nothing in the face of the provisions of Law 32/77. They were "mere Petitioners" and the status of "Petitioners" has not been preserved by the saving clause.

I share the view of Summerfield C.J., that:

> "The upshot is that as the petitioners (appellants) do not have the two year residential qualification specified in the definition of 'domicile' in the Immigration Restriction (British Subjects) Law, as imported into section 15 (1) (b)

> "by virtue of the new subsection (3) of section 15 of the Revised Law in its present form, they were not domiciled here at the relevant time for the purposes of section 15 (1) (b), and, therefore, do not qualify for a declaration."

I would dismiss the appeals, but I would make no order as to costs, firstly because the points of law raised were of considerable general importance, and secondly the appellants' Petitions have endured for long on the files of the Court partly because of their inactivity but more significantly due to administrative negligence.