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JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEALS NOS. 64 & 67 OF 1984

COR: THE HON. MR. JUSTICE ROWE, P.
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.

BETWEEN: HORACE CLINTON NUNES
(Executor of the Estate of)
(Lionel S. Coke, deceased.) APPELLANTS

APPLETON HALL LIMITED

v.

ROY WILLIAMS RESPONDENTS
REGISTRAR OF TITLES
LAND DEVELOPMENT & UTILIZATION COMMISSION

Gordon Robinson for Executor Estate Nunes
W.K. Chin See, Q.C. & Dennis Morrison for Appleton Hall Ltd.
Dr. Lloyd Barnett & Miss Hilary Phillips for Roy Williams
L. Langrin for Registrar of Titles & Land Development and
Utilization Commission.

22nd, 23rd, 24th, 25th, 26th April
& 13th June, 1985

ROWE, P.

I agree with the judgments of Carey and Campbell, JJ.A.,
that the respondent Roy Williams had no locus standi to
bring the Originating Summons. I also agree with the judg-
ment of Campbell, J.A., that section 20 of the Land Develop-
ment and Utilization Act does not have the effect of over-



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riding the provisions of the Registration of Titles Act and that the factum of registration in the instant case renders the title indefeasible.

I would concur with my brothers that the appeals be allowed, the orders made in the Court below are/ ^{hereby} set aside and there will be judgment for the appellants both here and in the Court below with costs to be agreed or taxed.

CAREY, J.A.

During the hearing of this appeal which occupied a number of working days, we were pressed with a deal of esoteric arguments into the legal implications of registering land under the Registration of Titles Act, the ambit of the concept regarding indefeasibility of title under the Torrens System of Land Registration, and, specifically, the effect of an agreement for sale of agricultural land, rendered ineffective under the Land Development and Utilization Act (Sec. 20), on registered land.

For my part, I have come to the clear conclusion that the solution to the problem raised on this appeal, is not to be sought in those recondite reaches of the law, but in the answer to a simple question - has the plaintiff any locus standi to invoke the Court's aid in the remedy he seeks?

To understand how the issue arises, it is convenient at this point to summarize the history of the matter. The applicant in the proceedings below, Mr. Roy Williams, in or

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about October 1979, entered into an agreement with Lieutenant Colonel Coke (now deceased) to purchase certain agricultural land known as Chippenham, in Bamboo, St. Ann, at a price of \$90,000.00. He duly paid the deposit stipulated of \$21,000.00 but was unable to complete the transaction despite extensions of time mutually agreed between the parties. In January 1980, the vendor cancelled the sale as he was entitled to do under the agreement and refunded the deposit. He sold the land subsequently to Appleton Hall Limited (one of the present appellants). But by an admitted oversight on the part of the vendor's attorney-at-law the approval of the Land Development & Utilization Commission, which is required under the Land Development & Utilization Act, was neither sought nor obtained. On June 6, 1980, the applicant filed an action in the Supreme Court against the vendor whereby he claimed specific performance and/or damages. He pleaded in his statement of claim that the parties had by an oral agreement, reinstated the agreement for sale and "the Defendant has neglected and refused to take any steps towards the completion of the said agreement(s)". The prosecution of that suit appears to have been suspended, for in February 1984, the applicant launched altogether different proceedings by way of an originating summons seeking the following orders:

1. A declaration that the Instrument of Transfer numbered 381157 registered on the 22nd day of May, 1980 of the lands comprised in Certificate of Title registered at Volume 520 Folio 48 is of no effect.
2. An Order that the Registrar of Titles cancel the aforesaid Instrument of Transfer.
3. An Injunction restraining any further dealings with the land comprised in the said Certificate of Title pending the determination of the suit herein.
4. An Injunction restraining the Land Development & Utilization Commission from granting approval to the Transfer numbered 381157 at (1) above or to any further dealings in the land comprised in the said Certificate of Title".

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By an order dated 4th October 1934 Harrison, J., (A.G.) made orders in terms of that summons. The appeal to this Court is taken against these orders by Horace C. Nunes, the executor of the late vendor and Appleton Hall Limited the purchasers and present registered owners of 'Chippenham', the land in dispute.

For purposes of completion, some further facts should be alluded to. Shortly after the agreement for sale between the applicant and the vendor was aborted, the former, through his attorneys-at-law, lodged a caveat against the title of the land in dispute. As a result of some administrative negligence, nothing however came of those proceedings. It was subsequent to this, that the applicant filed his writ claiming specific performance etc., of course, the transfer to the present owners had by then been registered.

As the matter stood at the date of hearing, the applicant was a plaintiff in an action claiming specific performance against a vendor who had sold his land to other purchasers, and these then held a registered title. He was in a situation that has recurred time out of mind. The aggrieved party invariably claims specific performance but is constrained to accept a judgment in damages. Put another way the Court exercises a well recognized discretion against granting the equitable remedy of specific performance seeing that the rights of innocent third parties would be affected.

The aggrieved party in this case, Mr. Williams, is plainly by these proceedings not seeking to recover damages; he desires the Court to declare that the instrument of transfer which records the purchase of the land by Appleton Hall Limited is of no effect. The basis of the order sought is, it is urged, to be found in the provisions of section 20 of the Land Development & Utilization Act, set out hereunder:

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"23. An owner or occupier of, or any other person having an interest in, any land comprising or included in an agricultural unit shall not without the approval in writing of the Commission --

(a) sell, lease or let the land or any part thereof; or

(b) transfer or assign his interest therein or in any part thereof,

and any such sale, lease letting, transfer or assignment shall not have effect unless and until it is approved by the Commission".

Although he has an apparent claim arising ex contractu, and indeed has filed such a suit, the purpose of these proceedings must be to enforce the provisions of the Land Development & Utilization Act. This plainly raises the question which I intimated earlier, viz., has this plaintiff been so peculiarly affected by the transfer, as to give him title to sue? Has he a locus standi?

We must now turn to the Land Development & Utilization Act. A fair reading of that Act shows that it is concerned with our national well-being as respects matters agricultural. The Act by section 12, establishes a Commission and prescribes the duties of that body. Section 14 provides as follows:

"14. It shall be the duty of the Commission--

(a) to ensure that occupiers of agricultural units fulfil their responsibilities under this Act to farm the agricultural land in such units;

(b) to ensure that such agricultural land is, as far as possible, properly developed and utilized; and

(c) to perform such other functions as may be required by the Minister".

Section 20 to which reference has already been made, restricts the disposition of agricultural land without the approval of the Commission. Section 5 stipulates that where an occupier

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of agricultural land is not fulfilling his responsibility to farm agricultural land, the Commission has the power to declare such land 'idle land'. Section 6 gives the Commission power to call upon the occupier of land declared 'idle land', to submit a development plan in respect of land. Nothing in this Act is concerned with the personality of any particular occupier but with his use of the land. The restriction on disposition without approval is plainly intended to ensure that the optimum use is made of agricultural land. Section 7 makes this perfectly clear. It provides so far as material, as follows:

- 4.--(1) For the purposes of this Act, it shall be the responsibility of an occupier of an agricultural unit to farm the agricultural land in the unit to such extent as may be practicable having regard to the character and situation of the unit and other relevant circumstances.
- (2) In determining whether the occupier of an agricultural unit is fulfilling his responsibility under the Act to farm the agricultural land in the unit regard shall be had to the extent to which and the manner in which--
- (a) pasture is being maintained;
 - (b) arable land is being cropped;
 - (c) the unit is stocked where the system of farming practised requires the keeping of live-stock,.....'

In my judgment, the responsibility for effecting the purposes of this Act lies with the Commission and ultimately the Minister of Agriculture. Where an occupier of land is affected by an order declaring his land, for example, 'idle land', he may appeal to the Minister. So far as this Act is concerned, it is difficult to conceive of anyone save an occupier of such land or being the owner thereof, being affected by the execution of the purposes of the Act. Any remedy to ensure compliance therewith, must, in my view,

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come within the realm of public law, not private law. So that what is being asserted by this applicant, is a public right, viz., the right of the public to ensure that agricultural land is properly farmed or stocked or in the instant case presumably not transferred to a party other than the applicant. The proper person to take action under the Act would, it would appear, be the Attorney General. In *Gouriet v. Union of Post Office Workers* [1977] 3 All ER 73 at page 80, Lord Wilberforce pointed out that-

"A relator action, a type of action which has existed from the earliest times, is one in which the Attorney General, on the relation of individuals (who may include local authorities or companies), brings an action to assert a public right. It can be properly said to be a fundamental principle of English law that private rights can be asserted by individuals, but that public rights can only be asserted by the Attorney-General as representing the public. In terms of constitutional law, the rights of the public are vested in the Crown, and the Attorney-General enforces them as an officer of the Crown. And just as the Attorney-General has in general no power to interfere with the assertion of private rights, so in general no private person has the right of representing the public in the assertion of public rights. If he tries to do so his action can be struck out".

and again at page 85, he declared the true state of the law, in this regard, in these words.

"....., I shall content myself with saying that, in my opinion, there is no support in authority for the proposition that declaratory relief can be granted unless the plaintiff, in proper proceedings, in which there is a dispute between the plaintiff and the defendant concerning their legal respective rights or liabilities, either asserts a legal right which is denied or threatened, or claims immunity from some claim of the defendant against him, or claims that the defendant is infringing or threatens to infringe some public right so as to inflict special damage on the plaintiff".

Viscount Dilhorne for his part, put the matter this way at p.93:

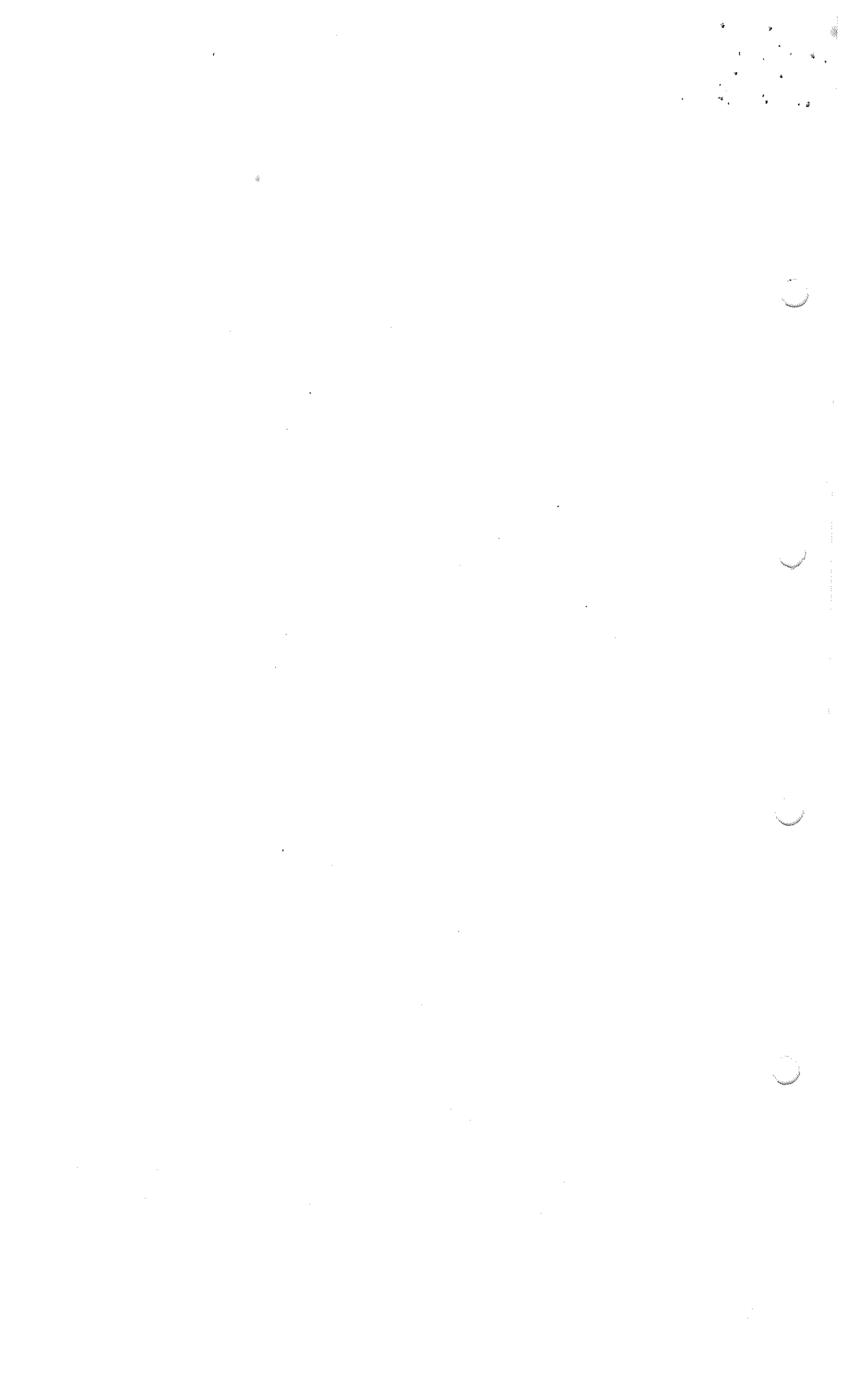
"In conclusion, as I see it, we are asked not to just extend the existing law but to over-ride a mass of authority and to say

"that long established law should no longer prevail. That is a question for the legislature to consider and, in the light of what I have said about the exceptional character of requests by the Attorney-General to the civil courts to come to the aid of the criminal law and of the occasions when that has been given, I must confess to considerable doubt whether it would be in the public interest that private individuals such as Mr. Gouriet should be enabled to make such applications in cases where such interest as they have is in common with all other members of the public and when the object is the enforcement of public rights".

The interest of the applicant in the declaration he seeks, can only be for the enforcement of a public right. The peculiar interest which he conceives he has, can be served by a recourse to private law, namely an action for breach of contract. Damages can provide adequate compensation for such breach as he avers in his writ, he has suffered. Since it is the fact, that the applicant has a subsisting claim against the vendors, it is pertinent to enquire what is the need for a declaratory judgment. The following apposite view of Lord Diplock at page 100, confirms the position I have taken:

"The early controversies as to whether a party applying for declaratory relief must have a subsisting cause of action or a right to some other relief as well can now be forgotten. It is clearly established that he need not. Relief in the form of a declaration of right is generally superfluous for a plaintiff who has a subsisting cause of action. It is when an infringement of the plaintiff's rights in the future is threatened or when, unaccompanied by threats, there is a dispute between parties as to what their respective rights will be if something happens in the future that the jurisdiction to make declarations of right can be most usefully invoked. But the jurisdiction of the court is not to declare the law generally or to give advisory opinions: it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else".

A declaration by the Court that the transfer is ineffective, seems to me, to be a pointless order. It is the Commission



which has the power to approve the transfer and considera-
tions for granting approval are based rather on good
husbandry or plans for the same than on the personality of
a particular applicant for approval. It is far from clear
to me how the present purchasers and the vendor could be
precluded from applying to the Commission for its approval
for there is no time limit prescribed for applying to the
Commission for such approval. Be it observed that Section
20 does not render the sale or other dealing in the land
illegal, it merely makes the particular transaction ineffec-
tual until the approval has been had. The vendor and pur-
chaser are at liberty at any time to make their application
seeking the Commission's approval for the transaction. The
regulations relating to the application for such approval,
show the format to be a joint application by the vendor and
the purchaser.

In my view, the Court ought not to participate in an
exercise in fatuity. The applicant says he has a claim but
chooses not to pursue his suit to finality. His interest in
that land can be no different from any enlightened farmer
dwelling in any part of the country, who has a patriotic
interest in seeing good agricultural practices throughout
the country. But that would not entitle him to bring pro-
ceedings for the declaration; he would be regarded as an
officious busy-body. What prompts him to action might be
nobly inspired or indeed might be of sinister origin, but,
the motivation is wholly irrelevant. The applicant might
modestly believe he is better able to farm the land in dis-
pute than the present owners but that affords him no legal
right to have the transfer to the present occupiers declared
of no effect:

"The only kinds of rights with which courts
of justice are concerned are legal rights;

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And a court of civil jurisdiction is concerned with legal rights only when the aid of the court is invoked by one party claiming a right against another party to protect or enforce the right or to provide a remedy against that other party for infringement of it, or is invoked by either party to settle a dispute between them as to the existence or nature of the right claimed. So for the court to have jurisdiction to declare any legal right it must be one which is claimed by one of the parties as enforceable against an adverse party to the litigation, either as a subsisting right or as one which may come into existence in the future conditionally on the happening of an event".

per Lord Diplock at page 100.

no legal right to the land // The applicant has no legal right to the land in dispute; he has no enforceable right except an inchoate personal claim against the vendor. In a word, he has no locus standi.

In this connection, Gregory & Another v. London Borough of Camden [1966] 2 All ER 196 and Royce v. Paddington Borough Council [1903] 1 Ch. 139 are of assistance. As to the former, the plaintiffs were the owners and occupiers of two houses at the back of which was a large open space forming part of the grounds of a convent. The defendants, the local planning authority, granted planning permission to the trustees of the convent to erect a large new school in the convent grounds and later for a second means of access to it which would injuriously affect the amenities of the plaintiffs' houses, as many hundreds of pupils might well use this access and pass close to them. The plaintiffs brought an action for a declaration that the grants of planning permission were ultra vires the defendants. The defendants submitted that the action was misconceived since it was not brought to enforce or declare any right of the plaintiffs in connection with the matters complained of in the statement of claim or to secure the performance of any duty owed by the defendants to the plaintiffs, and that a declaration against the defendants as claimed, would not effectively remedy any grievance

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or supposed grievance of the plaintiffs against the defendants. Paull, J., decided in favour of the defendants, holding that "there is no status for the plaintiffs to claim a declaration". At page 203 the learned judge explained the situation thus:

"In this case, as I see it, the plaintiffs are really saying that in effect they have a right which they would not have had but for the passing of the Town and Country Planning Act, viz., a right to look and see if the Minister or the town planning authority has made an order which is not a good order, and, if they find that this is so, then they can take steps whereby this building may possibly be stopped. That is essentially what the plaintiffs are saying for this action is no use to them whatsoever unless in some way it will influence the question whether the trustees can or cannot go on with their building. Looking at it in that rather simple way, it seems to me that the answer to the question which I have to determine is that the plaintiffs have no legal right to step in at all. They may have suffered *damnum*, that is to say, loss in one way or another, but they have not suffered *injuria*, that is to say, any legal wrong.

There are many acts which cause loss which give no legal rights. Before one can come to a court of law, one must suffer an *injuria* as well as *damnum*; one must have suffered a legal wrong as well as an actual loss of money or amenity or something else. What is taking place on this land behind Nos. 51 and 53 is something in respect of which, as between the plaintiffs and the trustees, there are no legal rights whatsoever, and the plaintiffs cannot interfere by maintaining that a third party's permission must be got before the building can be built. This may be a simple way of looking at this matter, but it seems to me that that is the way by which one can find the solution which seems to fit in with legal principles and with the purposes for which these Acts have been passed".

Every word in this excerpt is applicable to the present circumstances. The applicant in this case is saying that he has a right which but for the passing of the Land Development & Utilization Act he would not have had, viz., a right to look to see if the Commission should withhold approval so as to render the transfer of no effect and then to take steps to pursue his claim for specific performance. He may have suffered *damnum*, but he has not suffered *injuria*, that is to

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say, any legal wrong. The Land Development & Utilization Act gives rights to the public, not to individuals, not to this applicant.

The second case relates to a churchyard in Paddington, London. The churchyard was an "open space" within the Metropolitan Open Spaces Acts, 1877, 1881, and 1887, and the Disused Burial Grounds Act, 1884. The plaintiff was the owner of a leasehold piece of land abutting on the churchyard, on which he had recently erected blocks of flats with windows over-looking the churchyard. The defendant Borough Council passed a resolution directing their surveyor to erect a screen or hoarding in the churchyard to obstruct the light to the window. The action by Boyce was for an injunction to restrain the defendants from erecting the screen. On behalf of the defendants, it was submitted that the plaintiff had no cause of action. The only person who could bring an action if public rights are being interfered with, is the Attorney General and he was not a party to the action. The plaintiff had no legal right to the access of light to his windows. His object in these proceedings is to prevent the windows being obstructed, so that he might have a prescriptive right to light. It is a case of damnum absque injuria. Buckley, J., held that the situation created a right in the public to enjoy the churchyard as an open space and accordingly the plaintiff had no cause of action.

Both of these cases show, I venture to suggest, that in order to allow a party to sue for a declaration where public rights are concerned, he has to show that he has personally suffered some special damage which amounts to an infringement of his legal rights. Where of course, he is unable to show that he possesses any such legal right, then his action might

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well be struck out. In this case, I agree that the submissions of Mr. Gordon Robinson are well-founded.

Having regard to the conclusion I have come to on this preliminary and fundamental question, I find it wholly unnecessary to consider the other matters adverted to at the beginning of this judgment. But it would be churlish not to acknowledge with admiration, the research effort and the very interesting and detailed arguments placed before us as regards the Registration of Titles Act, the Torrens System of Registration and the effect of void or ineffective contracts on registered land.

Since the preparation of my judgment, I have had the opportunity of reading in draft the judgment of my brother, Campbell, J.A., and I wish to say that I entirely agree with his analysis of the position of a caveator under the Registration of Titles Act.

Accordingly, I am impelled to say that my decision is in favour of the appellants. I would allow the appeals, set aside the orders made by the judge below and dismiss the summons with the usual consequential orders.

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CAMPBELL J.A.

By Originating Summons dated February 22, 1984 the plaintiff/respondent (hereafter the "respondent") sought a declaration that registered instrument of transfer numbered 381157 of the lands comprised in Certificate of Title registered at Volume 520 Folio 48 is of no effect. The instrument was registered on 22nd May, 1980. The respondent consequently sought an order directed to the Registrar of Titles to cancel the aforesaid instrument with further orders for injunction against the Registrar of Titles and the Land Development and Utilization Commission restraining the former from dealing with the lands in question pending the determination of a subsisting suit and restraining the latter from granting approval to the transfer numbered 381157 or to any further dealings in the land comprised in the Certificate of Title.

The respondent had previously filed suit No. E75/80 on June 6, 1980 claiming specific performance of a contract in relation to the self same land.

The essence of the respondent's claim in that suit was that the contract was concluded on October 1, 1979. He admitted that certain pre-conditions relating to his securing a mortgage and to his notifying his vendor by a certain date of his success in securing the mortgage had not been complied with and that in consequence his vendor had rescinded the contract pursuant to a condition in the agreement and had returned his deposit. He however asserts that on January 30, 1980 which was the day immediately subsequent to the rescission of the agreement by the vendor, the latter orally agreed with him to reinstate the rescinded agreement on certain terms agreed between them. This oral agreement was reduced into writing by the vendor who dispatched this written memorandum through the respondent to the former's attorneys-at-law for the latter to give formal effect thereto. The

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the respondent's sole right to bring proceedings under the Registration of Titles Act would be as Caveator since he did not come within the category of persons mentioned in section 161. His caveat having lapsed he ceased to have locus standi and his Originating Summons ought on this ground also to have been dismissed.

For the reasons given I would allow the appeal.

the reporter's sole right to bring proceedings under the
 provisions of this Act would be as aforesaid, since he did not
 come within the category of persons mentioned in section 101.
 His claim having failed he ceased to have locus standi and his
 application, known as such in this ground, also to have been
 dismissed.

For the reasons given I would allow the appeal.