

17,1969

IN THE PRIVY COUNCIL

No. 15 of 1968

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O N A P P E A L

FROM THE COURT OF APPEAL OF THE WEST  
INDIES ASSOCIATED STATES SUPREME COURT

B E T W E E N :-

BOSWELL WILLIAMS

Appellant

- and -

THE GOVERNMENT OF THE ISLAND  
OF SAINT LUCIA

Respondent

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R E C O R D O F P R O C E E D I N G S

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DURRANT, COOPER & HAMBLING,  
73, Cheapside,  
London, E.C.2.

Solicitors for the Appellant.

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
Strand, London, W.C.2.

Solicitors for the Respondent.

RECORD OF PROCEEDINGS

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I N D E X O F R E F E R E N C E

No.	Description of Document	Date	Page
1.	Declaration of Acquisition of Land in the Saint Lucia Gazette <u>BEFORE THE BOARD OF ASSESSMENT</u>	28th December 1963	1
2.	Notes of the Chairman, E.H.A. Bishop	3rd and 4th May 1966	3
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LIST OF EXHIBITS TRANSMITTED BUT  
NOT REPRODUCED

Exhibit Mark	Description of Document Appellant's Exhibits	Date	Page
A 1	Letter, Appellant to His Honour the Administrator	4th January 1964	
A 2	Letter, Appellant to His Honour the Administrator	26th February 1964	

INDEX OF REFERENCE (Contd.)

Exhibit Mark	Description of Document Appellant's Exhibits	Date	Page
A 3	Letter, Appellant to G. St. A. Guard	20th March 1964	
A 4	Letter, Acting Attorney General to Appellant	9th February 1965	
A 5	Letter, Appellant to the Honourable Attorney General	9th February 1965	
A 6	Letter, Appellant to G. St. A. Guard	12th March 1965	
A 7	Letter, Appellant to the Honourable Attorney General	25th January 1966	
A 8	Payment Voucher	31st July 1965	
	<u>In the West Indies Associated States Supreme Court of Appeal</u>		
	Notice of Motion for Leave to Appeal to Her Majesty in Council	6th December 1967	
	Order of Court Granting Conditional Leave to Appeal	15th December 1967	
	Bond for Costs of Appeal	12th March 1968	
	Certificate of Registrar pursuant to Rule 13 (2)	Undated	
	Pursuant to Rule 18 of the Judicial Committee Rules 1957 the Respondent has objected to the inclusion in the Record of the following documents :-		
	<u>BEFORE THE BOARD OF ASSESSMENT</u>		
	Notes of the Chairman E.H.A. Bishop	3rd and 4th May 1966	
	Notes of the Assessor E.R.L. Ward	Undated and 4th May 1966	

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O N A P P E A L

FROM THE COURT OF APPEAL OF THE WEST  
INDIES ASSOCIATED STATES SUPREME COURT

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BOSWELL WILLIAMS

Appellant

- and -

THE GOVERNMENT OF THE ISLAND  
OF SAINT LUCIA

Respondent

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R E C O R D O F P R O C E E D I N G S

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No. 1

No. 1

DECLARATION OF ACQUISITION OF  
LAND IN THE SAINT LUCIA GAZETTE

SAINT LUCIA GAZETTE, 28 December, 1963  
SAINT LUCIA.

Declaration of  
Acquisition of  
land in the  
Saint Lucia  
Gazette.  
28th December,  
1963.

20

IN THE MATTER OF THE LAND ACQUISITION  
ORDINANCE CHAPTER 109

AND

IN THE MATTER of a Declaration by the Adminis-  
trator in Council that certain land situate  
in the Quarter of Soufriere, in the Island  
of Saint Lucia, are to be acquired for a  
public purpose.

DECLARATION OF ACQUISITION OF LAND

30 WHEREAS it is enacted by section 3 of the Land  
Acquisition Ordinance, Chapter 109 that if the  
Administrator in Council considers that any land

No. 1  
Declaration of  
Acquisition of  
land in the  
Saint Lucia  
Gazette.  
28th December,  
1963.

should be acquired for a public purpose he may  
cause a declaration to that effect to be made;

AND WHEREAS it is considered by the Adminis-  
trator in Council that the land mentioned and  
described in the Schedule hereto should be  
acquired for a public purpose, to wit, the  
development of tourism;

(Contd.)

NOW THEREFORE, IT IS HEREBY DECLARED by the  
Administrator acting in accordance with the advice  
of the Executive Council that upon the Second  
Publication of this Declaration in the Gazette,  
the land mentioned and described in the Schedule  
hereto shall be acquired for the above-mentioned  
purpose and shall vest in the Crown.

10

SCHEDULE

All the lands being and situate in the Quarter  
of Soufriere known as Ventine Estate consisting of  
seventeen carrés more or less (including seven  
carrés annexed to the said Ventine Estate) and also  
the Sulphur Springs or volcano also known as Terre  
Blanche approximately 4.2 carrés in extent, the  
whole comprising 21.2 carrés more or less as shown  
on a Plan of Survey No. S41 by John E. Quinlan,  
Sworn Land Surveyor, dated 22nd December, 1891, and  
kept in the office of the Commissioner of Crown  
Lands together with the appurtenances and depen-  
dencies thereof. The said Ventine Estate as  
hereinbefore described is bounded on the North  
partly by the Diamond Estate and partly by the  
Terre Blanche Estate, South by the Rabot Estate,  
East by the Esperance Estate and West partly by the  
Terre Blanche Estate and partly by the Rabot Estate  
or however else the same may be bounded.

20

30

The plan of survey hereinbefore referred to may  
be inspected at the office of the Commissioner of  
Crown Lands on any day except Wednesdays, Sundays  
and public holidays between the hours of 9 a.m. and  
4 p.m. and on Wednesdays between the hours of 9 a.m.  
and 12 o'clock noon.

40

Dated this 20th day of December, 1963.

(Sgd) U. RAVENEAU,  
Clerk of the Executive Council,

(Gazetted 21st and 28th December, 1963).

No. 2

NOTES OF THE CHAIRMAN, E.H.A. BISHOP

Before the  
Board of  
Assessment

BOARD OF ASSESSMENT

ACQUISITION OF VENTINE ESTATE

No. 2

Notes of the  
Chairman,  
E.H.A. Bishop.  
3rd and 4th  
May, 1966.

Tuesday 3rd May, 1966

10

Chairman: E.H.A. Bishop, Puisne  
Judge

Member: E.R.L. Ward, Esq.

Appearances: Mr. T. Hosein Q.C. with  
Legal Assistant for  
the Crown

Mr. V. Floissac for  
owner Boswell Williams.

20 Appointment and composition of Board explained.  
Reference to Gazette and letter.

Mr. Floissac takes preliminary objection re  
jurisdiction of Board.

30

submits: Purported compulsory acquisition  
on which these proceedings are  
based is void for failure of  
compliance with provisions of  
section 3 of Land Acquisition  
Ordinance of St. Lucia. Since  
these proceedings are based on a  
void compulsory acquisition the  
proceedings are themselves void.  
In the result this Board of  
Assessment has no jurisdiction  
to entertain the questions  
relating to compensation which  
has been referred to it.

Cites Christopher Browne Ltd. v. Genossenschaft  
1954 1 Q.B. p: 8 J. Devlin at page 12.

40 Independent of statutory power arbitrators  
have a right to determine their jurisdiction.

Before the  
Board of  
Assessment

No. 2

Notes of the  
Chairman,  
E.H.A. Bishop.  
3rd and 4th  
May, 1966.  
(Contd.)

Mr. Hosein: 11 Hals. 3rd Edition. page 59  
paragraph 116 concedes Board has jurisdiction.

Mr. Floissac: Acquisition is improper because  
declaration invalid. Cites section 3 of Land  
Acquisition Ordinance Chapter 109 Section 3(1) of  
Land Acquisition Ordinance.

- (i) If Administrator is of personal opinion that  
land should be acquired. 10
- (ii) declaration to that effect Declaration to  
effect that the Administrator considers the  
land should be acquired for a public purpose.  
i.e. declaration of the personal opinion of  
the Administrator.

Cites declaration in Gazette. December 1963.  
Principal or operative part. (3rd paragraph), no  
mention of personal opinion of Administrator.  
Clear and unambiguous paragraph 2. 20

Contains personal opinion of Administrator.

Cites Lampugh v. Norton 22 Q.B. 452

Bowen L.J. page 459

Cites Bourne v. Keane 1919 A.C. 815

per Lord Berkenhead L.C. at p. 841

The recital or preamble cannot be construed so as  
to declare what the Administrator in Council did  
not declare whether that omission was deliberate or  
by inadvertence.

At page 870 Lord Buckmaster. 30

Impossible to make a declaration by a preamble.

All that is declared is the effect of what should  
have been declared.

Cites p. 884 Lord Arkinson. The recital of the  
declaration cannot be regarded as the declaration.

Cites p. 901 Lord Parmoor:

Cannot use the recitals of the declaration to



extend the provisions beyond the limitations clearly expressed in its operative part.

Before the Board of Assessment

Cites decision dealing with recitals.

No. 2

Commissioner of Inland Revenue v. Raphael et al. 1935 A.C. 96 per Lord Wright at page 143

Notes of the Chairman, E.H.A. Bishop. 3rd and 4th May, 1966. (Contd.)

Per Lord Wright at page 147

10

Submits:

Where a draftsman chooses to divide his document into two parts - preamble or recital and principal part, he exposes himself to the governing the effect of rules already stated. Declaration is made.

2 parts. preamble or recital - operative part

20

Operative part: clear and ambiguous - contains a statement of law - erroneous and unnecessary. has not declared what is necessary - personal opinion of Administrator cannot invoke recitals in aid

Effect of non-compliance with section 3.

Cites Article 1497 of Civil Code of St. Lucia. Can only expropriate land by authority of law in manner and according to the rules prescribed.

Cites Bygrave v. Metropolitan Board of Works 1886 55 L.J. Chapter 602

30

Bowen L.J. at P. 604

Fry L.J. at page 604

Refers to Preliminary objection. (reads)

Declaration is bad.

Alternative submission.

Even if declaration is capable of being held to be valid the acquisition is still void for non-compliance with section 6(i) of Land Acquisition Ordinance.

Before the Board of Assessment

No. 2

Notes of the Chairman, E.H.A. Bishop. 3rd and 4th May, 1966. (Contd.)

Purchase.

Purchase by Government through negotiation with the owner. Presupposes land has not yet vested in the Crown: If so could be no question of purchase.

Authorised Officer has a duty to negotiate for the purchase before the second publication.

Mr. Hosein objects - not a preliminary objection.

At this stage submission not pursued.

Adjourned 11.15.

11.35 a.m. resumed.

Mr. T. Hosein - submission unfounded

Read Section 3 of Chapter 109.

Administrator exercises his judgment and comes to conclusion that the land is to be acquired for a public purpose; he may cause the conclusion at which he has arrived to be declared.

To be made in the manner provided by this section.

When declaration is made, it is to be conclusive evidence that the land to which it relates is required for a public purpose.

To be made in manner provided by this section can only referred to subsection 2.

Reads subsection 2.

..... A declaration shall be specified the following particulars .....

In complying with subsection 2 you comply with subsection 1.

Conjoint effect.

Administrator exercises judgment; comes to conclusion; declaration that land is acquired for public purpose.

10

20

30

Subsection 2 sets out manner in which declaration is made

Before the  
Board of  
Assessment

No form of Declaration required by Statute.  
No formal document or document in particular form.

No. 2

Encyclopedia of Compulsory Purchase and  
Acquisition by Gore Brown

Notes of the  
Chairman,  
E.H.A. Bishop.  
3rd and 4th  
May, 1966.  
(Contd.)

10 Note to section 18 of Land Clauses Consolidation  
Act 1845

Paragraph 2030 for page 2016

Note 2032 page 2018

Form of notice to treat - no special form.

Notice here - no special form

no special declaration.

Declaration in section 3(1) - declaration means  
a statement.

20 Refers to document itself; Heading is important  
Statute depends on what is enacted. Construing  
Statute or deed.

No analogy in case here. Declaration is statement  
of fact.

Effect of section 3(1) in paragraph 1 - state-  
of the effect of subsection 1.

Paragraph 2 - positive statement of fact. Even  
if personal opinion of Administrator were re-  
quired to be stated, this does it.

30 Not required to state personal opinion.  
Paragraph 3 - complies with subparagraph (d) of  
subsection 2.

Schedule is in compliance with paragraphs of  
subsection 2.

(A) and (b) complied with in schedule.

The declaration is the whole of the document.

Before the Board of Assessment

No. 2

Notes of the Chairman, E.H.A. Bishop. 3rd and 4th May, 1966. (Contd.)

Section 7 of Chapter 109 sets out particulars which notice of acquisition is to contain.

No principal or operative part of declaration. The declaration must be read as a whole. It is the statute which vests the land not the declaration. As such the declaration does not vest anything in anybody.

Vesting takes place by force of subsection 2 of section 3.

10

Cannot equate present situation with case of statute.

The declaration is merely a step in the procedure. The declaration as set out sets out all that is required to be set out.

No formal and informal parts of declaration.

Mr. Floissac replies.

Declaration is not merely declaration of conclusion or opinion, but the personal opinion of the Administrator.

20

Section 3(2) of Chapter 109.

Word "the" before declaration. Equivalent to section 7(2)

Agree that the declaration of the conclusion of the Administrator need not take any special form.

Notice to treat must be capable of being construed as a notice to treat.

Declaration must be capable of being construed as a declaration of the conclusion of the Administrator.

30

Cites Corporation of Parkdale v. West 1887 12 A.C. at page 612 Declaration is a first step in proceedings and here this was a bad step or not a step properly taken.

1.00 p.m.

Adjourned to tomorrow at 9.30 a.m. for ruling on submission.

(Sgd) Eric H.A. Bishop  
3rd May 1966.

40

Wednesday 4th May, 1966

9.30 a.m. Resumed.

Written Decision of Board read by Chairman.

Mr. Floissac: Reserves right to raise question on appeal; refers to the documents forwarded to Chairman.

10 Mr. Brown gives assurance to provide copies of documents to Board and counsel for owner.

Mr. Floissac cites Browne & Others v. Commissioner of Railways 1890 15A C. page 240, page 249.

Article 287 of Code of Civil Procedure

Article 309 of Code of Civil Procedure.

(II) provisional compensation.

Cites section 13(2)(d) of Land Acquisition Ordinance, Chapter 109.

Mr. Browne replies.

20 Cites final paragraph of authorised Officer's report dated 14th April 1966.

11.50 a.m. adjourned sine die.

(Init'd) E.H.A.B.

Before the  
Board of  
Assessment

No. 2

Notes of the  
Chairman,  
E.H.A. Bishop.  
3rd and 4th  
May, 1966.  
(Contd.)

10.

No. 3

NOTES OF THE ASSESSOR, E.R.L. WARD

Before the  
Board of  
Assessment

ACQUISITION OF VENTINE ESTATE

No. 3

Board of Assessment,

Notes of the  
Assessor,  
E.R.L. Ward.  
Undated and  
4th May, 1966.

Ventine Estate

10

Chairman: Puisne Judge, Mr. E.A. Bishop

Assessor, Mr. E.R.L. Ward

Appearances: Mr. V. Floissac for the Owner

Mr. Tagmool Hosein ) for the  
Mr. Brown with him ) Crown

Mr. Bishop explains appointment and composition of the Board, Mr. Williams, the owner, having declined to nominate a member of the Board.

Mr. Floissac: Objection in limine

20

Appointment of Board void because of failure to comply with the provisions of the Land Acquisition Ordinance Section 3.

Board therefore has no jurisdiction to assess the value of the land in question.

Jurisdiction of Board to determine question of jurisdiction.

Christopher Brown Ltd. v. Genossenschaft (1954) 1.Q.B. 80

Mr. Hosein: Halsbury 3rd Edition, p.59

30

Mr. Floissac: Land Acquisition Ordinance Chapter 109, Section 3

Two requirements: (1) Conclusion by Administrator in Council that any land should be acquired for a public purpose. (2) Declaration to that effect by publication in the Gazette in accordance with Subsection (2) Sub-paragraphs (a) to (d).

Before the Board of Assessment

No. 3

Notes of the Assessor, E.R.L. Ward. Undated and 4th May, 1966. (Contd.)

Lamplough v. Norton 22 Q.B. 452, Lord Justice Bowen at page 459

Bourne v. Keane (1919) Appeal Cases 815. Birkenhead L.C. at page 841.

Preamble cannot be interpreted as a declaration.

Commissioners of Inland Revenue v. Raphael and others 1955 Appeal Cases 96 at page 148.

Non-compliance with Section 3 - Effect of.

Civil Code Article 1497

No jurisdiction as acquisition not properly completed

Bygrave v. Metropolitan Board of Works (1886) 55 L.J. Chancery 602

Bowen L.J. at page 604 Fry L.J. at page 604

Summary of Argument attached.

2. Submits that even if declaration is held to be in proper form the acquisition is still void for non-compliance with Section 6(1)

Negotiation before second publication.

Mr. Hosein objects that there should be evidence on this submission.

Mr. Floissac agrees to postpone this submission .

Adjourned at 11-15 a.m.

Resumed at 11.30 a.m.

Mr. Hosein: Section 3.

Governor-in-Council concludes that land shall be acquired for a public purpose.

Cause a declaration to that effect - the declaration should state the effect of the judgment arrived at and shall be made in the manner provided by the section.

10

20

30



Declaration is conclusive evidence of the fact that the land is required for a public purpose. Manner provided refers only to subsection (2). Compliance with requirements of Subsection (3) is compliance with subsection (1).

Before the Board of Assessment

No. 3

No form of declaration prescribed.

Notes of the Assessor, E.R.L. Ward. Undated and 4th May, 1966. (Contd.)

Document in a particular form not required except in accordance with provisions of subsection (2).

10

Encyclopedia of Compulsory Purchase (by Gore Brown) Note in section 18 of Land Clauses Consolidation Act 1845

p. 2030 at paragraph 2016. page 2032 at paragraph 2018.

Declaration merely a statement of the decision of the Governor-in-Council.

20

Document is headed Declaration of Acquisition of Land - 1st sentence recites sub-section (1) of Section 3. 2nd sentence Statement of decision of Administrator-in-Council. Positive statement of fact.

Part of the Declaration.

3rd sentence: Reference in Declaration imports into the declaratory sentence the public purpose for which the land is to be acquired.

Mr. Ward refers to Section 7(2)(a) and (b).

30

No dichotomy between formal and informal parts of a Declaration under Land Acquisition Ordinances. Land vested in Crown by Statute Declaration does not vest the land. Subsection (3) of section 3 provides that land is vested on publication of two notices in the Gazette.

Declaration merely a step in the procedure for acquisition.

Mr. Floissac: In reply meaning of words to that effect - not the conclusion that the land should be acquired.

40

Declaration need not be in a particular form, but it must clearly be a declaration and capable of

Before the  
Board of  
Assessment

being construed as such and not part of a preamble  
to which purports to be a Declaration under the  
Ordinance.

No. 3

Corporation of Parkdale v. West (1887) 12 A.C.  
p.612

Notes of the  
Assessor,  
E.R.L. Ward.  
Undated and  
4th May, 1966.  
(Contd.)

Adjourned at 1.00 p.m.

Wednesday May 4th 1966

Appearances: Mr. Floissac for Mr. Williams

Mr. Brown for the Crown

10

Decision made by Chairman.

Adjourned Sine die; date to be fixed by Chairman  
by giving 14 days notice

Mr. Floissac reserves the right to raise question  
of the jurisdiction of the Board of Assessment.  
Asks for copies of document and for Order for  
provision for expert witness.

Brown and Others v. Commissioners of Rail-  
ways (1890) A 15 A.C. 240.

20

Asks for provisional compensation Section  
13(2) of Land Acquisition Ordinance (2)(d)

Mr. Browne: \$40,000 has been paid to the owner  
in December 1965.

Adjourned at 10.50 a.m.

No. 4  
DECISION

Before the  
Board of  
Assessment

No. 4

DECISION BY BOARD OF ASSESSMENT  
(VENTINE ESTATE) ON PRELIMINARY  
OBJECTION OF COUNSEL FOR THE OWNER

Decision.  
4th May, 1966.

10 We wish to express our gratitude to counsel  
for the manner in which they urged their submissions  
and for the assistance which they rendered us on  
this point.

After due consideration of these submissions,  
it is clear that the burden of the arguments rests  
almost entirely on an interpretation of the provi-  
sions as contained in section three of the Land  
Acquisition Ordinance, Chapter 109 of the Laws of  
Saint Lucia.

20 The relevant parts of the section are to be  
found in the first three subsections which read as  
follows:

"3 (1) If the Governor in Council considers that  
any land should be acquired for a public purpose he  
may cause a declaration to that effect to be made  
in the manner provided by this section and the  
declaration shall be conclusive evidence that the  
land to which it relates is required for a public  
purpose.

30 (2) Every declaration shall be published in two  
ordinary issues of the Gazette and .....  
..... and in the declaration shall be specified  
the following particulars in relation to the land  
which is to be acquired:-

- (a) the parish or district in which the land is  
situate;
- (b) a description of the land, giving the  
approximate area and such other particulars  
as are necessary to identify the land;
- 40 (c) in cases where a plan has been prepared,  
the place where and the time when a plan of  
the land can be inspected;

Before the  
Board of  
Assessment

No. 4

Decision.  
4th May, 1966.  
(Contd.)

(d) the public purpose for which the land is required.

(3) Upon the second publication of the declaration in the Gazette as aforesaid, the land shall vest absolutely in the Crown."

On an analysis of these provisions we are satisfied that there must be a declaration, that such declaration must be published in two ordinary issues of the Gazette, and that those particulars which are enumerated in subsection two must be contained in the declaration.

10

This declaration when made in accordance with the provisions of the section becomes conclusive evidence that the land to which it relates is acquired for a public purpose. On the 2nd publication of this declaration in the Gazette the land to which it referred is vested absolutely in the Crown.

20

For the purposes of this objection, it is our view that if these requirements are met, then the legislative provisions have been fulfilled. There is no necessity for the declaration to assume any particular form. Every declaration of this nature must contain the particulars listed - whether chronologically or not and whether contained in one particular part of the declaration or not; and provided these particulars are stated then the effect referred to in subsection one will have been achieved.

30

In the absence of any provision to the contrary, the word "declaration" must be given its ordinary meaning and we are satisfied that in this case, the word declaration must be construed to mean a statement, or an announcement which makes known publicly certain facts.

The document to which our attention has been drawn by counsel is described therein and headed: "Declaration of Acquisition of Land;" and, indeed - when read in its entirety - it states or announces unequivocally all those particulars in - relation to the land which is to be acquired - that are required by the four paragraphs of subsection two notwithstanding that they do not all occur in a particular part or position of such document.

40

We are satisfied on looking into this matter in all its aspects that we may proceed with the holding of this inquiry so as to assess, award, and apportion compensation under the Land Acquisition Ordinance of this territory and to this end we invite the owner and the Crown to lead relevant evidence.

(Sgd) E.R.L. Ward

(Sgd) Eric H.A. Bishop  
Chairman  
4th May, 1966

Before the  
Board of  
Assessment

No. 4

Decision.  
4th May, 1966.  
(Contd.)

18.

No. 5  
AWARD

Before the  
Board of  
Assessment

SAINT LUCIA

No. 5

IN THE MATTER OF THE VENTINE ESTATE

Award.  
Undated.

AND

IN THE MATTER OF THE LAND ACQUISITION ORDINANCE

CHAPTER 109

10 B E T W E E N :-

BOSWELL WILLIAMS

Claimant

AND

THE GOVERNMENT OF THE ISLAND  
OF ST. LUCIA

Respondent

The Ventine Estate comprises sixty three acres, two roods, twenty-three perches more or less, and is situate in the Quarter of Soufriere in this Island. It formed part of the Estate of Sir Lennox A.O. O'Reilly, Q.C. deceased.

20 After negotiations extending from 20th May, 1963 until 23rd December, 1963, Boswell Williams, the Claimant, acquired the Ventine Estate from three beneficiaries named in the Will of Sir Lennox A.P. O'Reilly Q.C. - dated 25th May, 1945 with a codicil dated 6th July, 1948 - as residuary legatees as to one third share each of his residuary estate, for the total purchase price of twenty seven thousand two hundred and five dollars.

30 The Ventine Estate was vested in the claimant by a deed dated 23rd December, 1963 and recorded on the 27th December, 1963.

This claim arises out of the compulsory acquisition on the 28th December, 1963 by the Government of the Island of St. Lucia, of the Ventine Estate.

In accordance with the provisions of section three of the Land Acquisition Ordinance, Chapter 109

Before the  
Board of  
Assessment

No. 5

Award.  
Undated.  
(Contd.)

of the St. Lucia Revised Ordinance 1957, notices were published in the St. Lucia Gazette of 21st and 28th days of December, 1963; these notices stated that the public purpose for which the land was being acquired was "the development of tourism."

The claimant in a letter dated 4th January, 1964 and addressed to His Honour the Administrator protested "most vigorously" at the action of the Government of St. Lucia in compulsorily acquiring the Ventine Estate. He set out the reasons for his protest and the details of his plans for landscaping the area and establishing a spa and an industrial estate. In paragraph 7 of this letter, the claimant requested that the Orders in the St. Lucia Gazette published on 21st December and 28th December, 1963 "be cancelled voluntarily by Government."

10

Acrimonious correspondence followed between the parties in the matter.

On the 13th February, 1964, in a letter which referred to the claimant's letter of the 4th January, 1964, the Administrator drew to the attention of the claimant the contents of previous correspondence of the 22nd May, 1963, 1st June, 1963 and 26th July, 1963, in which the claimant who was then Development Secretary of St. Lucia (a contract officer) sought permission to purchase the Ventine Estate, and which permission was refused. The claimant terminated his contract with the Government of St. Lucia, and in a letter dated 26th February, 1964 pointed out to His Honour the Administrator that when the transfer of the Ventine Estate was concluded he was a "citizen/landowner" and as such, not subject to General Orders Numbers 143 and 144.

20

30

In a letter dated 20th March, 1964 to Mr. G. St. A. Guard, the authorised officer in this matter, the claimant acknowledged receipt of the former's letter of the 17th February, 1964 and set out the particulars of his claim to an amount of nine million one hundred and sixty-two thousand, five hundred and sixty dollars as compensation following the compulsory acquisition of the Ventine Estate by the Government of Saint Lucia.

40

The next letter in the documents that were put in evidence is dated 20th January, 1965.



In this letter the Acting Attorney General indicated that it was a reply to a letter from the claimant to His Honour the Administrator and dated 10th January, 1965. The Acting Attorney General also stated that consequent upon instructions, he was making alternative offers - payment of the sum of Forty thousand dollars in full settlement of the claim for compensation and costs, or the reconveyance of the Ventine Estate to the claimant.

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10 In a letter of reply dated 22nd January, 1965 the claimant rejected the offer of forty thousand dollars and he intimated a willingness to accept the reconveyance of the Estate to him on condition that for loss of use of the property, Government pay him the sum of five thousand dollars and grant to him two portions of Crown land, situate to the North of Choc cemetery, Castries, and to the West of Anse Raphael Ray, Vieux Fort.

20 The Acting Attorney General in a letter dated 9th February, 1965 made a final offer - either the sum of forty thousand dollars in full settlement of the claim for compensation and costs, or to re-vest the Ventine Estate in the claimant and pay him the sum of five thousand dollars in full settlement of any claim for damages and costs arising out of the deprivation of the use of the Estate during the time it was vested in the Government of St. Lucia.

The claimant rejected offers by a letter of the same date - 9th February, 1965.

30 In a letter dated 6th March, 1965 - Mr. G. St. A. Guard, the Authorised Officer replied to the claimant's letter dated 20th March, 1964. He rejected the claim for nine million one hundred and sixty-two thousand, five hundred and sixty dollars and he repeated the offers made in the letter of the 9th February, 1965 from the Acting Attorney General.

40 On 31st July, 1965 the claimant received the sum of forty thousand dollars as an interim payment for compensation.

Correspondence continued in the latter part of the year 1965 and in the month of January 1966, culminating with the appointment by the Administrator of a Board of Assessment on the 19th

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February, 1966. The claimant indicated earlier that he wished to waive his right to nominate a member to the Board of Assessment, and by virtue of the provisions contained in Section 12 of the Land Acquisition Ordinance, Chapter 109, the Administrator directed the Chairman by letter dated 7th April, 1966 to proceed with the inquiry.

We have set out these details of the protracted correspondence because they indicate clearly the course of the negotiations between the claimant and the Government of St. Lucia and the attitudes of the parties.

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By agreement between counsel for the parties certain books, letters, pamphlets and Reports were put in, not as evidence, but in order to apprise the Board of the views of lay observers, and of scientific specialists on the geophysical and geothermal nature of the area, the indications of geothermal heat in commercial quantities, the span of activity, the necessary preliminary investigations, and the economic feasibility of using the geothermal heat for generating electrical and/or other forms of power. Two Reports put in were prepared by Mr. Gunnar Bodvarsson, Chief Engineer of the Geothermal Department, State Electricity Authority, Reykjavik, Iceland (dated 29th September, 1951) and by Dr. Fritz Durr of the Geothermal Department of Harry Wassal and Associates, Consulting Engineers.

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In his evidence before the Board, the claimant explained the grounds on which he relied in his claim for compensation. He based his claim almost entirely on the tentative estimates made by Mr. Bodvarsson, of the supply of thermal heat emanating from fissures in the fumarole area of three to four acres, and the probable span of this thermal activity. The evidential value of these estimates was significantly reduced by the repeated warnings that his conclusions were based solely on presumptive evidence which must be tested by preliminary surveys in order to ascertain the sub-surface geological conditions that existed in the area. Again, another condition necessary before assuming the correctness of the estimates was that exploratory drilling should be carried out to determine whether the steam flow would be constant, or would be increased or diminished by the inflow of high temperature water from underground sources.

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Dr. Durr was equally reluctant to assume the presence of geothermal steam in commercial quantities, from visual conditions and without the preliminary surveys to ascertain the geological structure of the fumerole area and the influence of ground water on the geothermal phenomena. Further, he recommended exploratory drilling so as to decide whether production drilling should be undertaken.

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10 Both Mr. Bodvarsson and Dr. Durr in their reports, agree that the preparatory and exploratory operations would take a period of time in the vicinity of not less than about two years.

20 There was a third expert opinion. It was that of Mr. Frank A. Perret, a volcanologist and was dated 8th April, 1940. He checked the depth and the temperature of the water in the pools and he found that they averaged only three feet in depth, and that the water was below boiling point. He also concluded that the jets of steam emanating from the holes were due to pressure in the subsurface fissures or supply pipes. Mr. Perret shares the views of the lay observers Lefort de Latour (dated 1787) Breen (dated 1844) and Reverend Father Jesse (dated 1953) on the medicinal and curative properties of the warm mineral waters. He stated that iron was a most abundant element and the baths should be highly tonic.

30 Criticism of the claim has been directed to five aspects, namely, (1) failure to take into consideration the capital costs of (a) exploratory investigation, (b) erecting machinery for converting the steam into motive power, (c) operating the plant, (d) providing for depreciation and interest;

(2) the failure to provide any estimates for developing the area as a tourist resort.

40 (3) the failure to estimate the cost of creating a market for the products of the industrial enterprises envisaged by the claimant as part of the potential return from the development of the area.

(4) the failure to produce evidence of the presence of commercial minerals in quantities

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which would justify a prospective purchaser in undertaking their recovery.

(5) exaggerated claims in respect of the potentialities of the Estate.

Two expert witnesses were called to give evidence on behalf of the Government of Saint Lucia.

Mr. George Roddam, a Fellow of the Institute of Electrical Engineers of Great Britain, has had experience of a wide range of electrical, mechanical and hydraulic engineering undertakings. His qualifications and total experience were set out in a document produced as an exhibit. He gave evidence to the effect that in view of the present cost of fuel oil and of the limited market for electrical power in St. Lucia it would be uneconomic to utilise the natural steam heat present at the fumaroles for the generation of electricity. The price of fuel oil was forty-eight cents per gallon in 1951 when Mr. Bodvarsson wrote his report. This price fell to twenty-four cents per gallon by December 1962 and the market value further decreased to the present price of fifteen and one half cents per gallon. Mr. Roddam stated as his opinion that it would be uneconomic to use the steam at the Ventine Estate for generating electricity for transmission by submarine cables to neighbouring West Indian Islands. He also discussed as economically inadvisable the use of steam for other forms of motive power. He also pointed out that Mr. Bodvarsson's assessment of the heat potential in the area would first have to be fully investigated by a geological survey and exploratory drilling.

Mr. Jack Abnett, an Associate of the Chartered Auctioneers and Estate Agents Institute and Associate of the Royal Institute of Chartered Surveyors, has had over thirty years experience in the valuation of real property of all kinds. He supported the views of Mr. Roddam. In valuing the Ventine Estate he used two methods of valuation. He valued the agricultural land by comparing the prices paid for similar land in St. Lucia during the relevant period, and by adjusting these market values in accordance with the

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condition, locality, state of cultivation and accessibilities of the properties. With respect to tourist potential Mr. Abnett accepted the view that the fumaroles were a unique natural phenomenon which would attract visitors, and therefore a prospective purchaser would consider a small tourist development as a possible source of profit to be considered when making an offer for the property in the open market. He then used the Receipt Basis of valuation for assessing the value of the area comprised in the fumaroles and mineral springs; and he arrived at a valuation of twenty thousand dollars. Using the comparative method of valuing the agricultural land, he arrived at a total value of twelve thousand two hundred and fifty five dollars. He divided the total area into two: 23.5 acres suitable for agriculture and valued at three hundred and fifty dollars per acre and 40.3 acres of hill land which he considered to be marginal and which he valued at one hundred dollars per acre.

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Two other valuations of the Ventine Estate were submitted. Mr. Mullings, then Acting Assistant Agricultural Superintendent, valued the land in the year 1964. In his valuation, he divided the area into forty acres of cultivated agricultural land which he valued at six hundred dollars an acre and the remainder of twenty three acres, two roods twenty perches of very steep partly useless land which he valued at four hundred dollars an acre taking into consideration its revenue producing potential for sightseeing.

Mr. Guard the authorised officer made a valuation by taking the purchase price paid by the plaintiff and then adding to that amount of six thousand dollars as compensation for the tourist potential of the mineral hot water. He added a rider to the effect that compensation to the claimant should include a royalty for thermal energy, to be determined by experts if and when the source of energy is developed.

With respect to the medicinal value attributed to the mineral springs, Dr. Frederick J. Clarke, a former Chief Medical Officer of this Island, gave his opinion that their value for the treatment of arthritic conditions was minimal and indeed could be attributed solely to the heat.

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Indeed, he said "You could get the same thing by having a hot bath at home." He also gave evidence of the presence of schistosomiasis, more commonly known as Bilharzia in the Springs and the vicinity of the Ventine Estate. He expressed the view that the presence of schistosomiasis would adversely affect tourist development in the area.

Mr. Guard and Mr. Abnett both expressed the opinion that the steep lands bordering the fumarole area were totally unsuited for building residences or for the establishment of an industrial estate. It was their view also that the only building land consisted of approximately two acres contiguous to the mineral springs. Mr. Abnett pointed out that the cost of developing the area as a building estate would be prohibitive, and the continual sulphur smell would be a discouragement to persons either building or living in that vicinity. Further, he stated that the bottling of the mineral water would entail large capital investment and without the guarantee of a market for this product, a prospective buyer would not take it into consideration in arriving at an open market price for the Ventine Estate.

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In reply to the Board Mr. Abnett agreed that he saw the agricultural land for the first time in 1966. He also admitted that he did not consult Mr. Mullings and so he could not say whether the condition of the land when he saw it had deteriorated since 1963.

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In our examination of the claim we have followed the principles of valuation laid down in Section nineteen of the Land Acquisition Ordinance. The relevant parts of the section state:

"(a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller might have been expected to have realised at a date twelve months prior to the date of the second publication in the Gazette of the declaration under Section 3 of this Ordinance:

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(b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the

land could be applied only in pursuance of statutory powers not already granted, or for which there is no market apart from the special needs of a particular purchaser, or the requirements of any Government Department:

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(c) no allowance shall be made on account of -

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- 10 (1) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;
- (v) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put."

20 There is a large corpus of judicial decisions as to the meaning and intent of the words used in this section and we have used as a guide the interpretation given by the Court of Appeal in the case Inland Revenue v. Clay and Buchanan (1914) 3 K.B. 466. The owner is presumed to be selling of his own free will, but a willing seller will also be presumed to take all reasonable measures to ensure that the property is offered for sale under the most favourable conditions. A willing seller does not mean a person who will sell without reserve for any price which he can obtain, "In the open market" implies that the land is offered under conditions enabling every person desirous of purchasing to come in and make an offer. Such persons are deemed to be fully informed of all the ascertainable facts about the property and its potentialities. Such a prospective buyer would be influenced by the state of the market, the amount of competition and the period which must elapse before the full benefits of his investment can be realised.

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40 Development of Ventine Estate as envisaged by the claimant would necessitate a large capital investment. It included the utilisation of geo-thermal heat for the generation of electrical and other forms of motive power, the provision of suitable facilities for the attraction of day-trippers and temporary residents, the establishment of a commercial undertaking for bottling and marketing mineral and carbonated waters on the area, and the recovery of and selling of any minerals. It

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is the claim of Mr. Williams that the exploitation of all the potentialities would be so economically advantageous that a prospective purchaser would be prepared to pay nine million one hundred and sixty-two thousand, five hundred and sixty dollars to obtain it.

It is our view that while a prospective buyer might be willing, relying on the presumptive evidence of the amount of geothermal heat available and the history of the long existence of this natural phenomenon, to accept the risk of purchasing without complete knowledge of the subsurface geological conditions, he would be deterred from undertaking the heavy capital investment projected in the reports of Bodvarsson and Durr because of the limited market for electricity and other forms of motive power in St. Lucia both now, and in the foreseeable future. A further deterrent would be the fact that in 1962 it had become more economical to use fuel oil for the generation of electricity. We do not therefore accept the claim for five million one hundred and thirty three thousand, three hundred and sixty dollars in respect of the fumaroles as a source of motive energy.

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For similar reasons we reject the claim for three million six hundred and seventy-nine thousand and two hundred dollars in respect of the mineral springs. No evidence was given to show the existence of a present market for these products, or of the possibility of developing such a market in the foreseeable future; and no projection of the cost of processing the marketing the products has been submitted for our consideration. It is our opinion that no prospective purchaser would regard this as a potentially remunerative development of the property.

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The third item of the claim was for two hundred and fifty thousand dollars which the claimant alleged to be the value of twenty-five acres of land ripe for building development. He compared this price with the amount paid by the St. Lucia Government for land at Sans Souci, namely, about fifteen thousand dollars an acre. There are two objections to this claim. Firstly, except for about two acres the land is unsuitable for development as a building estate; secondly, in valuing land suitable for building purposes, the residual

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method of valuation is appropriate since it takes into account the cost of preparing the site and bringing essential services, roads, water, light, drainage, etc. to it. The claimant has made no attempt to do this. We prefer the method of valuation chosen by Mr. Abnett for assessing the value of its potential for tourism.

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(Contd.)

10 Finally there was the claim under the Head Miscellaneous, for Mineral and other deposits, for one hundred thousand dollars. No evidence was given as to the quantities of the various minerals. The only information was to be found in the Reverend Father Jesse's booklet in which it was stated that early in the nineteenth century sulphur was extracted in marketable quantities, the exports total exceeding five hundred tons in one year. There was also visual evidence of the presence of kaolin or china clay. The Government valuers have attached no significance to the mineral deposits and have  
20 given no value.

We accept the valuation of Mr. Mullings who saw the cultivated land in 1964 shortly after its compulsory acquisition, and who must be regarded as and indeed is familiar with the value of agricultural land in St. Lucia. We therefore award the sum of twenty four thousand dollars in respect of the forty acres of agricultural land. We further accept the valuation of Mr. Abnett with respect to the tourist potential of the mineral springs, and  
30 the two acres adjoining them, and we award twenty thousand dollars under this head. With regard to the rest of the land, there was an admission of Mr. Guard that two acres might be used as building land; we also take into account the claimants plan for the beautification of the hillside land with ornamental and flowering plants and other attractions, and we consider that a realistic valuation of the whole area of land, the possession of which is essential for the control of the tourist develop-  
40 ment site would be three hundred dollars per acre.

We are of opinion that the presence of mineral deposits would also be taken into consideration by a prospective buyer, especially in view of the evidence of the former recovery of sulphur and its present market value. We award five thousand dollars under this head of the claim.

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Finally, in the valuation some weight must be given to the unique character of the fumaroles which will continue to be, as far as human foresight can predict, a wonderfully attractive natural phenomenon for generations. In our opinion a prospective purchaser in the open market would add five thousand dollars to his offer to secure it.

We accordingly assess the value of Ventine Estate as follows:-

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40 acres of agricultural land	\$24,000.00
tourist potential of mineral springs etc.	\$20,000.00
23½ acres of non agricultural land	\$ 7,050.00
value of minerals	\$ 5,000.00
unique character of fumaroles	\$ 5,000.00

We recommend that the claimant be awarded the sum of sixty one thousand and fifty dollars in full satisfaction of his claim against the Government of St. Lucia for compensation in respect of the compulsory acquisition. The claimant already received an interim payment of forty thousand dollars and therefore the balance payable will be twenty-one thousand and fifty dollars.

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In view of the failure by the claimant to produce any evidence to support his claim of the presence of commercial minerals in quantities which would justify a prospective purchaser in undertaking their recovery and because of the largely unsupported and exaggerated claims which were made with regard to the potentialities of the Estate, we feel that the claimant should be awarded two-thirds of his costs to be taxed.

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(Sgd) Eric H.A. Bishop

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JUDGMENT - AWARD

Before the  
Board of  
Assessment

No. 6

SAINT LUCIA:

IN THE MATTER OF THE VENTINE ESTATE

AND

IN THE MATTER OF THE LAND ACQUISITION ORDINANCE  
CHAPTER 109

Judgment -  
Award.  
21st March,  
1967.

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B E T W E E N :-

BOSWELL WILLIAMS

Claimant

AND

THE GOVERNMENT OF THE ISLAND OF  
ST. LUCIA

Respondent

BEFORE: THE BOARD OF ASSESSMENT

(1) The Honourable Mr. Justice Eric  
H.A. Bishop (Chairman)

(2) Mr. Erskine R.L. Ward.

20 Mr. V.F. Floissac for the Claimant

Mr. T. Hosein Q.C., and the Honourable Attorney  
General of St. Lucia for the Respondent.

DATED: 21st March 1967 and entered on the 21st  
March 1967.

JUDGMENT - AWARD

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THIS MATTER coming on for hearing before this  
Board on the 3rd and 4th days of May 1966 and the 17th  
to the 21st days inclusive of January 1967 in the  
presence of Counsel for the Claimant and for the  
Respondent and UPON READING the reference and UPON  
HEARING the evidence and what was alleged by Counsel  
for the Claimant and Counsel for the Respondent.

THIS BOARD DID ORDER that this matter should  
stand for decision.

Before the  
Board of  
Assessment

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Judgment -  
Award.  
21st March,  
1967.  
(Contd.)

AND THIS MATTER standing for decision in the presence of the parties and of Counsel for the Claimant and Counsel for the Respondent on the 21st day of March 1967.

THIS BOARD DOTH MAKE THE FOLLOWING AWARD:-

(1) That the Claimant be awarded the sum of sixty-one thousand and fifty dollars (\$61,050.00) in full satisfaction of his claim against the Respondent for compensation in respect of the compulsory acquisition of the Ventine Estate the value whereof is assessed as follows:-

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(a) 40 acres of agricultural land	\$24,000.00
(b) tourist potential of mineral springs etc.	\$20,000.00
(c) 23½ acres of non agricultural land	\$ 7,050.00
(d) value of minerals	\$ 5,000.00
(e) unique character of fumeroles	\$ 5,000.00
	<u>\$61,050.00</u>

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(2) That the Claimant having already received an interim payment of forty thousand dollars (\$40,000.00), the balance payable to the Claimant under (1) above be twenty-one thousand and fifty dollars (\$21,050.00).

(3) That the Claimant be awarded two-thirds of his costs to be taxed.

BY ORDER OF THE BOARD OF ASSESSMENT

30

(Sgd) Eric H.A Bishop

CHAIRMAN

No. 7  
NOTICE OF APPEAL

In the British  
Caribbean  
Court of  
Appeal

IN THE BRITISH CARIBBEAN COURT OF APPEAL

No. 7

APPELLATE JURISDICTION

Notice of  
Appeal.  
15th April,  
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NOTICE OF APPEAL

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SAINT LUCIA

Civil Appeal No. of 1967

IN THE MATTER OF THE VENTINE ESTATE

AND

IN THE MATTER OF THE LAND ACQUISITION  
ORDINANCE CHAPTER 109

B E T W E E N :-

BOSWELL WILLIAMS Claimant-Appellant

and

THE GOVERNMENT OF THE ISLAND  
OF ST. LUCIA

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Respondent

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TAKE NOTICE that the Claimant-Appellant being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the Board of Assessment in the above matter contained in the Judgment - Award of the said Board of Assessment dated the twenty-first day of March 1967 doth hereby appeal to the British Caribbean Court of Appeal upon the ground set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND THE APPELLANT further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The decision hereby complained of is as follows:-

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Caribbean  
Court of  
Appeal

No. 7

Notice of  
Appeal.  
15th April,  
1967.  
(Contd.)

(1) That the Claimant be awarded the sum of sixty-one thousand and fifty dollars (\$61,050.00) in full satisfaction of his claim against the Respondent for compensation in respect of the compulsory acquisition of the Ventine Estate the value whereof is assessed as follows:-

(a)	40 acres of agricultural land	\$24,000.00	
(b)	tourist potential of mineral springs etc.	\$20,000.00	10
(c)	23½ acres of non agricultural land	\$ 7,050.00	
(d)	value of minerals	\$ 5,000.00	
(e)	unique character of fumeroles	\$ 5,000.00	
	Total	<u>\$61,050.00</u>	

(2) That the Claimant having already received an interim payment of forty thousand dollars (\$40,000.00), the balance payable to the Claimant under (1) above be twenty-one thousand and fifty dollars (\$21,050.00).

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(3) That the Claimant be awarded two-thirds of his costs to be taxed.

3. The ground of appeal is that the said Board of Assessment had no authority or jurisdiction to make the said decision which is null and void in that:-

(i) the Declaration upon which the purported compulsory acquisition of the land in question is based is not a Declaration made in the manner provided by the Land Acquisition Ordinance of St. Lucia and is therefore null and void;

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(ii) the said purported compulsory acquisition being based on a void Declaration is itself null and void;

(iii) the entire proceedings of the said Board being based on a void acquisition are themselves a nullity.

4. The Appellant seeks to have the said Judgment - Award set aside.

In the British  
Caribbean  
Court of  
Appeal

5. Persons directly affected by the appeal are as follows:-

No. 7

	<u>NAMES</u>	<u>ADDRESSES</u>
10	BOSWELL WILLIAMS	La Clery, Castries, St. Lucia.
	THE GOVERNMENT OF THE ISLAND OF ST. LUCIA	St. Lucia.

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Appeal.  
15th April,  
1967.  
(Contd.)

Dated this 15th day of April, 1967.

FLOISSAC & GIRAUDY

per: V.F. Floissac

Solicitors for THE APPELLANT.





No. 8

JUDGMENT OF THE CHIEF JUSTICE

IN THE WEST INDIES ASSOCIATED STATES  
SUPREME COURT

IN THE COURT OF APPEAL

(SAINT LUCIA)

CIVIL APPEAL No. 2 of 1967

B E T W E E N :-

BOSWELL WILLIAMS Claimant/Appellant

and

THE GOVERNMENT OF SAINT LUCIA Respondent

BEFORE :-

The Honourable the Chief Justice  
The Honourable Mr. Justice Gordon  
The Honourable Mr. Justice Cecil Lewis

V.F. Floissac for the appellant.  
J.D.B. Renwick (Attorney General),  
S.A. Browne (Legal Assistant) with him,  
for the respondent.

October 3, 4, 5, 1967.

November 18, 1967.

The Chief Justice:

I have had the opportunity of reading in advance the judgments which are about to be delivered by my brothers Gordon and Cecil Lewis. I agree with the conclusion they have reached and shall content myself with stating my reasons as concisely as possible.

Two main arguments were advanced by learned counsel for the appellant. The first was that the Declaration of Acquisition published in the Gazette was a statutory instrument having the force of law and to be construed according to well established

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ciated States  
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18th November,  
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In the West  
Indies  
Associated  
States Court  
of Appeal

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principles of construction of statutes; and that although the Declaration recited the decision of the Administrator in Council to acquire the Ventine Estate it was invalid and ineffective to vest the property in the Crown because the decision was not again referred to in the paragraph of the Declaration which is introduced by the words "Now Therefore, It Is Hereby Declared ....."

In my opinion this argument fails because its premise, that the Declaration is a legislative act, is erroneous. In my judgment, the Declaration is merely the method prescribed by the Ordinance for recording an administrative (or ministerial) decision reached by the Governor in Council, with a view to the publication of that decision in the Gazette and at other prescribed places for the information of the public. It has no legislative effect and of itself does not either enact or alter law. The vesting in the Crown of the land to which it relates upon its second publication in the Gazette is not the result of the content of the Declaration or of its publication, per se, but is rather the result of the impact of the provisions of sub-section (3) of section 3 of the Ordinance (Cap. 109) upon the fact of compliance with subsections (1) and (2) of that section. A statutory transfer of title is effected, not by any enacting force inherent in the Declaration but as a result of the Ordinance itself and compliance with its provisions.

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There is in my view nothing in the authorities cited to us inconsistent with the opinion I have formed as to the essential character of the Declaration. In neither of the cases, Mackay v. Attorney General for British Columbia (1922) 1 A.C. 457 and Musson v. Rodriguez (1953) A.C. 530, was it suggested that the record of the decision of the Governor which was held to be required as proof of that decision was considered to be a legislative act. Rather, it seems to me that these cases impliedly recognize that its true nature is that of an official administrative document. The publication of such a document, in compliance with a statutory requirement, whether in its original form or by incorporation in some other document in a different form, does not confer upon it or upon the latter document the character of a legislative act.

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Once this is appreciated it becomes clear that the form of the Declaration is immaterial, as long

as it sets forth the fact of the decision of the Administrator in Council and specifies the particulars prescribed by subsection (2)(a) to (d) of section 3 of the Ordinance. The recital that

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"it is considered by the Administrator in Council that the land mentioned and described in the Schedule hereto should be acquired for a public purpose, to wit, the development of tourism",

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is as declaratory and as conclusive as to the facts therein stated, though introduced by the words "And Whereas" as if they were instead introduced by the words "It is Hereby Declared". It is the substance of what is recorded in the Declaration, and not its form, which must be examined in order to ascertain whether it complies with the provisions of the section.

The validity of the Declaration was further challenged on the ground that it nowhere states that the Ventine Estate is "immediately required" for a specified public purpose. It was pointed out that the word "required" appears nowhere in the Declaration, and submitted that merely to state the decision that the land should be "acquired for a public purpose, to wit, the development of tourism" is insufficient: for "to acquire" and "to require" have different connotations. This submission was based upon section 3(2)(d) of the Ordinance, which says that the Declaration must specify

"(d) the public purpose for which the land is required."

The cases of The Zamora (1916) 2 A.C. 77 and Vanterpool v. Crown Attorney (1961) 3 W.I.R. 351 were cited in support of this submission. In my opinion neither of these cases is conclusive of this proposition. The Zamora decided that the Crown has no power by Order in Council to prescribe or alter the law which Prize Courts have to administer, and that since by international law the Court had to be satisfied that property of a neutral seized by and in the custody of a belligerent Power was urgently required by that Power for use in connection with defence or the security of the realm before it could sanction its requisition, a rule of Court which required the Court to deliver

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up the property to the belligerent Power merely on a statement of its desire to acquire it was invalid and not binding on the Court.

This case is not an authority for holding that a Declaration of Acquisition made under a statute which prescribes its essential particulars and does not call for the use of the words "urgently" or "immediately required" is invalid.

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In Vanterpool's case the question of the sufficiency of the content of the Declaration of Acquisition was not in issue. Cecil Lewis, J., sitting at first instance, expressed the opinion, obiter, that the Declaration should recite that the Governor in Council has considered that the land to be acquired is required for a public purpose. The actual decision however dealt with entirely different questions.

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The determination of this question depends upon the construction of s. 3(1) and s. 3(2)(d). The latter subsection states that the declaration must specify "the public purpose for which the land is required", not that the land is required for a public purpose. The wording is significant because s. 3(1) states that the Declaration that the Administrator in Council considers that any land should be acquired for a public purpose, when made in the manner provided by the section "shall be conclusive evidence that the land to which it relates is required for a public purpose".

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In my opinion, as long as the Declaration specifies the particular public purpose for which the Administrator in Council considers that the specified land should be acquired then the Declaration is conclusive as to two matters, viz: (1) that it is required for that purpose, and (2) that that purpose is a public purpose. Section 3(2)(d) must be read in conjunction with section 3(1) and means that it is not sufficient for the Declaration to state that the land is to be acquired for a public purpose but it must go on to specify the particular public purpose.

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For the foregoing reasons I am satisfied that the Declaration in this case was valid and effective. In my opinion this appeal fails and should be dismissed with costs.

I must add that the question whether the procedure adopted in this case for challenging the competence of the Board of Assessment to assess and award compensation was correct was not canvassed in this appeal, and appears to have been either waived or conceded before the Board. Accordingly I express no opinion on this question.

A.M. LEWIS  
CHIEF JUSTICE

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Indies  
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States Court  
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No. 9

JUDGMENT OF GORDON J.A.

IN THE WEST INDIES ASSOCIATED STATES  
SUPREME COURT

IN THE COURT OF APPEAL

(SAINT LUCIA)

CIVIL APPEAL No. 2 of 1967.

B E T W E E N :-

BOSWELL WILLIAMS Claimant/Appellant

and

THE GOVERNMENT OF SAINT LUCIA Respondent

BEFORE:-

The Honourable the Chief Justice  
The Honourable Mr. Justice Gordon  
The Honourable Mr. Justice P. Cecil Lewis

V.F. Floissac for the appellant  
J.D.B. Renwick (Attorney General),  
S.A. Browne (Legal Assistant) with him  
for the respondent.

October 3, 4, 5, 1967

November 18, 1967

Gordon, J.A.:

This is an appeal by the claimant/appellant against an award made by a Board of Assessment appointed by the Government of St. Lucia in respect of certain land situate in the Quarter of Soufriere in the Island of St. Lucia, and which had been compulsorily acquired under and by virtue of the Land Acquisition Ordinance (Cap. 109) of the Laws of St. Lucia (hereinafter referred to in this judgment as the Ordinance).

Being dissatisfied, the appellant has appealed to this Court against the award which is in the following terms:

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Associated  
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Gordon J.A.  
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"(1) That the claimant be awarded the sum of sixty-one thousand and fifty dollars (\$61,050.00) in full satisfaction of his claim against the respondent for compensation in respect of the compulsory acquisition of the Ventine Estate the value whereof is assessed as follows:-

(a) 40 acres of agricultural land	\$24,000.00	10
(b) tourist potential of mineral springs etc.	20,000.00	
(c) 23½ acres of non-agricultural land	7,050.00	
(d) value of minerals	5,000.00	
(e) unique character of fumeroles	5,000.00	
	<u>\$61,050.00</u>	

(2) That the claimant having already received an interim payment of forty thousand dollars (\$40,000.00) the balance payable to the claimant under (1) above, be twenty-one thousand and fifty dollars (\$21,050.00). 20

(3) That the claimant be awarded two-thirds of his costs, to be taxed."

The land in question which is known as the Ventine Estate, comprises approximately 63 acres two roods and twenty-two perches, and it was compulsorily acquired by the Government of St. Lucia on the 28th December, 1963, in consequence of a Declaration published in the St. Lucia Gazette on the 21st and 28th December, 1963, in accordance with provisions prescribed by section 3 of the Ordinance. 30

In arguing his single ground of appeal 'that the Board of Assessment had no authority or jurisdiction to make the award as to compensation', counsel for the appellant divided this ground into 9 sub-heads under which he challenged the validity of the declaration by which the Government purported to acquire the land. He contended that as a consequence of the Declaration being intrinsically bad, all action by Government pursuant on it, viz. the 40



appointment of the Board, the deliberations of the Board and their award, were all null and void.

For purposes of convenience it is as well to set out at this stage the relevant legislation to which reference has been made in the course of the arguments advanced before this Court. Sections 3 and 4 of the Ordinance read as follows:

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10 Acquisition of land. "3. (1) If the Governor in Council considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made in the manner provided by this section and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose.

20 (2) Every declaration shall be published in two ordinary issues of the Gazette and copies thereof shall be posted on one of the buildings (if any) on the land or exhibited at suitable places in the locality in which the land is situate, and in the declaration shall be specified the following particulars in relation to the land which is to be acquired:-

- 30 (a) the parish or district in which the land is situate;
- (b) a description of the land, giving the approximate area and such other particulars as are necessary to identify the land;
- (c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;
- 40 (d) the public purpose for which the land is required.

(3) Upon the second publication in the Gazette as aforesaid the land shall vest absolutely in the Crown.

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Judgment of Gordon J.A. 18th November, 1967. (Contd.)

Preliminary notification and power to enter land.

(4) Nothing in this section shall be deemed to prevent the acquisition of lands for public purposes by private treaty.

4. If it appears to the Governor in Council that any land is likely to be required for any purpose which, in the opinion of the Governor in Council, is a public purpose and it is necessary to make a preliminary survey or other investigation of the land, he may cause a notification to that effect to be published in the Gazette and thereupon it shall be lawful for the authorised officer (and his agents, assistants and workmen) to do all or any of the following things, that is to say:

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....."

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and the relevant portion of the published Declaration reads:-

IN THE MATTER OF THE LAND ACQUISITION ORDINANCE CHAPTER 109

AND

In the Matter of a Declaration by the Administrator in Council that certain land situate in the Quarter of Soufriere in the Island of Saint Lucia, are to be acquired for a public purpose.

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DECLARATION OF ACQUISITION OF LAND

WHEREAS it is enacted by section 3 of the Land Acquisition Ordinance, Chapter 109 that if the Administrator in Council considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made;

AND WHEREAS it is considered by the Administrator in Council that the land mentioned and described in the Schedule hereto should be acquired for a public purpose, to wit, the development of tourism;

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NOW THEREFORE, IT IS HEREBY DECLARED by the Administrator acting in accordance with the advice of the Executive Council that upon the Second Publication of this Declaration in the Gazette, the land mentioned and described in the Schedule hereto shall be acquired for the above-mentioned purpose and shall vest in the Crown.

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SCHEDULE

....."

The several grounds on which the validity of the Declaration by which Government purported to acquire the land in question, was challenged by counsel for the appellant, are in the main objections to the form and the contents of the document.

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It was submitted, that having regard to the definition of "statute" in sec. 3(56) of the Interpretation Ordinance (Cap. 115):

"56. "Statute" shall mean any Act of Parliament or Ordinance at any time in force in this Colony, and shall include any notice, regulation, rule, by-law, order in council, proclamation or other instrument at any time having the force of law in this Colony",

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this document was in fact a statute and as such was to be subject to the normal canons of construction applicable to statutes; that in order for it to comply with the Ordinance it should contain all the requirements prescribed by sub-section 3, but in this latter regard it was however wanting in that the very wording of the document, far from indicating an immediate requirement of the land for a public purpose as was required by the Ordinance, contemplated an anticipatory acquisition for a public purpose which was not immediate.

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It is indisputable that sec. 3 of the Ordinance prescribes the method by which the Governor in Council may acquire land for a public purpose, and that it sets out in detail the procedure by means of which this object can not only be achieved, but speedily achieved.

It confers on the Governor in Council administrative power to cause a declaration to be made

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in a particular manner if, and when, he considers that land should be acquired for a public purpose, providing the declaration conforms to the requirements set out in sec. 3: The publication of the declaration (a) shall be conclusive evidence that the land is required for a public purpose; and (b) On the second publication of the Declaration in the Gazette the land vests in the Crown.

By this form of legislation, power is given to the Governor in Council, by which he can achieve administrative finality within the framework of the section. It would therefore seem that the only ground on which his action can be judicially assailed is on the question of whether he has acted within the scope of the legislation which has vested him with power under which he has purported to act.

My views on this point are further strengthened by the words of Greene M.R. in *Carltona Ltd. v. Commissioner of Works* [1943] 2 All E.R. 560 at 564:

"It has been decided as clearly as anything can be decided that, where a regulation of this kind commits to an executive authority the decision of what is necessary or expedient and that authority makes the decision, it is not competent to the courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith. If it were not so it would mean that the courts would be made responsible for carrying on the executive government of this country on these important matters. Parliament, which authorises this regulation, commits to the executive the discretion to decide and with that discretion if bona fide exercised no court can interfere. All that the court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to see that those powers are exercised in good faith. Apart from that, the courts have no power at all to inquire into the reasonableness, the policy, the sense, or any other aspect of the transaction".

An administrative decision of this kind, is therefore distinguishable from the prerogative Orders in Council by which Government may act

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independently of any special statutory authority. The decision in the Zamora 1916 2 A.C. 77 clearly indicates that the prerogative Order in Council, unlike the type of legislation under which this Ordinance falls (administrative) is not absolute in itself but subject to judicial review and the ordinary law of the land.

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10 Yet another reference to these different types of Orders in Council is to be observed from the judgment of Viscount Radcliff in Ibralebbe vs. The Queen 1964 A.C. 900 at 918, where specific reference is there made to different types of Orders in Council, the Judicial as distinct from the Legislative and from the Administrative or Ministerial. Lord Radcliffe had this to say:

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20 "In their opinion it has long been recognised that the Order in Council which implements the decision of such appeals is in everything but form the equivalent of a legal judgment. As such it has no analogy with an Order in Council having legislative effect or with an Order in Council that is part of the administration of Government, except in the widest general sense that each within its category derives its ultimate force from some form of sovereign authority and thus can be said to 'make law'."

30 In the instant case the Declaration which in fact is a notice to the public of its contents, is the means by which the Ordinance provides that effect shall be given to the intention of the Administration, thus if the document conforms with the requirements of sec. 3(2) regardless of its form, it is mandatory in its direction to those whom it affects.

40 Having regard to the fact that no provision is made in sec. 3 for any given form in which the Declaration should be presented, the criticisms directed by counsel for the appellant against the document on the ground that the enactment clause does not specifically set out the immediate requirement of the land for a public purpose, are unconvincing, if for no other reason, than that in the particular section (pp. 3 of the Declaration) 'the above-mentioned purpose' is referable to the words in preamble 2 which clearly indicate

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the public purpose to be 'the development of tourism'. In support of his further argument that because pp. 3 is clear in its meaning it is not open under the normal rules of construction of a statute to refer to the preambles in order to implement any particular meaning, he cited (Birkenhead L.C. in Bourne vs. Keane 1919 A.C. 815 @ 841):

"The preamble is an important part of the statute, and plays a definite part in the construction of the enacting part; but it is not itself the enacting part and cannot have that effect."

10

Having regard to sec. 3 of the Ordinance the publication of the Declaration is evidence that (a) the Governor in Council has considered that the land should be acquired for a public purpose, (b) the Governor in Council has exercised the discretionary power given him by the Ordinance, and as such has indicated by the publication of the Declaration the mode by which he has exercised his administrative power.

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The Declaration therefore is a document framed to conform with sec. 3 of the Ordinance and regardless of the form in which it is presented, it must be interpreted as a whole, and in the context of the section.

By interpreting the document as a whole, counsel for the appellant in the course of his argument had to concede that the public purpose for which the land has been acquired is set out in the document. This ground must accordingly fail.

30

A complete answer to the argument that the absence from the Declaration of some formal reference to the conclusion of the Governor in Council, was fatal, is the fact that it is not open to the Court to question the evidence indicated by the publication of the Declaration, viz. that the Governor in Council has in fact considered the land suitable for acquisition for a public purpose. The manner in which he exercised his power cannot be the subject of judicial enquiry, for the Court has no jurisdiction to enquire into a question which the Ordinance has given an authority the power to determine, and

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which it has in fact determined. To hold otherwise "would be to invest the Court with an appellate jurisdiction as opposed to a supervisory jurisdiction which it certainly does not" (Parker L.J. in Healey v. Ministry of Health 1954 (3 All E.R. 449).

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10 It was submitted that because the very wording of the Declaration indicates that the land in question was to be acquired in the future, neither the spirit nor the intention of the law was satisfied by the so-called Declaration, for the Ordinance did not provide for an anticipatory acquisition as appeared from the text of the Declaration.

Judgment of Gordon J.A. 18th November, 1967. (Contd.)

20 While the use of the words 'are to be acquired' in the Title of the Declaration, and the words 'shall be acquired' in the penultimate line of pp. 3 of the same document connote an event which is to take place in the future, the words when construed in the context of section 3 of the Ordinance (alluded to in pp. 1 of the published Declaration), sub. sec. 3 of which provides that until the Declaration will have been published in the Gazette for the second time, the land in question will not have vested in the Crown, can only mean that until then the acquisition will not be complete. The particular words as used in the Declaration cannot reasonably admit of an interpretation other than that the land which Government intends to acquire for a named public purpose shall only become 30 acquired upon the second publication of the Declaration in the Gazette.

Counsel contended that the clause in sub. sec. 1 of sec. 3 of the Ordinance which reads:

"If the Governor in Council considers, that any land should be acquired ....."

and the clause in sec. 4 which reads:-

40 "If it appears to the Governor in Council that any land is likely to be required for any purpose which in the opinion of the Governor in Council is a public purpose ....."

together indicate that two distinct steps had to be pursued by the Governor in Council concerning the suitability of the acquisition of land for a public purpose:

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- (a) a decision to acquire,  
(b) a declaration of that decision,

and when conjoined presuppose that the conclusion in respect of the suitability of the land for a public purpose should be set out formally in an instrument such as an Order in Council. It was the further contention of Counsel that in the Declaration there should have been specific reference to the Order in Council in which the conclusion of the Governor in Council had been set out.

10

It is observed that sections 3 and 4 provide separate procedures in respect of the acquisition of land. Section 3 sets out the procedure where the land is required forthwith, while section 4 prescribes the procedure to be followed in cases where the acquisition of land in the future is likely. It provides for a preliminary investigation of the land with such an object in view and for safeguards in relation to the collection of this preliminary information.

20

In the face of a definite statement in the Declaration that the land which is the subject of these proceedings was acquired under section 3, and the fact that it deals with circumstances other than those for which the procedure in section 4 provides, any argument suggesting that the normal procedure necessary for Government to acquire land immediately must be gleaned from a link-up of these two sections, is tenuous and unconvincing.

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In aid of his contention that evidence of the conclusion of the Governor in Council was essential, and consequently there should have been some reference to it in the Declaration, he cited the cases of McKay vs. the Attorney General of British Columbia 1922 1 A.C. 457 and Musson vs. Rodriguez 1953 A.C. 532.

In McKay vs. the Attorney General of British Columbia where by the Public Works Act 1911; the Lieutenant-Governor in Council may acquire for and in the name of His Majesty land which in his judgment is necessary for certain specified purposes and the Minister of Works may for such purposes enter into contracts which are not to be valid unless sealed with the seal of the Department, it

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was held that a contract for the purchase of land for a public purpose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order even if the contract is sealed with the seal of the Department.

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10 In Musson vs. Rodriguez it was held that where the Governor in Council had the power to declare a person an undesirable inhabitant, anything less than a signification of the decision of the Governor under the hand of the Colonial Secretary would be insufficient, i.e. some formal statement was necessary.

Judgment of Gordon J.A. 18th November, 1967. (Contd.)

20 The distinction between these two cases and the instant case, lies in the fact that whereas in the respective statutes under which the proceedings in the cases cited were founded, it was not set out how the decision of the Governor was to be made public; in the instant case however that procedure is clearly set out in sec. 3 of the Ordinance, the publication of the Declaration being the prescribed signification to the public that the land in question is to be acquired. The necessity therefore for any more formal indication of the result of this conclusion of the Governor in Council in this instance is not only unnecessary, but as was pointed out earlier in this judgment, the conclusion of the Governor in Council is absolute and beyond question

30 once the publication of the Declaration is made.

Even though in its present form the Declaration bears certain similarities to a statute, this cannot ipso facto, make it anything more than the document it is supposed to be, namely a Declaration, as contemplated by sec. 3 of the Ordinance, and it is therefore in that context that it must be examined, construed, and interpreted.

40 Firstly the document must be read as a whole, with no limitations placed on any particular paragraph. Not being a statute the restrictions applicable to preambles in statutes do not apply and indeed the principles enunciated in the cases of Bourne vs. Keane 1919 A.C. 815, and Attorney General vs. H.R.H. Prince Ernest Augustus of Hanover [1957] 1 All E.R. 46, regarding preambles in statutes, it has already been pointed out, are equally inapplicable in this case.

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The Declaration contains all the requisites called for under section 3. The public purpose in the third pp. is by reference to the second pp. clearly set out. The document is in no way inconsistent with the provisions of the Ordinance which has itself authorised the particular procedure, which shall be conclusive evidence that the land to which the Declaration relates is required for a public purpose. There is no evidence of any excess of jurisdiction by the Governor in Council nor any averment of bad faith on his part in the manner in which he exercised the administrative power given him by the section. I am therefore satisfied that the arguments advanced against the validity and the form of the Declaration are misconceived and that the Declaration is of full force and effect, consequently the action of the Board pursuant on it, in my view, is in order.

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For the above reasons I would dismiss this appeal with costs.

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(K.L. Gordon)

No. 10JUDGMENT OF P. CECIL LEWIS J.A.

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P. Cecil Lewis, J.A.

No. 10

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P. Cecil  
Lewis J.A.  
Undated.

10 By a declaration dated December 20, 1963, and published in two issues of the St. Lucia Gazette of the 21st and the 28th December, 1963 respectively, the Governor in Council compulsorily acquired for public purposes certain land owned by the appellant, situate in the Quarter of Soufriere in the Island of St. Lucia.

The acquisition was authorised by s. 3 of the Land Acquisition Ordinance Cap. 109, of the St. Lucia Revised Ordinances 1957 (hereinafter in this judgment referred to as "the Ordinance"). This section reads:

20 "3. (1) If the Governor in Council considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made in the manner provided by this section and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose.

30 (2) Every declaration shall be published in two ordinary issues of the Gazette and copies thereof shall be posted on one of the buildings (if any) on the land or exhibited at suitable places in the locality in which the land is situate, and in the declaration shall be specified the following particulars in relation to the land which is to be acquired:-

- 40
- (a) the parish or district in which the land is situate;
  - (b) a description of the land, giving the approximate area and such other particulars as are necessary to identify the land;
  - (c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;

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Judgment of P. Cecil Lewis J.A. Undated. (Contd.)

(d) the public purpose for which the land is required.

(3) Upon the second publication of the declaration in the Gazette as aforesaid the land shall vest absolutely in the Crown.

(4) Nothing in this section shall be deemed to prevent the acquisition of lands for public purposes by private treaty".

10

The declaration made pursuant to this section was in the following terms:

"DECLARATION OF ACQUISITION OF LAND

WHEREAS it is enacted by section 3 of the Land Acquisition Ordinance, Chapter 109 that if the Administrator in Council considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made;

20

AND WHEREAS it is considered by the Administrator in Council that the land mentioned and described in the Schedule hereto should be acquired for a public purpose, to wit, the development of tourism;

NOW THEREFORE, IT IS HEREBY DECLARED by the Administrator acting in accordance with the advice of the Executive Council that upon the Second Publication of this Declaration in the Gazette, the land mentioned and described in the Schedule hereto shall be acquired for the above-mentioned purpose and shall vest in the Crown.

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SCHEDULE

All the lands being and situate in the Quarter of Soufriere known as Ventine Estate consisting of seventeen carrés more or less (including seven carrés annexed to the said Ventine Estate) and also the Sulphur Springs or Volcano also known as Terre Blanche approximately 4.2 carrés in extent, the whole comprising 21.2 carrés more or less as shown on a Plan of Survey No. S.41 by John E. Quinlan, Sworn Land Surveyor, dated 22nd

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December, 1891, and kept in the office of the Commissioner of Crown Lands together with the appurtenances and dependencies thereof. The said Ventine Estate as hereinbefore described is bounded on the North partly by the Diamond Estate and partly by the Terre Blanche Estate, South by the Rabot Estate, East by the Esperance Estate, and West partly by the Terre Blanche Estate and partly by the Rabot Estate or however else the same may be bounded.

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10

The plan of survey hereinbefore referred to may be inspected at the office of the Commissioner of Crown Lands on any day except Wednesdays, Sundays and public holidays between the hours of 9 a.m. and 4 p.m. and on Wednesdays between the hours of 9 a.m. and 12 o'clock noon.

Dated this 20th day of December, 1963.

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U. RAVENEAU,

Clerk of the Executive Council.

/Gazetted 21st and 28th December, 1963./"

Subsequent to the acquisition of the appellant's land a Board of Assessment was constituted under s. 12 of the Ordinance to assess the compensation payable to the appellant.

At the hearing before the Board the following preliminary objection was taken by counsel for the appellant to the Board's jurisdiction:

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"Purported compulsory acquisition on which these proceedings are based is void for failure of compliance with provisions of section 3 of Land Acquisition Ordinance of St. Lucia. Since these proceedings are based on a void compulsory acquisition the proceedings are themselves void. In the result this Board of Assessment has no jurisdiction to entertain the questions relating to compensation which have been referred to it."

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After a lengthy argument in which a considerable number of authorities were cited to it, the Board gave its ruling on the preliminary objection in the course of which it said:

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"After due consideration of these submissions, it is clear that the burden of the arguments rests almost entirely on an interpretation of the provisions as contained in section three of the Land Acquisition Ordinance, Chapter 109 of the Laws of Saint Lucia.

The relevant parts of the section are to be found in the first three subsections which read as follows:-

10

/Here the Board quoted the relevant parts of the section and continued/

"On an analysis of these provisions we are satisfied that there must be a declaration, that such declaration must be published in two ordinary issues of the Gazette, and that those particulars which are enumerated in subsection two must be contained in the declaration.

20

This declaration when made in accordance with the provisions of the section becomes conclusive evidence that the land to which it relates is acquired for a public purpose. On the 2nd publication of this declaration in the Gazette the land to which it referred is vested absolutely in the Crown.

For the purposes of this objection, it is our view that if these requirements are met, then the legislative provisions have been fulfilled. There is no necessity for the declaration to assume any particular form. Every declaration of this nature must contain the particulars listed - whether chronologically or not - and whether contained in one particular part of the declaration or not; and provided these particulars are stated then the effect referred to in subsection one will have been achieved.

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In the absence of any provision to the contrary, the word "declaration" must be given its ordinary meaning and we are satisfied that in this case, the word "declaration" must be construed to mean a statement or an announcement which makes known publicly certain facts.

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The document to which our attention has been drawn by counsel is described therein and headed: "Declaration of Acquisition of Land"; and, indeed, when read in its entirety it states or announces unequivocally all those particulars in relation to the land which is to be acquired that are required by the four paragraphs of subsection two notwithstanding that they do not all occur in a particular part or position of such document.

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We are satisfied on looking into this matter in all aspects that we may proceed with the holding of this inquiry so as to assess, award, and apportion compensation under the land Acquisition Ordinance of this territory and to this end we invite the owner and the Crown to lead relevant evidence."

At the conclusion of the evidence the Board awarded the appellant the sum of \$61,050.00 and 2/3 of his taxed costs.

The appellant appealed against the decision of the Board. His arguments however were confined solely to that part of the Board's decision in which it held that it had jurisdiction to make the award and his sole ground of appeal was "that the said Board of Assessment had no authority or jurisdiction to make the said decision which is null and void in that:-

(i) the declaration upon which the purported compulsory acquisition of the land in question is based is not a declaration made in the manner provided by the Land Acquisition Ordinance of St. Lucia and is therefore null and void;

(ii) the said purported compulsory acquisition being based on a void declaration is itself null and void;

(iii) the entire proceedings of the said Board being based on a void acquisition are themselves a nullity."

Counsel for the appellant handed the Court a written summary of the submissions and of the various authorities on which he proposed to rely in support of his ground of appeal. The submissions appearing in the summary read as follows:-

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- "1. That the fundamental basis and the essential basic ratio decidendi of the compulsory acquisition of land is the immediate requirement of the land for a public purpose.
  - (i) art. 1497 of the Civil Code
  - (ii) ROSENBAUM v. BURGOYNE (1965) A.C. 430
  - (iii) section 3 and section 4 of the Land Acquisition Ordinance. 10
  
2. That the clause "if the Administrator-in-Council considers that any land should be acquired" means "if the Administrator-in-Council comes to the conclusion that any land should be acquired or makes a decision to acquire any land, or in other words "if an order in council is made to acquire any land".
  - (i) MACKAY v. ATTORNEY GENERAL FOR BRITISH COLUMBIA (1922) 1 A.C. 457. 20
  - (ii) MUSSON v. RODRIGUEZ (1953) A.C. 530 at p. 532.
  
3. That the declaration referred to in sec. 3 is a piece of subordinate legislation in its own right - separate and distinct from and additional to the order-in-council which forms part of it.
  - (i) Halsb. Vol. 36 p. 476 para. 723 and p. 477 para. 724. 30
  
4. That the declaration to be valid must by nature and character be a declaration of the order in council (decision to acquire) and must therefore declare (state or enact) the order in council.
  
5. That having enacted the order in council, the declaration to be complete must specify (inter alia) the ratio decidendi of the order in council (the reason for the decision to acquire) - namely the immediate requirement of the land for a specified public purpose. 40
  - (i) s. 3(2)(d) of the Land Acquisition Ordinance.



- (ii) VANTERPOOL v. CROWN ATTORNEY (1961) 3 W.I.R. 351
- (iii) THE ZAMORA (1916) 2 A.C. 77.
6. That the declaration is defective because it failed to declare or enact the order in council (or decision to acquire) and is therefore not by nature or character (not intrinsically) a declaration of the order-in-council (decision to acquire)
- (i) BOURNE v. KEANE (1919) A.C. 815
- (ii) A.G. v. H.R.H. PRINCE ERNEST AUGUSTUS OF HANOVER (1957) 1 A.E.R. 49
- (iii) THE C.I.R. v. RAPHAEL (1935) A.C. 96
- (iv) THE KING v. OPPENHEIMER etc. (1915) 2 K.B. 758.
7. That the declaration is defective because it fails to specify the ground of the decision to acquire namely the immediate requirement of the land for a specified public purpose.
8. That for at least 5 reasons, section 3 must be construed as mandatory, and failure to observe its regulative provisions fatally affects the validity of the Declaration and the compulsory acquisition based on the Declaration.
9. In the absence of a valid acquisition, a Board of Assessment appointed under the Land Acquisition Ordinance has no jurisdiction to make any award under the Ordinance.
- (i) sec. 11
- (ii) Halsbury Vol. 9 p. 581
- (iii) R. v. Fulham, Hammersmith & Kensington Rent Tribunal ex parte Zerek (1951) 1 All E.R. 482.
- (iv) Essex County Council v. Essex Incorporated Congregational Church Union (1963) A.C. 808."

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I now turn to the submissions of counsel for the appellant. The eighth and ninth of these may be

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disposed of immediately. The others will be considered in their sequence.

Eighth Submission.

This was conceded by the Attorney General.

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Ninth Submission.

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This is a self-evident proposition and merely states the result which will inevitably follow if the procedure prescribed by section 3 is not observed.

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First submission.

It was contended that the fundamental and basic justification for the acquisition of land under the Ordinance is "the immediate requirement of the land for a public purpose". The essence of this submission lay on the emphasis which counsel placed on the word "immediate", and the importance which he attaches thereto can be judged by the fact that it also appears in his fifth and seventh submissions.

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The word "immediate" does not appear either in section 3 of the Ordinance or in article 1497 of the Civil Code and its incorporation into the section by way of construction can only be justified if it is necessary to give the section an intelligible meaning. On the face of it the language of section 3 is clear and unambiguous therefore the burden on the appellant to satisfy me that this section ought to be construed so as to incorporate the word "immediate" therein is a particularly heavy one.

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Counsel sought to support this argument by references to art. 1497 of the Civil Code of St. Lucia, Cap. 242, the case of Rosenbaum v. Burgoyne (1965) A.C. 430, and a suggested difference in the procedure for compulsory acquisition based on a comparison of the provisions of sections 3 and 4 of the Ordinance.

Article 1497 of the Civil Code reads:

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"1497. In cases in which immovable property is required for purposes of public utility, the owner may be forced to sell it or be expropriated by the authority of law in the manner and according to the rules prescribed by special laws."

This article does not assist the appellant's case in any way. The word "immediate" as I said before, does not appear therein, and all the article says in effect is that where immovable property is required for a public purpose the owner may be deprived of it in accordance with the relevant Law. The relevant law in this case is the Land Acquisition Ordinance, Cap. 109, and therefore the reference to article 1497 carries the matter no further. Rosenbaum v. Burgoyne (1965) A.C. 430 was referred to for the purpose of ascertaining the meaning of the word "required". This word occurs in section 17(2)(b) of the Betting and Gaming Act 1960, the relevant words of para. (2) being:

"That the stake required to be hazarded in order to play the game once does not exceed sixpence".

Lord Evershed in construing these words said (at p. 443):

"..... as I have already indicated I take the word "required" in the context to be equivalent to requisite or necessary, and one sixpence is all that is, in that sense, required in order to enable the machine to be manipulated....."

I accept that in the context of s. 3 the word "required" has a similar meaning.

The assistance which is said to be derived from a comparison between sections 3 and 4 of the Ordinance is, in my opinion, delusive.

It was conceded that s. 3 prescribed the conditions under which land might be compulsorily acquired, but counsel said that if there was any doubt that the land was immediately required for a public purpose then the Governor-in-Council should proceed under section 4. I do not think this is the essential difference between the two sections.

Section 4 provides as follows:

"4. If it appears to the Governor-in-Council that any land is likely to be required for any purpose which, in the opinion of the Governor-in-Council, is a public purpose and it is necessary to make a preliminary survey or other investigation of the land, he may cause a notification to that effect to be published in the Gazette and

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thereupon it shall be lawful for the authorised officer (and his agents, assistants and workmen) to do all or any of the following things, that is to say:-

(a) to enter upon and survey and take levels of any land in any locality to which the notification relates;

(b) ..... (g)

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This section is intended to deal with a situation where the Governor-in-Council has in mind a piece of land which he thinks might be required for a public purpose, but first wishes to satisfy himself that it is in fact suitable for the purpose contemplated before making a decision under s. 3 to acquire it. The purpose of section 4 therefore is to permit a preliminary survey or investigation to be made in order that it may be ascertained if the land is suitable for the particular public purpose which the Governor in Council has in mind. If the survey reveals that it is, then the necessary action under s. 3 may be taken. If it is found to be unsuitable then s. 3 will not be invoked. In other words whenever a decision to acquire is taken s. 3 must be used, but section 4 need only be used in the circumstances and for the purpose I have mentioned above. This after all is only a matter of common sense, and the legislature in section 4 gives recognition to the course of action which the ordinary prudent person would take who wishes to acquire land.

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The same idea is to be found in the old Compulsory Powers (Land) Act 1888 No. 2 of Barbados, s. 3(1) of which (in so far as it is material) reads:

"The Governor-in-Executive Committee is hereby authorised to direct any person to survey, to take levels of or make excavations or borings in any land which it is desired to take under this Act in order that it might be ascertained if the land is suitable for the purpose for which it is desired".....

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There has never been any suggestion that the circumstances for which s. 4 provides ever applied in this case, no question ever arose as to whether it appeared to the Governor-in-Council that the

appellant's land was "likely to be required for a public purpose", on the contrary the appellant's whole case is that the Governor-in-Council (without preliminary investigation or survey) decided that his land was in fact so required and proceeded to make a declaration accordingly, which declaration the appellant says is invalid. As far as the Governor-in-Council was concerned there was never any doubt in his mind that the appellant's land was required for a public purpose, for he so decided and implemented his decision by a declaration as required by section 3.

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If section 3 is to be construed to mean that land must immediately be required in order to justify its compulsory acquisition, as the appellant's counsel contends, then he is met with the difficulty that this construction at once introduces an entirely new element, viz. the question of fact whether the land is or is not so required, and this question cannot be raised by the mere ipse dixit of counsel. Some foundation must be laid for it by way of evidence before it can become an issue between the appellant and the Crown. It has not been suggested that any evidence on this point was ever placed before the Board of Assessment, nor is it part of the appellant's case as disclosed by the record.

In my view counsel for the appellant has not shown any justification why section 3 should be read in the manner for which he contends, and I would regard any attempt to construe the section in the manner suggested by him as an unwarranted and unauthorised gloss on the interpretation of the section. He is in effect inviting this Court not to construe but to re-write the section.

Very many years ago Patteson, J. in King v. Burrell (1840) 12 A & E 460 at 468 issued this warning:

"Every day I see the necessity of not importing into statutes words which are not to be found there".

This is a warning which is particularly apposite in this case.

The Attorney General submitted in response to this argument that, assuming the question whether

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or not the land was immediately required for a public purpose could validly be raised by the appellant, then the answer thereto was to be found in the words of s. 3(1) where it is provided that the declaration should be "conclusive evidence that the land to which it relates is required for a public purpose."

It is unnecessary to come to any decision on this particular point for I am of the opinion, for the reasons which I have stated above, that the appellant's first submission fails.

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Second Submission:

In support of this submission it was urged that the words "if the Governor-in-Council considers that any land should be acquired for a public purpose" meant that if the Governor-in-Council did decide that land should be acquired he had to embody his decision in an order in Council, and support for this submission was, it was said, to be found in the case of Mackay v. Attorney General for British Columbia (1922) A.C. 457 and Musson v. Rodriguez (1953) A.C. 530.

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The facts in Mackay's case were these: by section 3 of the Public Works Act (R.S.B.C. 1911, c. 189 as amended in 1914) the Lieutenant-Governor in Council of British Columbia was authorised to acquire and take possession of any lands for and in the name of the Sovereign which in his judgment were necessary for certain specified purposes, and by section 37, the Minister of Public Works had power to enter into any contract required for carrying out the provisions of the Act, but no such contract was to be binding on him unless signed by him and sealed with the seal of his Department. A contract was duly entered into between the appellant and the Minister of Public Works for and on behalf of the Crown. In the contract it was recited that the Lieutenant-Governor in Council had deemed it necessary to acquire the lands specified therein. The contract also provided for the determination of the purchase price by arbitration. An award was subsequently made but a change of government ensued and the incoming Ministers refused to advise the agreement to be carried out, "alleging among other things, that there was no evidence that its execution had been authorised by the Lieutenant-

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Governor in Council or that it was sealed with the seal of the Department of Public Works." After fruitless attempts to secure payment of the award the appellant sought by an originating summons in the Supreme Court to enforce it pursuant to section 15 of the Arbitration Act. Gregory J. dismissed the summons on the ground that the agreement did not constitute a submission to arbitration. The appellant appealed to the Court of Appeal which by a majority (McPhillips J. dissenting) held "that no agreement could be validly made by the Minister of Public Works unless an Order in Council had first been passed providing for the acquisition of the land and that the appellant had failed to prove that any such order in council had been passed". There was a suggestion that the transaction had had the approval of the Cabinet, but "there was no suggestion that it had the assent or had ever been brought to the notice of the Lieutenant-Governor".

On a further appeal by the appellant to the Judicial Committee of the Privy Council, the Board disagreed with the view of McPhillips J. "that an Order in Council was not a condition precedent to the making of a binding agreement, that the agreement contained a well-constituted submission to arbitration and that the Crown was, in the circumstances estopped from denying the validity of the agreement and the award". The Board held that under s. 3 of the Public Works Act it was only the Lieutenant-Governor in Council to whom power to enter into the contract was given, that the constitution of British Columbia which was of the type known as a responsible form of Government required "that the Sovereign or his representative should act on the advice of Ministers responsible to the Parliament that is to say, should not act individually but constitutionally", and, that "a contract which involves the provision of funds by Parliament requires, if it is to possess legal validity, that Parliament should have authorised it ....." "It follows" said Viscount Haldane (at p. 461) "that in the present case no such contract could have been made unless s. 3 authorised it". The vital question therefore was whether an order or resolution had been passed by the Lieutenant-Governor in Council authorising the contract.

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Viscount Haldane who delivered the opinion of the Board said (1922) 1 A.C. 457 at 461 as follows:

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"It was contended before their Lordships that it ought to be presumed that an Order in Council had been passed, so as to satisfy the provisions of the statute. But it appears from the affidavit of the Deputy Provincial Secretary that all Orders in Council, made by the Lieutenant-Governor in Council, are recorded in his office, and that no such order authorizing the acquisition of the land in question is to be found. Moreover, all the learned judges in the Court of Appeal appear to have regarded no such order as having been made, and it does not appear that this was disputed before them. Under these circumstances, their Lordships must hold that no such order, nor any resolution amounting to it, existed, and it is accordingly not necessary to enter upon the point made as to the seal. If so, this ends the case. For the mere assent of the ministers of the day to the contract could not, as has already been pointed out, under a constitution, such as that of British Columbia, make the contract a legally binding one, and accordingly the basis on which the claim under the arbitration proceedings was rested, disappears".

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In Musson's case the Governor-in-Council of Trinidad and Tobago had power to deem persons undesirable inhabitants of or visitors to the Colony and therefore prohibited immigrants. This power arose under section 4 of the Immigration (Restriction) Ordinance 1936 as amended in 1943 the material portion of which reads:

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"4. (1) the following persons ..... are prohibited immigrants:-

" (h) any person who from information or advice which in the opinion of the Governor-in-Council is reliable information or advice is deemed by the Governor-in-Council to be an undesirable inhabitant of or visitor to the Colony ..... (3) No appeal shall lie against the decision of the Governor-in-Council in regard to any persons mentioned in paragraphs ..... (h) ..... of subsection (1) of this section unless such appeal be directed to identity only of the person affected by the decision".

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The appellant and others were declared prohibited immigrants under this section and ordered to leave the Colony by a certain date. They failed to do so and they were prosecuted under an information sworn before a justice of the peace which alleged that being prohibited immigrants and having been ordered to leave the Colony by the specified date failed to leave as ordered, and warrants for their arrest were applied for and granted. The appellants were brought before a magistrate to answer the complaints and pleaded not guilty. The magistrate after hearing evidence made an order that they should be removed from the Colony and detained in custody in the meanwhile. His order was subsequently confirmed on appeal by a majority of the Supreme Court (Duke J. dissenting) At the trial before the magistrate oral evidence was admitted to prove the Governor-in-Council's decision deeming the appellants to be undesirable inhabitants of or visitors to the colony and therefore prohibited immigrants under section 4(1)(h) of the Immigration (Restriction) Ordinance. Duke J. held that evidence of the decision of the Governor-in-Council "could only properly be given by way of a written document showing on the face of it, that the decision was arrived at in compliance with the terms of and in accordance with the requirements of section 4(1)(h)."

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The appellants appealed to the Privy Council against the decision of the Supreme Court of Trinidad and Tobago and their counsel took the objection that oral evidence to prove that the Governor-in-Council made the alleged order was inadmissible. Counsel for the respondent admitted that as the Immigration (Restriction) Ordinance contained no provision requiring that the decision of the Governor-in-Council should be recorded in writing, oral evidence in proof thereof was admissible unless expressly excluded. This view was rejected by the Board who said (per Lord Normand) (1953 A.C. 530 at 533):

"The drastic power given to the Governor-in-Council by section 4(1)(h) to interfere with personal liberty may be exercised without any antecedent judicial inquiry and without the persons who are affected having had any opportunity of making representations. It is not subject to any appeal in a court of

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law or to any form of review at the instance of the affected persons. When such a power is committed to the Governor-in-Council there must be the strictest compliance with the provisions by which it is granted. It must be clear beyond question that the Governor-in-Council on information or advice which in his opinion was reliable had come to a definitive decision to deem the person an undesirable inhabitant or visitor. It is further necessary that the decision shall be in such a form that it can be repeated in the notice served on the person affected and become the foundation of any proceedings for his removal. Counsel for the appellant argued that the only way by which the necessary certainty in so important a transaction could be achieved was by recording the decision in writing, and that the only competent mode of proving the decision was by the production of the written decision or a statutory equivalent".

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Then lower down on the same page in reference to the mode of proving the Governor-in-Council's decision he said this:

"Their Lordships consider that it would be unfortunate if the proof of the decision of the Governor-in-Council under section 4(1)(h) of this Ordinance were to be subject to the uncertainties which attend proof by oral evidence. But it is not necessary to consider whether from the provisions of the Immigration (Restriction) Ordinance alone it should be implied that proof by oral evidence is inadmissible. For in their Lordships' opinion section 19 of the Interpretation Ordinance (c.1 No. 2) applies to a decision under the Immigration (Restriction) Ordinance, section 4(1)(h). Section 19 provides that when power is given to the Governor to make any order or give any direction it shall be sufficient, unless it is otherwise expressed, for such order or direction to be signified under the hand of the Colonial Secretary. A decision by the Governor-in-Council under the Immigration (Restriction) Ordinance, section 4(1)(h) is a decision by the Governor within the meaning of section 19 of the Interpretation Ordinance ..... The respondent's counsel submitted that a decision

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under section 4(1)(h) is not an "order", but their Lordships see no reason to restrict the meaning of "order" in the Interpretation Ordinance in this way".

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10 "If, then", he continued, "section 19 of the Interpretation Ordinance applies, it carries the plain implication that anything less than a signification of the decision of the Governor-in-Council under the hand of the Colonial Secretary, would be insufficient. A writing under the hand of the Colonial Secretary is the appropriate means of publishing the decision so that it may be acted on. Oral proof falls short of the requirements of section 19 and is an insufficient mode of proof. Their Lordships do not suggest that it is not competent to prove the decision by producing, for example, a writing under the Governor's hand".

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The Board agreed with the judgment of Duke J. that the Governor-in-Council's decision should be evidenced by writing and as no written document was produced by the Crown for this purpose there was "no competent proof that the Governor-in-Council" had come to the alleged decision. The appeal was therefore allowed.

30 The emphasis in MacKay's case and in Musson's case was on the need for the decision in each of these cases to be evidenced in a manner which could permit reference to be made thereto in order to ascertain the contents of the decision, and consequently, whether it complied with the provisions of the law under which it was made. This requirement could only be satisfied if the decision possessed the attributes of a written record.

40 The cases were not primarily concerned with the form in which the decisions were to be expressed. Indeed neither the statute of British Columbia nor the Trinidad and Tobago Ordinance in terms prescribed any particular form which the decision should take, and that mere form was not of paramount importance can, I think, be gathered from the fact that it was held that the decisions could appropriately be expressed in documents of a different nature: in Mackay's case by an order in council or a resolution in the nature thereof, and in

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Musson's case by a writing under the hand of the Colonial Secretary or by a writing under the Governor's hand.

To the extent therefore that these cases decided that the respective decisions should be in writing they are in harmony with section 3(1) of the Ordinance, which prescribes the manner in which the decision of the Governor-in-Council should be expressed, viz. in a declaration. It is therefore, in my view, incorrect to say that this section requires the Governor-in-Council to make an order in council embodying his decision to acquire the land which would then have to be enacted by the declaration. The section contemplates one document only, a declaration, and not two, as counsel for the appellant contends.

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This being the case, what form should the declaration take? And what is its essential character? These questions will be answered by considering the remainder of the appellant's submissions which may conveniently be taken together.

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Third to seventh submissions:

It was submitted by counsel for the appellant "that the declaration referred to in section 3 is a piece of subordinate legislation in its own right separate and distinct from and additional to the order in council which forms part of it". In particular it was submitted that the declaration was a statute. In section 4, paragraph (56) of the Interpretation Ordinance, Cap. 115, "statute" is defined as follows:

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"statute" shall mean any Act of Parliament or Ordinance at any time in force in this Colony, and shall include any notice, regulation, rule, by-law, order in council, proclamation or other instrument at any time having the force of law in this Colony".

It was said that the declaration was comprehended within the meaning of the words "or other instrument" in this definition, and therefore the technical rules relating to the interpretation of statutes applied thereto.

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It was conceded that the declaration need take no particular form and with this I agree. It is said also that the word "declaration" is not defined in the Ordinance or in any other law in St. Lucia and consequently is not a term of art. However, adopting the meanings given in the Oxford Concise dictionary to the word "declare" as being to make known something formally, publicly or explicitly, and "declaration" as being a positive, emphatic or solemn statement, a legal assertion, an announcement or proclamation, counsel developed his argument that the declaration was a statute with a preamble and an enacting part. He said that when s. 3 requires a declaration to be made this was another way of saying that the declaration must enact the Governor-in-Council's decision, and to lend support to this point he said further that the legislature selected the word "declaration" because it wishes to emphasize that the order in council (which he contended was necessary) "had to be enacted and stated formally and not merely stated casually" (to use his own words). He thus disagreed with the view expressed by the Board of Assessment that the word "declaration" must be given its ordinary meaning, and "be construed to mean a statement or an announcement which makes known publicly certain facts". There is no magic in the word "declaration" and I attach no significance to the use of this word by the legislature in preference to any other in describing the document whereby the Governor-in-Council's decision is to be made public. It may be noted merely as a matter of interest that the Legislature of Trinidad and Tobago was content to authorize the use of a notification rather than declaration, for the same purpose. (Vide Land Acquisition Ordinance, Cap. 27 No. 10, Vol.III Trinidad and Tobago Revised Ordinance 1950).

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In my view the declaration is not legislation. It is, of course, authorised by an enactment of the legislature, but it is nevertheless a ministerial act designed to implement and give legal effect to the decision of the Governor-in-Council.

In Ibralebbe and The Queen, (1964) A.C. 900, the question arose as a preliminary point as to the relationship between a report of the Judicial Committee of the Privy Council and the Order in Council which implements the report. Viscount Radcliffe who delivered the opinion of the Board said ( (1964) A.C. 900 at 918):

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"Their Lordships must now turn to consider the nature of the appeal to Her Majesty in Council in judicial matters which, for brevity, they will refer to as the Privy Council appeal. In their opinion it has long been recognised that the Order in Council which implements the decision of such appeals is in everything but form the equivalent of a legal judgment. As such it has no analogy with an Order in Council having legislative effect or with an Order in Council that is part of the administration of Government, except in the widest general sense that each within its category derives its ultimate force from some form of sovereign authority and thus can be said to "make law" ."

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Then, after remarking (at p.919) that "the two fullest statements as to the relationship between the Judicial Committee and the Privy Council and as to the Order in Council which implements the Committee's reports are that of Lord Haldane in Alex. Hull & Co. v. M'Kenna (1926) I.R. 402, and that of Lord Sankey L.C. in British Coal Corporation v. The King (1935) A.C. 500; 51 T.L.R. 508, and after quoting from these statements he concluded as follows (at p. 921) (ibid):

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"Their Lordships take it to be clear, therefore, that the Order in Council, which gives effect to a Judicial Committee report, is a judicial order. It is an "order or decree . . . . on appeal", to use the words of section 21 of the Act of 1833. It is mandatory in its directions to those whom it affects by virtue of the provisions of that section".

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This decision makes it clear that Orders in Council are of three kinds: first there is the order in council which has legislative effect, then there is the order in council which is part and parcel of the administration of Government and which is a ministerial act, and finally there is the order in council which gives effect to a decision of the Judicial Committee of the Privy Council and is a judicial order.

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Now the Governor in Council's decision under s. 3 is the first step and indeed, the very foundation of acquisition proceedings under the Ordinance, yet this decision remains inchoate until implemented

by the declaration which alone can give it legal effect, accordingly the declaration is the necessary complement of the decision.

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10 The Order in council which is promulgated after the Judicial Committee of the Privy Council has given its decision on an appeal is a judicial order because it is an essential part of the judicial proceeding to which it relates and is necessary for perfecting the decision. On an analogous basis the declaration under s. 3 is a ministerial act necessary for perfecting and giving effect to the Governor in Council's decision. It may thus be said that the declaration derives its character from the nature of the act which it implements, and the Governor-in-Council's decision being in its nature a ministerial act, its complement, the declaration, is of a like character.

20 Counsel for the appellant's argument based on the premise that the declaration is "a piece of subordinate legislation" having the nature of a statute is misconceived and has vitiated most of his submissions.

Since the declaration does not possess legislative effect the only pertinent inquiry is whether it satisfies the requirements of section 3, and this demands examination of the document as a whole.

30 It was submitted that the declaration was "defective because it failed to declare or enact the decision to acquire", and also because "it failed to specify the ground of the decision to acquire, namely the immediate requirement of the land for a specified public purpose". The use of the expression "enact the decision to acquire" is unfortunate and so too is the use of the word "immediate".

I have indicated earlier in this judgment that there is no justification for the use either of the expression or the word in question.

40 When one looks at s. 3(1) it will be seen that it begins with the word "if". This word introduces a condition, the fulfilment of which enables certain consequential action to be taken by the Governor-in-Council, so the subsection means if the Governor-in-Council decides that any land should be acquired for a public purpose then "he may cause a declaration to

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be made to that effect". Here both of these things have been done; the decision has been arrived at and the declaration made. It was admitted that the declaration does contain a statement that the land is required for a specified public purpose; but counsel submitted that the public purpose for which the land "should be acquired" need not necessarily be the same as the public purpose for which it "is required". He said that the words "should be acquired" denote desirability and are subjective and opinionative, whereas the words "is required" connote necessity, and are objective and factual. The Governor-in-Council, it was said further, may consider that land should be acquired for a public purpose not because it is presently required but because it will be required in the future, and conversely he may consider that land is presently required for a public purpose but should not be acquired for financial or other reasons.

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This argument is speculative and ignores the factual situation which is that the decision to acquire was followed by the making and publication of the declaration as section 3 requires. These two facts taken together of necessity indicate an intention to acquire in praesenti and not in futuro. It has not been suggested that there was any delay between the making of the Governor-in-Council's decision and the making and publication of the declaration which might have created doubts as to the Crown's intention in regard to the land. In the circumstances the various shades of meaning which counsel for the appellant suggested might be ascribed to the expressions "should be acquired" and "is required" respectively become of little practical importance. The crux of the matter is what does the declaration say?

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It is common ground that the first recital is merely a repetition of section 3(1) in a slightly shortened form. It was conceded by counsel for the appellant that the second recital was incorporated by reference into what he called the operative part of the declaration. This recital means that the Administrator-in-Council had already come to a definitive decision that the land should be acquired and it states the public purpose for which the acquisition is being made. The decision when made was a decision to acquire at the time of its making and this is supported by the

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fact that after the making of the decision the declaration to give it effect was itself made on Dec. 20, 1963, and published on the following day and again on Dec. 28, 1963. Although the actual date of the Governor in Council's decision is nowhere stated, yet the date of the declaration and the date of its first publication cannot be ignored in considering whether or not there was an intention to acquire at the time of the decision or in the future; for the purpose of the declaration is to give effect to the decision to acquire which, ex hypothesi, had already been made as indicated in the second recital to the declaration. Accordingly the first publication of the declaration within a day after it was made gave a clear indication of the time of the intended acquisition and followed as it was by the second publication this completed the whole process of acquisition, for by s. 3(3) when the latter publication was made the land vested in the Crown absolutely. In the light of these circumstances it would be a misuse of language to say that the declaration showed an intention to acquire in the future.

Then the declaration, after stating the Administrator-in-Council's decision to acquire and the specific public purpose for the acquisition goes on to say emphatically that the said land "shall be acquired" for this purpose. It was argued that the words "upon the second publication of this declaration in the Gazette the land mentioned and described in the schedule hereto shall be acquired for the above-mentioned purpose and shall vest in the Crown", indicated an intention to acquire in the future, i.e. on the second publication, but this argument is fallacious. In the first place any reference in the declaration to its publication in the Gazette, be it a first or second publication, is unnecessary, but this does not in itself make the declaration bad. Secondly, the land vests in the Crown not by virtue of the declaration but by reason of the specific provisions of section 3(3). Therefore the operative part of the declaration (as it has been termed), read with the omission of the words "upon the second publication of this declaration in the Gazette" in effect means that the land mentioned in the schedule (which is the same land referred to in the second recital) and in respect of which a decision to acquire had already been made will now in fact be acquired.

In the West  
Indies  
Associated  
States Court  
of Appeal

No. 10

Judgment of  
P. Cecil  
Lewis J.A.  
Undated.  
(Contd.)

In the West  
Indies  
Associated  
States Court  
of Appeal

No. 10

Judgment of  
P. Cecil  
Lewis J.A.  
Undated.  
(Contd.)

In my view the declaration satisfies all the conditions laid down by section 3 of the Ordinance and is therefore valid. The Board of Assessment was accordingly right in holding that it had jurisdiction to entertain the questions relating to (sic) compensation referred to it, and I would dismiss the appeal with costs.

(P. Cecil Lewis)  
Justice of Appeal

No. 11

CERTIFICATE OF THE ORDER OF THE COURT

IN THE WEST INDIES ASSOCIATED STATES  
SUPREME COURT

COURT OF APPEAL

In the West  
Indies  
Associated  
States Court  
of Appeal

No. 11

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Certificate of the Order of  
the Court

Certificate  
of the Order  
of the Court.  
20th November,  
1967.

Saint Lucia

Civil Appeal No. 2 of 1967

IN THE MATTER OF THE VENTINE ESTATE

AND

IN THE MATTER OF THE LAND ACQUISITION  
ORDINANCE CHAPTER 109

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Appeal from the Judgment - Award of the Board of  
Assessment dated the 21st day of March, 1967

B E T W E E N :-

BOSWELL WILLIAMS Claimant-Appellant

AND

THE GOVERNMENT OF THE ISLAND  
OF ST. LUCIA Respondent.

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This appeal coming on for hearing on the 3rd,  
4th and 5th days of October, and on 18th November,  
1967 before the Honourable A.M. Lewis, Chief Justice,  
the Honourable Mr. Justice Keith Gordon and the  
Honourable Mr. Justice Cecil Lewis in the presence of  
V.F. Floissac, Esq., for the Claimant-Appellant and  
J.D.B. Renwick, Esq., for the Respondent.

I HEREBY CERTIFY that an Order was made as follows:-

This appeal is dismissed with costs.

Given under my hand and the Seal of the Court this  
20th day of November, 1967.

L.S.

(Sgd) E. Wilkinson  
REGISTRAR,  
COURT OF APPEAL



No. 12

ORDER OF COURT GRANTING FINAL LEAVE TO  
APPEAL

In the West  
Indies  
Associated  
States Court  
of Appeal

IN THE WEST INDIES ASSOCIATED STATES  
SUPREME COURT

No. 12

COURT OF APPEAL

Order of Court  
granting final  
leave to appeal.  
4th May, 1968.

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NOTICE OF MOTION FOR LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

SAINT LUCIA

Civil Appeal No. 2 of 1967

IN THE MATTER OF THE VENTINE ESTATE

AND

IN THE MATTER OF THE LAND ACQUISITION  
ORDINANCE CHAPTER 109

B E T W E E N :-

BOSWELL WILLIAMS Claimant-Appellant  
(Applicant)

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AND

THE GOVERNMENT OF THE ISLAND  
OF SAINT LUCIA Respondent

DATED the 4th day of May, 1968.

BEFORE: The Honourable Mr. Justice K.L. Gordon,  
Justice of Appeal.

ORDER

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UPON READING the Motion of the applicant dated  
the 19th April, 1968, filed on the 20th April, 1968,  
and presented to this Court on the 4th May, 1968; and

UPON READING the Affidavit of the Claimant-  
Appellant dated 19th April, 1968; and

UPON HEARING the Claimant-Appellant and Counsel  
for the Respondent; and

In the West  
Indies  
Associated  
States Court  
of Appeal

No. 12

Order of Court  
granting final  
leave to  
appeal.  
4th May, 1968.  
(Contd.)

UPON IT APPEARING that the Claimant-Appellant  
has complied with the conditions of the Order of  
this Court dated the 15th day of December, 1967.

IT IS HEREBY ORDERED that the Claimant-  
Appellant be granted final leave to appeal to Her  
Majesty in Council.

By the Court

Acting Deputy Registrar Court of  
Appeal.

O N A P P E A L

FROM THE COURT OF APPEAL OF THE WEST  
INDIES ASSOCIATED STATES SUPREME COURT

B E T W E E N :-

BOSWELL WILLIAMS

Appellant

- and -

THE GOVERNMENT OF THE ISLAND  
OF SAINT LUCIA

Respondent

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R E C O R D O F P R O C E E D I N G S

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