

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
25 RUSSELL SQUARE  
LONDON W.C.1

1.

No. 36 of 1968

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE WEST INDIES ASSOCIATED STATES SUPREME  
COURT IN THE COURT OF APPEAL, DOMINICA

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B E T W E E N :-

HER MAJESTY'S ATTORNEY-GENERAL FOR  
DOMINICA (Plaintiff) Appellant

- and -

HOWELL DONALD SHILLINGFORD  
(Defendant) Respondent

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C A S E FOR THE APPELLANT

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1. This is an appeal from a Judgment and Order of the West Indies Associated States Supreme Court (hereinafter referred to as "the Court of Appeal"), dated the 6th July, 1968, allowing an appeal from, and setting aside, the Judgment of the Supreme Court of the Windward Islands and Leeward Islands, Colony of Dominica (hereinafter also referred to as "the Trial Court"), dated the 21st October, 1966, whereby, in proceedings relating to the ownership of certain land in Dominica instituted by the Appellant against the Respondent in which the Appellant claimed (1) a Declaration that of the 776 acres registered on the Respondent's Certificate of Title in respect of the Batalie Estate, Dominica, 486 acres are Crown lands, (2) an Order that the said 486 acres be surveyed and restored by the Respondent to the Government of Dominica, and (3) an Order directing the Registrar of Titles to cancel and/or correct the said Certificate of Title, it was held that, except as to a portion of the said 486 acres (hereinafter also referred to as "Lot 5") in

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pp.116 - 161

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respect of which the Crown's claim failed, the Appellant was entitled to the relief sought.

2. The main questions for determination on this appeal are as follows:-

- (A) On the oral and documentary evidence before it, was the Trial Court wrong in its conclusions that although the Crown had failed to establish its claim to the said Lot 5, it had succeeded in doing so as to the remaining portions of the land in dispute (hereinafter also referred to as "Lots 1, 2, 3, 4 and 6")?
- (B) Is the Respondent's Certificate of Title, issued to him under the Title by Registration Ordinance (C.222) indefeasible as against the Crown?

3. The facts, briefly stated, are as follows:-

p.70 1.29  
to  
p.71 1.10

On the 5th September, 1941, the Respondent filed a Request at the office of the Registrar of Titles, Dominica, addressed to the Registrar, for the issue to him of a Certificate of Title as the holder of the title and owner in possession of all that Estate lands and premises known as "the Batalie Estate" comprising 776 acres, 1 rood and 12.08 poles. As embodied in the Request, the Respondent's title arose by virtue of a Deed of Conveyance to him executed by Eleanor Margaret MacIntyre, Annie Frances MacIntyre, Kathleen Annie MacIntyre and Georgiana Celia Lockhart, recorded in Book of Deeds "2" No.7 folios 487 to 491. The Request, was accompanied by a Plan, Surveyor's Affidavit, Notice to adjacent occupiers and Affidavit of Service of the Notice, Form of Common Affidavit of Solicitor and Applicant, and Abstract of Title. On the 8th November, 1941, the Chief Justice ordered the First Certificate of Title to issue. The Certificate of Title was issued by the Registrar on the 14th November, 1941, and registered in Liber "R", folio 26. The Certificate shows the Respondent to be the registered proprietor of the Batalie Estate described as above and the accompanying Plan

p.71,  
11.11-26

delineates the boundaries of the Estate.

4. On the 10th August, 1962, the Attorney-General of Dominica informed the Respondent that recent Government investigations relating to the Batalie Estate (of which the Respondent was the registered proprietor) had disclosed that of the 776 acres which the Estate purported to contain all but 186 acres, 23 roods, appeared to be Crown lands in respect of which there had been no transaction with the Government of Dominica. The Attorney-General invited the Respondent to meet him for discussions on the discrepancy on or before the 31st August, 1962. The invitation was not accepted by the 10th April, 1964, on which date it was renewed, with the warning that further failure to accept it would result in the institution of legal proceedings "with a view to recovering the Crown lands which Government considers have been wrongly included in the area mentioned in your Certificate of Title of Batalie Estate recorded in the Registry at Liber R folio 26". This second offer was also ignored and these proceedings were therefore instituted by the Appellant (hereinafter, also, called "the Plaintiff") against the Respondent (hereinafter, also, referred to as "the Defendant") in the Trial Court on the 21st May, 1964.

pp.71 - 72

p.72, 1.27  
to  
p.73, 1.10

p.73,  
11.13-14  
p.1

5. By his Amended Statement of Claim, dated the 20th July, 1964, the Plaintiff, giving details of the Crown's claim, said:-

"3. The Crown.... is entitled to the possession of certain areas or portions of land in the parish of Saint Joseph ..... totalling 486 acres 12.08 perches (hereinafter referred to as 486 acres) at present incorporated in the 776 acres 1 rood 12.08 perches (hereinafter referred to as 776 acres) recorded on the Defendant's Certificate of Title, as representative of the area and extent of the Batalie Estate or Plantation situate in the said parish of Saint Joseph, the said Estate or Plantation being in the possession of the Defendant, who is

p.3

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registered as the proprietor of the said 776 acres.....

"4. No part nor parts of the said .... 486 acres has, or have at any time, been granted by Her Majesty or any of Her Majesty's predecessors to the Defendant or any or more of the Defendant's predecessors in title in respect of the Batalie Estate or Plantation, nor has any part of the said 486 acres ever been the subject of any grant, dedication, demise, license or contract between the Government of Dominica on the one hand and the Defendant or any of his predecessors in title on the other hand in respect of the said Batalie Estate.

"5. The said ..... 486 acres are more particularly delineated and shown on the surveyors' plan hereto annexed, as the uncoloured portions of the said plan; and the Plaintiff says that the coloured portions of the said plan are representative of a total of 290 acres, that the said acreage of 290 is the true acreage of the Batalie Estate proper, and that the other portions totalling 486 acres which go to make up the total acreage shown on the said plan are the property of the Crown, that is to say, of the Government of Dominica."

p.4,11.1,2

p.4

6. In paragraph 6 of his said Amended Statement of Claim, the Plaintiff said that for the purpose of illustrating the incorporation of the said Crown lands into the registered (alleged) acreage of the Batalie Estate he would rely upon, inter alia, an authenticated map or plan of the Island of Dominica, certified by John Byers, Chief Surveyor, and published in the year 1776, to show the then position and extent of the unappropriated Crown lands in the locality in which the Batalie Estate is situated as well as the relative positions of what was then (i.e.1776) the Batalie Estate and the said adjoining unappropriated Crown lands. and in paragraph 7 he said that for the purpose of establishing that "the true acreage of the Batalie

p.4

Estate was, and still remains, at a figure not exceeding 290, and, further, that the said adjacent and adjoining (on three sides) 486 acres are still the property of the Crown" he would rely on the title deeds recorded and certain other transactions all of which are recorded in the Registry of Dominica.

7. In paragraphs 8 to 30 of his said Amended Statement of Claim (pages 4 to 15 of the Record) the Plaintiff gave details of the relevant documents in establishment of the Crown's case which was, and is, that up to the date (the 31st May, 1941) when the Defendant purchased what he alleged was land included in the Batalie Estate, no additional lands outside of, and adjoining, the boundaries of the said total of 290 acres shown coloured on the plan annexed to the Amended Statement of Claim were added to the said Estate - a conclusion which was confirmed by a search of the records entered in the Registry.

8. In paragraphs 31 and 32 of the said Amended Statement of Claim the Plaintiff drew attention to the fact that although, on the 31st May, 1941, the acreage of the Batalie Estate had been stated (wrongly) in the conveyance of the property to the Defendant as 652, yet five months later even that excessive figure was increased to 776 on the strength of a further survey which last-mentioned figure was recorded on the Defendant's Certificate of Title.

pp.15,16

9. Paragraph 34 of the said Amended Statement of Claim, submitting the Crown's case for rectifying the Register of Titles was as follows:-

"34. Further and in the alternative the Plaintiff says that the true state of facts relating to the title of the total acreage at present shown on the said Certificate of Title was not shown, and so not represented to the Registrar of Titles when the Defendant in 1941 made his initial application to the Supreme Court of Dominica for a First Certificate of Title to the said Batalie Estate; and

p.16

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further that the initial registration based as it was on the facts set out in the said application wherein the Defendant and his predecessors in ownership were requested as having a good documentary title to all of the acreage now shown on the said Certificate of Title was, and is, a mistake, constituting a ground for rectifying the Register of Titles as pertaining to the title of the said Batalie Estate".

10. Paragraph 35 of the said Amended Statement of Claim denying the validity of the Defendant's title and conclusiveness of the Register of Titles in so far as it affected the Batalie Estate was as follows:-

pp.16-17

"35. Assuming, but not admitting, that the Crown, that is to say, the Government of Dominica, is bound by the provisions of the Title by Registration Act, Cap.99 of the Leeward Islands, the Plaintiff will contend that in any event the Defendant has no right or title to the said 486 acres of Crown lands now included in his Certificate of Title and purportedly purchased by him in May, 1941, from the MacIntyres, who themselves had no right or title to the same, and will further contend that the said 486 acres of Crown lands were wrongly registered as part of the lands of the Batalie Estate, that the Registrar of Title as affecting this Estate is not conclusive in favour of the Defendant and that the said (First) Certificate of Title acquired in November, 1941, by the Defendant was, and is, based on a defective title obtained in May, 1941, from the Macintyres, his predecessors in alleged title".

11. The Plaintiff claimed, in his said Amended Statement of Claim for, inter alia, -

"(1) A Declaration that the said portions of land represented uncoloured on the map hereto amended and totalling, 486 acres, have always been, and still are, Crown lands, i.e. the property of the Government of Dominica and that the Crown is entitled to the immediate possession of the said 486 acres.

"(2) An Order that the said 486 acres now incorporated in the 776 acres at present registered on the Defendant's Certificate of Title (registered in Book of Titles R 126) in respect of Batalie Estate are representative of the area and extent of the said Estate, be immediately surveyed and restored to the Crown by the Defendant handing over the said lands (486 acres) to such officer of the Government of Dominica as the Court may direct.

"(3) An Order that the Registrar of Titles be directed to cancel and/or correct the said Certificate of Title of the Batalie Estate, consequent on the Plaintiff being awarded the Declaration and/or Order hereinbefore claimed; and that the Registrar of Titles makes such other consequential amendments and adjustments to the said title of the Batalie Estate as the Court may direct, or as to him may seem fit."

12. By his Defence, dated the 16th March, 1965, the Defendant stated, in paragraph 1 thereof, that he is the registered proprietor of all that Estate, lands and premises known as Batalie Estate situate in the Parish of St. Joseph in the Colony of Dominica containing 776 acres, 1 rood and 12.08 poles and butted and bounded as follows.....

The second (and final) paragraph of his Defence was as follows:-

"2. The Defendant is in possession of the said land."

Record

13. By his Reply, dated the 26th March, 1965, the Plaintiff said:-

p.19

"1. The Plaintiff joins with the Defendant on his defence.

"2. And, in further answer to paragraph 2 of the Defence, the Plaintiff will object that the matter alleged in the said paragraph is no answer to the Plaintiff's claim in this action. "The Plaintiff will contend that the Crown is never out of possession by the wrongful entry of the subject."

pp.69-112

14. By his Judgment dated the 21st October, 1966, the learned Trial Judge (Louisy J.), having carefully scrutinised and assessed the oral and documentary evidence which was before him held as follows:-

p.112

"(a) The coloured portions of the plan (Ex.29a) containing 296 acres comprise the Batalie Estate.

"(b) The portions of land numbered 1, 2, 3, 4 and 6 belong to the Crown.

"(c) The portion of land numbered 5 does not belong to the Crown.

"(d) The 3 Chains Grants shown on the plan form part of the Batalie Estate.

"(e) The Certificate of Title issued to the Defendant is not conclusive against the Crown.

"(f) The Title by Registration Ordinance does not bind the Crown.

"(g) The Nullum Tempus Act (Crown Suits Act, 1769) does not apply to Dominica.

"In view of my findings above Judgment will be entered for the Plaintiff and Order -



- "(1) The Defendant to give up possession of the portions of land numbered 1, 2, 3, 4 and 6 on the plan (Ex.29a) on or before the 15th January, 1967.
- "(2) The said portions of land to be surveyed by the Plaintiff and plans thereof prepared.
- "(3) The Plaintiff to submit the plan to the Registrar of Titles.
- "(4) The Registrar of Titles to take steps to correct the Defendant's Certificate of Title, dated 14th November, 1941.

"Costs of this action to be Plaintiff's and to be taxed".

15. In his Judgment the learned Trial Judge referred to the objections to the Statement of Claim which Defendant's Counsel had taken after the Plaintiff had opened his case. These were to the effect that the Statement of Claim was defective inasmuch as it (a) contained no allegation of fraud or false suggestion and yet claimed rectification of the Defendant's Certificate of title, and (b) did not contain a sufficient averment of the Crown's title.

p.73,1.20  
to  
p.77,1.21

The learned Judge, while holding that the Statement of Claim was defective in that it did not set out a distinct ground of forfeiture (e.g. fraud or false suggestion) as the foundation for rectification, pointed out that the action was one for recovery of land in which the Plaintiff had claimed a Declaration that the land in dispute was Crown land to the immediate possession of which the Crown was entitled which Declaration the Court had jurisdiction to make and which, if made, would necessarily entail rectification of the Defendant's Certificate of Title. It was his view therefore that "in the instant case an Order for rectification may be made even where there is no ground for forfeiture revealed in the Statement of Claim".

pp.73/74

p.74,  
11.15-20

p.76  
11.31-34

Record  
p.74,1.35  
to  
p.77,1.21

p.77,  
11.16-17

As to averment of the Crown's title, the learned Judge, for reasons that he gave, held that the Statement of Claim contained a sufficient averment of the Crown's title but that even if he was wrong in so holding it was, in his view, a sufficient answer to the objection to state that it was the Crown's prerogative to plead the general issue.

p.77,1.33  
to  
p.83,1.35

p.81,1.27  
to  
p.83,1.35  
n.p.  
p.84,  
11.24-26

16. Dealing with the evidence - oral and documentary - in support of the Plaintiff's case, the learned Trial Judge (Louisy J.) referred to the reproduction of a "Plan of the Island of Dominica laid down by actual survey under the direction of the Honourable the Commissioners for the sale of land in the ceded islands by John Byers, Chief Surveyor, 1776". This document which, in support of the Plaintiff's case had been produced at the trial by one Jerome Robinson, Crown Surveyor and Commissioner of Lands, was held, by the learned Trial Judge, for reason that he gave, to be inadmissible in evidence, as, in his view, was evidence derived therefrom. The learned Judge, conscious of the rule of law that the "Plaintiff must recover on the strength of his own title and not through any defect in the Defendant's title", then embarked upon a close scrutiny and careful assessment of the mass of admissible documentary evidence which in support of the Crown's case, the Plaintiff had produced. He placed the documents in three separate groups as follows: (1) documents affecting the coloured portion of the plan (Ex.29a) of the Batalie Estate - the true acreage of the Estate proper which, according to the Plaintiff, is no more than 290; (2) those affecting the uncoloured portions of the same plan, numbered 1, 2, 3, 4, 5 and 6, in extent and area totalling 427 acres (all of them claimed by the Crown); and (3) those affecting the Three Chains Grant (also claimed by the Crown).

p.84,1.45  
to  
p.85,1.3

17. The estate in the said portions of land (or Lots) numbered 1, 2, 3, 4 and 6 was thus described by the learned Trial Judge (Louisy J.):-

p.91,  
11.31-46

"I understand the estate in Grants numbered 1, 2, 3 and 6 to be a fee simple upon

condition. With regard to portion No.4 it will be observed that the other portions of land in the same area Nos.1, 2 and 3 were held in fee simple upon condition.

With regard to portion No.4 it will be observed that the other portions of land in the same area Nos. 1, 2 and 3 were held in fee simple upon condition and also that the portion numbered 1 is held by the same persons to whom No.4 Grant was made. It is not unreasonable therefore to conclude that the 64 acres were similarly held. Such an estate gives the grantor a right to enter and determine the estate when the event occurs; unless and until entry or a claim equivalent to an entry is made the fee simple continues."

18. The learned Trial Judge's careful examination and assessment of the evidence furnished by the Plaintiff's documents in each of the three said groups led him to the conclusion that the portions of lands numbered 1, 2, 3, 4 and 6 on the plan Ex.29a were, and still are, Crown lands. He found that they were Crown lands when they were incorporated in the Defendant's Certificate of Title. As to the portion of land No.5 (on the same plan) he found that the Crown's title thereto had not been established. In his view the Plaintiff was entitled to bring an action for the recovery of the said Crown lands which were originally granted by the Crown in fee simple upon condition but which had become liable to forfeiture upon assignment or sale by the grantees.

p.92,  
11.16-30

19. The learned Trial Judge (Louisy J.) next turned to the argument advanced on behalf of the Defendant that the Certificate of Title which, in respect of 776 acres alleged to belong to the Batalie Estate, had been issued to the Defendant on the 14th November, 1941, and registered in Liber "R" folio 26, must, under the Title by Registration Ordinance (C.222), be regarded as conclusive even against the Crown. The learned Judge set out the provisions of Section 8 of the Title by Registration Ordinance (C.222) (which,

p.94,  
1.21-25

pp.94-95

Record

pp.96-97 enacts, inter alia, that a Certificate of Title shall be "indefeasible"), the definition of the word "indefeasible" in the Schedule to the said Ordinance, and Section 10 of the same Ordinance (which enacts, inter alia that the right of a registered proprietor named in a Certificate of Title "shall be the fullest and most unqualified right which can be held in land by any subject of the Crown under the Law of England"). He referred also to certain relevant passages from Hogg's "Registration of Title to Land Throughout the Empire" (1920 ed.) He considered carefully the Board's decision in Assets Company v. More Roihi (1905) A.C.176, P.C., an appeal from New Zealand, which had been relied on by the Defendant's Counsel. In the learned Judge's opinion that decision was "authority for the conclusiveness of the Register as between private individuals and not as between a subject and the Crown." He considered, further the Board's decision in Attorney-General for New South Wales v. Dickson et al [1904] A.C.273, 280, in which however the question as to whether or not the Crown is bound by a registered title was left open.

p.97,1.9  
to  
p.98,1.11

p.98,1.34  
to  
p.99,1.19

Concluding, he said:-

p.99,  
11.20-25 "Neither Hogg nor cases I have referred to above assist me in deciding whether a registered title is conclusive against the Crown.

"It is therefore necessary to refer to the definition of the word "indefeasible" given in the Ordinance and to interpret the definition."

20. Interpreting the definition of the word "indefeasible" as set out in the Schedule to the said Ordinance, the learned Trial Judge said:-

p.99,1.40  
to  
p.100 "The question here is whether the word 'person' in the definition includes the Crown. I infer from the words 'by the person making the challenge' in the definition, that any person can challenge the Certificate of Title in any Court of law for fraud or on the ground that such

person has acquired a right under the Real Property Limitation Ordinance which supersedes the title of the registered proprietor. Certainly that part of the definition which refers to the Real Property Limitation Ordinance could not refer to the Crown as that Ordinance does not apply to the Crown but to the subject. This seems to indicate that the word person used in the definition does not mean the Crown but the subject."

21. Continuing his analysis of the definition of the word "indefeasible", the learned Trial Judge said:-

"Similarly the second definition when interpreted would lead to absurdity if it applies to the Crown. The definition reads -

p.100,  
11.9.20

"the Certificate of Title being issued by the Government of the Colony, the Government of the Colony is, with the exceptions above-mentioned, prepared to maintain the title in favour of the registered proprietor, leaving anyone justly aggrieved by its issue to bring the action for money damages against the Government of the Colony."

"I think it is accepted that the Government of the Colony is the Crown. If the definition includes the Crown, the Crown could be a registered proprietor. What then is the position when the Crown has issued a title and the person justly aggrieved (as in the instant case) is the Crown? Does it mean that the Crown is prepared to maintain the title in favour of the registered owner and bring an action against itself for damages?

p.100,  
11.21-29

"It appears to me that the definition of 'indefeasible' in the Ordinance is conclusive as between subject and subject, and a Certificate of Title issued under the Ordinance is conclusive as between subject and subject and not as between a subject and the Crown."

p.100,  
11.30-35

Record  
p.100,  
ll.36-42

Concluding on this topic, the learned Judge said that in his researches on this aspect of the case he was unable to find support for Hogg's view as expressed in his work "Registration of Title to Land throughout the Empire", (1920 Ed.) that "the better opinion seems to be that the Register is conclusive against the Crown as regards the ordinary rights of property enjoyed by a subject".

p.100,  
l.43 to  
p.101,  
l.6

22. Still on the same topic, the learned Trial Judge (Louisy J.) referred to Section 31 of the Interpretation and General Clauses Ordinance which enacts that Crown rights shall not be affected by any Ordinance unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby.

pp.101-105  
p.105, l.21  
to  
p.106, l.40

He examined closely the relevant United Kingdom and Australian authorities and drew attention to certain provisions of the Title by Registration Ordinance (C.222) a consideration of the implications of which led him to the clear conclusion that that Ordinance does not bind the Crown even though the Crown is entitled to certain benefits thereunder. He said:-

p.107,  
ll.20-35

"In my view although the Crown can enjoy certain benefits under the Ordinance where Crown lands are registered under it, the Crown is not because of this bound by the Ordinance by necessary implication. To hold that the Crown is bound under the Ordinance would have this as one of the consequences. At present lands not held by the Crown under the Ordinance are protected from acquisition by 12 or 30 years' prescription, yet if the Crown chooses to be registered under Section 12 of the Ordinance, a subject could acquire title to Crown lands after being in possession for the periods mentioned above. This would, in effect, be creating a Statute of Limitations against the Crown where no such statute exists at present. This certainly would not make sense.

"In my view the Crown is not bound by the Title by Registration Ordinance, C.222."

Record  
p.107,  
11.36-37

23. On behalf of the defence, it was agreed further that "whatever the rights or wrongs of the situation" the Crown had been out of possession for over 60 years and was therefore, under the Crown Suits Act, 1769 (the Nullum Tempus Act) out of court. As to this defence it is sufficient to state here that the learned Trial Judge (Louisy J.), for reasons that he gave, held that that Act does not apply to Dominica.

p.107  
11.38-46

pp.110-112  
p.112,  
11.7-8

24. Against the said Judgment and Order of the Trial Court the Defendant (present Respondent) appealed to the Court of Appeal on the grounds set out in his Notice of Appeal, dated the 10th November, 1966. (see pages 113 to 115 of the Record).

25. The appeal was heard by a Bench consisting of Lewis C.J., Gordon J.A., and C. Lewis J.A., who, by their Judgment, dated the 6th July, 1968, allowed the appeal, set aside the Judgment and Order of the Trial Court and ordered Judgment to be entered for the present Respondent.

p.116-159

26. In his Judgment, Lewis C.J. said that the appeal raised the following three questions:-

"(1) Has the Crown established its ownership of Lots Nos. 1, 2, 3, 4 and 6?"

p.123,  
11.18-26

"(2) If yes, is the appellant's Certificate of Title indefeasible as against the Crown?"

"(3) Is the Crown barred from recovering by 60 years' adverse possession by virtue of the Nullum Tempus Act?"

On the 1st question, the learned Chief Justice said, with respect to Lots 1, 2 and 6 that the Crown grants relating to them are self-styled grants of occupancy of the lands to which they relate. His conclusion that the Crown had established its title to the said Lots was preceded by the following observations:-

p.125,  
11.8-10

Record  
p.125,  
ll.15-38

"The learned Trial Judge held that they were grants in fee simple upon condition. This may technically be their true classification for the grant is made to the grantee and his heirs for ever. Assuming this to be so it is nevertheless clear that the rights which they confer in the land are granted subject to the express conditions as to the Crown's right to determine them..... This condition may seem inconsistent with a fee simple, but the Crown, save in so far as any statutory provision binding upon it may prescribe otherwise, is entitled to grant its lands subject to such conditions as it may deem fit. I agree with learned Counsel for the respondent that by these grants the Crown did not dispose absolutely of its rights of ownership but retained sufficient of its rights to entitle it to retake possession of the land in appropriate circumstances."

26. Continuing, on the Crown's right of re-entry, the learned Chief Justice (Lewis C.J.) said:-

p.125,1.39  
to  
p.126,1.2

"Where, as in this case, the persons entitled under the grant have gone out of possession, and a third party has entered and remained in adverse possession for a period of time which under the Real Property Limitation Ordinance Cap.16 is sufficient to bar their right to recover the property from the occupant, and even to extinguish their title to the land, the Crown is entitled, in my opinion, in the exercise of its rights of ownership, to re-enter to protect its rights and to recover the land from the occupant...  
.....

p.126,  
ll.7-13

"It is conceded that the Crown is not bound by the provisions of the Real Property Limitation Ordinance, so that unless the appellant is protected by his Certificate of Title or the Nullum Tempus Act, the Crown is entitled to recover from him Lots Nos. 1, 2 and 6."

p.126,1.14  
to  
p.127,1.6

27. The learned Chief Justice did not agree with the finding of the Trial Court as to Lots 3 and 4,



Record

in respect of both of which his opinion was that the Crown had not established its title:

The learned Trial Judge had concluded that it was, in the circumstances of this case, reasonable to conclude that the terms of the grants of Lots 3 and 4 were similar to those of the grants of Lots Nos. 1 and 2. In the opinion of the learned Chief Justice, in the absence of evidence as to the precise terms of the Grants, the Court should not have come to any such finding.

28. As to the indefeasibility of the said Certificate of Title the learned Chief Justice (Lewis C.J.), after referring to the arguments advanced by both sides, came to the conclusion that, in Dominica, the Crown is bound by Sections 8 and 10 of the Title by Registration Ordinance (C.222) and cannot, therefore, challenge any Certificate of Title except on grounds mentioned in the said Ordinance. He was in agreement with the argument for the appellant (present Respondent) that "the indefeasibility of the Certificate established by Section 8 involves a guarantee or pledge by the Crown in its right of the Government of Dominica that it will maintain in favour of the registered proprietor the title which it has conferred on him by means of the Certificate of Title which it has itself issued to him." It was his view that the Crown is "barred by Section 10 of the Ordinance from asserting as against the registered proprietor named in a Certificate of Title its right of ownership in any of the lands included in the Certificate of Title". He does not appear to have made any attempt to resolve the doubts and difficulties envisaged by the learned Trial Judge (see paragraphs 20 to 22 hereof) which, if the said Ordinance is to be applied to the Crown, would almost certainly arise if the Crown in Dominica sought relief under the Ordinance in the manner of one of its subjects.

p.127,1.7  
to  
p.131,1.1

p.131,  
11.1-10

p.132,  
11.13-18

29. The learned Chief Justice (Lewis C.J.) finally referred to the argument that the Crown's title in the instant case was barred as a result of 60 years' adverse possession of the Defendant - Appellant and his predecessors-in-title. This

p.133-134

Record

argument was based on the provisions of the Crown Suits Act, 1769 (the Nullum Tempus Act) which, it was argued, applies to Dominica.

p.134,  
11.1-6

For reasons that he gave, the learned Chief Justice (in agreement on this point with the Court below) rejected the argument. He was of the clear opinion that though Dominica was subject to the control of the Parliament of the United Kingdom, statutes passed by that Parliament after the promulgation in Dominica of the Proclamation of the 7th October 1763 (Vol.I Revised Laws of Dominica, 1961, p.lxxi) do not extend to Dominica without express words showing the intention of the United Kingdom Parliament that they should.

pp.134-155  
pp.152-159

30. Gordon J.A. and C. Lewis J.A., the other members of the Bench which had heard the appeal, delivered separate Judgments also allowing that appeal. It is sufficient to state here that their reasoning and conclusions were substantially similar to that of Lewis C.J.

pp.160-161

31. An Order in accordance with the Judgment of the Court of Appeal was drawn up on the 6th July, 1968, and against the said Judgment and Order the present Appellant applied for Leave to Appeal to Her Majesty in Council, which by its Order, dated the 22nd November, 1968, granting Final Leave to Appeal, was granted by the Court of Appeal.

p.166

In the Appellant's respectful submission the appeal ought to be allowed, with costs throughout, for the following among other -

R E A S O N S

1. BECAUSE, on the evidence before the Courts below and on any reasonable interpretation and application of the relevant laws of Dominica, it is clear that the title to the said Lots 1, 2, 3, 4 and 6 is in the Crown.
2. BECAUSE the Court of Appeal which was right in its recognition of the Crown's title to Lots 1, 2 and 6 was wrong in law in its

rejection of the reasoning and conclusion of the Trial Court which recognised also the Crown's title to Lots 3 and 4.

3. BECAUSE if the said reasoning of the Trial Court as to the ownership of Lots 3 and 4 is open to doubt then it is, alternatively, open to the Appellant to say that as the title to the said Lots cannot be traced back to a Crown grant or otherwise be satisfactorily established by the documentary evidence in the case it must be deemed to have remained vested in the Crown as from the date of the cession of the Island of Dominica up to the present day.
4. BECAUSE the Title by Registration Ordinance (C.222) does not bind the Crown.
5. BECAUSE a Certificate of Title issued under the said Ordinance is not conclusive against the Crown and the Court of Appeal's decision to the contrary is not in accordance with reason or law.
6. BECAUSE, for reasons stated therein, the Judgment of the Trial Court was right, and ought to be restored.

E.F.N. GRATIAEN  
G. B. NILES  
R.K. HANDOO

CONSTANTINE

No. 36 of 1968

IN THE PRIVY COUNCIL

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ON APPEAL

FROM THE WEST INDIES ASSOCIATED STATES  
SUPREME COURT

IN THE COURT OF APPEAL, DOMINICA

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B E T W E E N :-

HER MAJESTY'S ATTORNEY-GENERAL FOR  
DOMINICA

(Plaintiff) Appellant

- and -

HOWELL DONALD SHILLINGFORD

(Defendant) Respondent

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C A S E     F O R     T H E     A P P E L L A N T

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MESSRS. T.L. WILSON & CO.,  
6 Westminster Palace Gardens,  
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Solicitors for the Appellant