

17, 1969

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
Claimant-Appellant - Appellant

- and -

THE GOVERNMENT OF THE ISLAND OF
SAINT LUCIA
Respondent - Respondent

CASE FOR THE APPELLANT

- 1. This is an appeal from a decision of the Court of Appeal of the West Indies Associated States Supreme Court (Lewis, C.J., and Gordon and Lewis, JJ.A.) delivered on the 18th day of November, 1967, which dismissed with costs an appeal that sought to set aside the decision of a Board of Assessment comprising the Honourable Mr. Justice H.A. Bishop and Mr. Erskine R.L. Ward which is contained in the Judgment-Award of the said Board dated the 21st day of March 1967 and filed in the Supreme Court of the Windward Islands and Leeward Islands (Saint Lucia) on the same day. RECORD
p.79
- 2. The appeal arises out of the publication in the SAINT LUCIA GAZETTE on the 21st and 28th days of December 1963 of a 'Declaration of Acquisition of Land' whereby the Respondent claims that certain lands therein described namely the Ventine Estate and the Sulphur Springs or volcano also known as Terre Blanche, the property of the Appellant, was compulsorily acquired and vested in the Crown under authority of Section 3 of the Land Acquisition Ordinance. pp. 31 & 32
p.2, 1.45
pp.1-2
- 3. The question for decision in this appeal turns on the construction of the Land Acquisition Ordinance and of the Declaration published as aforesaid and whether the latter complies with the provisions of

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CASE FOR THE APPELLANT

RECORD

Section 3 of the said Ordinance or is authorised to be made under that Section.

4. Section 3 of the Land Acquisition Ordinance reads as follows:

"3. (1) 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 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.

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(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:-

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(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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(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."

RECORD

5. Before the Board of Assessment on the 3rd May 1966, objection in limine was taken by Counsel for the Appellant to the jurisdiction of the Board to entertain the questions relating to compensation in respect of the said lands which had been referred to it on the ground that the purported compulsory acquisition on which those proceedings were based were void for failure of compliance with the provisions of Section 3 of the Land Acquisition Ordinance in that the Declaration published in the SAINT LUCIA GAZETTE on the 21st and 28th December, 1963 was invalid.
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6. In support of his contention regarding the invalidity of the published Declaration, Counsel for the Appellant submitted to the Board that the words 'declaration to that effect' in Section 3 meant a Declaration to the effect that the Administrator considers that the land should be acquired for a public purpose; that the recital or preamble could not be construed so as to declare what the Administrator in Council did not declare whether that omission was deliberate or by inadvertence; that it was impossible to make a declaration by a preamble; that all that was declared was the effect of what should have been declared; that the recital of the declaration could not be regarded as the declaration; that the recitals of the declaration could not be used to extend the provisions beyond the limitations clearly expressed in its operative part; that where a draughtsman chose to divide his document into two parts namely: a preamble or recital and a principal part, he exposed himself to the effect of the rules governing them; and that the operative part of the published declaration contained a statement of law, and it had not declared what was necessary.
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7. Counsel for the Respondent contended that the submission was unfounded; that the words 'cause a declaration to that effect' meant that the declaration should state the effect of the judgment arrived at and should be made in the manner provided by the section; that the words 'to be made in the manner provided by this section' could only refer to sub-section 2; that compliance with sub-section 2 was compliance
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- p.3, 1.21 &
p.11, 1.19
p.3, 11.23-36, & p.11, 11.20-24
- p.4, 1.5
- p.4, 11.12-14
- p.4, 11.26-29
- p.4, 1.31
p.4, 11.32-33
p.4, 11.34-35
p.4, 1.37-
p.5, 1.2
- p.5, 11.13-16
- p.5, 11.19-20
p.5, 1.21
- p.6, 1.14
p.12, 11.32-35
- p.6, 11.25-26
p.6, 11.30-31

RECORD	with sub-section 1; that no particular form of declaration was required by the statute except in accordance with the provisions of sub-section (2); that the second sentence of the published Declaration contained a statement of the decision of the Administrator-in-Council so that even if the personal opinion of the Administrator-in-Council was required to be stated, which it was not, paragraph 2 of the published Declaration did it; that there was no dichotomy between the formal and informal parts of a Declaration under the Land Acquisition Ordinance; that the declaration was the whole of the document, there was no principal or operative part of the declaration, it must be read as a whole, and as set out it did set out all that was required to be set out.	
p.7, 1.4 & p.13, 11.6-9 p.13, 1.20 & p.7, 11.26-29		
p.13, 11.28-29		10
p.7, 1.35 p.8, 1.4 p.8, 1.5 p.8, 11.16-17		
pp.15-17	8. On the 4th May, 1966, the Board of Assessment delivered its decision on the preliminary objection. The Board held that there was no necessity for the declaration to assume any particular form; that 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 were stated then the effect referred to in subsection one would have been achieved. The Board stated:	20
p.16, 11.24-32	'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.' The Board ruled that it was satisfied on looking into the matter in all its aspects that it might proceed with the holding of its inquiry.	30
p.16, 11.39-47		
p.17, 11.1-3		40
p.31, 11.27-28 pp.31-32	9. The Board of Assessment continued its hearing on the 17th to the 21st days inclusive of January 1967, and by a Judgment-Award dated 21st March, 1967 and filed in the Supreme Court of the Windward Islands and Leeward Islands (Saint Lucia) on the same day, awarded the	

Appellant (in substance) a sum of money in full satisfaction of his claim against the Respondent for compensation in respect of the compulsory acquisition of the Ventine Estate together with two-thirds of his costs to be taxed.

RECORD

10. The Appellant appealed to the British Caribbean Court of Appeal seeking to have the decision of the Board of Assessment contained in the Judgment-Award set aside on the ground that the said Board of Assessment had no authority or jurisdiction to make the said decision for reasons which there as before the Board of Assessment on the preliminary objection derived from the contention that the Declaration published in the SAINT LUCIA GAZETTE of the 21st and 28th December, 1963 was null and void.
11. The appeal was heard by the Court of Appeal of the West Indies Associated States Supreme Court (Lewis, C.J., Gordon and Lewis, JJ.A.) on the 3rd, 4th, and 5th October 1967, and on the 18th November 1967 the Court delivered a unanimous decision dismissing the appeal with costs, each of the Honourable Judges delivering his own separate judgment.
12. Before the Court of Appeal, two main arguments directed at impugning the validity of the published Declaration were advanced by Counsel for the Appellant. On the first argument so advanced, that the declaration was defective because it failed to declare or enact the order in council and was therefore not by nature or character a declaration of the order-in-council, (essentially the argument advanced before the Board of Assessment), his Lordship the Chief Justice expressed the opinion that this argument failed because its premise, that the Declaration was a legislative act, was erroneous. He accordingly held that the second recital of the published declaration "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'."
13. His Lordship Mr. Justice Gordon held that the Declaration must be read as a whole, with no limitations placed on any particular

pp.33-35

p.34, 11.25-39

pp. 1 & 2

p.79, 11.26-34

p.37, 11.33 & 34

p.61, 11.6-10

p.38, 11.10-12

p.39, 11.4-15

p.53, 11.38-41

RECORD	paragraph, and not being a statute the restrictions applicable to preambles in statutes did not apply.	
p.75, 11.19-23	14. His Lordship Mr. Justice P. Cecil Lewis stated that "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"; that since the declaration did not possess legislative effect the only pertinent inquiry was whether it satisfied the requirements of section 3, and this demanded examination of the document as a whole.	10
p.61, 11.18-21	15. In advancing the second argument on behalf of the Appellant before the Court of Appeal, that the declaration was defective because it failed to specify the ground of the decision to acquire namely the immediate requirement of the land for a specified public purpose, it was pointed out that the word 'required' appeared 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' was insufficient for 'to acquire' and 'to require' had different connotations. This submission was based on section 3(2)(d) of the Land Acquisition Ordinance.	20
p.39, 11.23-30		
p.40, 11.39-44	16. On the second argument, His Lordship the Chief Justice held that "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".	30
p.76, 11.30-35	17. His Lordship Mr. P. Cecil Lewis held that "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".	40
p.49, 1.38- p.50, 1.2	18. His Lordship Mr. Justice Gordon held that "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 the public purpose to be 'the development of tourism'.

10 19. It was conceded by Counsel for the Respondent that Section 3 must be construed as mandatory, and failure to observe its regulative provisions would have fatally affected the validity of the Declaration and the compulsory acquisition based on the Declaration.

p.62, 11.4-6 & p.61, 11.22-26

20 20. The Appellant applied to the Court of Appeal of the West Indies Associated States Supreme Court for Leave to Appeal to Her Majesty in Council, and on the 4th May 1968 the said Court of Appeal (Gordon, J.A.) granted the Appellant final Leave to Appeal to Her Majesty in Council.

pp.81 & 82

21. The Appellant respectfully submits that the decision of the Court of Appeal of the West Indies Associated States Supreme Court, dismissing the appeal with costs, should be reversed and the decision contained in the Judgment Award of the Board of Assessment set aside for the following among other

p.79, 1.34
pp.31 & 32

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REASONS

- (1) BECAUSE the rules of construction governing the effects of the preamble or recital of a statute and its relationship to the statute as a whole are applicable to a Declaration made under powers conferred by Section 3 of the Land Acquisition Ordinance.
- 40 (2) BECAUSE on grounds of law, principle, and reason, separate and distinct from the inclusion of a Declaration made under powers conferred by Section 3 of the Land Acquisition Ordinance within the ambit of the rules governing the

construction of statutes referred to at (1) above, the preamble or recital of the published Declaration ought not to be invoked to declare what the Administrator in Council did not cause to be declared.

- (3) BECAUSE having regard to Articles 362 and 1497 of the Civil Code of Saint Lucia and to the principles of construction applicable, due weight and effect must be given to the words 'for which the land is required' appearing in Section 3(2)(d) of the Land Acquisition Ordinance and they should not be treated as being inoperative, superfluous, void, or insignificant. 10
- (4) BECAUSE it is ULTRA VIRES the powers conferred by Section 3 of the Land Acquisition Ordinance to declare that the land 'shall be acquired' - the decision that the land 'shall be acquired' being in substance part of 'the decision ... to acquire and take possession of the land compulsorily' which under Section 7(2)(a) is 20
- (a) only within the power of the Administrator to make; and
- (b) required to be stated in a Notice of Acquisition to be issued by the Authorised Officer in accordance with the provisions of Section 7 of the Ordinance. 30
- (5) BECAUSE a condition precedent to the making of a declaration under Section 3 of the Land Acquisition Ordinance is adequate written evidence that the Administrator in Council considers that the land should be acquired for a public purpose; and no order in council to that effect having been published in the Saint Lucia Gazette, the Declaration published in the Saint Lucia Gazette on the 21st and 28th December, 1963 is a nullity. 40

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- (6) BECAUSE the powers conferred by Section 3 of the Land Acquisition Ordinance are not available to or exercisable by the Administrator or the Administrator acting in accordance with the advice of the Executive Council.
 - (7) BECAUSE the acquisition of land for a specified public purpose for which the Administrator in Council considers that it should be acquired is outside the scope of the powers conferred by Section 3 of the Land Acquisition Ordinance.
 - (8) BECAUSE the words 'development of tourism' do not disclose, fairly disclose, specify, or state the public purpose for which the land is required.

BOSWELL WILLIAMS

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Appellant
(in person)

No. 15 of 1968

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ON APPEAL
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SUPREME COURT

BETWEEN:-

BOSWELL WILLIAMS
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Appellant

- and -

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Respondent - Respondent

CASE FOR THE APPELLANT

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