22.3.83

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDENAT GEORGE TOWN

BEFORE THE HON. SIR JOHN SUMMERFIELD CBE QC CHIEF JUSTICE
ON 7 FEBRUARY 1983

CAUSE NOS 253 and 254 OF 1981

IN THE MATTER OF the Caymanian Protection Law 1971

AND

IN THE MATTER OF Petitions filed in pursuance of section 16 of the Caymanian Protection Law 1971 and ROBERT CLARKE HANNA AND LOLA ELEANOR HANNA

Mr. Ramon Alberga QC(with him Mr. J.D.MacDonald) for petitioners
Mr. John Martin for respondent.

JUDGMENT

These two petitions were heard together as both turn on substantially the same facts and law. The petitioners are husband and wife and petition pursuant to section 16 (1) of the Caymanian Protection Law for a declaration that they were domiciled in these Islands at the relevant time for the purpose of section 15 (b) (now 15 (1) (b)) of that Law and thus become possessed of Cayman status upon the declaration being made. At this stage, I am using neutral language as one issue for resolution is which version of the relevant sections of that Law - the original one or one brought about by subsequent amendments - governs their particular case.

Both petitioners are British subjects and both have their domicile of origin in Canada. Before the relevant period to be considered in this judgment the husband had not acquired a domicile of choice outside Canada and, of course, since their marriage, the wife's domicile follows that of the husband.

They were married in these Islands in April 1970 and resided here for about three weeks at that time. Subsequently,they spent some time in the Turks and Caicos Islands but then returned to Canada, sold up

their belongings, including stocks and shares, and came to these islands on the 28th December 1971 and made these Islands their home for almost five years thereafter (i.e. until October 1976). They bought land here, built a home on one of their plots and lived in that home. They then returned to Canada and have lived there ever since. The home they have here is let on lease. Factors influencing their return to Canada were (a) unfortunate physical defects in their child which needed a series of operations and specialised medical attention and (b) a wish to give the husband's children, by a former marriage, higher education.

The Caymanian Protection Law 1971 (No.23 of 1971) was passed by the Legislative Assembly in December 1971 and became law on 27th March 1972. In section 2 of that Law as enacted, and, indeed, throughout until today, it is provided that:

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

Section 15 (b) as originally enacted provides:

> "15. Every British subject who -
>
> .....
>
> (b) was domiciled in the Cayman Islands at the time of the coming into effect of this Law and has been declared to be domiciled under subsection (1) of Section 16
>
> .....
>
> is a person of Caymanian status as of right.".

Section 16 (1) provides the machinery for making application to the Grand Court for a declaration.

The petitions were filed as long ago as August 1972. In fact there had been been applications filed in May 1972 but a practice direction laid down that applications should be by way of petition and, accordingly, petitions were substituted for the original applications. Why they were not heard much earlier is something of a

mystery. It would appear that they were listed for hearing in September 1972 but somehow the machinery snarled up. Part of the delay no doubt came about as a result of waiting for the result of what were test cases involving the wife's father, namely, Re James David MacDonald 1973 20 W.I.R. 314 (which I will refer to as MacDonald No.1) and Re James McDonald (No.2) 1975 23 W.I.R. 332 (which I will refer to as McDonald No.2) Thereafter, no serious effort appears to have been made to have the matter heard until December 1980 after which several unavoidable postponements led to further delay until the hearing date of 7th February 1983. The delay between December 1980 and February 1983 is of no consequence to the decision in this case as no relevant amendment was enacted during that period. The petitioners place part of the blame for delay on the belief that the petitions were mislaid in the Registry and on the fact that they thought that the initiative for fixing a hearing lay with the Court as set out in the earlier practice direction. That direction did not stand in the way of other petitions being heard or later efforts by counsel for the petitioners to assume the initiative for a hearing date (from 1980 onwards). I suspect that the delay, certainly after 1975, was due largely to the petitioners' alterations in plans leading them to return to Canada.

Had I been deciding these cases in 1972 as the law then stood (as set out above) I would have had no difficulty in granting a declaration in favour of the petitioners. The test, in my view, would have simply been whether, on 27 March 1972, the husband (and, accordingly, the wife) was domiciled in these Islands as understood by the Common Law concept of domicile. That seems to me to be the clear meaning of the relevant provisions at that time. I cannot see how the Common Law concept of domicile (as defined) can be excluded from the construction of section 15(b) in its original form. I do not see how the "context otherwise requires" in paragraph (b) but not, for instance, in paragraph (a). Why should "domiciled" in paragraph (b) have a different meaning from the same word in paragraph (a) - or, for that matter, in section 17? I think it is significant that section 16 (1) provides that: "Any British

subject claiming to be.... ordinarily resident or domiciled in the Cayman Islands for any purpose of this Law may at any time apply to the Grand Court....". That suggests to me that there is no distinction to be drawn between the use of the word "domiciled" in one context from its use in another. Nor should there be any reason to do so unless the language of the provision concerned clearly required otherwise. The Common Law concept of "domicile" (pursuant to the definition) fits just as snugly in paragraph (b) of section 15 as it does in paragraph (a) of that section and in section 17 - the principal places where it affects qualifications for status. I cannot accept that this was not intended. That is what the Law said unambiguously.

As to the facts to satisfy me on the question of domicile at Common Law, I am fully aware of the burden on the petitioners, the presumption against a change of domicile, the durable quality of the domicile of origin and that a change is not to be inferred lightly. Although the change of plans and return to Canada in October 1976 are factors to be taken into account in deciding whether there was a bona fide intent to take up permanent residence at the relevant time (factors, incidentally, which would not have been present if the cases had been decided in 1972) the real issue is whether that intent existed on 27th March 1972 and before. The husband gave evidence and I have no reason to doubt that at the relevant time both petitioners had decided to make these Islands their permanent home, despite the necessity for obtaining work permits for the time being. They had taken up residence here and I am satisfied that they had a firm and settled intention to live here permanently at that time.

Although events made subsequent departure necessary I accept that that does not affect my conclusion on the issue so far as it relates to the relevant period. They have kept their property here; they visit regularly and intend to return to live here permanently.

Accordingly I find that they were domiciled here according to

the Common Law concept of domicile on 27th March 1972 and immediately before for about three months.

Unfortunately, matters are not so simple. The Law in February 1983 when the petitions were heard is substantially different from what it was in 1972 when the Caymanian Protection Law (which I will call the Original Law) was enacted.

I have made my findings of fact on the question of domicile at Common Law as there will almost certainly be an appeal from this decision and my findings of fact may be of assistance to the Court of Appeal in the event that their Lordships take a different view of the law applicable from the one I do.

There have been several amendments to the principal law and a Revised version issued under the authority of the Law Revision Law. Learned counsel for the petitioners helpfully outlined the history of the enactments, not without wry digs at the Executive and what prompted the amendments. It is sufficient to say that for the most part those amendments followed decisions of the Courts which were not in keeping with the Executive's understanding of the original intent behind the provisions when enacted.

For the purposes of this case it is sufficient to consider, as they occured chronologically, The Cayman Protection (Amendment) Law 1977 (No.7 of 1977) (which I will refer to as the 7/77 Law) and in particular, section 4 (which repeals and replaces, inter alia, section 15 of the Original Law) and section 15, The Caymanian Protection Law (Revised)(which I will refer to as the Revised Law) and, in particular, section 15 (1) (b) (which reflects the same provision introduced by section 4 of the 7/77 Law) and section 76 (which reflects, but not accurately, parts of the substantive section 15 of the 7/77 Law), and the Caymanian Protection (Amendment) (No.3) Law 1977 (No.32 of 1977) (which I will refer to as the 32/77 Law).

The 32/77 Law was an amendment passed in consequence of a decision of this Court, In Re Claude-Jean Beaulieu (Cause No.531 of 1977) which is very much on all fours with this one and where the case was decided by applying the Common Law principles to the interpretation of the word "domiciled" in section 15 (b) as contained in the Original Law. (Apparently it was common ground that the later amendment, the 7/77 Law, did not apply by reason of the substantive section 15 (d) of that Law as the petition had been filed before that Law was enacted. There was, therefore, no decision on that point.)

One irrational consequence of the 32/77 Law is that it purports to introduce a definition of the word "domiciled" for the purposes of paragraphs (a) and (b) of section 15 (1) without repealing the definition in section 2 of the Original Law. Therefore, the purported meaning in paragraphs (a) and (b) of section 15 (1) is different from that where the same word is used in section 17.

In submissions to this Court learned counsel have laid emphasis on selected passages in the judgments in the MacDonald No.1 and McDonald No. 2 cases. In dealing with those submissions I have, with respect, to make the following observations.

In MacDonald No.1 their Lordships reached their common conclusions by completely different routes. There is no majority ratio decidendi to be culled from their judgments. Some of the pronouncements on the law appear to conflict. This court is not, therefore, bound by any one line of reasoning expounded. Indeed, it would be presumptious of this Court to adopt any one line as the better view and to be preferred to that of the other members of the Court. It should also be observed that their Lordships were then construing these provisions before the amendments to them introduced by the 7/77 Law and the 32/77 Law. That case related to the law when it was substantially different from what it is today. That is an additional reason why it is not binding on this Court. Furthermore in that case the decision turned on a different point.

Similar comments apply to the majority judgments in the McDonald No. 2 case, save for the last one made. The dissenting judgment was, of course, based on an entirely different line of reasoning from the other two.

Learned Counsel for the petitioners also placed strong reliance on certain obiter dicta of Graham-Perkins J.A. in the McDonald No.2 case. Here again, apart from being obiter, it should be emphasised that they related to a state of the law quite different from what it was at the hearing in this case.

Had this case been decided shortly after the McDonald No.2 case had been decided by the Court of Appeal and before the amendments had been passed then, of course,the position would have been altogether different and I would have had the decision in that case to guide me and I doubt if the Government would have opposed the petition. However, as I see it the sponsers of the 7/77 Law no doubt had this very decision in mind and intended to change the relevant provision in the light of that decision.

As it is, I will have to find my own way through the maze created by the subsequent amendments drafted in some haste, no doubt, and certainly not as free from argument as to their meaning as one would wish.

Those amendments can now be considered.

Section 15(1) (b) as contained in the 7/77 Law (and as reprinted in the Revised Law) reads:

> "Any British Subject who, prior to the 27th day of March 1972:
>
> .....
>
> (b) was domiciled in the Cayman Islands in accordance with the provisions of any then existing Immigration Law of the Islands and has been declared to be so domiciled under subsection (1) of section 16;
>
> .....
>
> shall, as from the coming into operation of this Law, be deemed to possess Caymanian status for the purposes of this Law.".

It will be noted that it is substantially different from the provisions in the Original Law it replaced. Four differences should be listed:

(a) the qualification relates to a British Subject who was domiciled here prior to 27th March 1972 - not on that date as in the Original Law;

(b) domicile is to be determined in accordance with the provisions of any then existing (prior to 27 March 1972) Immigration Law of these Islands - obviously having in mind the Immigration Restriction (British Subjects) Law, Cap. 67, which was repealed by the Original Law;

(c) the expression "Caymanian status as of right" is omitted;

(d) (probabely unintentional) when the declaration is made it relates back to 27 March 1972 and the person concerned is deemed to have had status since that date. Under the Original Law the person concerned has status from the date of the declaration only.

It should be stressed that this provision relates to and defines a qualification existing prior to 27th March 1972. It must therefore be retroactive in its nature and must relate back to that time. It is intended clearly to alter the qualification contained in the provision it replaced. It cannot relate to any person who did not have that qualification before 27th March 1972. It defines the qualification a person must have at the date of the petition and declaration (namely, he must be a British Subject) coupled with the qualification he must have had prior to 27th March 1972 (namely, he must have then been domiciled here in accordance with the provisions of any then existing Immigration Law (i.e. the Immigration Restriction (British Subjects) Law)).

Section 2 (1) of the Immigration Restriction (British Subjects) Law provides, inter alia:

"2 (1) In this Law -

....

"domicile" means the place in which a person has his home or in which he resides or to which he returns as his place of present permanent abode and not for a mere

> special or temporary purpose; and a British subject shall not be deemed to have a domicile within the Islands for the purposes of this Law unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted by this Law or any other Law in force in the Islands or as a person under detention in a prison, reformatory, orphanage, mental hospital or leper asylum; and a British subject shall be deemed for the purposes of this Law to have lost his domicile within the Islands if he voluntarily goes and resides outside the Islands (except for a special or temporary purpose) with the intention of making his home outside the Islands; and "domiciled" shall have a corresponding meaning.".

For the purposes of that Law a British subject was deemed not (although it used the awkward phrase "shall not be deemed") to have a domicile in these Islands unless "he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted" by that Law etc.

Neither petitioners had resided in these Islands for two years or more prior to 27 March 1972. And the few months residence here they enjoyed before that date was not "otherwise than under terms of conditional or temporary residence permitted "by the Immigration Restriction (British Subjects) Law.

That would appear to be an end of the matter except for the ingenious arguments advanced with which I must now deal.

It was urged that the definition of domicile imported into section 15 (1) (b) as contained in the 7/77 Law, and the revised Law, ended after the first semi colon, that is to say, it was as follows:

> "domicile" means the place in which a person has his present home or in which he resides or to which he returns as his place of permanent abode and not for a mere special or temporary purpose;"...

It was argued that the rest of that definition was governed by the words "for the purposes of this Law" (i.e. for the purposes of the Immigration Restriction (British Subjects) Law) and was, therefore, intended for the purposes of that Law alone and no other. The imported definition would thus exclude the two year residence qualification. Some support for that argument was sought in the judgment of Graham-Perkins J.A. in the MacDonald No. 1 case at p.330.

As observed earlier, His Lordship in that case was considering the Law in a different form, i.e. before the subsequent amendments.

In my view, there are several reasons why the argument advanced cannot be accepted.

In the first place, section 2(1) of the Immigration Restriction (British Subjects) Law (which sets out the definitions) commences "In this Law - ". That means that all the definitions set out therein were for the purpose of that Law. That is the position with every Law unless otherwise specified therein. The Law defines various words and phrases for the purposes of that Law. Therefore the words "for the purposes of this Law" in the definition of "domicile" add nothing to it. The whole of the definition of "domicile" was for the purposes of that Law and no other, including that part before the first semi-colon. It could surely not be argued that that part of the definition before the first simi-colon was not solely for the purposes of that Law despite the absence of any reference to "for the purposes of this Law".

Secondly, the effect of the definition as a whole is that a person was not domiciled here under that Law unless he had resided here for at least two years otherwise than under terms of conditional or temporary residence etc. The language used might have been somewhat cumbersome but, in the end, it sets out the criteria for establishing domicile in these Islands; those criteria, briefly, being (a) having a present home here or residing here or this country being the one to which he returns as his place of present permanent abode and (b) two years residence otherwise etc. Unless both criteria were satisfied the person concerned was not domiciled here under that Law. One cannot excise one factor and contend that the resulting truncated definition defined "domicile" for the purpose of that Law or otherwise. That would be wholly artificial. Section 15(1) (b) as contained in section 4 of the 7/77 Law imported into itself the whole of the definition of domicile in section 2 (1) of the Immigration Restriction (British Subjects) Law - not only part of it. It says "was domiciled in the Cayman Islands in accordance with the provisions of any then existing Immigration Law (meaning, of course, the Immigration Restriction (British

Subjects) Law). A person was not "domiciled in the Cayman Islands in accordance with" the latter Law unless both criteria set out in (a) and (b) above were satisfied. The position would have been clearer if a slightly different style had been used to define "domicile" in section 2(1) of the Immigration Restriction (British Subjects) Law e.g. "a person shall be domiciled in these Islands if (i) he has his present home in these Islands etc (as in (a) above); and (b) he has resided here for two years otherwise etc (as in (b) above)." However, the difference in style does not alter the fact that the meaning is the same.

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

> "For the avoidance of doubt it is hereby declared that -
>
> (a) nothing in section 15 (as replaced) shall be construed as conferring any right or privilege on any person which such person would not have possessed under or by virtue of section 15 as originally enacted;".

If one gives to section 15 (1) (b) as replaced the meaning contended for, then, it would confer a right or privilege on certain persons which such persons would not have possessed under or by virtue of section 15 as originally enacted. The whole effect, if such a meaning were accorded, would be to give to British Subjects who had their present home here or resided here etc. prior to 27 March 1972, but who could not claim to be domiciled here at Common Law at the relevant time, automatic Caymanian status. That would be the sole effect. It would be an exercise in fatuity to accord such a right in the revised section 15 (1) (b) and take it away again in the

substantive section 15 (a). There would be no point to section 15 (1) (b) as replaced. Clearly, the new version was intended to introduce more rigorous qualifying factors.

That brings me to the next point which is based on paragraph (d) of the substantive section 15 of the 7/77 Law which reads:

> "For the avoidance of doubt it is hereby declared that -
>
> (d) nothing in this Law shall itself serve to affect the rights of any person with respect to Caymanian status as existing prior to the 27th day of March, 1977.".

That provision is reprinted as section 76 (2) of the Revised Law with a slight variation in wording.

No one seems to be able to suggest a reason for the choice of the date 27 March 1977. It was either chosen arbitrarily or is a misprint. It is a date 10 days after the Bill passed the Legislative Assembly and a date nearly seven weeks before the assent. Be that as it may, it is a date enshrined in that provision of law.

It was contended that by virtue of section 15 (d) one had to look to section 15 (b) of the Original Law (and the definition of "domicil" therein) because in so far as the new section 15 (1) (b) as contained in the 7/77 Law affected any rights with regard to Caymanian status as they existed before the 27th March 1977 (which effectively means as they existed under the Original Law) those rights were saved by that saving provision. On this view we would reach the absurd position that (a) by virtue of the substantive section 15 (a) of the 7/77 Law the revised section 15 (1) (b) of the parent Law introduced by that Law would confer no new rights and by virtue of the substantive section 15 (d) of the 7/77 Law the revised section 15 (1) (b) would affect no earlier acquired rights. Which would mean that there could be no possible point or purpose in substituting the revised section 15 (1) (b) contained in the 7/77 Law for ~~the purpose of~~ section 15 (b) as it existed in the Original Law. I cannot impute such a futile exercise to the Legislature.

It is clear from the background history and its wording that the revised section 15 (1) (b) was intended to vary the qualifications for the

right to a declaration that a person enjoys Caymanian status. By its wording those qualifications relate back to a period immediately prior to 27 March 1972. They can relate to no other period. They cannot relate to a point in time after 27 March 1972 or a point in time after 27 March 1977. They are qualifications that had to exist immediately prior to 27th March 1972 in order to qualify for a declaration. Therefore, the change brought about by the revised section 15 (1) (b) directly bore on inchoate or unperfected or undeclared rights existing at the time when the Original Law was enacted. Otherwise, there could be no possible reason for introducing the revised section 15 (1) (b). In that context, the only reasonable interpretation to place on the substantive section 15 (d) of the 7/77 Law is that it saved the rights of persons who had actually acquired Caymanian status by declaration under section 15 (b) and section 16 of the Original Law or otherwise. Their status was preserved. No other rational meaning can be accorded to the substantive section 15 (d) of the 7/77 Law.

The point is that until there is a declaration pursuant to section 15 (b) (before or after it was revised) and section 16 a person claiming to qualify under section 15 (b) does not acquire Caymanian status. The revised section (15 (1) (b)) alters the qualifications for a declaration. So that if the declaration is made after the 7/77 Law came into force the revised qualifications govern whether a declaration can be made. Where the declaration was made before the 7/77 Law came into force section 15 (b) of the Original Law would govern whether a declaration could be made and, where a declaration ~~is~~ was so made, the revised qualifications do not affect it.

It should, perhaps, be noted at this stage that the filing of a petition for a declaration does not of itself in any way vary or acquire or crystalize any rights. That is merely a preparatory step to the declaration of a right. It is the declaration which confers Caymanian status under 15 (b) or the new section 15 (1) (b). The qualifications for a declaration are those provided by law at the time it is made.

I have dealt with this aspect in some detail because learned Counsel for the petitioners placed great reliance on dicta in the Court of Appeal case John Patrick Collins and Keith Christian Collins v. The Crown (Civil Appeal No.1

of 1978). There are certainly dicta supporting the view contended for on page 4 of the Court of Appeal judgment and it was urged that this Court is bound by the principles there expressed. That is a cogent argument which must be squarely faced.

In the Collins case their Lordships were considering a completely different provision, namely, section 15 (1) (d) of the parent Law as contained in section 4 of the 7/77 Law or section 15 (e) of the Original Law. Their Lordships expressed the view that because of the substantive provisions 15 (a) and 15 (d), and in particular the latter, of the 7/77 Law they were obliged to consider the provisions of the law as originally enacted to determine whether a person, inter alia, acquired Caymanian status as of right or otherwise. Accordingly, they construed the provision of the Original Law relevant to the appellants.

The first point to be made is that their Lordships in that case were construing a completely different provision.

The second point is that the relevant part of the provision under construction by their Lordships was in substantially the same terms in the version contained in the 7/77 Law and as enacted in the Original Law. The main difference was that, as originally enacted, the provision (commencing with the word "is")related to a qualification existing at the time when the Original Law came into effect whereas the version in the 7/77 Law (commencing with the word "was") related to the same qualification existing prior to that point in time. Nothing turned on that distinction in reaching the ultimate conclusion. It would not have mattered so far as the end result was concerned which provision was construed. Their observation was, therefore, not crucial to their ultimate conclusion. Furthermore, the consequences of the application of the substantive section 15 (d) of the 7/77 Law in that case were not such as to negative entirely the version as revised of section 15 contained in the 7/77 Law as would be the position in this case.

More important, their Lordships were, with respect, right in

principle to adopt the approach adopted in the context of that case. The provision under construction actually conferred Caymanian Status - as of right under section 15 (e) of the Original Law and "deemed" it under the 7/77 Law - on persons within the category specified. If a person was within the category specified in section 15 (e) of the original Law then he automatically acquired Caymanian status on the date of the coming into force of the Original law - 27th March 1972. The declaration was merely machinery for establishing that fact. As observed above, the substantive section 15 (d) of the 7/77 Law preserved that status. Nothing in the revised section 15 as contained in section 4 of that Law derogated from that acquired status. Conversely, by virtue of the substantive section 15 (a) of the 7/77 Law no additional right or privilege was conferred by the revised section 15. And so, the matter under consideration in the Collins case fell to be determined by construing section 15 (e) of the Original Law. Rightly or wrongly I have taken the view for the reasons given that the position is quite different when it comes to a construction of section 15 (1) (b) as revised, a provision which was not under consideration in the Collins case.

Finally, I feel sure that the observations of their Lordships in the Collins case were never intended to lead to a construction of a different provision in such a way as to completely frustrate the intention of the Legislature.

Whether I am right or wrong in my construction of the effect of the relevant provisions of the 7/77 Law as set out above, the matter can now be taken a stage further which introduces a new dimension and releases the constraints of the provisions of paragraphs (a) and (d) of the substantive section 15 of the 7/77 Law. That is the effect of the amendment introduced by the 32/77 Law. That was passed before the Court of Appeal decision in the Collins case but the amendment had no bearing on the provision under construction in that case and so was not considered by their Lordships. In passing it may also be noted that this amendment was enacted after the Revised Law had been issued as supplement No.5 published with Gazette No. 16 of 1977. It was obviously passed in

response to the decision of this Court in the Claude-Jean Beaulieu case.

The 32/77 Law adds a new subsection (3) to section 15 of the parent Law, as amended, in the following terms:

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

Nothing could be clearer than that. I have dealt earlier with the argument that the definition of "domiciled" intended by the revised section 15 (1) (b) of the 7/77 Law was so much of the definition of "domicile" in section 2 (1) of the Immigration Restriction (British Subjects) Law as was specified therein up to the first semi-colon. The same can be said of the argument that the definition of "domiciled" introduced by this new subsection (3) has the same restricted definition. That was clearly not the intention from its plain meaning, disregarding the historical background which gave rise to its enactment. If the meaning contended for was intended then its purpose, in the light of the Claude-Jean Beaulieu case, is difficult to see.

The 32/77 Law is not fettered in any way by paragraphs(a) or (d) of the substantive section 15 of the 7/77 Law or section 76 of the Revised Law. It is a later enactment and has its own saving provision, namely, "Provided that nothing in this subsection shall affect any existing Caymanian Status declared by the Grand Court under section 16 (1)." That bites only on Caymanian status existing by reason of an earlier declaration e.g. as in the Claude-Jean Beaulieu case. There must be an actual declaration otherwise the saving provision does not apply. That is not the case with these petitioners. They had reached the stage only of petitioning for a declaration. That saving provision does not bite on

qualifications for a declaration.

An argument was put forward based on section 25 of the of the Interpretation Law and, in particular, paragraphs (a), (c) and (e) of subsection (2). I do not think I need deal with this in any detail. The short answer is that subsection (2) of section 25 is specifically made subject to a contrary intention appearing and the intention woven into the wording of the new subsection (3) as contained in the 32/77 Law is manifest beyond peradventure.

The upshot is that as the petitioners do not have the two year residential qualification specified in the definition of "domicile" in the Immigration Restriction (British Subject) Law, as imported into section 15 (1) (b) by virtue of the new subsection (3) of section 15 of the revised Law in its present form, they were not domiciled here at the relevant time for the purposes of section 15 (1) (b) and, therefore, do not qualify for a declaration.

Accordingly, both petitions are dismissed with costs.

SIR JOHN SUMMERFIELD.

22 March 1983