

## IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL No.1 of 1978

BEFORE: The Hon. Mr. Justice Leacroft Robinson, President  
 The Hon. Mr. Justice Zacca, J.A.  
 The Hon. Mr. Justice Carberry, J.A.

BETWEEN - JOHN PATRICK COLLINS  
 AND  
 KEITH CHRISTIAN COLLINS - APPELLANTS  
 AND - THE CROWN - RESPONDENT

IN THE MATTER of Applications  
 under Section 16 (1) of the  
 Caymanian Protection Law  
 (Revised) for declarations of  
 Caymanian Status pursuant to  
 Section 15.

Mr. R.N.A. Henriques for the appellants.

Mr. David Muirhead, Q.C. and Mr. John Martin for the Crown.

December 12, 13 & 14, 1979;  
 February 11, 12, 13, 14, 15  
 & 19, 1980; April 25,  
 1980

ROBINSON, P.:

The appellants are brothers. They are British subjects who were born in Jamaica, the elder on the 22nd January, 1943 and the younger on the 15th June, 1945. They are the children of a mother who was a "Caymanian" in every sense of the word. She was born in the Cayman Islands of parents both of whom were domiciled in the Cayman Islands

at the time of her birth and she has always been and still is a British subject. She therefore qualified as a "Caymanian," defined in the Regulation of Immigration Law, Law 3 of 1934 as meaning, inter alia, "a person born in the Cayman Islands." She was also "deemed to belong" to the Cayman Islands under the provisions of the Immigration (Restriction) Law, 1941, Law 9 of 1941, section 2 (2) of which provided that for the purposes of that Law "a person shall be deemed to belong to the Dependency if he is a British subject and (a) was born in the Dependency or of parents who at the time of his birth were domiciled or ordinarily resident in the Dependency." Here she qualified under both limbs. And so she did too under the provisions of the Deportation (British Subjects) Law, Laws 10 of 1941 and 7 of 1944, Cap. 37 of the 1963 Revised Edition, and the Immigration Restriction (British Subjects) Law, Law 15 of 1961, Cap. 67 of the 1963 Revised Edition, each of which had similar provisions as to what "deemed" a person to belong to the Cayman Islands. Then when the Caymanian Protection Law 1971, Law 23 of 1971, replaced these earlier laws, and introduced a new title called "Caymanian Status," she became "a person of Caymanian status as of right" being both a "British subject who (a) was born in the Cayman Islands ....." and being a British subject born of parents at least one of whom at the time of her birth was domiciled in the Cayman Islands (either of which would have qualified her).

Believing that their mother's status afforded them a root of title, so to speak, the appellants claim that they too are of Caymanian status and they base their claim on the provisions of section 15 (1) (d) of the Caymanian Protection Law (Revised). Accordingly, on the 6th December, 1977, they filed Petitions in the Grand Court of the Cayman Islands applying under Section 16 (1) of the said Law for declarations to that effect.

Their Petitions were dismissed, hence their appeals to this Court.

At the time of their applications, section 15 (1) (d) of the Caymanian Protection Law (Revised) provided that any British subject who, prior to the 27th day of March, 1972 "..... was the child, or a step-child or an adopted child under the age of eighteen years," of a person who was born in the Cayman Islands of parents at least one of whom at the time of his birth was domiciled or ordinarily resident in the Cayman Islands, "shall, as from the coming into operation of this Law be deemed to possess Caymanian status for the purposes of this Law."

Section 76 of the said Law provided as follows:

"76 (1) Nothing in section 15 confers any right or privilege upon any person which such person would not have possessed at the coming into effect of this Law on the 27th day of March, 1972.

(2) Nothing in this Law affects the rights of any person with respect to Caymanian status existing prior to the 27th day of March, 1977."

To make sense of the above provisions, it has to be appreciated that the Caymanian Protection Law (Revised) was merely a publication in consolidated and revised form of the originally enacted Caymanian Protection Law, Law 23 of 1971, which came into operation on the 27th March, 1972 together with the amendments introduced by the Caymanian Protection (Amendment) Law, 1977, Law 7 of 1977, which amendments were passed on the 17th March, 1977, but not brought into operation until the 23rd May, 1977.

It is necessary, therefore, to examine the actual relevant provisions of Law 7 of 1977, to appreciate the significance and effect of sections 15 (1) (d) and 76 of the Law in its consolidated and revised form. (At once it will be seen that there was an error in the wording of s. 15 (1) (a) of the Law as revised by the omission of the word "or" between the

words "Islands" and "of" in the first line thereof and which error was not corrected until two years later when Law 13 of 1979 was enacted.)

Section 4 of Law 7 of 1977 repealed and replaced section 15 of the Law as originally enacted (in Law 23 of 1971), but section 15 of the Amending Law, i.e. Law 7 of 1977, provided so far as is relevant, as follows:-

"15. 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. "

and

.....

(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. "

Bearing in mind that Law 7 of 1977 did not come into operations until the 23rd May, 1977 and bearing in mind the provisions of section 15 of that Law, it is clear that regard must be had to the provisions of Law 23 of 1971 as originally enacted to determine whether or not a person had acquired Caymanian status, as of right or otherwise, or even whether he had qualified to acquire same, prior to the 27th day of March, 1977, for if he had, section 15 (d) of Law 7 of 1977 left it in no doubt that such rights as he had already acquired with respect to Caymanian status were not to be affected by any of the amendments contained in Law 7 of 1977.

In the result, therefore, the claims of these appellants fall to be considered under and by virtue of section 15 of Law 23 of 1971 as originally enacted.

The relevant portions of that section (as originally enacted) provided as follows:

"15. Every British subject who -

- (a) was born in the Cayman Islands .....
- (b) .....
- (c) .....
- (d) ..... an
- (e) is the child, or a step-child or/adopted child under the age of eighteen years, of a person to whom any of the foregoing paragraphs of this section apply ....."  
(i.e. of a person who was born in the Cayman Islands)  
"is a person of Caymanian status as of right."

The appellants are British subjects (as defined in Law) and are the children of a person who was born in the Cayman Islands. The only question, therefore, is whether the section requires "the child" to be under the age of eighteen years, as is clearly required of "a step-child or an adopted child." The question arises largely, if not solely, because of the position of the commas which appear to make the words "under the age of eighteen years" govern only "step-child and adopted child."

For this, and other reasons, it was submitted that upon a proper construction of the section, the child of a person born in the Cayman Islands enjoyed Caymanian status as of right without any qualifications whatever as to age.

As regards the position of the commas, it is to be borne in mind that the authorities all indicate that punctuation is by no means a sine qua non in the construction of statutes. Indeed, as recently as 1961 it was being stated that "it appears to be established that punctuation marks are not to be treated as forming part of a statute, and that they must therefore be disregarded for the purpose of construing it." See Halbury's Laws of England, 3rd Edition, Vol. 36, Statutes: p. 374, para. 549 - Punctuation, and the cases there cited, including that of Inland Revenue Commissioners v. Hinchy (1960)

A.C. 748 H.L. (& 1967 1 A.E.R. 505) where Lord Reid at p. 765 (at p. 510) was expressing strong doubts as to whether punctuation can properly be looked at even in modern Acts.

A more realistic view, however, in the light of modern drafting practices, is that expressed by Lord Jamieson in Alexander v. Mackenzie (1947) J.C. 155 (Scot) where he said:

"While notice may be taken of punctuation in construing a statute, a comma or the absence of a comma must be disregarded if to give effect to it would so alter the sense as to be contrary to the plain intention of the statute."

(See note 60 in Craies on Statute Law, 7th Edition at p. 198).

In this connection the preamble to Law 23 of 1971 is quite explicit. It states the Law to be "A Law to consolidate The Law Affecting Persons Who Do Not Belong To The Cayman Islands ..... And To Make Provision With Respect To The Acquisition and Enjoyment By Persons Who Belong To These Islands, Of Caymanian Status." Now while the preamble to a Law may not be a part of the enacting provisions of the Law, it often affords a very useful guide as to what it was that the legislature was intending to do, and as was stated by the House of Lords in Attorney General v. H.R.H. Prince Ernest Augustus of Hanover (1957) A.C. 436, per Lord Normand at p. 468,

"..... if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred." Here the preamble clearly states that the intention of the legislature was to grant Caymanian status to persons who belonged to the Cayman Islands.

It seems necessary to consider, therefore, whether the appellants could properly be said to have belonged to the Cayman Islands at the time when Law 23 of 1971 was enacted. To do so involves an examination of all the relevant legislation existing from the time of their respective births in 1943 and 1945.

The relevant bits of legislation in existence during those years, i.e. 1943 and 1945, were the Immigration (Restriction) Law, 1941, Law 9 of 1941 and the Deportation (British Subjects) Law, Laws 10 of 1941 and 7 of 1944 (Cap. 37 of the 1963 Revised Edition). Law 9 of 1941 provided by section 2 (2) that "a person shall be deemed to belong to the Dependency if he is a British subject and

- (a) was born in the Dependency ..... or
- (b) .....
- (c) .....
- (d) .....
- (e) is a dependent of a person to whom any of the foregoing paragraphs apply. "

The Deportation (British Subjects) Law, Laws 10 of 1941 and 7 of 1944 (Cap. 37 of the 1963 Revised Edition), by section 2 (2) also deemed a person to belong to the Cayman Islands if he is a British subject and is a dependent of a person who was born in the Cayman Islands.

Law 9 of 1941 was repealed and replaced by the Immigration Restriction (British Subjects) Law, Law 15 of 1961 (Cap. 67 of the 1963 Revised Edition). This new Law, Law 15 of 1961, by section 2 (2) also deemed a person to belong to the Cayman Islands if, being a British subject, he is a dependent of a person who was born in the Cayman Islands.

The Deportation (British Subjects) Law (Cap. 37) and the Immigration Restriction (British Subjects) Law, (Cap. 67) both remained in force until the 27th March, 1972, when they were repealed and replaced by Law 23 of 1971 with a proviso that "anything done under any provisions of any of those laws" shall be deemed to have been done under this Law." (See Section 77).

The question at this point is, therefore, whether these appellants were at any time dependents of their mother under all or any of the aforesaid laws. In the first place, it is to be appreciated that it would be as "dependents" and only as "dependents" that they could qualify to be "deemed to belong!"

There is no evidence that the appellants were ever dependents of their mother. In so far as legitimate children were concerned, the Maintenance Law of the Cayman

Islands, originally enacted from as far back 1881, placed the primary responsibility for maintaining such children on the father "so long as such children ..... are unable by reason of tender years or bodily or mental infirmity to maintain themselves." (See section 2 of the Maintenance Law (Revised)). It was only if the father was dead or if the father failed to perform his obligation that the mother was required to maintain them - see section 3 of the Maintenance Law which provided as follows:

"3. Every widow and unmarried woman is hereby required to maintain her own children, legitimate or illegitimate and every woman having any children which any man under the provisions of section 2 is primarily bound to maintain is hereby required to maintain such children in the event of such man failing to perform his obligation, and every woman is hereby required to maintain the legitimate children of any child that she may have had in the event of the parents of such children and of any man primarily bound under the provisions of section 2 to maintain such children failing to do so, so long as such children respectively are, by reason of tender years or bodily or mental infirmity, unable to maintain themselves. "

It is of interest to note that that law, having by section 5 empowered a Summary Court to make orders for maintenance against defaulters, provided by section 7 that: "Any order of maintenance made under this Law shall in the case of a child be made to hold good until such child attains the age of fourteen years .....". And section 9 provided that "For the purposes of this Law every child under 14 years of age shall be deemed unable to maintain himself or herself by reason of tender years, unless the contrary be shown." Section 10, also provided that "For the purposes of this Law every man shall be liable and is hereby required to maintain his wife, irrespectively of her being able to maintain herself:

Provided that no order for the payment of any sum of money by the husband of any married woman shall be made against such husband under the provisions of this Law if it be proved before the summary court to whom application for such order is made that the wife has committed adultery (unless

such adultery has been condoned), or that the wife has wilfully and without just cause deserted her husband; and any order for payment of any such sum as aforesaid may be discharged by the court upon proof that the wife has since the making thereof committed adultery."

It would seem, therefore, that up to the time of the passing of Law 9 of 1941, the Law of the Cayman Islands regarded children under the age of 14 years and wives (while in residence, so to speak) as being dependents of the husband.

Law 9 of 1941, however, provided its own definition of dependents, but it is significant that all it appears to have done in so far as children were concerned, was to raise the age of dependency from 14 to 16 years.

Section 2 (1) of the Law, Law 9 of 1941, provided that, "..... unless the context otherwise required -

"dependent," in relation to another person means -

- (a) the wife of such person provided she is not living apart from him under a decree of a competent court or a deed of separation;
- (b) the child or step-child under the age of 16 years, of such person
- (c) an adopted child under the age of 16 years having been adopted by such person in a manner recognized by law."

This definition of dependent was retained in all the subsequent legislation right up to the passing of Law 23 of 1971. (See Section 2 (1) of Chapter 37 and Section 2 (1) of Chapter 67).

Be it observed that the concept of a child being a dependent only until the age of 16 years is also to be seen in section 4 (1) (b) of Cap. 67 which includes as prohibited immigrants -

"(b) children under the age of sixteen years being dependents of a prohibited immigrant:"

So much, therefore, for the argument that the words "under the age of sixteen years" in (b) of the definition of "dependent" as given in section 2 (1) of Law 9 of 1941, in section 2 (1) of Cap. 37 and in section 2 (1) of Cap. 67 were intended to apply

to step-children only!

To my mind, there can be no doubt that a "dependent" was intended to enjoy or suffer the status of the person on whom he or she was dependent only as long as he or she remained a dependent, i.e. in the case of a married woman, while she continued to live with her husband as his wife, and in the case of a child, while he was under the age of sixteen years.

Having regard to all the foregoing, including in particular the provisions of the Maintenance Law, it is to say the least very doubtful, that the appellants in their particular circumstances, were ever dependents of their mother, but even if they were, it seems to me that they would have been deemed to belong to the Cayman Islands only in their capacity as dependents and only while they remained dependents.

This would mean that the appellant Keith Collins would have ceased to be a dependent on the 22nd day of January, 1959, when he attained the age of 16 years and the appellant John Collins would have ceased to be a dependent on the 15th June, 1961, when he attained the age of 16 years. I find unacceptable the contention of Counsel for the appellants that once a dependent was "deemed to belong," he or she continued to be so deemed to belong even after ceasing to be a dependent. If that were so, then, to take the example of a wife, if she had qualified as being deemed to belong to the Cayman Islands because her husband was a British subject born in the Cayman Islands and she was living with him, then she would continue to "be deemed to belong" even if she subsequently divorced him. But this could obviously not be so as the Law expressly provides that a wife is a dependent only "if she is not living apart from him under a decree of a competent court or deed of separation." Similarly a child is a dependent only while under the age of 16 years. It is dependents as defined in the Law and dependents only who are also deemed to belong to the Cayman Islands by virtue of the

aforementioned provisions. It seems to me, therefore, that a dependent, as such, could only be deemed to belong to the Cayman Islands while he or she remained a dependent as defined in the Law.

For these reasons I am obliged to hold that the appellants did not belong to the Cayman Islands on the 27th March, 1972 when Law 23 of 1971 came into operation. If ever they were, they had long ceased to be, and bearing in mind that Law 23 of 1971 was intended to confer Caymanian status on persons who belonged to the Cayman Islands, - as stated in the preamble " to make provision with respect to the acquisition and enjoyment by persons who belong to these Islands, of Caymanian status," I find no difficulty in holding that the provision in section 15 (e) of Law 23 of 1971, as originally enacted, was intended merely to provide Caymanian status for children who were dependents of a person who qualified for Caymanian status under the preceding paragraphs of that section, the only difference being that the age of a child dependent was raised from 16 to 18 years.

I am fortified in this view when I look at section 17 (1) of that Law, as originally enacted, which enables a child who has ceased to be a dependent, i.e. "who has attained the age of 18 years" to make his own application for the grant of Caymanian status provided, inter alia, that he was domiciled in the Cayman Islands, or "has been ordinarily resident in the Cayman Islands for a period of 5 years and upwards immediately prior to the making of the application ...."

I am further fortified in the view I take when I look at section 17 (2) (as originally enacted) which also ensures the entitlement to Caymanian status of a dependent wife who was qualified as a person belonging to the Cayman Islands under the previous legislation. This section reads as follows:

"17 (2) The wife of every person having Caymanian status as of right who is not living apart from such person under a decree of a competent court or deed of separation shall, if not of Caymanian status at the time of marriage, be deemed, if a British subject, to have Caymanian status by grant for all purposes of this Law with effect from the date of such marriage or the date when such person acquired such status, whichever is the later."

It will be seen that here, too, her Caymanian status is conditional on her "not living apart from her husband under a decree of a competent court or deed of separation."

In other words if her dependent role ceases, she ceases to be deemed to have Caymanian status by grant, but here again, if she did not have it on other grounds, she could, as could a child on attaining the age of 18 years, apply in her own right under section 17 (1), and in her case, she is put on par with a child who has ceased to be a dependent, by a proviso to section 17 (1) which reads as follows:

" Provided that, in the case of a married female applicant living apart from her husband whose domicile is, by reason of her marital status, beyond her own control, condition (b) shall not apply as a bar to the grant to her of Caymanian status. "

Condition (b) read as follows:

"(b) that the applicant is, or would upon the grant to him of Caymanian status become domiciled in the Cayman Islands."

For all the above reasons, I have come to the conclusion that the first comma appearing after the first child in the first line of section 15 (e) must be disregarded as to give effect to it would so alter the sense as to be contrary to the plain intention of the statute. I am satisfied that a proper construction of section 15 (e) requires the words "under the age of 18 years" to relate to and govern all three categories of children, i.e. "the child, the step-child and the adopted child."

I, therefore, find that the appellants did not qualify for Caymanian status as of right under section 15 (e) of the Caymanian Protection Law, 1971 (as originally enacted).

I consequently find, for the reasons I have already given, that they did not obtain Caymanian status by virtue of any of the provisions of the Caymanian Protection (Amendment) Law, 1977, Law 7 of 1977, not under section 14 (4) as they were well over the age of 18 when that section came into operation, not under the new section 15 (d) as section 15 of Law 7 of 1977 had provided that:

"15. 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.",

under and not any of the sections of the Caymanian Protection Law (Revised) because that Law merely consolidated Laws 23 of 1971 and 7 of 1977 and section 76 thereof preserved the provisions of section 15 of the Amending Law, Law 7 of 1977.

Although I have proceeded by a different route, I have nevertheless arrived at the same conclusion as did the Learned Chief Justice and am, therefore, constrained to dismiss the appeals herein.

It is perhaps not inappropriate to point out, however, that the case of the appellants, whose widowed mother, a Caymanian by birth, now resides (with them) in the Cayman Islands, is not entirely without hope as section 14 (1) (e) of the Caymanian Protection Law (Revised) provides that the Governor may grant Caymanian status to any person being a British subject "if, the Governor, in his opinion should find special circumstances to warrant his so doing. "

Because of the conclusion I have reached, it is not really necessary to pronounce on the effect of the new subsection (3) (it should read subsection (4)) to section 15 of the Caymanian Protection Law (Revised) which was introduced by section 2B of the Caymanian Protection (Amendment) Law, 1979, Law 13 of 1979. Suffice it to say, however, that it

speaks for itself and is quite unequivocal. The new subsection reads as follows:

"(3) for the removal of doubt it is hereby declared that no person who has attained the age of 18 years may retain or claim Caymanian status under paragraph (d) of subsection (1) but such disability does not prejudice such person from claiming or acquiring Caymanian status under any other provisions of this Law. "

As Lord Buckmaster said in Ormond Investment Company Limited v. Betts (1928) A.C. 143, at p. 154:

" It is of course, certain that Parliament can by statute declare the meaning of previous Acts. It would be competent for them to do so, even though their declaration offended the plain language of the earlier Act."

And the matter is succinctly summed-up in the 12th Edition of Maxwell on Interpretation of Statutes wherein is stated at p. 224, thus:

" If a statute is in its nature a declaratory Act, the argument that it is not to be construed so as to take away previously vested rights is inapplicable. "

The appeals are accordingly dismissed with costs to the respondent.