

J A M A I C A

IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL NO. 4 of 1976

BEFORE:

The Hon. Mr. Justice Swaby J.A. (Presiding)  
The Hon. Mr. Justice Watkins J.A.  
The Hon. Mr. Justice Melville J.A. (Ag.)

THE GOVERNMENT OF THE CAYMAN ISLANDS

Vs.

JAMAICA PRESBYTERIAN CORPORATION

Mr. H.G. Edwards, Q.C. for Respondents

Mr. G. Waddington Q.C. Attorney General with Mr. S. Panton for Appellant

January 24, 25, April 1, 1977.

WATKINS, S.A.:

On April 12, 1976 Shaw J. sitting in the Grand Court of the Cayman Islands made an order increasing (with interest) an award made on July 25, 1974 by the Governor in favour of the Jamaica Presbyterian Corporation by way of compensation in respect of lands in the Islands compulsorily acquired under the Land Acquisition Law. Both parties being dissatisfied with the order of Shaw, J. have appeal<sup>led</sup> to this Court, and having on January 24 and 25 heard arguments on a point in limine as to the jurisdictional competence in this Court to entertain this appeal, we answered in the negative. We promised to put our reasons in writing and now do so.

Put succinctly the question before the Court was this:

Does this Court have jurisdiction to hear and determine the instant appeals from the order of Shaw, J. exercising the special jurisdiction conferred upon the Grand Court under the Land Acquisition Law? Now it is not susceptible of debate that at common law no right of appeal exists and it is equally trite law that where such a right exists it derives from

statute. Accordingly, in the course of the debate before us, three statutes, the Land Acquisition Law itself Cap. 81, the Judicature (Appellate Jurisdiction) Law, Cap. 73 and the Judicature (Administration of Justice) Law, Cap. 74, fell under consideration.

The Land Acquisition Law contains no provisions expressly or otherwise conferring a right of appeal from the Grand Court to this Court, and section 12 thereof is indeed quite to the contrary.

So far as relevant it provides that "every award made under section 11 (whereunder the relevant award of the Administrator/Governor had been made) shall be filed in the Administrator's Office and shall, except as hereinafter provided be final and conclusive as between the Administrator and the person interested ..... of the true area and value of the land.....". What the statute has provided pursuant to the exception is only a reference to the Grand Court by an interested person aggrieved by the Administrator's award. No appeal from the Grand Court to this Court is provided in the Law and it is manifest therefore that the Land Acquisition Law vests no jurisdiction in this Court to entertain these appeals. The parties however were not to be deterred and the other statutes chapter 73 and 74, already mentioned, were prayed in aid. For reasons of convenience chapter 74 will first be examined.

The Judicature (Administration of Justice) Law, Cap. 74 is a statute by virtue of the provisions of which jurisdiction in civil and criminal matters is conferred upon the Grand Court and by which forms and procedures appropriate to those respective forms of proceedings are regulated. Thus on the civil side a common law jurisdiction in contract, tort and land actions is conferred upon the Court. Likewise is jurisdiction in revenue matters and exactions in the nature of revenue that is to say, fines, penalties etc. conferred upon the Court,

as also jurisdiction in equity, bankruptcy and probate and administration. The mode of trial, including trial by jury, is also regulated by the statute. The appeal provisions of the statute in respect of civil proceedings commence at section 210, the ipsissima verba of which are:

"Subject to the provisions of this law an appeal shall lie to the Court of Appeal from the judgment, decree or order of the Grand Court in all civil proceedings, upon any point of law, or upon the admission or rejection of evidence, or upon the question of the judgment, decree or order being founded upon legal evidence or legal presumption, or upon the question of the sufficiency of the facts found to support the judgment decree or order; but no appeal shall lie upon the finding of the Court upon questions of conflicting evidence."

It seems quite clear both in respect of the provisions conferring civil jurisdiction upon the Grand Court and in respect of the statutory grounds on the basis of which *an appeal therefrom lies that the law decides* is one which exists where the proceedings originated in the Grand Court and it may be noticed that the provision at section 210 is similar in all material respects to section 251 of the Judicature (Resident Magistrates) Act of Jamaica which governs the right of appeal to this Court in civil matters originating in the Resident Magistrates' Courts.

Turning now to the Judicature (Appellate Jurisdiction) Law the relevant provision, section 8, is in these terms:

"Subject to the provisions of this Law and to the provisions of the Judicature (Administration of Justice) Law, regulating appeals from the Grand Court in civil proceedings, and to rules made under that law an appeal shall lie to the Court of Appeal from any final judgment or decision of the Grand Court sitting as a Court of First Instance in all civil proceedings.....".

Was Shaw, J. sitting at first instance in the Grand Court when he made the order the subject of the instant appeals before us? What is meant by "at first instance"? To answer these questions one must first examine the scheme of the Land Acquisition Law as it implicates the Administrator and the Grand Court. The Law comes into operation when the Administrator

(now Governor) issues a gazetted declaration naming specified lands as being needed, or likely to be needed, for a public purpose. Thereafter the Administrator is required, inter alia, to cause public notice to be given stating the intention of the Government to take possession of the land and that claims to compensation for all interests in such land may be made to him. The notice must state the particulars of the land to be acquired and must require all persons interested in the land to appeal before the Administrator at a time and place mentioned therein (such time not being earlier than 15 days after the date of the publication of the notice) and to state the nature of their respective interests in the land, the amount and particulars of their claim to compensation for such interests, and their objections, if any, to measurements required to be made under the Law. Occupiers must be similarly notified and special provisions exist for the notification of interested persons who reside outside the Islands and have no local agents. On the appointed day and at the appointed place the Administrator enquires into the objections if any, and into the value of the land and the respective interests of the persons claiming compensation and is required to make an award of compensation for the land and apportion same among all the persons known or believed to be interested in the land of whom, or of whose claims he has had information. With respect to the enquiry the Administrator is clothed with all the powers of the Grand Court to summon witnesses to administer oaths, to compel witnesses to give evidence and to compel the production of documents so as to elicit all such information as the Administrator considers necessary. Criminal sanctions are provided for failing without lawful excuse to obey a summons or to answer questions put by the Administrator or to produce documents so required to be produced, and in determining the amount of compensation

to be paid under the Law, the Administrator like the judge of the Grand Court upon a reference to him, is bound to observe certain criteria laid down in the Law. In the conduct of the proceedings before him, the Administrator is not obliged to observe the strict rules of evidence in civil or criminal proceedings. Any person interested who is not satisfied with the award made by the Administrator may by written application to the Administrator, require that the matter be referred by the Administrator for the determination of the Grand Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. Finally there are statutory limitations upon the power of the Grand Court to vary the quantum of compensation awarded by the Administrator. Thus if an applicant has made a claim to compensation the amount awarded to him by the Grand Court can neither exceed the applicant's claim nor be less than the Administrator's award. If an applicant refuses or omits to state the quantum of his claim, the amount awarded by the Grand Court must in no case exceed the Administrator's award. If however an applicant omits to state the quantum of his claim for reasons allowed by the Court, then the amount awarded by the Court may not be less than but may exceed the amount awarded by the Administrator. It is in such a scheme of things that it must be determined whether the judge of the Grand Court was or was not sitting at first instance. In this connection Rice v. Commissioner of Stamp Duties (1954) A.C. 216 is instructive. Under the Death and Gift Duties Ordinance of Fiji a donor aggrieved by the assessment by the Commissioner of Stamp Duty of duty exigible upon a gift had a right to appeal by way of case stated to the Supreme Court of Fiji. The Court of Appeal Ordinance of that

Island provided that "an appeal shall lie in any cause or matter .....  
to the Court of Appeal from a single judge of the Supreme Court of Fiji  
sitting in first instance from all final orders judgments and decisions",  
Under the Death and Gift Duties Ordinance the Commissioner was given  
power to hold an enquiry for the purpose of obtaining information  
respecting any claim for duty under the Ordinance and to summon before  
him and examine on oath touching any matter which was relevant to any  
claim for duty all persons whom the Commissioner or any other person  
interested required to be so called and examined. On any such enquiry  
the Commissioner was deemed to be vested with all the powers which  
might be conferred on Commissioners under the special Commissioners  
Ordinance which enabled the Governor to delegate to all commissioners  
powers like to those vested in the Supreme Court of Fiji for compell-  
ing the attendance of witnesses and the production of documents for  
administering oaths or affirmations to witnesses and compelling them  
to give evidence, for the punishment of contempt if committed in the  
presence of the Commissioner when engaged in taking evidence in pursuance  
of the objects of the commission.. Upon an appeal at the instance of  
Rice the Privy Council, reversing the decision of the Court of Appeal,  
of Fiji, held that the Supreme Court when it answered the questions  
put to it in the case stated was sitting in first instance. In deliver-  
ing the opinion of the Board Lord Cohen said;

"In the present case their Lordship have to consider  
the meaning of the words "sitting in first instance"  
where they appear in a statute constituting a Court  
of Appeal. These words are .....plainly directed  
to limiting a litigant's right to appeal from one Court  
of justice to another..... It was not intended to  
deprive a litigant who had not been heard in any court  
of justice except the Supreme Court of a right of appeal  
to the Court of Appeal. Can the decision of the Commis-  
sioner properly be described as that of a court of justice?  
Certain provisions of the Death and Gift Duties Ordina-  
nce suggest that in certain cases it should be so  
regarded. Thus in section 15 (2) it is provided that the  
Commissioner's decision under 15 (1) shall be regarded  
as a determination of a question of Law and that all

provisions of the Act thereafter contained..... should apply accordingly. Other provisions of the Ordinance..... contain provisions for inquiry and securing to the Commissioner access to relevant documents ..... All these provisions undoubtedly indicate that the Commissioner has some of the powers which he might be expected to possess if he were exercising judicial functions. On the other hand, there are plainly absent certain provisions which are usually regarded as essential to the due administration of justice in a court of justice. Thus there is no provision indicating any right of the taxpayer to present to the Commissioner either orally or in writing any argument on any question of law: indeed the Commissioner may reach his decision on the question of law on evidence obtained by him under section 60 or section 61 of which the taxpayer knows nothing. It must also be borne in mind that if the Commissioner's determination is to be regarded as the decision of a court of justice, this means that he has been the judge in his own cause. An executive officer can no doubt be made a judge in his own cause, but if there is an ambiguity in the statute their Lordships must lean against a construction which would have this effect."

There will at once have been noticed the striking similarities between certain powers of the Administrator and those of the Commissioner particularly so in relation to powers of summoning witnesses, compelling attendance and production of documents. Equally striking are the dissimilarities. Thus claimants are entitled to urge before the Administrator questions of Law and indeed exercised this right, and although ostensibly a judge in his own cause, to the extent that in determining the amount of compensation payable under the law the Administrator is bound to observe certain objective statutory criteria, he must exercise an independent impartial and objective judgment. Further and as already noticed, upon a reference to the Grand Court that Court in making an award is placed under constraints related to the quantum of the award made by the Administrator. It seems clear therefore that the Administrator exercised judicial functions at first instance and that accordingly the Judicature (Appellate Jurisdiction) Law would not apply so as to provide a further appeal from the Grand Court to this Court.

For the foregoing reasons we held that this Court had no jurisdiction to hear and determine the instant appeals and accordingly we dismissed them.

WATKINS J.A.

SWABY J.A.

MELVILLE: J.A. (AG.):

Despite my misgivings at one stage I am satisfied that there is no power in this Court to countenance these appeals.

The Land Acquisition Law, Chapter 81 of the Cayman Islands (hereinafter referred to as "the Law") sets out the procedure and remedies where land is to be compulsorily acquired for public purposes. Failing a negotiated settlement of the price to be paid for the land to be acquired, the administrator (now the Governor) is bound to hold an enquiry into the matter. In addition to giving public notice, all the interested parties are required to be notified of the holding of the enquiry at which all the parties are entitled to be heard - after hearing all the parties who desire to be heard the Administrator must then make his award which must state:-

- (a) the true area of the land;
- (b) the compensation to be allowed for the land;
- (c) the apportionment of the compensation among the parties interested in the land.

(See section 11 of the Law).

That award has then to be filed in the Administrator's office and "shall, except as hereinafter provided, be final and conclusive" evidence as between the administrator and the persons interested" (Sec. 12 (1) of the Law). The only provision thereafter provided is Sec. 17 which states in part:-

"any person interested who is not satisfied with the award made by the administrator under section 11 may, by written application to the Administrator, require that the matter be referred by the administrator for the determination of the Court.....".

On such a reference the Court, which is referred to as the Grand Court has to determine the matter in accordance with the provisions of the Law. In determining the amount of compensation to be awarded both the administrator and the Judge of the Grand Court are to have regard to the provisions of Section 21 and 22. Sec. 21 sets out the matter to be taken into consideration whilst Sec. 22 is the very opposite. Then Sec. 23 places further limitations on the amount of compensation that the Grand Court can award. Thereafter the Law is silent as to

what is to happen if a person is not satisfied with the determination of the matter by the Grand Court.

There being no express provisions in the law providing for an appeal to this Court from such a determination of the Grand Court Mr, Edwards sought such a right in the provisions of the Judicature (Appellate Jurisdiction) Law, Chapter 73. and the Judicature (Administration of Justice) Law, Chapter 74. I can add nothing useful to what Watkins, J.A. has said about the Judicature (Administration of Justice) Law, Chapter 74 except to respectfully add my concurrence.

Next to be considered, was the Grand Court sitting at "first instance" when this award was referred to it under the provisions of Sec. 17 of the Law? Under Section 5 of the Law if a dispute arises as to the amount of damages to be paid for an "entry" on the land that dispute has to be referred by the administrator (apparently without any hearing by him) to the Grand Court for decision, So, said Mr. Edwards, in Sec. 5 dispute, the Grand Court would already be sitting as a court of first instance, and an appeal would lie to this Court from such a determination by virtue of Sec. 8 of the Judicature (Appellate Jurisdiction) Law, Chapter 73. Similarly, by implication, an appeal should also lie from a determination under Sec. 17 of the Law. Further, it was said, the circumstances here are analogous to those that existed in Rice v. Commissioner of Stamp Duties (1954) A. C. 216 on which much reliance was placed.

That argument appeared most attractive at first blush, but I do not think that it can stand close scrutiny. It is true that an appeal may lie to this Court from a decision given under Sec. 5 of the Law, but is it the same or similar to a decision given under Sec. 17? I think not. A Sec. 5 dispute goes without further ado directly to the Grand Court without any intermediate hearing. Whereas a reference under Sec 17 has first to be determined by the Administrator which, one must remember is final and conclusive unless there is dissatisfaction about it. The circumstances here are clearly distinguishable from those in Rice's case. There the Commissioner could act on evidence of which the taxpayer knew nothing. Again there was no

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right in the taxpayer to be heard in any argument on any question of Law. It was in those peculiar circumstances that it could rightly be said that the Commissioner was a judge in his own cause. Here, with the possible exception of receiving evidence which might not be strictly admissible in a civil or criminal proceeding, the Administrator was bound to conduct the enquiry in a judicial manner. There can be no doubt it, for instance, the administrator were to refuse to hear an interested party at the enquiry that Mandamus would lie to compel him to do so.

After such an enquiry can it be said that on a reference thereof that the Grand Court was sitting at first instance to determine that reference? To my mind the answer must plainly be no. For all practical purposes the administrator had already conducted a judicial enquiry and the reference to the Grand Court was by way of a review of that decision.

For the reasons I have endeavoured to state I agree that the appeals should be dismissed.

(Sgd.) V. Melville,  
Judge of Appeal,  
Court of Appeal.,