

CAYMANIAN PROTECTION LAW, 1971 - DOMICILE

CIVIL APPEAL NO. 7/73

RE: JAMES DAVID MACDONALD (No. 2)

Before: Edun, Graham-Perkins and Swaby, J..J.A.

Heard : 27th June, 1974 and 17th January, 1975

As in the first appeal, there was no unanimity on any single point argued.

The majority (Graham-Perkins and Swaby, JJ.A) held that the appeal should be allowed and the declaration granted.

DOMICILE UNDER THE 1941 LAW

Graham-Perkins, J.A. , on page 4, dissented "most emphatically from the proposition that the appellant was required to establish a domicile according to the 1941 Law". Indeed, he did not see in the 1941 Law a single word which provides for the establishment of a domicile. " A man must have", he says, "in terms of Private International Law either a domicile of origin or a domicile of choice". He regarded the establishment of a domicile according to a statute as the introduction, into the concept of domicile, of a dimension heretofore unknown.

It must be concluded therefore that Graham-Perkins, J.A. granted the declaration on the basis of a common law domicile of choice.

In his first judgment he did not specifically say whether he would have granted the declaration although, on page 7 thereof, he said that he "inclined strongly" to the view that the petition is capable of leading to a conclusion that a domicile of choice had been acquired.

Swaby, J.A. was of the opinion that the Legislature intended the domicile referred to in S. 15(b) to be one which was already established when the 1971 Law came into operation. In so doing, he agreed not only with Smith, J.A (as he then was) but also with Edun, J.A.

In his judgment, the appellant had satisfied the statutory requirements for the acquisition of a domicile of choice and his status in the Islands whether in 1962 or 1967 is quite irrelevant to the acquisition of a domicile of choice.

In his judgment, further, Swaby, J.A., states: "the fact of the appellant's residence for nearly twelve years up to the time of his petition and the animus manendi to which he has sworn lead irresistibly to the conclusion that a domicile of choice had been acquired and which fulfils the requirements under Law 9 1941".

It is clear, therefore, that Law 9 1941 was the basis for this learned judge's decision to grant the declaration.

Edun, J.A. was of the view that the petitioner had not established that his presence in the Cayman Islands had ^{been} temporary or conditional. "By failing to do so, he could not, according to the Law of the Cayman Islands, acquire a domicile choice".

On this point, both Graham-Perkins and Swaby, JJ.A., ruled in favour of the petitioner. They felt that the facts adduced in the affidavit were sufficient and that the balance of probabilities was in his favour.