CAYMAN ISLANDS

CIVIL APPEAL No. 1 of 1973

BEFORE: The Hon. Mr. Justice Smith, J.A.(Presiding).
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

Re: JAMES DAVID McDONALD

To: Boddam & Co
Compliments of:

R.N.A. Henriques for appellant.

G.E. Waddington Q.C. (Attorney General) and
Seymour Panton as amici curiae.

Reported
13-03-73

1973 - Mar. 14. Apr. 30

SMITH, J.A.:

This is an appeal from a decision of the Grand Court of the Cayman Islands in the exercise of its jurisdiction under s.16(1) of the Caymanian Protection Law, 1971 (Law 23 of 1971). A preliminary objection was taken to the hearing of the appeal on the ground that the decision of the Grand Court in the matter was final and binding and no appeal lay in respect thereof. By a majority decision of the Court the objection was overruled on the ground that no declaration as contemplated by s.16(1) had in fact been made.

The appellant is a British subject who claims to be a person of Caymanian status as defined in s.14 of Law 23 of 1971. He claims to be qualified as of right for this status by virtue of the provisions of s.15(b) of the Law. Section 15 provides as follows:

"Every British subject who -

(a) was born in the Cayman Islands or of parents at least one of whom at the time of his birth was domiciled or ordinarily resident in the Cayman Islands; or

(b) was domiciled in the Cayman Islands at the time of the coming into effect of this Law and has been declared to be so domiciled under subsection (1) of Section 16; or

(c) has been ordinarily resident in the Cayman Islands for a total period of five years out of the seven years immediately prior to the coming into effect of this Law; or

(d) has been and remained a grantee of Caymanian status under section 17 for a period of five years and upwards; or

(e) is the child, or a step-child or an adopted child under the age of eighteen years, of a person to whom any of the foregoing paragraphs of this section apply, provided that in the case of an adopted child such adoption has been in a manner

recognised by the law of the domicile of such person at the time of such adoption; or

(f)is a citizen of the United Kingdom and Colonies by reason of the grant by the Governor or a certificate of Naturalisation under the British Nationality and Status of Aliens Acts 1914-1943, or a certificate of Naturalisation or of registration under the British Nationality Acts 1948-1965 or any Act amending or replacing those Acts,

is a person of Caymanian status as of right."

The Law came into operation on March 27, 1972, the day appointed for that purpose under s.1.

The appellant petitioned the Grand Court for a declaration under s.16(1). The petition, dated August 22, 1972, alleged, inter alia, that the appellant had abandoned his domicil of origin, which was Canadian, on or before the month of October, 1960 on his arrival in the Cayman Islands and that he "is and was on the 27th day of March, 1972 domiciled in the Cayman Islands." The petition prayed for a declaration that the petitioner "is a British subject who was domiciled in the Cayman Islands on the 27th day of March, A.D. 1972, and is of, and is qualified for, Caymanian status as of right."

At the hearing of the petition, the appellant claimed, in substance, to be domiciled for the purposes of s.15(b) in the sense that the word "domicil" is defined in s.2 of the Law. The Attorney General who appeared before the Grand Court, and before us, as amicus curiae, contended, in effect, that the domicil of the appellant was to be determined by the relevant law in force immediately before Law 23 of 1971 came into operation. He contended that that law was the Immigration Restriction (British Subjects) Law, Cap.67 (1963 Revised Edition). The learned judge of the Grand Court accepted the contention of the Attorney General and held that a petitioner for a declaration under s.16(1) of the Law of 1971 on the ground of domicil must satisfy the court that he was domiciled in the Cayman Islands "when the Cayman (sic) Protection Law came into operation within the meaning of this definition in Cap.67." He dismissed the petition on the ground, apparently, that the evidence presented was inconclusive on this interpretation of the Law for a declaration to be made. The grounds of appeal challenge both the interpretation placed upon the provisions of s.15(b) and the finding that the appellant had not established that he was domiciled under the section as interpreted.

The preamble to Law 23 of 1971 is in the following terms:

"A Law to consolidate the law affecting persons who do not belong to the Cayman Islands, whereby control is exercised over the entry, residence, engagement in gainful occupation, removal and deportation of such persons, and to make provisions with respect to the acquisition and enjoyment by persons who belong to these Islands, of Caymanian status."

The learned Attorney General relied on the terms of the preamble in support of his contention that the Law is a consolidating statute and that, therefore, the principle of interpretation that the legislature did not intend to make any alteration in the existing law in enacting it is relevant in interpreting s.15(b) In order to examine this contention and for the purpose of assisting in seeking to ascertain the intention of the legislature, it is necessary to take a brief look at the relevant laws governing the status of residents of, and visitors to, the Cayman Islands prior to March 27, 1972.

By s.77, the Law of 1971 repealed the Aliens Law (Cap.3), the Deportation (British Subjects) Law (Cap.37), the Immigration Restriction (British Subjects) Law (Cap.67) and the Work Permit Law, 1965. These were the laws which, together, related to the status of residents and visitors. Maxwell on the Interpretation of Statutes (12th edn.)(at p.20) defines a consolidating statute as one "which collects the statutory provisions relating to a particular topic, and embodies them in a single Act of Parliament, making only minor amendments and improvements." A comparison of the provisions of the Law of 1971 with those of the laws it repealed shows at once that the former is not truly a consolidating statute. While by and large the provisions in the Law of 1971 are to the same effect as those contained in the repealed laws, it cannot be said that the provisions in those laws have been repeated in the new law "making only minor amendments and improvements." It is, therefore, doubtful whether the principle of interpretation relating to consolidating statutes to which reference has been made can properly be applied in this case and I do not, therefore, place any reliance on this contention of the learned Attorney General.

The provisions of the repealed laws, however, when contrasted with those of the Law of 1971, are clear pointers to the intention of the legislature when the latter law was enacted. As this will be relied on later as an aid to the construction of s.15(b), I will now set out certain of the

provisions of the repealed laws and contrast them with provisions in the Law of 1971. Those laws, between them, divided residents of, and visitors to, the Cayman Islands into three categories. Their status, rights and obligations as residents in, and visitors to, the Islands depended on the category into which they fell. The categories were: (a) British subjects who "belonged to the Islands," (b) British subjects who did not "belong to the Islands" and (c) aliens. As provided in s.2 of each of Caps. 37 and 67 and the Law of 1965, a British subject "belonged to the Islands" if he:

> "(a) was born in the (Cayman) Islands or of parents who at the time of his birth were domiciled or ordinarily resident in the (Cayman) Islands; or
>
> (b) is domiciled in the (Cayman) Islands; or
>
> (c) has been ordinarily resident in the (Cayman) Islands continuously for a period of five years or more, and since the completion of such period of residence has not been ordinarily resident in any other part of Her Majesty's dominions or any territory under the protection of Her Majesty continuously for a period of five years or more; or
>
> (d) obtained the status of a British subject whilst resident in the (Cayman) Islands by reason of the grant ..... of a certificate of naturalization under the British Nationality Act, 1948; or
>
> (e) is a dependent of a person to whom any of the foregoing paragraphs apply."

There is a common definition of "domicile" in these three repealed laws, 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 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 (Cayman) 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 (Cayman) Islands or as a person under detention in a prison, reformatory, orphanage, mental hospital or leper asylum ....."

The Law of 1971 reduces the categories to two - persons with Caymanian status and those without. Those in the latter category are referred to in the Law as persons of "non-Caymanian status." Part III of the Law deals with the qualification for, and the grant, loss and forfeit of,

Caymanian status. Only British subjects are qualified for, or may be granted, Caymanian status. On a comparison of s.15 of this Law with the repealed laws, it will be seen that, except for minor (but, as will be shown, significant) alterations, the classes of persons who under the repealed laws "belonged to the Islands" are included among those qualified under s.15 for Caymanian status as of right. This is in keeping with the declared object in the preamble "to make provision with respect to the acquisition and enjoyment by persons who belong to these Islands, of Caymanian status." The only other class included in s.15 is that in para.(d), viz., persons who have been granted Caymanian status under s.17 of the Law. Section 2 states that "domicil" and its derivatives "has the meaning ordinarily applied to that expression at Common Law."

Let me turn now to the provisions of s.15(b) of the Law of 1971, the construction of which is in question. Mr. Henriques, for the appellant, referred to the definition of "domicile" in Cap.67 (repealed) and to the definition of "domicil" in the Law of 1971. He contrasted them and contended that if a person can establish that he has a domicil at common law he can do so even though his residence was conditional. He did not elaborate on this contention. He submitted that the legislature intended to change the law by changing the definition of "domicil" and that the new definition must prevail, unless the context otherwise requires. Mr. Henriques was compelled to qualify his submission because of the presence of the words "unless the context otherwise requires" in the definition section, s.2. For what it is worth, it may be noted, in passing, that the definition sections in the repealed laws did not have those, or any other, qualifying words, though this was not necessary in view of s.12(1) of the Interpretation Law, Cap.70. By the inclusion of these words the legislature is saying, expressly, that the words defined in the section are not necessarily used in the defined sense throughout the law. The real question for decision is, therefore, whether the context in which "domiciled" appears in s.15(b) requires that it be given a meaning other than the defined meaning. The Attorney General contends that it does and the appellant that it does not.

In my view, this contention of the Attorney General is clearly right. This is the result if the words of para.(b) of s.15 are construed either by themselves, in the context of the whole Law or with the use of external aids.

The first thing to notice is that the domicil is to be ascertained at a fixed time, viz., "at the time of the coming into effect" of the Law. It is said by the appellant that that time is the day the Law came into operation. This is borne out by the allegation in his petition that he "is and was on the 27th day of March 1972 domiciled in the Cayman Islands." This has to be the appellant's contention unless the definition of "domicil" in the Law of 1971 is to be given retrospective effect. So, what the appellant is really saying is that he was domiciled in the Cayman Islands on the day that the Law came into operation. But that is not what the paragraph says. If that is what was meant it could have been simply so stated. I do not think that "at the time of" and "on the day (or date) of" are necessarily synonymous. It seems also that effect must be given to the words "the coming into effect," which suggest movement. Section 16 of the Interpretation Law, Cap.70 provides that: "Where any Law, or part of a Law, ... came or comes into operation on a particular day, it shall be deemed to have come or shall come into operation immediately on the expiration of the day next preceding such day." In my view, the time that is being fixed by the words of the paragraph is the very first moment of time of March 27, 1972.

It will, of course, be said that the first moment of March 27, 1972 is in fact March 27, which is what the appellant contends. But there is yet the word "was" to be considered. A statute speaks from the day it comes into operation and from day to day thereafter. It, therefore, normally speaks in the present tense. When it speaks of or concerning the past or future it usually says so either expressly or by necessary implication. Mr. Henriques said that if "is", denoting the present, was used in place of "was" it would be bad grammar. I do not see why this should be so, unless he means that one would then expect the paragraph to read "is domiciled in the Cayman Islands at the time this Law comes into effect." Authority is not required for the proposition that "was", in its ordinary sense, refers to something past and not something present or in the future, but I hope that I will be forgiven for pointing out that Romer, J. said as much in Tithe Redemption Commission v. The Governors of the Bounty of Queen Anne (1946) 1 All E.R.146 at 154 when he said: "Prima facie I should have thought ..... that the word 'was' in its primary meaning refers to something that is past and not to something that is future ...." I should think that if it were relevant

the learned judge would have added the words "present or" before the word "future." In my judgment, it is plain that by use of the word "was" in conjunction with the words "at the time of the coming into effect", the legislature was saying that in order for a British subject to be qualified as of right for Caymanian status on the ground of his domicil under s.15(b) he must establish that at the moment of time when March 26 was going out and March 27 was coming in he already had a domicil in the Cayman Islands. His domicil would thus fall to be decided on the state of the law as it existed before the Law of 1971 actually came into effect.

If I am wrong and the meaning of the provisions of para.(b) of s.15 is not plain then it is obscure. This lets in external aids and viewing the provisions of para.(b) in the light of other provisions in the Law in order to discover the intention of the legislature. On general principles, it is permissible as an external aid to look at the historical setting of the Law, but the preamble makes it inevitable that the history of the Law and the reasons which led to its being passed be examined.

As has been shown, in keeping with the stated object in the preamble, the class of persons who qualify for Caymanian status as of right under s.15 of the Law of 1971 are, with one addition, the same as those who formerly enjoyed the status of "belonging to the Islands." The words "belong to these Islands" in the preamble must necessarily bear the defined meaning in the repealed laws. It has also been shown that the new Law makes a clear distinction between persons of "Caymanian status" and those of "non-Caymanian status" comparable to the distinction between "belongers" under the repealed laws and "non-belongers", terms which were formerly in common use in the Cayman Islands. Paragraph (a) of s.15 of the new Law is identical in terms with para.(a) of the definition of persons "belonging to the Islands" under the repealed laws. Para.(b) of the former is based on domicil at a fixed time and is in the past tense while (b) of the latter is in the present tense and there is no time fixed. Para.(c) of both are based on residence but the difference in wording is of special significance. In the repealed laws the person "belonged to the Islands" once he had been ordinarily resident for a period of five years or more continuously and had not since then been ordinarily resident for a similar period in any other British territory. Under the new Law the residence must have been for five years out of the seven

years immediately prior to the coming into effect of the Law. Paras.(d) and (e) of the definition in the repealed laws are substantially the same as paras. (e) and (f) of s.15. The word "dependent" in para.(e) of the former is defined in the repealed laws in terms similar to those of para.(e) of the latter, except that wives are included in the former and not in the latter and the age of the child is sixteen years in the former but eighteen years in the latter. The alteration of the language and tense in paras.(b) and (c) in the respective laws and their retention in the other paragraphs seem, without doubt, to indicate that the legislature intended that paras.(b) and (c) in the new Law should refer to a closed class of persons whose qualification for Caymanian status is based on the status which they enjoyed under the repealed laws. These classes should be contrasted with the classes in the other paragraphs of s.15 (except para.(d)) where the essential quality which identifies each class remains unchanged, thus making it unnecessary to alter their description. This view of these provisions is supported by the fact that the Law of 1971 contains other provisions by which Caymanian status can be acquired on the grounds of residence and domicil. Reference will be made later to these provisions.

The definition of "domicil" in the new Law appears to be narrower in its application than the definition in the repealed laws. While an animus manendi is required to establish a domicil of choice under the new Law it does not seem to have been essential to establish a domicil for the purposes of the repealed laws. The declared object of making provisions enabling Caymanian status to be acquired by persons formerly "belonging to the Islands" could be defeated if "domiciled" in s.15(b) is given the new meaning. Take the case of a British subject who was domiciled for the purposes, and within the meaning, of the repealed laws and, therefore, "belonged to the Islands". He may be unable to prove, because of the absence of an animus manendi, that he had acquired a domicil of choice at common law on March 27, 1972. He would thus be disqualified from claiming Caymanian status under s.15(b). On the other hand, persons who were not domiciled and, therefore, did not "belong to the Islands" on March 26, 1972 could acquire Caymanian status under s.15(b). Take the case of an immigrant British subject who had lived in the Islands for six months up to March 26, 1972 or had lived for, say, four years up to that date under terms of

conditional residence or under detention in a prison, mental hospital or leper asylum. He may be able to satisfy the Court that on March 27 he was domiciled at common law in the Islands by establishing the constituents of residence and intention and so acquire Caymanian status as of right under s.15(b). In the case of the resident for six months, he would thus be able to engage in gainful employment lawfully though he had previously been refused a work permit under Law 36 of 1965. These results could not have been intended by the legislature when the Law of 1971 was enacted. They would be contrary to the clear intention apparent in the preamble to maintain in the Law of 1971 the distinction which previously existed between persons who "belonged to the Islands" and those who did not.

When the provisions of s.15(b) are viewed in the context of the rest of the law the meaning of those provisions, in my opinion, become clear. First, the deliberate use of the past and present tenses in paras.(a),(b), (c) and (f) of s.15 should be noticed. The significance of this use of the tenses is accentuated when the words "was domiciled" in para.(b) of s.15 are compared with the words "is .... domiciled" in para.(b) of s.17. If the appellant's contention is right and these set of words fell to be interpreted on March 27, 1972 they would have the same meaning notwithstanding the difference in tenses. This would have a curious result. Caymanian status by grant under s.17 may not be acquired on the ground of domicil alone. It has to be combined with residence for at least five years and proof of good character and the grant must not be contrary to the public interest. On the appellant's interpretation of s.15(b), it would be possible for an immigrant British subject to claim Caymanian status as of right on the sole ground that he was domiciled on March 27, 1972 even though he could not obtain a grant under s.17 on the basis of that same domicil because he was otherwise disqualified from obtaining it.

I have endeavoured to show that the provisions of paras.(a),(d) and (e) of the definition in the repealed laws, whereby persons within those provisions were deemed to "belong to the Islands", have been substantially re-enacted in paras.(a),(e) and (f) of s.15. The remaining grounds upon which persons were deemed to "belong to the Islands" were those of domicil and residence, under paras.(b) and (c) of the definition. Para.(c) of s.15 is, in terms, in respect of residence prior to the Law of 1971 coming into

effect. This clearly was intended to make provision for the acquisition of Caymanian status by a person who was deemed to "belong to the Islands" under para.(c) of the definition in the repealed laws. If the appellant's contention is right the only persons who were deemed to "belong to the Islands" for whom provisions have not been made for the acquisition of Caymanian status as of right are those who based their claim under the repealed laws on domicil.

Another matter of significance is the fact that the operation of the provisions of paras.(b) and (c) of s.15, which relate to domicil and residence, are tied to the "coming into effect" of the Law while s.17 makes provision for the acquisition of Caymanian status by grant on the grounds of domicil and residence in combination. This is a clear indication, in my view, that the legislature intended to alter the previous law insofar as it enabled the status of a person "belonging to the Islands" to be acquired on the ground of domicil as well as on the ground of residence while, at the same time, protecting the status which had been acquired on those grounds under the repealed laws.

In my opinion, the only conclusion that can reasonably be drawn from the examination which has been made of the historical setting of the Law of 1971 and the provisions of that law, viewed as a whole, is that the legislature intended the domicil referred to in s.15(b) to be one which was already established when the Law of 1971 came into operation. Both by these methods of construction and by construing the relevant provisions by themselves, the result is that a claimant of Caymanian status under s.15(b) must establish that he had acquired a domicil in the Cayman Islands prior to the coming into effect of the Law of 1971 and that it existed when that law actually came into operation. That domicil, in my judgment, must necessarily be established on the state of the law as it existed at the time of its alleged acquisition. I reject as untenable any contention that though the domicil is to be determined at a time prior to the Law of 1971 taking effect it must nevertheless be determined by the application of the definition contained in that law. This would clearly be giving a retrospective operation to the law and there is no indication either from the subject-matter or from the wording of the statute that it is to receive a retrospective construction. In my opinion, the indications are to the contrary.

Applying the law, as I have endeavoured to construe it, to the facts and circumstances of the case under appeal, I think the learned judge of the Grand Court was in error in holding, as he did, that the appellant and others who petition for a declaration on the ground of domicil under s.15(b) must satisfy the Court that they were "domiciled" within the meaning of that word in Cap.67. He was in error insofar as he intended this ruling to apply in every case regardless of the circumstances. The Immigration Restriction (British Subjects) Law, Cap.67 came into force on March 1, 1962. If a British subject had acquired a domicil before that date his status as a person domiciled in the Cayman Islands would not be affected by the provisions of Cap.67. Unless he had abandoned that domicil before the Law of 1971 came into effect he would be a person domiciled within the provisions of s.15(b) and could claim Caymanian status. The question whether a claimant under s.15(b) was "domiciled" or not is to be determined by the law in existence when it is alleged the domicil was acquired and not by the law in force immediately prior to the Law of 1971 taking effect.

The appellant's petition, as already stated, alleged that he arrived in the Cayman Islands "on or before the month of October, 1960" after abandoning his Canadian domicil of origin. He alleged that his only residence and home is in the Cayman Islands. No reference was made either in the Grand Court or on appeal to the state of the law relevant to domicil during the period between the appellant's arrival to reside in the Cayman Islands and the coming into force of Cap.67. It may eventuate that the governing law at the time was the common law. In saying, at the conclusion of his judgment, that the "petition shows that (the appellant) arrived in the Cayman Islands on or before the month of October 1960 but his residence could have been conditional or temporary", the learned judge was clearly applying the definition of "domicil" in Cap.67 to the period from October, 1960. There is no apparent justification for his applying that definition retrospectively. The appellant may well have acquired a domicil before March 1, 1962 under the then existing law. I do not know. If he did, then it appears that he was domiciled within the provisions of s.15(b) of the Law of 1971 and was entitled to a declaration. The learned judge obviously did not consider the appellant's petition from this point of view. His conclusion that the appellant had not made out his claim, therefore, cannot be supported.

I would allow the appeal and remit the matter to the Grand Court for a re-consideration of the evidence tendered in support of the petition on the basis of the relevant law.

I would allow the appeal and remit the matter to the Grand Court for a re-consideration of the evidence tendered in support of the petition on the basis of the relevant law.

(2)

EDUN, J.A.:

Now that the appeal has been heard, my views concerning the application under consideration are as I now state.

The definition in section 2 of the Caymanian Protection Law, No. 23 of 1971 says that the word "domicil and its derivatives has the meaning ordinarily applied to that expression at common law," unless the context otherwise requires. The application in this matter comes within the purview of section 15 (b) of the above-mentioned Law No. 23 of 1971 which provides that every British Subject who was domiciled in the Cayman Islands at the time of the coming into effect of that Law and has been declared to be so domiciled under subsection (1) of section 16 ..... is a person of Caymanian status as of right (underlining mine).

The context of section 15 (b) requires a consideration of the status the applicant had before the coming into operation of Law 23 of 1971, that is, on 27th March, 1972. The relevant law governing the status of the applicant before 27th March, 1972 is section 2 (1) of the Immigration Restriction (British Subject) Law, Chapter 67. It provides as follows:

> " ..... 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 then under terms of conditional or temporary residence permitted by this Law or any other Law in force in the Islands ....."

The applicant may well show that he resided in the Cayman Islands for a period of over ten years before 27th March, 1972 but that would not be enough if he cannot show that a period of at least two years of such residence was unconditional or not temporary. Paragraphs 2, 3, 4, 5 and 6 of his petition to the Judge of the Grand Court for a declaration under section 16 (1) of the Caymanian status as of right, read thus:-

/12. The Petition

"2. The petitioner is a British Subject, born at Calgary, Alberta, Canada, and has not renounced such citizenship.

3. The petitioner is and was on 27th day of March, 1972 domiciled in the Cayman Islands.

4. The petitioner was born at Calgary, Alberta, Canada on March 15, 1922, but abandoned his domicile of origin on or before the month of October 1960 on arrival in the Cayman Islands.

5. The only residence and home of the petitioner is in the Cayman Islands, and he has no intention of residing or making his home elsewhere than in the Cayman Islands.

6. The petitioner makes his home in the Cayman Islands with his wife Aileen Mae MacDonald and his son Donald Stanley Alistair MacDonald."

The Immigration Restriction (British Subject) Law, Ch. 67 came into operation on 1st March, 1962. It is, therefore, important also to consider what was the position of the applicant when he set foot upon the Cayman Islands on or about October 1960.

It cannot be questioned that the burden of proof lies upon those who assert that a change of domicile has taken place. See in the Est. of Fuld, dec'd. (1966) 2 W.L.R. 717. At p. 726 of that judgment, Scarman, J. had this to say:-

> "There remains the question of standard of proof. It is beyond doubt that the burden of proving the abandonment of a domicile of origin and the acquisition of a domicile of choice is upon the person asserting the change. But it is not so clear what is the standard of proof: is it to be proved beyond reasonable doubt or upon a balance of probabilities, or does the standard vary according to whether one seeks to establish abandonment of a domicile of origin or merely a switch from one domicile of choice to another? Or is there some other standard? .... The formula of proof beyond reasonable doubt is not frequently used in probate cases, and I do not propose to give it currency. It is enough that the authorities emphasise that the conscience of the court (to borrow a phrase

/from a .....

from a different context, the judgment of Parke B. in Barry v. Butlin (1838) 2 Moo. P.C.C. 480) must be satisfied by the evidence. The weight to be attached to evidence, the inferences to be drawn, the facts justifying the exclusion of doubt and the expression of satisfaction, will vary according to the nature of the case. Two things are clear - first, that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists: and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words."

That case has been considered by Megarry, J. (as he then was) in In Re Flynn, dec'd. (1968) 1 W.L.R. 97 and on the standard of proof concerning the question of domicile, he said at p. 115, thus:-

"I also have to bear in mind the standard of proof required; it is not questioned that the burden of proof lies upon those who assert that a change of domicile has taken place. In In the Estate of Fuld, dec'd. (No. 3) which I have already cited, Scarman J. had to consider the abandonment of a domicile established by a domicile of origin; and he rejected any requirement of proof beyond reasonable doubt. The standard of proof is, I think, the civil standard of a balance of probabilities, subject to the over-riding consideration (which I borrow from his judgment) that so serious a matter as the acquisition of a domicile of choice (or for that matter, I think, the abandonment of a domicile) is "not to be lightly inferred from slight indications or casual words."

The applicant in his petition asserted, that -

1 he was born in Canada,

2 in October 1960 when he arrived in the Cayman Islands, he was a Canadian Citizen,

3 he was a British Subject; and

4 he claimed that he had abandoned his domicile of origin and intended to reside permanently in the Cayman Islands.

The learned Judge of the Grand Court stated in his conclusion or finding:-

"Mr. MacDonald's petition shows that he arrived in Cayman Islands on or before the month of October 1960, but his residence could have been

/conditional .....

conditional or temporary."

In October 1960, when the applicant arrived in the Cayman Islands he was a British Subject without citizenship in the British colony or possession of the Cayman Islands. A British Subject without being a citizen of the United Kingdom and Colonies will not become a citizen of the United Kingdom and Colonies if he, previous to the coming into operation of the British Nationality (U.K.) Act 1948 (that is, January 1, 1949), was a citizen of one of the specified Commonwealth countries; (Canada being one): See British Nationality Act 1948 Ss 1 (3), 32 (1), (3). So that in October 1960, the applicant could not have entered the British Colony or possession of Cayman Islands without permission or otherwise as of right. No doubt, the applicant was a British Subject and assuming that he entered the Cayman Islands in October 1960 with permission, the fact that he resided therein for a period of over ten years does not mean that he acquired domicile therein. The question of his deportation or right to remain, would depend upon the provisions of the Deportation (British Subjects) (Cayman Islands) Law Ch. 37 which was enacted in 1941. S 2 (2) of that Law provides, thus:-

"For the purposes of this Law, a person shall be deemed to belong to the Islands if he is a British Subject and -

(a) was born in the Islands .....

(b) is domiciled in the Islands; or

(c) has been ordinarily resident in the Islands continuously for a period of seven years or more, and since the completion of such period of residence has not been ordinarily resident in any other part of Her Majesty's dominions or any territory under Her Majesty's protection continuously for a period of seven years or more; or

(d) obtained the status of a British Subject by reason of the grant by the Governor of Jamaica or the Administrator of a certificate of naturalisation under the British Nationality and Status of Aliens Act, 1914, or the British Nationality Act, 1948

/(e) is a .....

(e) is a dependent of a person to whom any of the foregoing paragraphs apply."

Section 2 (1) of the same Act defines "domicile" as meaning "the place in which a person has his present 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 person 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 any law in force in the Islands ....." (underlining mine).

The applicant, in the proceedings before the learned Judge of the Grand Court has not shown by virtue of the provisions of the Deportation (British Subjects) Law, Ch. 37 that he was a person belonging to the Islands. On the other hand, he has not in fact been deported. But be that as it may, the law in Chapter 37 has been in force until the enactment of the Caymanian Protection Law No. 23 of 1971. In the meantime, as from March 1, 1962 the Immigration Restriction (British Subjects) Law, Chapter 67 came into force, and section 3 (2) provides that for the purpose of this Law a British Subject shall be deemed to belong to the Islands if he - then follows provisions (a) (b) (c) (d) and (e) in almost the same words as provisions (a) (b) (c) (d) and (e) - in the Deportation (British Subjects) Law Ch. 37; except that the requirement in (d) in Chapter 67 provides for residence of five years instead of seven years. The The definition of "domicile" in Chapter 67 is repeated word for word except that in Chapter 37 for the words "..... and a person shall not be deemed ....." we find in Chapter 67 ".....and a British Subject shall not be deemed ....."

Here too, upon the coming into operation of the Immigration Restriction (British Subjects) Law, Ch. 67 when "a British Subject shall not be deemed to have a domicile within the Islands ..... unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence ....." the applicant has not shown that his type of residence has given him Caymanian status as of right.

/ I have .....

I have referred to certain provision of the British Nationality Act, 1948, the Deportation (British Subjects) Law, Ch. 37 and the Immigration (British Subjects) Law, Ch. 67 in order to show, that:-

1 though the applicant was a British Subject, his entry in the Cayman Islands in October 1960 must have been with permission or upon terms of conditional or temporary residence;

2 his continued residence thereafter in the Cayman Islands must be an element to be considered in assertaining his domicile. Domicile in this respect is not easy to determine owing to the ambiguity of ordinary conduct, as for example a person may have lived many years in a country without having acquired a foreign domicile, if it appears that his reason for so residing was for his health, or a desire to avoid his creditors or the like - eminently a matter of evidence;

3 the applicant must comply with the laws of the Cayman Islands then in force and affecting him; and

4 he must establish on a preponderance of probabilities in his favour that of his period of residence at least two years were otherwise than under terms of conditional or temporary residence.

With his petition the applicant exhibited as Ex. "B' an application dated February 25, 1969 for registration as a citizen of the United Kingdom and Colonies and there is an endorsement or certificate at the back and bottom of it: "The above applicant has been registered as a citizen of the United Kingdom and Colonies. (sgd.) ..... Administrator, date 26th Feb. 1969." In Thornton v. The Police (1962) A.C. 339, Thornton a British born subject entered Fiji under a permit and he refused to leave when he was ordered to do so at the expiration of his permit. The refusal had nothing to do with his being unreliable or anything of the kind. Thornton was convicted of an offence of failing to leave the Colony when ordered to do so on the expiration of the period for which the permit had been granted, contrary to S 8 of the Immigration

/Ordinance ....

Ordinance (Fiji) 1947. He appealed from the decision of the Magistrate and the Supreme Court, Appellate Jurisdiction, dismissed his appeal. Hammett, J. in his judgment said :-

> "It is submitted that all citizens of the United Kingdom and Colonies have, by virtue of the British Nationality Act, 1948, the free and unfettered right to enter and to reside in any place in the United Kingdom and Colonies. I have examined the British Nationality Act, 1948, with some care and I can find no provisions in it to this effect. This statute merely governs the status of persons and does not lay down what rights of movement or residence are granted by or attach to that status..... I know of no provision in the British Nationality Act, 1948, which precludes either the United Kingdom or any of the colonies from enacting such legislation they chose to regulate and control the entry into their territory or residence therein of persons whatever their status may be. I cannot accept the contention that the parts of the Immigration Ordinance, 1947, referred to are repugnant to the British Nationality Act, 1948."

Thornton sought special leave to appeal to the Privy Council from that judgment. His counsel contended that the power of a colonial legislature was subject to the overriding power of the Imperial Parliament, which is enforced by means of the Colonial Laws Validity Act, 1865, whereby any provision in a Colonial Ordinance repugnant to the United Kingdom Act was rendered void and inoperative to the extent of the repugnancy; the petitioner had a right to enter and remain in Fiji as a national. The Privy Council refused leave to appeal because they held there was no valid ground to say there was a repugnancy.

The applicant here claims Caymanian status as of right and the Deportation (British Subjects) Law, Ch. 37 and the Immigration Restriction (British Subject) Law, Ch. 67 of the Cayman Islands

/ provide "what .....

provide "what rights of movement or residence are granted by or attach to that status," that is, a residential qualification for for domicile of at least two years not under conditional or temporary permission before he can acquire Caymanian status as of right. The applicant's mere ipse dixit - "and slight indications or casual words" - are not enough. If they were, then the abovementioned Caymanian Laws would be rendered void and inoperative.

It may well be, that after the Caymanian Protection Law, No. 23 of 1971, came into force, where the context does not otherwise require an applicant can establish by evidence residence and intention of residing therein animus manendi; the fact that he is a British subject or an alien and liable to be deported at any time, will not prevent the acquisition of a domicile of choice. An applicant's period of residence will not now be governed by statutory provisions because of the new definition of "domicil" having the meaning ordinarily aaplied to that expression at Common Law: S 2.

The learned Judge of the Grand Court, in reaching his conclusion had taken the facts (insufficient as they were) into account. He had approached the facts in the right way, that is, that the onus of proving that the applicant was domiciled in the Cayman Islands, was upon him and that his residence could have been conditional or temporary; there was no evidence before him that it was not.

In the conclusion, however, I would agree with my learned brothers that the matter be remitted to the Grand Court for a re-consideration of evidence tendered in support of the petition on the basis that the applicant be given an opportunity to have substantial justice done to the merits of his application in the light of certain relevant laws.

GRAHAM-PERKINS, J.A.

The appellant is a British subject and an attorney-at-law practising in the Cayman Islands. He was born at Calgary, Alberta, Canada, on March 15, 1922. He arrived in the Cayman Islands in October 1960 and has made his home there with his wife and son. His petition and affidavit disclose that his only residence and home are, and since October 1960 have been, in the Cayman Islands and that he has no intention of residing or making his home elsewhere. He swears too that on, or prior to, his arrival in the Cayman Islands he abandoned his Canadian domicil of origin and that on March 27, 1972 he was domiciled in the Cayman Islands. Implicit in those statements is the assertion that on his arrival in the Cayman Islands there was present in his mind an intention to make his permanent home there.

The foregoing constitutes the factual background on which the appellant petitioned the Grand Court of the Cayman Islands for a declaration that he was domiciled within those Islands on March 27, 1972, the day on which the Caymanian Protection Law 1971 (hereinafter called 'the 1971 Law') came into effect. The learned judge of the Grand Court in dismissing the appellant's petition expressed himself thus:

> "Mr. Macdonald and any others who petition this Court for a declaration under the Cayman Protection Law must satisfy the Court that they were domiciled here when the Cayman Protection Law came into operation within the meaning of this definition in Cap. 67.
>
> Mr. Macdonald's petition shows that he arrived in the Cayman Islands on or before the month of October 1960 but his residence could have been conditional or temporary."

The reference to "this definition in Cap. 67" is to the definition of "domicil" in s. 2(1) of the Immigration Restriction (British Subjects) Law, No. 15 of 1961 (hereinafter referred to as"the 1961 Law") which came into force on March 1, 1962, and which was repealed by the 1971 Law. In holding as he did the learned judge acceded to the principal submissions advanced by the learned Attorney General who appeared amicus curiae.

The appellant contends, inter alia, that the learned judge erred in not finding on the evidence that he was domiciled in the Cayman Islands on March 27, 1972. Had the

judge so found and declared the important consequence for the appellant would have been the vesting in him of "Caymanian status as of right".

The relatively simple but crucial question raised by this appeal is whether the learned judge of the Grand Court was right in dismissing the appellant's petition. Before attempting an answer to this question it is desirable to set out certain provisions of the 1971 Law and then proceed to a discussion of certain aspects of the common law conception of a domicil of choice. Section 2 of the 1971 Law, as far as is material, provides:

> "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, as far as is relevant, provides:

> "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 so domiciled under subsection (1) of Section 16 ...
>
> is a person of Caymanian status as of right."

Section 16 (1) provides:

> "Any British subject claiming to be ... domiciled in the Cayman Islands for any purposes of this Law may at any time apply to the Grand Court for declaration to that effect ..."

It is clear, I think, that the domicil contemplated by ss. 15 and 16 is a domicil of choice involving as it does certain well defined propositions. It is, perhaps, not entirely inaccurate to say, as Chitty, J., said in Craignish v. Craignish (1892) 3 Ch. 180, at p. 192,

> "That place is properly the domicil of a person in which his habitation is fixed

without any present intention of removing therefrom."

It is, however, certainly true to say that the term "domicil" is more amenable to illustration than to definition, unless we are content to define it simply as "permanent home". Whatever be the problems inherent in any attempt to define "domicil" it may be said to be a fundamental truth that it is only through the concurrence in point of time and place of two essential elements - the taking up of residence in a country and the presence of an intention to remain there permanently - that a domicil of choice is established. Protracted residence in a foreign country unaccompanied by an intention to remain there permanently will not lead to the acquisition in that country of a new domicil. Jopp v. Wood (1865) 4 De G.J. & S. 616; Attorney General v. Yule (1931) 145 L.T. 9. On the other hand if a man leaves the country of his domicil of origin and moves to another country with the clear intention of remaining there permanently his mere arrival in that other country may very well be sufficient to satisfy the requirement as to residence. See Bell v. Kennedy (1868) L.R. 1 Sc. & Div. 307. A remarkably striking example of the application of this principle is seen in White v. Tennant (1888) 31 West Virginia 790. In that case a man abandoned his home in State X and took his family to a house in State Y, about half a mile from State X, intending to live there permanently. Having deposited his baggage, he returned to State X, with his family, in order to spend the night with a relative. He fell ill and died there. It was held that he died domiciled in State Y.

As to the moment of time at which the intention to make one's residence permanent must be apparent it is clear that this will necessarily depend on the particular circumstances of each case. It is equally clear, however, that although this intention must be a present intention to reside permanently, "it does not mean that such intention must necessarily be irrevocable. It must be an intention unlimited in period, but not irrevocable in character". Gulbenkian v. Gulbenkian (1937) 4 A.E.R. 618. Of course the word "present" means no more than that as far as the mental state of the de cuius was concerned at some relevant point of time, he clearly intended to make his residence permanent. A necessary corollary of the acquisition of a domicil of

choice, is, of course, the abandonment of a domicil of origin. Undoubtedly it is only the complete acquisition, facto et animo, of a domicil of choice that can effect the abandonment of a domicil of origin.

It is important to observe too that in 1960, as indeed at all other material times, the common law doctrine as to domicil was part of the general law of the Cayman Islands. When by the Cayman Islands Act 1863 (26 & 27 Vict.c.31) the Cayman Islands were annexed to Jamaica, the Laws then in force in Jamaica were, by s.5, to be deemed to be in force in the Cayman Islands. The Act contained no provision whereby any Law thereafter to be passed by the Legislature of Jamaica would apply to the Cayman Islands. By s.2, however, the Legislature of Jamaica was empowered "to make laws for the peace order and good government of the said Islands". In 1945 there came into force in Jamaica the Immigration Restriction (British Subjects) Law Cap. 153. This Law was not made applicable to the Cayman Islands. It was not until March 1, 1962 that there came into effect in those Islands the 1961 Law. Prior to March 1, 1962, therefore, there was, so far as the appellant's petition is concerned, no general statutory mandate in the Cayman Islands whereby the de facto acquisition of a domicil of choice was denied recognition by the State for all purposes. I have used the words "no general statutory mandate" deliberately because I am aware that during t e period between October 1960 and March 1962 there was in force in the Cayman Islands the Deportation (British Subjects) Law, Cap. 37 which had come into effect in September 1942. This Law was repealed by the 1971 Law. It contained a definition of "domicil" which was in identical terms with the definition of that word in the 1961 Law. As will appear later I do not recognize any distinction between the definition of "domicil" in the 1961 Law and the common law conception of the term. The definition of domicil in Cap. 37 was followed, as was the definition in the 1961 Law, by a clause which sought to exclude the operation of the common law in the case of certain classes of persons. This exclusory clause was, however, expressly limited to the particular purposes of Cap. 37.

There is a principle in the interpretation of statutes stated in Maxwell on Interpretation of Statutes, 11th Edn. pp. 78-79, thus:

> "Presumption against Implicit Alteration of Law. One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights or depart from the general system of law, without expressing its intentions with irresistible clearness ..."

If this principle of interpretation is valid, as I accept it to be, it would follow, it seems, that by its express declaration that certain persons were not to be deemed to have a domicil within the Cayman Islands for certain purposes, Cap. 37 was not in any way seeking to effect any alteration in the common law doctrine as to domicil. In all general matters outside the very particular purposes of Cap. 37 the law as to domicil remained undisturbed. Let it be supposed, for example, that the Administrator considered it desirable to make a deportation order under s.3 in the case of a British subject convicted of an offence and in respect of whom the Court had recommended deportation. Let it be supposed, further, that such a British subject had been conditionally resident in the Islands for less than two years, say eighteen months, prior to his conviction but had in fact acquired a domicil of choice in the Islands within that time. For the purpose of challenging such a

deportation order any such British subject could not call in aid the provisions of s.2 and be heard to say that he should "be deemed to belong to the Islands" because he was a British subject who was "domiciled in the Islands". And this would have been the necessary consequence of the exclusory clause by which "a person shall not be deemed to have a domicil 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 any law in force in the Islands ..." Cap. 37 did not deny recognition of the acquisition by a British subject of a domicil of choice in the Cayman Islands for all purposes. What it quite clearly did was to deny to certain British subjects, in certain defined circumstances and for certain limited purposes the consequences of any such acquisition de facto. This if it did by a negative deeming clause which ex facie did some violence to fundamental logic if not to grammar. If a certain state of things is not to be deemed to exist unless certain factors are known to have occurred does it follow that if the latter are shown to have occurred the former is to be deemed to exist? I should say, certainly yes. But as I have already shown protracted and unconditional residence without more does not ipso facto result in the acquisition of a domicil of choice. As Romer, J., said in Batcheller & Sons, Ltd. v. Batcheller (1945) 1 Ch. D. 522, at p.530, "It is, of course, quite permissible to 'deem' a thing to have happened when it is not known whether it happened or not.

Since no question concerning any of the limited purposes of Cap. 37 is in any way relevant to the appellant's petition I regard Cap. 37 as having not the least significance in this appeal.

The question may now be asked: Was the appellant domiciled within the Cayman Islands on March 27, 1972? In my judgment the answer to this question cannot, either as a matter of interpretation or as a matter of logic, be resolved

merely by reference to a consideration of the treatment of "domicil" in s.2(1) of the 1961 Law. I incline very strongly to the view that the appellant's petition is demonstrably capable of leading to a conclusion that he had, at some point of time between October 1960 and March 1, 1962, acquired a domicil of choice within the Cayman Islands. One consequence of any such conclusion would be that the appellant would have continued to enjoy that status up to March 27, 1972 and indeed until such time as he chose to abandon it in favour either of his domicil of origin or a new domicil of choice. Certainly it could not be argued that the 1961 Law would in any way have impinged upon that status. By limiting his enquiry into the appellant's status and by reference to the question whether he had acquired a domicil of choice in view of the deeming provision following the definition of "domicil" in the 1961 Law, the learned judge effectively prevented himself from seeking an answer to the more vital question whether the appellant had acquired a domicil of choice prior to March 1, 1962. There is no doubt that this Court is in as good a position to evaluate the evidence as the learned judge of the Grand Court, and is entitled to form its own judgment opinion as to the proper inference to be drawn therefrom. Benmax v. Austin Motor Co. Ltd. (1955) 1 A.E.R. 326. As, however, the question was not canvassed at all, either before the Grand Court or this Court, it is, in my view, eminently desirable that the Grand Court should consider the matter in the light of the foregoing. In the circumstances I would allow the appeal and order a rehearing of the appellant's petition.

In view of the conclusion at which I have arrived it becomes really unnecessary for me to discuss the several submissions advanced by the learned Attorney General and Mr. Henriques touching on the meaning of "domicil" as used

in s.15 (b) of the 1971 Law. Out of deference thereto, however, I desire to make one or two observations on those submissions. It was argued before this Court, as indeed before the Grand Court, that, notwithstanding the definition, in terms of the common law, of "domicil" in the 1971 Law, the appellant was required to establish that at the time when that Law came into effect he "was domiciled" in the Cayman Islands, not within the meaning of the common law, but within the definition of that term in the 1961 Law. This was so, it was argued, because the context in which the word "domiciled" appeared in s.15 (b) of the 1971 Law required a meaning to be assigned to it quite different from that described by that Law itself. Section 2(1) of the 1961 Law provided:

> " In this Law -
>
> 'domicil' 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 present permanent abode and not for a mere special or temporary purpose; and a British subject shall not be deemed to have a domicil 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 ..."

In view of the finding of the Grand Court it is important, I think, to note that the definition of "domicil" is contained in the words underlined. The passage following and ending with the words "or leper asylum" does not, in my view, form any part of the definition. What that passage

does is to assert that"for the purposes of this Law" certain persons are not, in the circumstances therein described, to be regarded as having a domicil - as already defined - within the Cayman Islands. I find it not a little difficult to appreciate the purpose of this exclusory passage in so far as it deals with persons temporarily resident or under detention in the several institutions catalogued. The formation of an intention as to permanent residence necessarily imports a measure of freedom of choice. It cannot, therefore, be predicated of these perons that during the continuance of the constraints resulting from confinement within those institutions they could demonstrate that necessary co-existence of residence and present intention to which I have already adverted. The exclusion of these persons does not therefore add anything to, nor detract from, the definition. With regard, however, to those persons who came within the restrictive provision as conditional residence it is at least clear that in the view of the legislature it was desirable that the consequences of the acquisition by a British subject of a domicil of choice within the Cayman Islands should for the purposes of the 1961 Law, to some extent be controlled by the State. As cases such as May v. May and Lehmann (1943) 2 A.E.R. 146 and Boldrini v. Boldrini and Martini (1932) P. 9, show, even an alien who was given permission to land (in England) subject to certain conditions was not debarred from acquiring a domicil of choice in that country. In May's case Pilcher,J., said, at p. 149,

> "The two requirements necessary to the acquisition of a domicil of choice are actual residence and the intention to settle permanently in the new country of residence. No doubt the knowledge that residence in the new country may be cut short at any moment by the Home Secretary under the powers conferred upon him by the Aliens

> Restrictions (Amendment) Act 1919 and the orders made thereunder, may influence the mind of the alien concerned in forming the intention which is necessary before a domicil can be acquired; but once the court is satisfied that the intention has been formed, all the elements necessary to the acquisition of a domicil of choice are present and the domicil is acquired."

I apprehend that in the absence of the specific deeming provision following the definition of "domicil" in the 1961 Law a British subject could, notwithstanding that he had been allowed to land "under terms of conditional residence", call in aid the fact and consequences of the acquisition of a domicil of choice within the Cayman Islands for <u>any</u> purpose whatever. As I have already attempted to show this latter consideration would not apply to the appellant. There was, in any event, not a scintilla of evidence that the appellant had been allowed to land in the Cayman Islands subject to any conditions as to residence. Indeed the legitimate inference from his residence of over twelve years would appear to be that his entry was in no way qualified, and there cannot be any warrant for any contrary assumption.

In my judgment the <u>definition</u> of "domicil" in the 1961 Law does not in any way differ from the common law conception of the term. Grammatically, the words "as his place of present permanent abode and not for a mere special or temporary purpose" clearly involve an adverbial phrase qualifying each of the three principal (understood) clauses: (i) "the place in which a person has his present home", (ii) "the place in which he resides", and (iii) "the place to which he returns". Viewed in this way the definition embraces the essential elements of domicil in the contemplation

of the common law. When, therefore, the learned judge of the Grand Court held that the appellant was required to satisfy that Court that he was domiciled in the Cayman Islands within "the meaning of this definition in Cap. 67" he was quite obviously confounding, albeit unwittingly, the definition with the deeming provision inserted by the legislature for the limited purposes of that Law. When the 1961 Law was repealed by the 1971 Law the latter did not in substance effect any change in the definition of "domicil". What it did was to remove the provision by which a domicil of choice within the Cayman Islands if acquired de facto, was, for certain purposes, not to be deemed to have been acquired. At the same time it introduced a new status, Caymanian status as of right, but the entitlement thereto was made to depend, inter alia, on the fact of an applicant's domicil within the Cayman Islands at the time it came into effect. It seems to be beyond debate that there is no means by which a domicil of choice can be acquired other than by virtue of the common law. Why, therefore, is it to be supposed that some meaning is required to be ascribed to "domicil" in s.15(b) of the 1971 Law other than that assigned thereto by that Law?. For my part I would have thought that the context in which the word "domicil" appears therein did not require, nor indeed permit, any such departure from the common law meaning of that term.

The enquiry for the purpose of a declaration under s.16 of the 1971 Law must always involve the question whether the applicant was domiciled within the Cayman Islands at the time of the coming into operation of that Law. For the purposes of the 1961 Law a person who had not resided in the Cayman Islands for at least two years otherwise than under terms of conditional residence was not to be deemed to have a domicil within those Islands. But does it follow, as

the learned Attorney General contends, that a British subject who for the purposes of the 1961 Law was not in certain circumstances to be deemed to have a domicil within the Cayman Islands cannot, in the terms of s.16(1) of the 1971 Law, claim "to be ... domiciled in the Cayman Islands for any purposes of this Law ..."? If a British subject could not so claim this would certainly not result from the content of any particular definition of domicil. Whether the Attorney General's contention could be said to be tenable would appear to depend, inter alia, on the validity of the proposition implied in his submission that a deeming provision inserted for the particular purposes of one Law (repealed) may legitimately be used to displace the clear terms of a definition in, and for the purposes of, another Law.

I am compelled to the conclusion that the words "was domiciled in the Cayman Islands at the time of the coming into effect of this Law" in s.15(b) of the 1971 Law do no more than prescribe the time by reference to which the question as to an applicant's domicil is to be resolved for the purposes of that Law. They do not, in my view, require the Grand Court to embark on an enquiry into the question whether an applicant at some indeterminate point of time in the past was or was not deemed to be domiciled within the Cayman Islands for the purposes of some other Law.

Finally, the appellant, an attorney-at-law, quite obviously familiar with the common law conception of domicil, as indeed with the definition of that term in the 1961 Law, had sworn that he was domiciled in the Cayman Islands on March 27, 1972. That statement manifestly involved the unequivocal assertion of fact that his residence in the Cayman Islands was neither temporary nor conditional. There was no evidence to the contrary. There was, therefore, no

evidential basis on which the learned judge of the Grand Court could have concluded: "Mr. Macdonald's petition shows that he arrived in the Cayman Islands on or before the month of October 1960 but his residence could have been conditional or temporary". As to the burden of proof involved in demonstrating the acquisition of a domicil of choice and the abandonment of a comicil of origin the authorities are clear that an applicant is required to do no more than establish this on a balance of probability. In this connection I observe not the least difficulty in the circumstances of the appellant's petition.

Smith, J.A.:

The appeal is allowed. The cause is remitted to the Grand Court for a re-consideration of the evidence on the basis of the relevant law. No order as to costs.