

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**CAUSE NO. G 178 OF 2018**

**BETWEEN:**

**ROGELIO ANTONIO HAWKINS**

**Plaintiff**

**AND**

**ARARBANEL LTD.**

**Defendant**

**Appearances:** Mr. Michael Wingrave of Dentons & Mr. Henry Orren  
Merren IV Attorney-at-Law

Mr. Colm Flanagan of Nelson & Co for the Defendant

**Before:** Hon. Justice Richard Williams

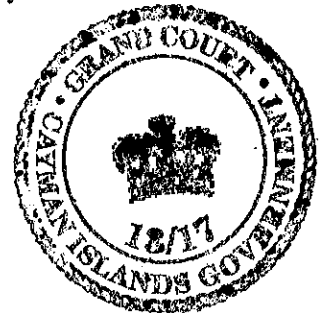
**Heard:** 9 December 2019

**Plaintiff's Written  
Submissions:** 7 January 2020, 8 January 2020 & 21 January 2020

**Defendant's Written  
Submissions:** 14 January 2020

**Draft Judgment circulated:** 29 April 2020

**Date of Judgment:** 7 May 2020



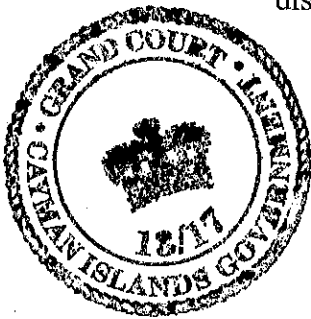
**HEADNOTE**

*Applicability of the laws of Jamaica in the Cayman Islands – Money Lending Law 1938 of Jamaica –  
Interpretation and effect of the Act for the Government of the Cayman Islands 1863*

**JUDGMENT**

## Introduction

1. These proceedings concern a loan arrangement between the Defendant, Abarbanel Ltd and the Plaintiff, Rogelio Antonio Hawkins. The Plaintiff claims that the Defendant is registered as a resident company and carries on a local business as a mortgage lender. The Defendant takes issue with this claim but accepts that it is registered as a local company and loaned money to the Plaintiff. Pursuant to the Loan Agreement registered charges were placed over the Plaintiff's house and apartments. The Plaintiff claims that the charge against the apartments should be discharged, contending that the Defendant should be:



*“barred from enforcing this charge because it was never properly authorised to carry on its commercial mortgage lending business in the Cayman Islands and thus the Defendant could not legally enter into, register and/or, enforce this charge.”*

The Plaintiff also claims that that he should receive a refund of USD\$40,504.73<sup>1</sup> as he contends that the Defendant:

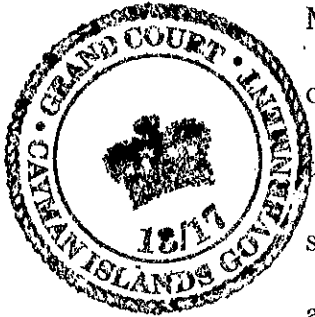
*“was not entitled to earn any interest, because it should not be allowed to profit from its own illegality and/or wrong - doing”.*

2. The Originating Summons was filed on 18 September 2018. The Acknowledgement of Service of the Originating Summons was filed on 3 October 2018. On 8 May 2019 Mangatal J directed that the action should continue as if

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<sup>1</sup> Pursuant to a Consent Order dated 28 September 2018, this was the the amount paid into Court, being an estimate of statutory interest in the event that the Defendant could establish its rightful claim to interest pursuant to s.34 of the Judicature Law.

begun by Writ, pursuant to GCR O.28, r.8 and that a Statement of Claim should be filed by or on 24 May 2019. The Learned Judge also gave comprehensive directions to trial. The lengthy Statement of Claim was filed on 24 May 2019. The Defence was filed, as directed on 7 June 2019. Although not provided for in Mangatal J's directions, the Amended Statement of Claim containing a great deal of amendments was filed on 17 June 2019. As directed, on 21 June 2019 a Reply to the Defence was filed. On 8 July 2019 the Defendant applied to strike out significant parts of the Plaintiff's Statement of Claim dated 24 May 2019, as well as striking out the Reply dated 21 June 2019. On 16 July 2019, a Summons was filed by the Plaintiff seeking leave to significantly amend its Originating Summons. The Amended Originating Summons was filed on 11 September 2019, leave having been given for that by Richards J when she approved a consent order on 3 September 2019. On 17 September 2019 a Re-Amended Statement of Claim was filed pursuant to the Order of 3 September 2019. On 2 October 2019 the Amended Defence was filed. On 15 October 2019 the Reply to the Amended Defence was filed.



3. I received Oral Submissions from the parties on 9 December 2019. In addition, I have considered the Written Submissions filed by the Plaintiff on 2 December 2019, 7 January 2020, 8 January 2020 and on 21 January 2020 and the Defendant's Written "Outline Submissions for the hearing on 9 December 2019" and its additional submissions filed on 14 January 2020. The parties were referred



by me to an extract from Elizabeth W. Davies text “The Legal Status of British Dependent Territories” and to the Cayman Islands Government publication by Sybil McLaughlin, “150 Years 1832 – 1982 Cayman Islands Parliamentary Government (1982)”<sup>2</sup>, and they were then afforded the opportunity to comment upon the same.<sup>3</sup>

4. Pursuant to the Consent Order approved by Richards J on 3 September 2019, the hearing before me was listed to deal with two preliminary issues. With that in mind, I do not intend to rehearse in any detail the factual background to the action or the reasons why so many amendments have been made to the pleadings.
5. At the hearing it became apparent that the only preliminary issue for my determination is whether the Moneylending Law 1938 of Jamaica (“the Law”)<sup>4</sup> is in full force and effect in the Cayman Islands. With this in mind, the Plaintiff notes the difficulties outlined by Harre CJ in *Cook-Bodden v Kirkonnell* [1994-95] CILR 27 at 41 when he stated:

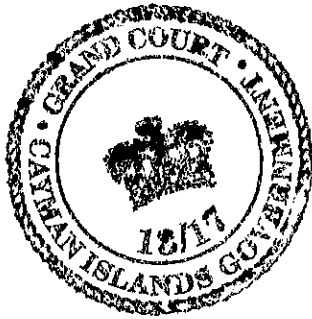
*“It is, unfortunately, a feature of British imperial inheritance that there are few Commonwealth jurisdictions for which it is possible to provide a definitive statement of statutes which have been inherited and currently have local effect. Sometimes it is only litigation which determines whether*

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<sup>2</sup> This publication was cited in a footnote at page 91 of the Elizabeth Davies text.

<sup>3</sup> I was conscious of the fact that the Court of Appeal at paragraph 92 in *The Deputy Registrar of the Cayman Islands & the Attorney General of the Cayman Islands v Chantelle Day & Vickie Bodden Bush* CICA NO.9 of 2019 felt it appropriate to have regard to and refer to a similarly authoritative text (Hendry and Dixon, British Overseas Territories Law, 2<sup>nd</sup> Edition, Hart: 2018).

<sup>4</sup> The Law is incorrectly referred to by the Plaintiff as being the Money Lending Act.



*a given statute has local application or not. The Cayman Islands are no exception. Indeed, the difficulties are compounded by the fact that the Islands were for many years under the governance of Jamaica, itself a British possession.”*

6. The Law was brought into being by the Governor and Legislative Council of Jamaica and assented to on 28 December 1937. By Proclamation, the Law was commenced on 27 January 1938.
7. On 14 April 1938, the Governor and Legislative Council of Jamaica passed an amendment to the Law, the commencement of which was deemed to have *“been coincidental with the commencement of the operation of the Law”*.
8. For completeness sake, the Law was further amended in 1967, when the Moneylending Act was passed by the Senate and House of Representatives of Jamaica in 1970, 1974, 1997 and 2003.
9. The Plaintiff contends that the Law was and remains in force in the Cayman Islands. This is the basis of his claim made in the substantive proceedings, as s.9 of the Law provides that any contract for the loan of money shall be illegal in so far as it provides (directly or indirectly) for the payment of compound interest. As a consequence, it is submitted that as both the Loan Agreement and charges are illegal because Clause 1.6 of the Loan Agreement and Clause 5 of the Second

Schedule to the Charges provide for compound interest, they are both illegal contracts.

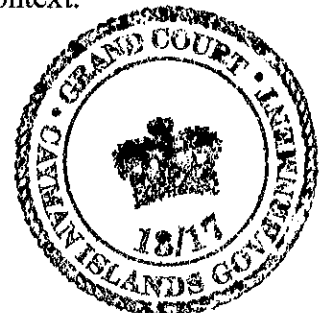
10. The Defendant, on the other hand, contends that the Law has never been a part of the law in the Cayman Islands and cannot be relied upon by the Plaintiff.
  
11. It is agreed by the parties that the Law does not contain any express provision extending it to the Cayman Islands. The Plaintiff suggests that this is equivocal and that in the absence of a provision to exclude the Law's applicability to the Cayman Islands, having regard to the legislative background, there is an interpretive presumption that the law applies to the Cayman Islands as from the date of its enactment by the Legislature of Jamaica.<sup>5</sup> The Defendant, on the other hand, contends that this is a "*misconceived*" argument, as it is grounded on the "*erroneous basis*" that every law of Jamaica was a law of the Cayman Islands unless repealed.

### **The Extension of the Laws of Jamaica to the Cayman Islands**

12. In order to determine the issue about the applicability or any effect of the Law in the Cayman Islands, one must consider the Law in an historical context.

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<sup>5</sup> See Paragraph 9f of the Reply to the Amended Defence.



13. The Cayman Islands are a British Overseas Territory of the United Kingdom and have recognition of such since the Treaty of Madrid 1670. The Islands became a British colony in 1725 by settlement.

14. The Cayman Islands Government publication by Sybil McLaughlin, "150 Years 1832 – 1982 Cayman Islands Parliamentary Government (1982)" ("the Article") provides helpful insight into the early government of the Cayman Islands. The accuracy of the content of the Article and its exhibits have not been challenged by either party.

15. The Article informs that the first meeting of democratically elected representatives of the people of the Cayman Islands, the elected assembly, was held on 31 December 1831. The Assembly had its second sitting in January 1832, at which legislation was passed outlining the rules and regulations to govern that body's operation. The legislature was divided into two houses. The lower house was comprised of elected "*Vestrymen*".<sup>6</sup> The upper house was comprised of "*Magistrates*" appointed by the Governor of Jamaica. Laws were passed by the Vestrymen, but they were not deemed to be valid until they had been assented to by the Magistrates sitting in their assembly. Mrs. McLaughlin stated in the Article that:

*"Once the Magistrates assented to a piece of legislation it immediately had the force of law in the Cayman Islands. Although it was required to be*

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<sup>6</sup> Sometimes called "Representatives".





*sent to Jamaica for one final step, which was the assent of the Governor of Jamaica.”*

The Article notes that, although there were delays, there do not appear to be any instances of the Governor failing or refusing to give his assent.

16. The Assembly legislated for the Islands for 32 years without any involvement from the Crown until June 1863 when the British Parliament passed the Act for the Government of the Cayman Islands<sup>7</sup> (“the 1863 Act”) which validated, on an *ex-postfacto* basis, all laws of the Caymanian Legislature made between 1832 and 1863, provided that the Governor of Jamaica assented to them. The effect of the 1863 Act was to recognise the local legislature in the Cayman Islands, but to reserve certain powers to Jamaica. The Governor of Jamaica was to exercise authority over the Cayman Islands *“as if the same had been part of the Islands of Jamaica”*.<sup>8</sup>

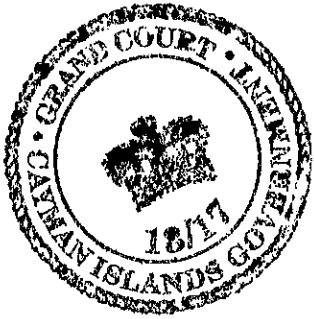
17. Mrs. McLaughlin, when reviewing in the Article the legislative history up to and including the passing of the 1863 Act, commented that from this early history:

*“... It can be seen that from the very beginning of self Government on these islands the elected representatives of the people moved quickly and firmly to establish the premise that they were masters in their own house.*

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<sup>7</sup> An Act for the Government of the Cayman Islands, 22 June 1863, 27 Vict. Cap. XXX1.

<sup>8</sup> Section 6 of the 1863 Act.



*This trait of strong independence has always been a hallmark of the Caymanian people who, though passionately loyal to the British Crown, have from the earliest stages of development as a nation, jealously asserted and guarded their right to determine their own future within these islands leaving to the United Kingdom only the power to determine the course of foreign affairs.”*

18. Section 5 of the 1863 Act, under the heading “*Law of Jamaica to take effect in the Cayman Islands*”, provided that:

*“Except, as they may be inconsistent with the aforesaid Acts or Resolutions, and subject to any such Alterations as may be made by or by Authority of the aforesaid Legislature of Jamaica, and to such Regulations as may from Time to Time be made under Authority of this Act, the Laws now in force in Jamaica shall from the Date of this Act be deemed to be in force in the said Islands, so far as the same shall be applicable to the circumstances thereof.” [My emphasis]*

This means that by s.5 of the 1863 Act the laws then in force in Jamaica were applied generally to the Cayman Islands. However, it does not provide that laws passed in Jamaica thereafter would automatically also be so applied under this provision, although any amendments or repeals to laws in existence at the time of the enactment of the 1863 Act would have been. This is important because the Law was, of course, not in force in 1863.

19. The 1863 Act, under the heading “*Power of Legislature of Jamaica to make Laws*” also provided the Jamaican Legislature with the power and right to pass

laws “for the peace, order and good government of the Cayman Islands” as well as to alter or repeal laws already made in the Islands<sup>9</sup>. This is not inconsistent with my reading of s.5 of the Act<sup>10</sup>, because it is clear that the intention was for the Jamaican legislature, when the above needs required<sup>11</sup>, to exercise its retained superior right to pass legislation. There is force in the Defendant’s submission that it would lead to a “nonsensical result” if s.5 or s.2 of the 1863 Act are interpreted to mean that every Law of Jamaica passed after the 1863 Act became a law of the Cayman Islands.

20. As new laws would be needed to be enacted to address “local purposes” which may not derive from the Jamaican Legislature, the 1863 Act also allowed the Jamaican Legislature to extend to the “Justices and Vestry, or other body or bodies of persons in the said Islands, such power of making laws and regulations” as it saw fit.<sup>12</sup> The Assembly could continue to make Regulations for a wide variety of set out purposes that “to them, seen fit” for the Islands although they could not come into effect until they had been signed by the Governor of Jamaica, subject to disallowance by the Imperial Authorities in Britain.<sup>13</sup>

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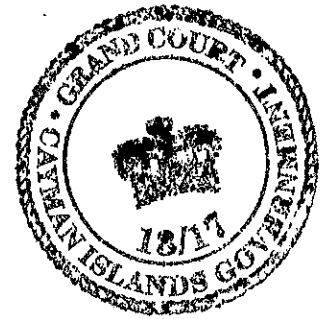
<sup>9</sup> Section 2 of the 1863 Act.

<sup>10</sup> Set out in paragraph 18 herein.

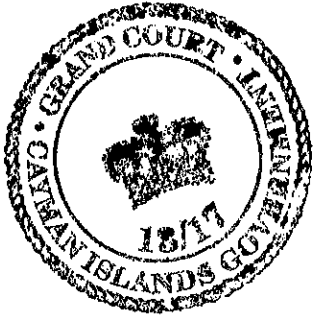
<sup>11</sup> “for the peace, order and good government of the Cayman Islands”

<sup>12</sup> Section 2 of the 1863 Act.

<sup>13</sup> Sections 3 and 4 of the 1863 Act.



21. Lord Walker of Gestingthorpe summarised the effect of the 1863 Act in the Privy Council decision of *In The Matter of Al Sabah* [2004-05 CILR] when he stated at paragraph 14 that it:



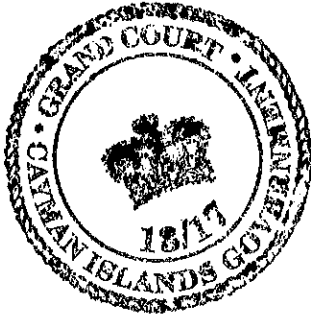
*".... was to confirm the existing arrangements so far as they went, but the islander's institutions became subject to the jurisdiction of the Governor, legislature and Supreme Court of Jamaica. The law of Jamaica was in general to apply to the Cayman Islands. That state of dependency continued until 1959."* [My emphasis]

I do not take this wording, as the Plaintiff does, to be expressing a view that all acts or laws passed in Jamaica between 1863 and 1959 would have automatic effect in the Cayman Islands. This is not what the situation was, although it is quite right to say that a state of dependency remained until just before Jamaica's independence.

22. Despite the fact that the Cayman Islands were formally annexed to Jamaica in 1863, with the Jamaican Legislature having superior legislative power over the Islands, in reality, Jamaica took a *laissez-faire* approach as regards to affairs in the Cayman Islands. When recognising that the authority of the Cayman Assembly and justices and vestry was subordinate to the superior legislative authority conferred by the 1863 Act upon the Legislature in Jamaica, Elizabeth Davies wrote in her aforementioned text <sup>14</sup> that in reality:

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<sup>14</sup> Page 91.



*“... the practical use to which the respective legislatures were put in the years that followed was such that the Cayman Islands’ legislative needs continued to be met by the Cayman Islands’ Assembly of justices and elected vestrymen. Little, if any, regard was paid to the provisions regarding the limited extent of the future legislative authority of the Assembly of justices and vestrymen prescribed by the 1863 Act. Although that assembly should only have been used for the purpose of making regulations within a limited field, this legislature continued to enact laws relating to a wide area.”*

Despite the author’s view that in 1863 there was an intention that the Assembly’s role would be restricted, it is evident that in reality the Jamaican Legislature, whilst exercising its superior power to pass laws each deemed to be *“for the peace, order and good government of the Cayman Islands”* to be applied in the Cayman Islands, was also comfortable with, and saw it fit, for the Assembly to exercise the power of making laws and regulations for local purposes. This became an established convention.

23. The Cayman Islands Assembly, cognisant of the changes that the 1863 Act would bring when it was enacted on 22 June 1863, passed a law on 16 June 1863.<sup>15</sup> This law ensured that a fair copy of all laws passed in the Islands since January 1832 and still operative would be transmitted to the Governor of Jamaica for his approval.

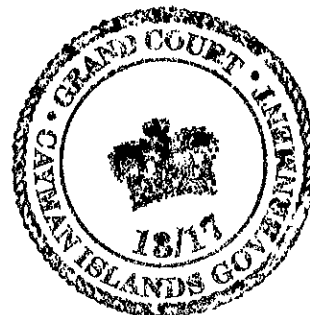
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<sup>15</sup> An Act authorizing a Revisal of Former Acts, and to Consolidate the Government, 16 June 1863, assented to by Governor Eyre, 23 March 1865, in *Laws of the Cayman Islands... 1869*, pp.5-6.

24. In 1893 the Cayman Islands Government Law 37/18 (“the 1893 Law”) was passed by the Jamaican Legislature. Section 1 of the 1893 Law declared that the enactments of the Assembly of justices and the vestrymen listed in Schedule 1 to that Law (dating from 1863 to 1893) to be valid. Section 2 of the 1893 Law conferred, for future purposes, full legislative authority upon the Caymanian Assembly to legislate for the peace, order and government of the Cayman Islands.
25. In the 1893 Law, the Jamaican Legislature referred to the fact that s.5 of the 1863 Act had provided that the Laws of Jamaica then in force should be deemed to be in force in the Cayman Islands (so far as they may be applicable to the circumstances thereof) and added that it was “... *expedient for the avoidance of doubt now to declare which of those acts of this Island<sup>16</sup> shall be deemed to be and to have been in force*” in the Cayman Islands under that provision. It was also felt expedient to “*declare certain of the Acts or Laws*” made in Jamaica, which had been passed since the 1863 Act, were also in force in the Cayman Islands. It is significant that the Legislature saw the need to separately declare the applicable Jamaican laws in place from 1863 and the post 1863 applicable Jamaican laws, and this is because all of the former became part of the law of the Cayman Islands due to s.5 of the 1863 Act, whereas only certain laws enacted in Jamaica post 1863 did.

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<sup>16</sup> Jamaica.





26. In the 1893 Law the Legislature set out the relevant acts and laws, as well as those made in the Cayman Islands, which were in place in the Cayman Islands in three schedules. Schedule I set out the laws passed by the Justices and Vestry which were in force. Schedule II set out the laws of Jamaica, which were deemed to be in force in the Cayman Islands by virtue of s. 5 of the 1863 Act. Schedule III set out the "*several Acts and Laws of Jamaica*", which were passed since the 1863 Act and which were deemed to be in force in the Cayman Islands.

27. In 1906, the Jamaican Legislature passed the Cayman Islands Government Law 1893, Amendment Law, 1906, Law 13 of 1906 ("the 1906 Law") to attempt to clarify any doubts that may have arisen as the effect of the repeal amendment in Jamaica of certain applicable laws. The 1906 Law amended the 1893 Law to provide that the repeal or amendment of any actual law contained in Schedule II of Schedule III of the 1893 Law was to operate as the repeal or amendment of the same in the Cayman Islands and any law repealing or amending any act or law mentioned in Schedule II of Schedule III of the 1893 Law was deemed to be in force in the Cayman Islands.

28. In 1953 the Cayman Islands Government Law (consolidated) Jamaica Laws 1953 - CAP. 425 was published. The Law was not referred to in any of the Schedule of laws or acts in force in the Cayman Islands. In fact, the Law does not appear in schedules of any version of the Cayman Islands Government Law.

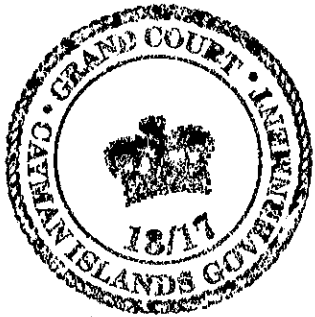
29. The Defendant rightly contends at paragraph 3.8 of his additional written submissions filed on 14, January 2020 that by virtue of the CI Government Law (as amended from time to time) the laws of the Cayman Islands were deemed to be comprised of (i) of the laws which had been made by the Justices and Vestry and referred to in Schedule 1 of the CI Government Law; (ii) of any laws thereafter which were made by the Justices and Vestry with the consent of the Governor; (iii) of the laws of Jamaica contained in Schedules II and III, including any subsequent repeals, amendments, substitutions, additions thereof; and (iv) of any law passed by the Jamaican Legislature that was specifically extended or privately extended by reference to the Cayman Islands. The Defendant went on to say that, even if the Law had at one time been put into effect in the Cayman Islands (which it argues did not happen<sup>17</sup>) in absence of a Jamaican law featuring in Schedule II or III or being specifically or impliedly extended to the Cayman Islands, it was of no force or effect in the Cayman Islands.

30. The Defendant added that *“whilst there was no statutory requirement for the Jamaican Legislature and the Cayman assembly to operate in this way, this was the constitutional convention that developed”*.<sup>18</sup> Consistent with this, in the aforementioned Article, when talking about the effect of the 1863 Act and the above Acts or Laws that followed, the author quoted the following from a report

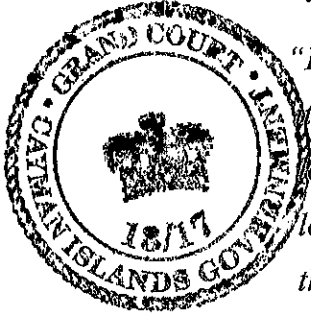
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<sup>17</sup> See paragraphs 10, 11 and 18 above.

<sup>18</sup> The Defendant conceded in his oral submissions that he would not rely, and base a convention submission, on the Earl of Perth’s submissions made during the Cayman and Turks and Caicos Bill debate (page 1 of the Hansard extract - tab 5 of the Defendant’s Bundle).



on the Cayman Islands written by Mr Frank Hill, and which was published in the Daily Gleaner of Jamaica on Monday 19 November 1956:



*"For a long time now, however, the Assembly has been allowed to exercise its legislative powers without any interference whatever from Jamaica: so long, in fact, that the majority of the Assemblymen came to believe that the local autonomy was a right conferred by a written constitution, rather than a privilege, generously conceded by the Jamaican Government."*

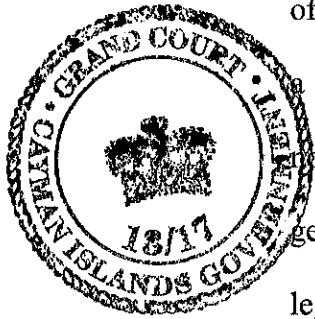
31. The Defendant further submitted that the convention which had developed was that Jamaican legislation enacted post the 1863<sup>19</sup> Act did not apply to the Cayman Islands unless it was expressly provided for. The Plaintiff contends that, if there was any such convention, that it did not come into force until 1959 and because this was after the Law had been enacted, it did not affect the applicability of the Law in the Cayman Islands.

32. With the intention that the Cayman Islands would no longer be a dependency of Jamaica, but transition to rule as a British Crown Colony, the Cayman Islands and Turks and Caicos Islands Act 1958 ("the 1958 Act") was enacted and it repealed the 1863 Act. By s.2(3) of 1958 Act the continued operation of existing law was preserved. The Cayman Islands' written constitution<sup>20</sup>, which received Royal Order in Council on 4 July 1959, specifically exempted the Islands from the control of the Jamaican Legislature and placed them directly under the authority

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<sup>19</sup> Unless it was to amend or alter a pre-1863 Act.

<sup>20</sup> Caribbean and North Atlantic Territories: the Cayman Islands (Constitutional) Order in Council, 1959, Statutory Instruments, No, 863 ("the 1959 Order").



of the Governor of Jamaica. The body of Vestrymen of Justices were replaced by a Legislative Assembly and an Executive Council. The Executive Council was normally to be consulted on matters of policy. The Governor of Jamaica had a general reserved legislative power and the Crown could disallow certain legislation.

33. Pursuant to s.56(2) of the 1959 Order the Legislature of Jamaica was authorised to continue to make laws “*for the peace, order and good governance*” of the Cayman Islands. Section 56(2) of the 1959 Order provided that such a law should not apply unless it “*is in express terms applied thereto*”<sup>21</sup> or the Governor by Proclamation had declared that the law should apply.<sup>22</sup>

34. Lord Walker in *Al-Sabah* summarised the position as being that the 1959 Order:

*“... provided for the Governor of Jamaica to be ex-officio the Governor of the Cayman Islands, with limited legislative powers conferred concurrently on the Governor with the advice and consent of the Cayman legislative Assembly (on the one hand) and the legislature of Jamaica (on the other hand), with power being reserved to Her Majesty in Council to amend or vary the order in Council.”*

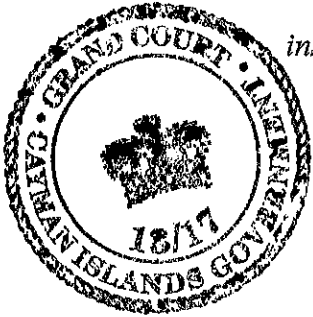
35. Section 65(1) of the 1959 Order provides that all “*existing instruments*” shall be construed with any adaptations and modifications necessary to bring them into

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<sup>21</sup> Section 56(2)(a).

<sup>22</sup> Section 56(2)(b).

accord with the provision of the 1959 Order. Section 65(4) defined “existing instruments” as being:



*“Laws, rules, regulations, by-laws, proclamation, orders, licences, permits and other instruments having the force of law, or issued in pursuance of statutory powers... which are in force in the Islands immediately before the appointed day...”*

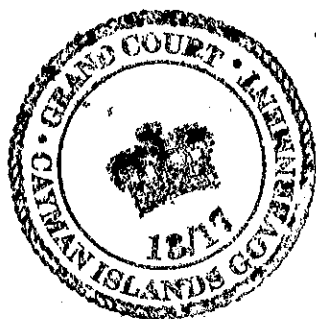
36. In August 1962, Jamaica became an independent nation and was therefore no longer a British colony. The Cayman Islands chose to separate from Jamaica and remain a British Crown Colony. To coincide with these changes the 1958 Act was repealed by the West Indies Act 1962 (“the 1962 Act”), but successive orders in Council providing Constitutions for the Cayman Islands contained similar saving provisions.<sup>23</sup> The 1959 Order in Council was revoked by the Cayman Islands Constitution Order 1962 (S.I. 1962/1646). The 1962 Act and the 1972 Constitution conferred law-making power “for peace, order and good government of the Islands” in the Governor<sup>24</sup> with the advice and consent of the Legislative Assembly, with power reserved to Her Majesty in Council. The Legislature in the Cayman Islands has power to amend or repeal any remaining imported Jamaican law.

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<sup>23</sup> Cayman Islands (Constitution) Order in Council 1962 (SI 1962/1646) s.56; Cayman Islands (Constitution) Order 1965 (SI 1965/1860) s.56; Cayman Islands (Constitution) Order 1972 (SI 1972/1101) s.57; Cayman Islands Constitution Order 2009 (SI 2009/1379) s.5.

<sup>24</sup> In earlier years known as the Administrator.

37. Lord Walker stated in *Al-Sabah* that “*the general effect of the various constitutional instruments was to maintain existing laws in force in the Cayman Islands, subject to any necessary modifications*”. Having regard to Jamaica’s independence and the above resulting fundamental constitutional changes, it was recognised that the Cayman Islands should have their own body of law. With this in mind, the Revised Edition (Laws of the Cayman Islands) Law 1960 (“REL 1960”) required the Governor to appoint Commissioners to be tasked with preparing a revised edition of the laws of the Cayman Islands.<sup>25</sup> The Commissioners were tasked with preparing or causing to be prepared a table of acts and laws of the Cayman Islands which were in force on 31 December 1963.<sup>26</sup> The Governor was then to lay the prepared revised edition before the Legislative Assembly. The revised edition would then come into force from the date set out in a Proclamation ordered by the Governor following his receipt of authorisation from the Legislative Assembly. Importantly s.10 of the REL 1960 states that the revised edition shall:



*“...without any question whatever in all Courts of Justice and for all purposes whatsoever the sole and only proper edition of the Laws of the Cayman Islands in force on the 31<sup>st</sup> day of December 1963:*

*Provided that nothing in this section shall affect the operation of any Law which before the date named in such Proclamation may be passed repealing, altering or amending any earlier Law, although such earlier Law has been already included in the revised edition.”*

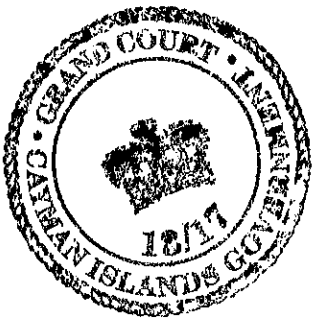
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<sup>25</sup> Section 3.

<sup>26</sup> Section 8.

38. The Commissioners were not given the power to make any alteration or amendment in the matter or substance of any Act or Law or part thereof.”<sup>27</sup> If the Commissioners felt that an alteration or amendment was desirable they were required to draft a Bill containing the same which would have to be submitted to the legislative Council in the ordinary way.<sup>28</sup> The Plaintiff contends that the REL did not give the Commissioners any power to determine whether a law should or should not be in force or whether it should be repealed.

39. The Revised Edition (Laws of the Cayman Islands) Law, 1960 As Amended by the Revised Edition (Laws of the Cayman Islands) (Amendment) Law 1963 stated in its Preface that it:



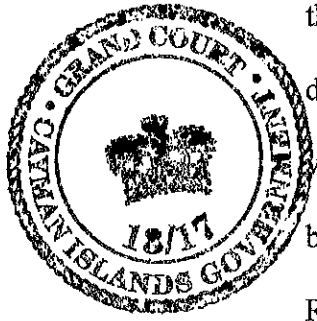
*“contains the Laws of the Cayman Islands inforce on the 31<sup>st</sup> day of December 1963, together with those Laws of Jamaica applicable to the Cayman Islands which were in force on that date and includes the modifications effected by and under section 56 of the Cayman Islands (Constitution) Order in Council, 1962.”*

40. The Revised Edition contained a chronological table of the laws of Jamaica, which set out how each law of Jamaica, which was applicable to the Islands, was dealt with. The Law was not included in the detailed chronological table or the Revised Edition and it is not one of the laws exempted for entry in the schedules pursuant to s.7 of the REL. The Plaintiff suggests that the Law being left out of

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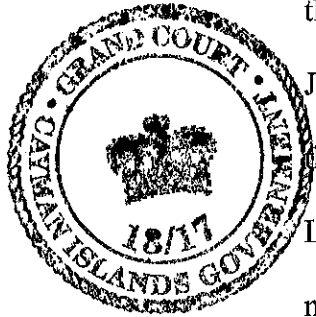
<sup>27</sup> Section 6(1) REL 1960.

<sup>28</sup> Section 6(2) REL 1960.



the schedule was solely due to human error. However, having regard to what I determine to be the effect of the 1863 Law, its absence is consistent with that view and likely because the Law was determined by the Commissioners as not being in force as at 31 December 1963. If this is right, then pursuant to s.10 of the REL, the Law is not regarded as being in force.

41. The Statute Law Revision (Repeal) Law 1963 was enacted to "*Facilitate the preparation*" of the Revised Edition of Laws "*by the Repeal of certain Enactments*" ("the Revision Repeal Law"). The Law was not mentioned in the Revision Law as being one of the Jamaican laws repealed in its application to the Cayman Islands. Therefore, on the Plaintiff's case, it would remain as a law of the Cayman Islands. The Plaintiff contends that the Revision Repeal Law would not have been required if the absence of a law from any of the Schedules in the Revised Edition of Laws was intended to be an indication that that law was not in force or had been repealed. However, the Revision Repeal Law was not intended to catalogue laws from Jamaica that had been repealed since 1863; it was simply to repeal five applicable laws from Jamaica and three laws enacted in the Cayman Islands to facilitate the preparation of the revised law. A number of the laws of Jamaica were not included in the repealed schedule because regard was only being had to repealing the laws which were a law of the Cayman Islands at the time.



42. As already mentioned, the Plaintiff submits that when the Law had been enacted, pursuant to s.5 of the 1863 Law, it was at a time when all laws passed in Jamaica automatically became a law of the Cayman Islands. It is contended that this meant that the Law came into force in the Cayman Islands at the same time as it did in Jamaica and, as it was not one of the laws included in the list of repealed laws in the Revision Repeal Law it remains in effect. The Plaintiff further asserts that the Law has not been repealed in Jamaica and, although there have been amendments made in Jamaica to the Law, s.9 of the Law has not been amended and accordingly remains in force in Jamaica as well as in the Cayman Islands.

43. The Defendant rightly contends that the Law is not in the list of repealed cases as it never formed a part of the law of the Cayman Islands. It rightly points out that the Law did not appear in any Schedules and was not "*expressly extended or impliedly extended to the Cayman Islands*". Although the Plaintiff noted that express extension was not required by the 1863 Act and only later arose as a statutory requirement due to s.56(2)(a) of the 1959 Order, in his Addendum to Supplemental Submissions the Plaintiff commendably conceded that the Jamaican Laws in Schedule III (which he had highlighted in his supplemental submissions because they did not contain an express extension provision) were actually incorporated into Cayman Law by virtue of being in the Schedules or by express or implied reference or context. This is consistent with the convention relied upon by the Defendant.

44. I am satisfied that the Law is not a law of the Cayman Islands and this view is confirmed by its absence in the aforementioned Schedule. The intention of the REL, having regard to s.10 therein, was to provide certainty moving forward about the Laws in place at that time.

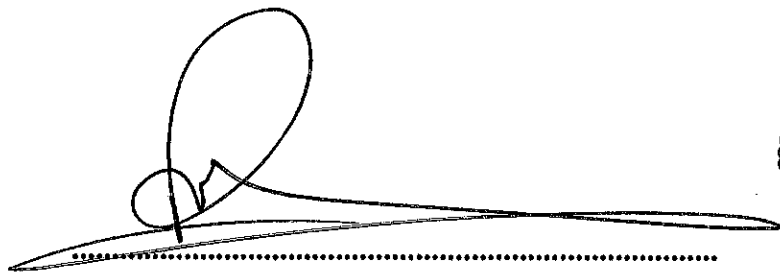


### Costs

45. Following circulation of the draft Judgment, the Defendant submits that the Plaintiff should pay the Defendant's costs in relation to the trial of the preliminary issue. The Plaintiff submits that the costs should be costs in cause.

46. The Defendant has been the successful party in the trial of the preliminary issues. Costs ordinarily follow the event. Having regard to the approach adopted by Nugee J in *Merck KGaA -v- Merck Sharp & Dhome Corpe* [2014] EWHC 3920 (Ch) my preliminary view is that the Plaintiff should pay the Defendant's costs in relation to the trial of the preliminary issues on the standard basis to be taxed if not agreed. However, as the parties have not been afforded the opportunity to make submissions in relation to costs, they may submit written submissions on the issue of costs by or on 24 May 2020 to enable me to then make a final decision about the appropriate costs order. If written submissions are not filed by that date, then I will make an order that the Plaintiff should pay the Defendant costs in relation to the trial of the preliminary issues on the standard basis to be taxed if not agreed.

47. I would like take this opportunity to thank all three Counsel for their considerable research and well-presented arguments, especially in light of the novel issues raised in this case.

A handwritten signature in black ink, consisting of a large, stylized loop at the top and a long, horizontal stroke extending to the right. Below the signature is a dotted line.

**The Honourable Mr. Justice Richard Williams  
JUDGE OF THE GRAND COURT**

