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No. 33 of 1975

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

BETWEEN:

COLLECTOR OF LAND REVENUE, SINGAPORE — Appellant

- and -

PHILIP HOALIM — Respondent

AND BETWEEN:

PHILIP HOALIM — Appellant

- and -

COLLECTOR OF LAND REVENUE, SINGAPORE — Respondent

(By Cross Appeal)

CASE

FOR THE COLLECTOR OF LAND REVENUE, SINGAPORE

RECORD

1. This is an appeal to your Lordship's Committee by leave of the Court of Appeal of Singapore granted on the 19th day of May 1975 from an Order of the Court of Appeal Singapore (Chief Justice Wee Chong Jin, Mr. Justice F.A. Chua and Mr. Justice Tan Ah Tah) dated the 18th day of March 1975 that a Case Stated by the Commissioner of Appeals pursuant to the provisions of the Land Acquisition Act (Cap. 272 of the revised edition of the laws) dated the 24th July 1974 be remitted to the Appeals Board constituted under — Pages 52-53, Pages 51-52, Pages 1-6

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the said Act with the opinion of the Court thereon for the said Appeals Board's further consideration and that the cost of and incidental to the said Case be reserved for the said Appeals Board.

2. PROCEDURE

These proceedings arise under the provisions of the Land Acquisition Act (Cap. 272 of the Revised Edition of the Laws of Singapore, "the Act"). On the 30th August, 1968 notice was given by the Collector of Land Revenue ("the Collector") pursuant to the provisions of section 5 of the Act that Lot 285 Mukim XXXIII otherwise known as Pulau Tekong Kechil ("the subject land") which is an island among the off-shore islands within the jurisdiction of Singapore was required for a public purpose and pursuant to the said notification the Collector took proceedings under the provisions of the Act for the acquisition of the subject land. Following an inquiry the Collector
Page 9 made an award under his hand pursuant to the provisions of section 10 of the Act and awarded to the owner the abovenamed Respondent, Philip Hoalim, ("the Respondent") a sum of $67,500.

3. Pursuant to the provisions of section 23 of the Act the Respondent being aggrieved by the said award appealed to the Appeals Board ("the Board") constituted under the provisions of section 19(1) of the Act and lodged with the
Pages 10-14 Registrar a notice of appeal and petition of appeal containing a statement of the grounds of appeal.

4. At a sitting of the Board held on the 21st, 22nd and 23rd May, 1974 the said appeal was heard and, inter alia, a number of documents were produced. The questions in issue before the Board were :-

Page 3 ll 10-19 (i) Is the market value of the subject land for the purposes of section 33(1)(a) of the Act as at the 30th August, 1968 limited by the provisions contained in the original grant by the said Secretary of State of the property dated the 26th
Pages 14-16 April, 1860 ("the original grant") and, if so, to what extent?

(ii) If not, what was the market value of the subject land at the said 30th August, 1968?

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5. The first of the said two issues raised questions of law relating to the construction and application of the terms of the original grant and the Board accordingly, without proceeding to the determination of the appeal, resolved to state a Case on the questions of law involved for the opinion of the Court of Appeal pursuant to the provisions of Section 30 of the Act and a Case was so stated dated the 24th day of July, 1974 setting out seven questions of law for the opinion of the Court of Appeal.

Pages 1-6
Page 5 l 15 to
Page 6 l 16

6. On the 18th day of March, 1975 the Court of Appeal delivered its opinion on the said questions and in the terms of the Order of that date referred to above remitted the Case to the Board with the said opinion for the said Board's further consideration.

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7. At the hearing before the Court of Appeal it was not in dispute :-

(i) that the Respondent was the sole owner of the entire property comprised in the subject land.

(ii) that the original grant was not registered at the Registry of Deeds.

(iii) that the rights of the Crown under the original grant are now vested in the Government of Singapore and can be exercised by the Government if the provision in the original grant which forms the subject matter of the dispute is binding upon the Respondent. The relevant provision contained in the original grant reads as follows :

"Subject nevertheless to the conditions hereinafter mentioned that is to say the said Gilbert Angus for himself his Heirs Executors Administrators and Assigns Doth hereby covenant and agree to surrender and make over unto the said Secretary of State for India in Council or his Successors in Office the said land and premises should it at any time be required for public purposes, upon a requisition made to him

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11.13-28

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to that effect in writing and upon the payment to him the said Gilbert Angus His Heirs Executors Administrators and Assigns by the said Secretary of State for India in Council or his Successors in office of all sum or sums of money that the said Gilbert Angus his Heirs Administrators Executors or Assigns may or shall have incurred expended (sic) upon the said land."

8. The Board is concerned solely with the task of assessing the value of the property acquired. To enable the Board to carry out this task it sought the opinion of the Court of Appeal by way of the Case Stated from which this appeal now lies upon the effect of this provision, if any; and if it has any effect, whether or not it binds the Respondent or purchasers from him and if so with what result.

Pages 1-6

9. Of the seven questions of law submitted for the opinion for the Court of Appeal that Court found in favour of the Collector on all except one under which the Court held that the Respondent was not bound by the terms of the original grant in view of its non-registration under the provisions of the Registration of Deeds Act (Cap.281 of the Revised Edition). This single answer was fatal to the Collector's case and it is against that single finding that the Collector now appeals. The Collector will seek before your Lordships to affirm the findings of the Court of Appeal on all the other questions.

10. There is a cross appeal by the Respondent pursuant to leave given by the Court of Appeal by Order dated the 30th June, 1975 against two parts only of the said decision of the Court of Appeal. For the sake of completeness, however, it may be of assistance to your Lordships to have set out briefly all the questions which were asked of the Court of Appeal and all the answers which were given showing which issues are no longer in dispute before your Lordships. These questions and answers are as follows :-

Pages 53-54

Page 37 ll. 29-32

(i) Is the said provision a covenant creating an interest in land, or is it a condition or is it both, and is the interest, if any, created thereby legal or equitable?

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The Court of Appeal held that the words "subject nevertheless to the conditions hereinafter mentioned" in the said provision import a condition and the whole provision amounts both to a condition and a covenant creating an interest in land both legal and equitable. This finding is subject to cross appeal to the extent that the Court of Appeal decided that the said provision constituted a condition. Page 39 ll. 30-36

(ii) Is the interest, if any, created by the said provision void by reason of the operation of the rule against perpetuities and in particular: Page 37 l.33 to Page 38 l.5

(a) does the rule apply at all (apart from statutory enactment) to legal rights of re-entry for condition broken;

(b) does the rule apply to equitable rights to enforce a covenant for a reconveyance against the land owner who is successor in title of the covenantor;

(c) if either (a) or (b) is answered in the affirmative does the rule apply in Singapore to provisions contained in grants by the Crown or its successor the State?

The Court of Appeal answered this question as follows :-

(a) No. Page 43 ll. 16-18

(b) Yes. Page 43 ll. 20-26

(c) No. Page 46 ll. 10-16

These findings are not in dispute before your Lordships.

(iii) If the said provision constitutes a valid common law condition is the question of notice, actual or constructive, material? Page 38 ll. 6-9

It was not in dispute that the answer to this question was in the negative and this issue is not in dispute before your Lordships. Page 46 ll. 18-19

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Page 38 ll. 10-12

(iv) On whom is the burden of proof of the existence or absence of actual notice of the said provision?

Page 46 ll. 21-22

It was not in dispute that the burden of proof was on the Respondent and this issue is not in dispute before your Lordships.

Page 38 ll. 13-18

(v) On the assumption that the Respondent had no actual notice of the said provision did he nevertheless have constructive notice thereof? And is the Respondent bound in view of the non-registration of the original grant?

Page 48 ll. 24-28
Page 50 ll. 8-14

The Court of Appeal held that the Respondent had constructive notice of the provision in the original grant but that the Respondent was not bound by it in view of the non-registration of the original grant under the Registration of Deeds Act. Both these answers, the first under the cross appeal and the second under the appeal, are in dispute before your Lordships.

Page 38 ll. 19-23

(vi) In the event that the said provision is binding upon the Respondent in whom are the rights of the Secretary under the original grant now vested and can they be exercised?

Page 50 ll. 15-19

It was not disputed that the rights of the Secretary of State for India in Council under the original grant were at the relevant time vested in the independent Republic of Singapore and can be executed by the Government of Singapore. This question is not in issue before your Lordships.

Page 38 ll. 24-30

(vii) In the event that the said rights can be exercised how are the words in the said provision - "all sum or sums of money that the said Gilbert Angus His Heirs Administrators Executors or Assigns may or shall have incurred expended upon the said land (sic)" to be construed.?

Page 51 ll. 4-12

The Court of Appeal determined that the words in question should be construed to mean the actual purchase price paid by the owner at the time of the exercise by the Government of the right of repurchase and any other sum or sums of

money he has subsequently expended upon the land. This question is not in issue before your Lordships.

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11. The Case so stated by the Commissioner of Appeals was remitted to the Appeals Board with the opinion of the Court thereon, as summarised above, by order of the Court of Appeal dated the 18th March, 1975.

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Pages 51-52

12. By Order dated the 19th May, 1975 the Court of Appeal of Singapore (Chief Justice Wee Chong Jin, Mr. Justice F.A. Chua and Mr. Justice Tan Ah Tah) gave leave to the Collector to appeal to your Lordships' Committee against that part of the opinion of the Court of Appeal in which the court held that the Respondent was not bound by the terms of the original grant in view of its non-registration under the provisions of the Registration of Deeds Act and by a similar Order dated the 30th June, 1975 the Court of Appeal of Singapore (Chief Justice Wee Chong Jin, Mr. Justice F.A. Chua and Mr. Justice Tan Ah Tah) gave leave to the Respondent to appeal to your Lordships' Committee against both parts of the opinion of the Court of Appeal specified above as being in dispute. It is pursuant to the said leave that the Collector appeals to your Lordships' Committee.

Pages 52-53

Pages 53-54

13. The Collector will deal with each of the questions in the Case Stated the answers to which are still in issue in this Appeal.

14. Is the said provision a covenant creating an interest in land or is it a condition or is it both, and is the interest, if any, created thereby legal or equitable? (Question (i))

Page 37 ll.29-32

The contention for the Collector before the Court of Appeal which was accepted by that Court was as follows :-

(i) The original grant is expressed to be made "in pursuance of Act IX of 1842". That was an Indian Act which at the date of the grant was in force in Singapore (Kyshe's Index 1st Ed.1883). The Act did no more than extend to the territories of the East India Company, which then included Singapore, the Imperial Act 4 and 5 Vict.

Page 14 ll.35-36

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Cap.21 "for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties." It justifies the words of conveyance used in the grant but throws no light on the provision quoted above.

(ii) The provision quoted is not merely a covenant but also a condition, i.e. a breach of the covenant to surrender would entitle the Crown to re-enter and resume ownership of the property. Any other interpretation gives no force to the perfectly technical phrase "subject nevertheless to the conditions hereinafter mentioned", and as stated in Sheppard's Touchstone, 122, one and the same clause "may be also a condition and a covenant, as if the words run thus: provided always, and the foeffee, &c. doth covenant, &c. that neither he nor his heirs shall do such an act, this is both a condition and a covenant." In Preston's Edition of 1820, a "query" appears in square brackets after the words cited, but Sheppard's view though perhaps expressed in somewhat imprecise language is fully justified by the old cases collected in Viner's Abridgment under "Condition (D)". Indeed the present case is not very different from two decided near the end of the 16th century.

(iii) In Simpson v. Titterell, Croke Eliz.242, (78 E.R. 498 case 6)

a landlord sought to eject a tenant for breach of the following provision, "Proviso semper, and it is further covenanted, that the lessee shall not assign his term to any other, except to the lessor, paying as much as another; and if the lessor will not have it, that then he may alien it to none except his mother or his son." "The question was, if the words were a condition, or only a covenant? - And all the Justices [of the Common Pleas] held it was a good condition to defeat the estate. For Periam said, proviso always implieth a condition, if there be not words subsequent, which may peradventure change it into a covenant; as where there is another penalty annexed to it for non-performance."

(iv) Similarly, in Pembroke v. Berkley, Croke Eliz. 384 Popham 116, (78 E.R. 630 case 8 and 805 case 17)

Lord Pembroke had granted certain forest rights, "Provided, and the said Maurice Berkley doth covenant, promise, and grant for him, his heirs, &c. " to preserve the game for the grantor and not to cut wood. Berkley's heir having cut down four oaks, Lord Pembroke claimed in the Court of Queen's Bench that the estate had been forfeited. Once again the leading question was, "whether it were a condition or but a covenant", and "upon conference amongst all the Justice of England, it was held by the greater part of them to be a condition, and adjudged accordingly".

15. On the assumption that the Respondent had no actual notice of the said provision did he nevertheless have constructive notice thereof?

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(Question (v))

(i) The Respondent further maintains that he was a purchaser for value without notice, actual or constructive, of the existence of the provision quoted. The question of notice is wholly immaterial if, as submitted above, the provision quoted constitutes a valid common law condition. If, however, it can only be enforced as a covenant, then the Respondent, who purchased the subject land for valuable consideration, is only bound by it if before completing his purchase he had actual or constructive notice of it. The relevant purchase is that by the Respondent, Mr. Hoalim, and Mr. Liew Kong Kee in 1951. If they then got a title free from the covenant, the Respondent would not be adversely affected by its coming to his knowledge before he subsequently acquired his co-owner's undivided share of the Island:

cf. Wilkes v. Spooner, (1911) 2 K.B.473.

(ii) The Respondent says that neither he nor Mr. Liew Kong Kee had actual notice of the clause in the deed of 1860. The burden of proving their ignorance (and that of any solicitor or other agent acting on their behalf) rests on the Respondent

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A-G v. Biphosphated Guano Co., 11 Ch.D. 327, at 337;

Wilkes v. Spooner, supra, at 486,

and even if it is so proved there will still be the question of possible constructive notice.

(iii) The Respondent further says (and again the burden of proof is upon him) that the title
Pages 17-18 deduced in 1950 began with the Conveyance of 1878, a root of title fully acceptable on an open contract under section 3(4) of the Conveyancing & Law of Property Ordinance. However, the
Pages 17-18 Conveyance of 1878 is not a self-contained root of title, since it identifies the property conveyed by reference to the boundaries shown
Page 16 in the plan indorsed on the deed of 1860, a method adopted again in 1951. The plan was thus incorporated in the Conveyance of 1878, and clearly no abstract of the latter would have been sufficient without a copy of the plan

cf. Llewellyn v. Jersey, 11 M. & W.183, at 189-152 E.R. 767 case 183

notwithstanding section 3(5) of the above mentioned Ordinance. The point on constructive notice is accordingly quite a narrow one, and turns on the application of the well-established doctrine that notice of any deed essential to the vendor's title is notice of its contents

Patman v. Harland, 17 Ch.D. 353;
Hooper v. Bromet, 89 L.T. 37

(iv) The Court of Appeal accepted the Collector's contention that the Respondent had constructive notice of the provision in the
Page 48 11.24-28 original grant and accordingly answered this part of question 5 in the affirmative.

16. Is the Respondent bound in view of the non-registration of the original grant?
Page 38 11.16-18 (Question (v))

Page 49 11.19-24 On this issue the Court of Appeal held first that the Crown was bound to register the original grant in the Collector's office in the manner directed by section 11 of the 1839 Indian Act

which was in force in Singapore in 1860 before it could successfully ask any Court to receive the deed in evidence as a legal instrument. The Court of Appeal further found that the original grant of 1860 is an assurance and that the Government is by necessary implication bound by the provisions of section 4 of the Registration of Deeds Act and indeed by the whole Act. It being common ground that the original grant was not registered under the Registration of Deeds Act of 1886 or under any subsequent Registration of Deeds legislation the Court of Appeal accordingly answered the second part of question 5 in the negative.

Page 50 11.8-12

Page 50 11.12-14

17. In the written submissions made before the Court of Appeal, which were not in dispute, it was stated that grants, statutory land grants and leases issued by the Crown or State are not, and never have been, as a matter of practice registered in the Registry of Deeds but that they are recorded in the Land Office where the duplicates are available for inspection, and new titles are at times noted in the Registry of Deeds but not registered.

18. As your Lordships' Committee will necessarily not have the same familiarity with local practice as do the Courts of Singapore a historical survey of the whole of the relevant records, maintained in Singapore pursuant to the legislation in force from time to time since the year 1830 has been made, copies of which will be available for your Lordships' Committee on the hearing, if reference to it should be necessary. This survey bears out the general statement of fact made before, and accepted by, the Court of Appeal in regard to the general practice in Singapore referred to in paragraph 17 of this Case.

19. This issue will be dealt with under three headings :

(i) Does the Registration of Deeds Act bind the State?

(ii) Does the Registration of Deeds Act apply to State grants and leases? and

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(iii) Does the Registration of Deeds Act apply to the original grant?

20. Does the Registration of Deeds Act bind the State?

(i) Section 55 of the Interpretation Act (Cap.3 of the Revised Edition) states that:

> "No Act shall in any manner whatsoever affect the rights of the Government unless it is therein expressly provided, or unless it appears by necessary implication, that the Government is bound thereby."

This section evidently adopts, or may be said to be declaratory of, the well-settled rule of construction at common law regarding the effect of statutes upon the Crown. Indeed, this provision, as it formerly appeared in the repealed Interpretation and General Clauses Ordinance (Cap. 2, 1955 Revised Laws), referred to "the Crown".

(ii) In Province of Bombay v. Municipal Corporation of Bombay (1947) A.C.58, 61 the Privy Council said :

> "The general principle to be applied in considering whether or not the Crown is bound by general words in a statute is not in doubt. The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein... But the rule so laid down is subject to at least one exception. The Crown may be bound, as has been often said, 'by necessary implication'. If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named."

(iii) While it is clear that the Registration of Deeds Act Cap.281 (as was the Registration of Deeds Ordinance 1886) is not by express words made binding on the Government, it has to be considered whether the Act may nonetheless bind

the Government by "necessary implication". Such an implication, if present in a statute, is admittedly only to be gathered from the construction of the particular statute concerned.

(iv) The use of the general words "assurance", with its definitive elaboration in section 2 of the Registration of Deeds Ordinance 1886 cannot by itself warrant the making of such "necessary implication". Some attempt was made in early cases and also by early legal writers to generalise certain categories of statutes which would by implication bind the Crown even though the Crown was not expressly named. Of relevance here is the view that a statute enacted "for the public good" necessarily carries such an implication. This view has however been categorically rejected by the Privy Council in Province of Bombay v. Municipal Corporation of Bombay (1947) A.C.58, 62, 65 in a judgment delivered by Lord DuParcq.

> "It was contended on behalf of the respondents that however a statute is enacted 'for public good' the Crown though not expressly named, must be held to be bound by its provisions... The proposition which respondents thus sought to maintain is supported by early authority, and is to be found in Bacon's Abridgment and other text-books, but in their Lordships' opinion it cannot now be regarded as sound except in a strictly limited sense. Every statute must be supposed to be 'for the public good', at least in intention, and even when, as in the present case, it is apparent that one object of the legislature is to promote the welfare and convenience of a large body of the King's subjects by giving extensive powers to a local authority, it cannot be said, consistently with the decided cases, that the Crown is necessarily bound by the enactment."

It may therefore be argued that no implication may be attached to the Registration of Deeds Act of its binding effect on the Government merely by reason that it was undeniably enacted "for the public good".

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(v) An early Australian case Attorney General v. Goldsborough (1889) 15 V.L.R. 638, held that the Transfer of Land Statute, 1886, of Victoria bound the Crown by necessary implication. Higinbotham C.J. in the lower court said at page 654:

> "The objects of this Act as stated in the preamble are: 'To give certainty to the title in Estates in land and to facilitate the proof thereof, and also to render the dealings with land more simple and less expensive'. All these are objects of public and general as well as high utility, and the Crown is ordinarily bound by Acts passed for the public good though it is not named... Moreover, the Crown shares with the subject the benefits and the aid of this Act, and it is reasonable that the Crown should also be bound by its conditions."

It should be pointed out that the judge was there construing a "Torrens" system statute in connection with the question whether the Crown should be bound by the indefeasibility of a title registered in favour of a subsequent purchaser of a Crown grant which had been irregularly issued but had been brought under the Torrens statute. The general reasons relating to public good or utility as emphasised by the judge for holding the statute as binding on the Crown cannot now be unreservedly accepted in the light of the Privy Council decision above quoted, although many specific reasons may indeed be advanced in favour of regarding a "Torrens" statute as having such a binding effect. The Registration of Deeds Act provides for the system of registration of instruments as should be distinguished from the system of registration of titles to land.

(vi) Prior to the above mentioned Privy Council decision, there appeared to be no judicial attempt at a definition of "necessary implication" except that in Gorton Local Bd v. Prison Commissioners (1904) 2 K.B. 165, 167, Day J. expressed the view that such implication would arise when "otherwise the legislation would be unmeaning". This view of Day J. has not attracted any subsequent judicial

consideration and seems too vague to be relied on. In Province of Bombay v. Municipal Corporation of Bombay (1947) A.C.58, 63 their Lordships were of the following view :

> "If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its term and its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound."

The Privy Council made the above statement after having expressed its disapproval of an interpretation on "necessary implication" by the Chief Justice in the Indian High Court. Lord du Parcq. observed at pages 61-62 that :

> "... the learned Chief Justice went on to say that if it can be shown that legislation 'cannot operate with reasonable efficiency unless the Crown is bound, that would be a sufficient reason for saying that the Crown is bound by necessary implication' and he concluded his judgment by enunciating the proposition that if the provisions of the Act 'cannot operate efficiently and smoothly, unless the Crown is bound... the Crown must be held to be bound by necessary implication' ".
>
> "... their Lordships are of opinion that to interpret the principle in the sense put on it by the High Court would be to whittle it down, and they cannot find any authority which gives support to such an interpretation."

(vii) Applying the test as stated by the Privy Council, it cannot be said that, if the Government was not bound by the Registration of Deeds Act,Cap. 281, the beneficent purpose of the Act "must be wholly frustrated". The Act still serves, as its main objectives, "to prevent secret and fraudulent conveyances and to provide means whereby the title to real property may be more certainly known". Even if it is assumed that the efficiency of the Act would have been enhanced if the Government

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were bound, this would still fall short of compelling the making of such "necessary implication".

(viii) Even if the narrower view of the Indian High Court were applied, it would appear that no such necessary implication would arise with regard to the Registration of Deeds Act, Cap.281. In view of the Land Office practice at the time the Registration of Deeds Ordinance 1886 was passed, any person who wanted to enter into any dealing with respect to Land held under a Crown grant or lease could have access to the Land Office for information relating to the original title document granted by the Government (see Government Notification, No.158, published in Gazette, 9 April 1880). The exclusion of the original title documents from registration under the Ordinance would not prevent and in fact has not prevented it from operating "efficiently and smoothly".

(ix) On the other hand, it should be noted that the working of the Act, if not binding on the Government, may in some conceivable cases give rise to undesirable results. For example, the Government may be a party to other sorts of assurances relating to lands which have already been alienated to private persons. If the Government is not subject to the requirement to have these assurances registered and is moreover free from any consequences of non-registration, the protection or benefit which the Act gives, for example under section 15, to persons who duly registered their instruments will be denied to those who happen to have dealt with lands affected by earlier and unregistered assurances in favour of the Government. Nevertheless, as is well illustrated by English cases holding the Rent Restrictions Acts as not binding on the Crown, it seems clear that the immunity of the Crown (or the Government in the present case) from a statute is not to be taken away merely because it may result in removing or qualifying, as against some individuals or a class or classes of persons, the protection which the statute seeks to give to such class or classes of persons.

(x) In Premchand Nathu & Co.Ltd. v. Land Officer (1963) 1 All E.R. 216 (appeal from

Tanganyika), the Privy Council held that section 14(1) of the English Conveyancing Act, 1881, which was statutorily imported into the law of Tanganyika, was not binding on the Crown. The Board was aware of the fact that all lands (with the exception of a relatively small portion) in Tanganyika were vested in the Crown who alienated such lands under "a right of occupancy" to private persons under the Tanganyika Land Ordinance, 1923, and also that the immunity of the Crown from the 1881 Act would mean denying to all occupants of lands under such "right of occupancy" the protection accorded by the Act to lessees of land against forfeiture of their leases. However, the Board said at page 222 :

> "It is true that, if section 14(1) of the Act of 1881 does not apply to Crown Lands, that section will have a somewhat restricted operation in Tanganyika, but this fact is not sufficient to create a necessary implication that the Crown was to be bound thereby."

It should be noted that, in this case, although the issue was whether the Crown was bound by the 1881 Act, the Privy Council was led to the negative conclusion by taking the view that "a right occupancy", being a new kind of interest in land created by the Land Ordinance, is not a lease within the meaning of the words in section 14(1) of the 1881 Act.

(xi) In Province of Bombay v. Municipal Corporation of Bombay (1947) A.C. 58 the general words "any land whatsoever" used in the statute there under consideration were clearly held to be insufficient to make the statute bind the Crown, although literally these words were wide enough to include land vested in the Crown. The Privy Council also treated it as immaterial whether land belonging to the Crown was land originally vested in the Crown or land subsequently acquired by the Crown from private persons.

(xii) Thus, applying the principle as was explained and applied in Province of Bombay v. Municipal Corporation of Bombay (1947) A.C. 58 it is submitted that the Registration of Deeds Act does not bind the Government. The general words

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"all assurances" and also "any land" employed in section 4 of the Act, though literally wide enough to include all assurances by or to the Government (or formerly the Crown) with respect to any land, cannot by themselves support the making of the "necessary implication" against the Government.

21. If the Registration of Deeds Act does bind the State does it apply to State grants and leases?

(i) This will be considered in three parts:

A. Construction by Context

1. Section 4 of the Registration of Deeds Act (originally section 5 of the Registration of Deeds Ordinance 1886) is the general provision which states what instruments may be registered under the Act. The section states that "all assurances.....by which any land within Singapore is affected...may be registered".

2. The meaning of the word "assurances", taken by itself without regard to the context in which it is used in the Act, could include any grant or lease from the State (or Crown). There is no authority which suggests the exclusion of such grants or leases from the literal meaning of the word "assurances". The Indian Act, 1858, 21 & 22 Vict. c.106 which empowered the Secretary of State for India to alienate, on behalf of the Crown, lands in Singapore and under which the grant in question was made, employed the word "assurances" to denote any grants or leases which the Secretary of State could so make under the empowering section (section 40). The Yorkshire Registries Act 1884 47 & 48 Vict. c.54, from which was borrowed (with mofications) Section 5 of the Registration of Deeds Ordinance 1886 and the definition of "assurance" (now contained in section 2 of the 1886 Act Cap. 281), has a specific section as follows :

"Section 30

Nothing in this Act contained shall be deemed to extend to any assurances of any lands being parcel of the land revenues of the Crown, or assurances of lands to or in trust for Her

Majesty, or other assurances which may be enrolled in the Office of Land Revenue, Record and Inrolments."

3. However, it is a settled rule of interpretation, that words must be construed in the context in which they appear. The words "all assurances" in section 4 of the Act under consideration should mean, in the context, all such assurances as are within the contemplation of the section and the Act read as a whole, and not all assurances within the literal meaning of the words in isolation.

4. Section 4 of the Registration of Deeds Act expressly states that the provisions therein are "subject to this Act and any rules made thereunder". Section 5 of the Registration of Deeds Ordinance 1886 also contained such a qualification. Section 4 of the Registration of Deeds Act further provides that assurances "may be registered in such manner as is hereinafter directed". Section 5 of the Registration of Deeds Ordinance 1886 had a similar provision.

5. The significance of these express qualifications is that section 4 does not purport to be exhaustive but leaves it to be further ascertained from the other provisions of the Act and the rules made thereunder as to what kinds of assurances are registrable under this Act.

6. A careful examination of all the relevant provisions and rules will show that none of them explicitly or specifically refer to State (or Crown) grants or leases. Secondly, the manner, procedure and forms relating to registration as prescribed or directed by the provisions and rules would appear to be inappropriate for application to the registration of such grants or leases. Thirdly, certain provisions and rules seem to contemplate only the registration of assurances relating to lands which are already held under a grant or lease from the State (or formerly the Crown).

7. Section 6 of the Registration of Deeds Ordinance 1886 which spelt out the mode of registration, stated in its opening sentence

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that "The registration of any instrument under this Ordinance shall be effected in the following manner". The corresponding section in the Registration of Deeds Act is section 5 which states that :

> "5.(1) Provisional registration of any instrument under this Act shall be effected in the manner provided by this and sections 6 and 7."

(Sections 6 and 7 are irrelevant to the present issue). Thus, if State grants or leases were registrable under the Act, they should come within the contemplation of section 5. But, section 5(3) requires that upon receipt of any instrument presented for registration, an entry shall be made in the book of reference, setting forth (inter alia) :

> "(d) the reference numbers of the State grants or leases, if any, in which the lands affected by the instrument are respectively comprised."

This requirement could only mean that the instrument (and indeed all assurances) which may be provisionally registered in compliance with this and other procedural requirements must be one affecting land already held under a grant or lease from the State. The words "if any" in the above-quoted provision evidently have reference to cases where Crown or State grants or leases had been issued without any numbers alloted to them.

8. In addition, the forms of several kinds of books prescribed by the Rules to be kept and used under the Act point even more clearly to the same conclusion. (See the 1934 Rules, presently in force, rules 16, 17, 19 and 20; originally the 1886 Rules, rules 15, 16, 18 and 19).

9. Thus, reading the Registration of Deeds Act and the rules as a whole and according to the express qualifications of section 4 thereof, it is submitted that the words "all assurances" in that section do not include State (or Crown) grants and leases.

B. Construction in the light of Historical Circumstances

1. It is a well settled rule of interpretation that, where a statute is ambiguous, its object and scope may be ascertained by way of construction in the light of the historical circumstances in which the statute was passed. (Craies on Statute Law, 7th Ed.pp.125 et seq; Maxwell on Interpretation of Statutes, 12th ed. pp.47 et seq; and Odgers' Construction of Deeds and Statutes, 5th ed. pp.324 et seq.) The historical setting which may be taken into consideration includes the relevant legislative history (as distinguished from parliamentary history) leading to the passing of the statute in question and other relevant facts.

2. In the preamble to the Registration of Deeds Ordinance 1886 it was stated that the object of the legislation was "to prevent secret and fraudulent conveyances and to provide means whereby the title to real property may be more certainly known".

3. The objective of the Registration of Deeds Ordinance 1886 was to provide a means whereby titles to land could be more certainly known. The need for such legislation was apparent because the provisions in the Indian Act, 1839 for the registration of "mutations in titles" were evidently defective. See Maxwell's Report on "The Torrens System of Conveyancing etc." (published in Government Gazette, 20 April 1883), paragraphs 187, 190 and 191.

The memorandum of "Objects and Reasons" (published together with the Registration of Deeds Bill for first reading in the Government Gazette, 31 December 1885) pointed out that:

> "The system which they (the provisions of the Indian Act) embodied failed to secure registration of every transfer, because, while prescribing no limit of time within which a deed may be legally registered, it conferred no advantage on the proprietor who did register, and

imposed no disability on one who neglected to do so."

These then were some of the defects which the Registration of Deeds Ordinance 1886 sought to remedy. Thus, the Registration of Deeds Ordinance 1886 contained provisions regulating priorities between instruments according to their dates of registration. As regards improvements on the mode of registration, the Ordinance not only required fuller particulars to be entered in several kinds of books but also required true copies of instruments registered to be enrolled.

At the time the Registration of Deeds Ordinance 1886 was introduced, there was already in existence a practice in the Land Office of registering and filing duplicate copies of Crown grants and leases. Records of these original documents had long been satisfactorily maintained.

The main defects of the earlier system and the then existing practice therefore did not concern the recording of the original titles but lay in the absence of systematic recording of subsequent transactions whereby the original titles had changed hands, hence the inability of ascertaining the "current" state of any given title. These were remedied by the Registration of Deeds Ordinance 1886. Several kinds of books were required to be kept and used; in particular, the "Index of Lands" (see rule 19 of the Registration of Deeds Rules 1886) to serve as a continuous record of transactions in every specified land with reference to the original title.

4. The other objective, namely, "to prevent secret and fraudulent conveyances", also appears to indicate that Crown grants and leases were not intended to be subject to the operation of the Registration of Deeds Ordinance 1886. What this objective aimed to prevent were the well-known evils attending the common law system of conveyancing between private persons. At common law, ill-disposed persons who had secretly conveyed their lands were in a position to commit

frauds by purportedly selling or raising loans on mortgaging the same lands to others. Such secret and fraudulent conveyances were what the Ordinance sought to prevent with a view to protecting subsequent purchasers or mortgages. Thus, under the Ordinance, a subsequent conveyance would gain priority over a prior conveyance if it was first registered; such protection was not extended to "any person claiming without consideration" (see section 16(2) of the Registration of Deeds Ordinance 1886 now section 15(5) of the Registration of Deeds Act). Assurances from the Crown did not need to be so registered. At the time when the Registration of Deeds Ordinance 1886 was introduced the Land Office had been keeping duplicate copies and other records of Crown grants and leases. Extracts from the Land Office records or registers could be obtained by members of the public on the payment of a fixed fee (see Government Notification No.158, published in the Gazette, 9 April 1880). There could not have been any question of secrecy or fraudulent practice relating to Crown grants or leases. Thus, it seems clear that those secret and fraudulent conveyances which the Registration of Deeds Ordinance 1886 sought to prevent could only have reference to conveyances between private persons, and it should therefore follow that "all assurances" which the Registration of Deeds Ordinance 1886 sought to make known in public records were not intended to include Crown grants and leases.

5. The present Registration of Deeds Act like the earlier consolidating legislation, has left out the preamble which appeared in the 1886 Ordinance. Nevertheless, there is nothing in the present as well as the past consolidating legislation to suggest any change in its object or scope.

C. Long Administrative Practice

1. State or Crown grants or leases have never been registered under the Registration of Deeds legislation. Before the establishment of the Registry of Titles and Deeds in about 1960, both

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(a) the registration of assurances under that legislation; and

(b) the registration of State or Crown grants and leases as well as the filing of their duplicates were carried out in one and the same department, namely, the former Land Office. However, within this same department, the two kinds of registration had always been administered separately. With the introduction of the Registration of Deeds Ordinance 1886, a "Register Office" was established under the Ordinance which formed a separate and distinct section in the Land Office and which alone carried out the former kind of registration, the filing and registration of State or Crown grants and leases being always regarded as pertaining and incidental to the preparation and issue of such grants and leases within the general functions of the Land Office. This practice relating to the separate administration of the two kinds of registration may be traced back to a century ago, and has after the 1886 Ordinance continued up to today on the basis that the Registration of Deeds legislation does not apply to State or Crown grants and leases.

2. To what extent can this long established administrative practice be referred to in aiding the construction of the legislation?

3. Lord MacNaghten in Commissioners of Income Tax v. Pemsel (1891) A.C. 531, at pp. 590-591 notes :

> "I cannot help reminding your Lordships, in conclusion, that the Income Tax Act is not a statute which was passed once for all. It has expired, and been revived, and re-enacted over and over again; every revival and re-enactment is a new Act. It is impossible to suppose that the legislature can have been ignorant of the manner in which the tax was being administered by a department of the state under the guidance of their legal advisers, especially when the practice was fully laid before Parliament in the correspondence to which I have referred. It seems to me that an argument in favour of the respondent

might have been founded on this view of the case. The point, of course, is not that a continuous practice following legislation interprets the mind of the legislature; but that when you find legislation following a continuous practice and repeating the very words on which that practice was founded, it may perhaps fairly be inferred that the legislature in re-enacting the statute intended those words to be understood in their received meaning. And perhaps it might be argued that the inference grows stronger with each successive re-enactment."

Craies on Statute Law 7th ed. suggested that special circumstances may warrant the admissibility of interpretation as inferred from practice as an aid to construction. Maxwell on Interpretation of Statutes (6th ed. p.57) contains an observation that "administrative practice does not... have the same weight" as judicial or conveyancing practice, and refers to Strand Securities Ltd. v. Caswell (1965) Ch. 958.

4. There being no authority going to the extent of negotiating the admissibility of administrative practice, it seems more correct to say that the question is not that of admissibility but one which relates to the degree of relevancy or weight of influence that may be accorded to administrative practice as an extrinsic aid to the interpretation of statutes. Lord MacNaghten clearly stressed that this would depend on the circumstances of the particular case.

5. An administrative practice which may be referred to should be of a general nature. In a New Zealand case Taupiri Coal Mines v. The King (1943) N.Z.L.R. 446, a company which had been exempted from the payment of duty under a Stamp Duties statute, sought to rely on the administrative omission to demand or collect such duty for more than 40 years as amounting to a practice. The company, basing its arguments on the above-quoted passage from Lord McNaghten in Commissioners of Income Tax v. Pemsel (1891) A.C. 531 at 590-591, further argued that the practice had been adopted by the legislature

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as the relevant statutory provisions had been twice re-enacted during the material period. The court in rejecting the argument, treated the alleged practice as no more than a routine continuance of an old ruling made by the administrative authority with regard to the particular company, and therefore observed that the case before him was by no means analogous to the situation envisaged by the quoted passage.

6. In the present case, there are a number of circumstances that would warrant a reliance on Lord MacNaghten's statement.

(i) The legislation in question is indeed ambiguous as to its scope of operation with regard to State or Crown grants and leases. This then should permit reference to the long established administrative practice.

(ii) The construction of the Registration of Deeds legislation adopted and acted upon administratively is one of the possible tenable interpretations. It cannot be disposed of as one that is utterly or clearly wrong, or one that makes "bad law". In Strand Securities Ltd. v. Caswell (1965) Ch. 958 the Land Registry department in England had, since the introduction of the Land Registration Act 1925, required for the registration of every lease the production by the lessee of his lessor's land certificate of title. There was no dispute that such was the administrative practice. The Court of Appeal held on the construction of the relevant provisions that the production of the land certificate was not required under the Act for the registration of a lease. Lord Denning, M.R. at page 977 said:

> "The Judge (in the lower court) was much influenced by the practice of the Land Registry. He thought he ought to have weight to it, just as to the practice of conveyancers. I do not

> agree with this. We cannot allow the registrar by his practice to make bad law and it is bad law to insist on the lessee producing his landlord's land certificate... to which he has no right"

In the earlier part of his judgment, Lord Denning said:

> "In my opinion that practice is wrong. In the absence of express agreement, a lessee has no right to call for his lessor's land certificate. The registrar should not insist on the lessee producing document to which he has no right."

In Strand Securities Ltd. v. Caswell (1965) Ch. 958 administrative construction and practice were repugnant to another well-established substantive rule of law which the Act does not seek to affect. Furthermore, the practice involved requiring a lessee to do what he had no legal right to do. In this sense, such a practice, would make "bad law". It should be realised that reference to administrative practice is for the purposes of aiding construction. If the construction administratively acted upon could not have been tenable, the mere fact of continuous practice cannot make it tenable. (See also Feather v. The Queen (1865) 35 L.J.Q.B. 200). In the case before your Lordships however, the administrative practice is not repugnant to any rules of substantive law or any legal principles.

(iii) The practice in question, based on a sound interpretation of the legislation, has worked smoothly over many years. This ought to be a factor to be taken into account as indicative not only of the administrative interpretation but perhaps also of an interpretation generally accepted over a long period of time.

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(iv) Alongside the continuation of the practice which should be presumed to have been known to the legislature the Registration of Deeds Ordinance 1886 has been re-enacted five times by subsequent consolidating legislation up to the present Act (namely Ordinance 6 of 1915, Ordinance No.148 of the 1920 Edition of Revised Laws, Ordinance No.148 of the 1926 Edition of Revised Laws, Chapter 121 of the 1936 Edition of Revised Laws, Chapter 255 of the 1955 Edition of Revised Laws, and now Chapter 281 of the 1970 Revised Edition). It may of course be argued that the mere re-enactment of a statute by way of a general revision of all statute law should not be given too much weight towards inferring legislative intention in adopting or confirming any existing administrative practice under each and every such revised statute. But, the Registration of Deeds legislation has since its inception been amended from time to time. In fact, there have been no less than sixteen occasions on which the legislation was amended. If this legislation were originally intended to provide for the registration of Crown or State grants and leases, its procedural provisions as well as subsidiary rules would clearly have required amendments to facilitate such registration. As a matter of fact, while the administrative practice was being continued, the Registration of Deeds legislation and the subsidiary rules remained wanting in obviously indispensible provisions for prescribing or even indicating how Crown or State grants and leases could be registered. This being so, the existence of the practice of separately filing and registering Crown or State grants and leases prior to the Registration of Deeds Ordinance 1886 and its subsequent continuation over all these years during which the Ordinance has been many times amended and re-enacted, should

be taken as having received legislative sanction.

(v) To further indicate legislative confirmation as to the correctness of the construction administratively acted upon, a reference should also be made to several notifications made under the Fees legislation, first introduced as the Fees Ordinance 1881 (No. 1 of 1881) and now the Fees Act, Cap. 138. The Fees Ordinance 1881 empowered the Governor, by Order in Council, to fix tables of fees leviable in public offices and departments. Section 2 of the Ordinance required every such table of fees to be "laid on the table of the Legislative Council" and to be published in the Government Gazette. Under the present Act, it is the Minister for Finance who may by order fix such fees, and the prescribed tables of fees are required to be presented to Parliament after publication in the Gazette (as amended by No.31 of 1958).

In 1907, a table of fees leviable in the Land Office was prescribed and published under the Fees Ordinance 1881 (see Gazette Notification No. 1355, December 1907). Among the items for which fees were prescribed was included an item "for the registration of any grant or lease". By a number of subsequent Notifications, a new table of fees leviable in the Land Office was prescribed in replacement of the earlier. These Notifications are Nos. 473, 382, 357 and No. S45 published in the Gazette of 15 April 1910, 31 March 1916, 10 February 1939 and Gazette Supplement of 27 February 1953 respectively, the last of which is presently in force. All these tables contain the item referred to above.

To understand the relevant implication of those tables of fees, reference

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must also be made to the concurrent existence of a different table of fees leviable in the Register Office under the Registration of Deeds legislation. Prior to the separation of the Register Office from the Land Office (the former now being part of the Registry of Titles and Deeds), the Register Office, having its own seal, was a separate and distinct section in the Land Office. The first such table of fees relating to the Register Office was set out in the Second Schedule to the Registration of Deeds Ordinance 1886. Subsequently, since the commencement of the Registration of Deeds Ordinance No.6 of 1915 on 1 August 1917, the table of fees came to be set out in the subsidiary rules made under the Registration of Deeds legislation. (See the Registration of Deeds Rules 1917 rule 23; and the Registration of Deeds Rules 1934, presently in force, rule 24 (as amended by G.N. No. S 121/1968) All the relevant rules, past and present, state that the prescribed fees "shall be taken in the Registry" which clearly means the Register Office. There is no item under these rules which refers to any fee chargeable for the registration of Crown or State grants or leases.

(vi) When the Registration of Deeds Ordinance 1886 came into force on 1 July 1887, the Crown Lands Ordinance 1886 had already been brought into operation in the preceding year. The Crown Lands Ordinance, by section 2, repealed several sections of the Indian Act 1839, including section 8 of that Act which provided for the registration of leases issued under that Act. Section 11 of the Indian Act providing for registration of mutations in titles was left in force until its repeal by the Registration of Deeds Ordinance 1886. Thus, after and under the Crown Lands Ordinance, there was no statutory provision dealing with registration

of Crown or State grants and leases, while such grants and leases as a matter of administrative practice continued to be registered and filed in the Land Office. This practice was apparently also acknowledged by the Crown Lands Ordinance as the Ordinance in Schedule A imposed a fee for "registration of grant" (evidently referring to a Statutory Land Grant). Later, the Registration of Deeds Ordinance 1886 set out in its Second Schedule fees chargeable under the Ordinance without any reference to registration of Crown or State grants or leases. This would again indicate legislative acceptance of the practice.

(vii) The administrative practice has long been relied and acted upon by the State or formerly the Crown and all immediate parties to State or Crown grants and leases. On this basis, the court should give effect to it as to do otherwise would mean that the legal rights and obligations which have been created may be adversely affected by a different construction being put on the legislation.

(viii) Finally, now that the administrative practice has been in existence for a century, a different construction as to the scope of the legislation in question would necessarily mean upsetting the present administrative structure.

22. <u>If the Registration of Deeds Act does bind the State and does apply to State grants and leases does it apply to the original grant</u>?

(i) The original grant, dated the 26th day of April 1860, is a Crown grant in fee simple made by the Secretary of State for India in Council in the exercise of powers conferred upon him by the Government of India Act, 1858 (21 & 22 Vict. c. 106) (sections 39 and 40). This grant was <u>not</u> registered in the Registry of Deeds. Pages 14-15

(ii) "Assurances" which may be registered

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under the Registration of Deeds Act include assurances by the State or formerly by the Crown. The grant in question would come within the Act only if, as stated in section 4 thereof, it is one of those assurances "which have not been registered under the Registration of Deeds Ordinance, 1886". Section 5 of the 1886 Ordinance provided that only those assurances "which have not been registered under Indian Act 16 of 1839" would be registrable under the said Ordinance.

(iii) This last quoted clause qualified the kinds of assurances executed prior to the commencement of the Registration of Deeds Ordinance 1886 by confining them only to those which could have been but were not registered under the Indian Act.

(iv) Section 16(1) of the Registration of Deeds Ordinance 1886 contained the expression "which are not registered". These words should be read in the context of the subsection, which clearly confined the ambit of its application to "all instruments entitled to be registered under the Ordinance". The determination as to what instruments were entitled to be registered under the Ordinance had in the first place to be derived from section 5. In other words, as regards instruments executed prior to the Ordinance, if section 5 only contemplated those which were registrable but not registered under the Indian Act, then that proviso in section 16(1) could only refer to this same category of instruments and no others.

(v) The clause "which have not been registered under India Act" in section 5 should grammatically convey a meaning implying that registration under the Indian Act has not been obtained. If an instrument is simply incapable of such registration, it seems inappropriate to say, with respect to the instrument, that its registration has not been obtained. By its grammatical meaning, the clause should refer only to instruments or assurances which could have been registered under the Indian Act.

(vi) If this interpretation is correct, it is then necessary to consider whether the original Crown grant was capable of being registered under the Indian Act, 1839.

(vii) The grant was not made under the Indian Act. This Act contained only two sections, namely sections 8 and 11, relating to matters of registration. Section 8 provided that :

> "every lease granted under the provisions of this Act shall be signed by the Collector for the time being and shall specify....which particulars, together with any other conditions material to the rights of Government, and of the party obtaining the lease, shall be entered in a register to be kept in the Collector's office for that purpose."

It clearly did not require grants in fee simple to be registered. In fact, the Indian Act 1839 did not envisage the issuing of freehold grants by the Government. In practice, the Land Office merely filed duplicate copies of freehold grants issued between 1845 to 1871 in a series of books without further recording their particulars in any register.

(viii) Section 11 of the Indian Act provided for the registration of "all mutations by act of party or by succession in titles to land" under the rules set out in the section. Thus, unless a grant in fee simple could come within the meaning of "mutations in titles to land" under the section, the grant in question would not have been registrable under the Indian Act.

(ix) The expression "mutations in titles" taking the expression by itself, seems equivalent to "changes in titles". In its widest sense, it may include

(a) a grant of title to land by the Crown to a private person, as well as

(b) a transfer of title between private persons.

A mutation of title presumes the existence in the first instance of a title to land which is the subject of a subsequent mutation or change. Although it is odd to say of the Crown as having a title to Crown land, the notion

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"title (without any qualification) is nonetheless wide enough to apply also the ownership of Crown land as vested in the Crown.

(x) However, in the context of section 11, this expression could only refer to changes in titles between private persons (or other legal entities as opposed to the Crown or State).

(xi) Furthermore, if section 11 were to require as well the registration of all grants and leases from the Government, it would seem to involve some inconsistency with section 8 which provided for separate registration of leases issued under the Act. It could hardly have been the intention of the legislature that such leases already registered under section 8 were to be again registered under section 11. If such leases did not come within the operation of section 11, it would appear highly irregular that other grants made by the Government would be caught by that section.

(xii) From the several grounds raised above it is submitted that there were no provisions in the Indian Act, 1839 which required grants in fee simple to be registered. Thus, the original Crown grant could not have been registered under that Act, and accordingly it was not entitled to be registered under the Registration of Deeds Ordinance 1886. This being so, it also falls outside the ambit of the present Registration of Deeds Act, Cap. 281.

23. The Collector humbly submits that the decision of the Court of Appeal of Singapore in answer to question (v) that the Respondent was not bound by the original grant in view of the non-registration thereof under the Registration of Deeds Act is wrong and ought to be reversed, that this appeal should be allowed and that the Case Stated by the Commissioner of Appeals should be remitted to the Appeals Board with the opinion of your Lordships' Committee on the said question and that the Respondent should be ordered to bear the Collector's costs before your Lordships' Committee for the following (amongst other) :-

R E A S O N S

(i) BECAUSE the Registration of Deeds Act

does not bind the Government;

(ii) BECAUSE the Registration of Deeds Act does not apply to State grants and leases;

(iii) BECAUSE the Registration of Deeds Act does not apply to the original grant.

24. The Collector further humbly submits that the Respondent's cross appeal should be dismissed and that the Respondent should be ordered to bear the Collector's costs thereof before your Lordships' Committee for the following (amongst other) :-

R E A S O N S

(i) BECAUSE the Court of Appeal in Singapore was right in answer to question (i) in holding that the words "subject nevertheless to the conditions hereinafter mentioned" in the said provision import a condition and the whole provision amounts both to a condition and a covenant creating an interest in land both legal and equitable.

(ii) BECAUSE the Court of Appeal of Singapore was right in holding as part of the answer to question (v) that the Respondent had constructive notice of the provision in the original grant.

GRAHAM HILL

No. 33 of 1975

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

B E T W E E N :

COLLECTOR OF LAND REVENUE, SINGAPORE — Appellant

- and -

PHILIP HOALIM — Respondent

A N D B E T W E E N :

PHILIP HOALIM — Appellant

- and -

COLLECTOR OF LAND REVENUE, SINGAPORE — Respondent

(By Cross Appeal)

CASE FOR THE COLLECTOR OF LAND REVENUE, SINGAPORE

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD
Solicitors for Collector of Land Revenue