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TURA

v.

COMMISSIONER OF LANDS AND SURVEYS

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[COURT OF APPEAL, 1970 (Gould V.P., Marsack J.A., Tompkins J.A.), 26th, 27th October, 13th November]

Civil Jurisdiction

British Solomon Islands Protectorate—appeal—enlargement of time for—appeal to Court of Appeal under section 232 (4) *of Lands and Titles Ordinance* 1968*—limitation of three months—general power of Court of Appeal to enlarge time not applicable—lease of land by Crown pursuant to findings of Lands Commission—validating regulation—whether intra vires—Pacific Order in Council* 1893, *Art.* 108*—Solomons Land Claims Regulation* 1923, *regs.* 2, 4*—Lands and Titles Ordinance* 1968 (*B.S.I.P.*) *ss.* 232 (3) (4) (5), 232 (*c*)*—King's Regulation No.* 3 *of* 1914*—Western Pacific (Courts) Order in Council* 1961, *ss.* 19, 22, 23*—Court of Appeal Rules* (*No.* 2) 1956, *r.* 23*—Magistrate's Courts Act* 1908 (*N. Z.*) *ss.* 3, 153,*—Pacific (Amendment) Order in Council* 1958, *ss.* 4, 5*—British Settlements Act* 1887 (50 & 51 *Vict., c.* 54) *s.* 2*—Pacific Islanders Protection Act* 1875 (38 & 39 *Vict., c.* 51) (*Imp.*) *ss.* 6, 7*—Foreign Jurisdiction Act* 1890 (53 & 54 *Vict., c.* 37) (*Imp.*) *ss.* 1, 12.

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The appellant appealed to the Court of Appeal against a decision of the High Court of the Western Pacific dismissing his appeal against a decision of the Registrar of Titles granting an application for registration of ownership of land by the Commissioner of Lands. By section 232(4) of the Lands and Titles Ordinance, 1968, the right of appeal to the Court of Appeal is limited to a period of three months after the issue of the decision appealed against, and by subsection (5) section 232 is to have effect notwithstanding anything contained in any other written law. The period of three months expired on the 5th March, 1970, and the notice of appeal was not lodged until the 18th March, 1970. The Chief Justice then purported to extend the time until the full grounds of appeal were submitted.

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Held: 1. The appeal was out of time.

2. The general power of the Court of Appeal to extend the time for appealing contained in rule 23 of the Court of Appeal Rules (No. 2) 1956, did not apply in view of the clear limitation imposed by section 232 of the Lands and Titles Ordinance, and the Court had no jurisdiction to entertain the appeal.

Per curiam: The Solomons Land Claims Regulations 1923, giving the force of law to recommendations of a Lands Commission touching the land in dispute, was neither invalid nor *ultra vires* by reason of alleged conflict with section 7 of the Pacific Islanders Protection Act, 1875, and was within the authority of His Majesty in Council to legislate for the peace order and good government of the territory.

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Cases referred to:

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Barraud and Abraham v. Fitzherbert [1915] N.Z.L.R. 1098.

Hermans v. Hermans [1961] N.Z.L.R. 390.

Quarterman v. Parcell [1936] N.Z.L.R. 798.

A *Berryman v. Hawkes Bay Farmers Meat Co. Ltd.* [1939] N.Z.L.R. 59.

Nyali Ltd. v. Attorney-General [1956] 1 Q.B. 1; [1955] 1 All E.R. 646.

Sobhuza II v. Miller [1926] A.C. 518; 135 L.T. 215.

Appeal from a decision of the High Court of the Western Pacific under section 232(4) of the Lands and Titles Ordinance, 1968.

R. G. Kermode for the appellant.

B *Nazareth* for the first respondent.

M. J. C. Saunders for the second respondent.

The facts sufficiently appear from the judgment of Tompkins J.A.

TOMPKINS J.A.: [13th November, 1970]—

The following judgments were read:

C This is an appeal against the decision of the learned Chief Justice of the High Court of the Western Pacific, dismissing an appeal by the abovenamed appellant against the disallowance of an objection made by him to the registration by the Commissioner of Lands of the Crown as the owner of a certain portion of land comprising part of L.R. 338 on Pavuvu Island in the Russell's Group of the British Solomon Islands Protectorate.

It is necessary first to deal shortly with the history of the land in dispute. On D 6th August, 1907, the High Commissioner of the Western Pacific granted an Occupation Certificate to Levers Pacific Plantations Limited for a period of 999 years, commencing 1st June 1905, in respect of land on the coastline of Pavuvu Island and of several nearby islands, containing an estimated total area of 10,000 acres. The Occupation Certificate was granted on the basis that the land was then unoccupied. However, in the course of time disputes arose concerning the ownership of this and other lands; a Lands Commission was set up to investigate E these disputes and to make recommendations. On 26th June, 1922, notice was given in the official gazette setting out the findings of the Lands Commissioner, and stating that unless cause be shown to the contrary by 31st December, 1922, the Secretary of State for the Colonies would be asked to confirm or otherwise deal with the recommendations. In the case of the land the subject of this appeal, the recommendations were:—

(*a*) That Lever's Pacific Plantations, Limited, should surrender the certificate F of occupation of 6th August, 1907, for cancellation.

(*b*) Lever's Pacific Plantations, Limited to give up all claims to islands comprised in the Certificate of Occupation.

(*c*) The Government of the Protectorate should purchase from the natives the freehold of the mainland as described in the Certificate of Occupation for £500.

G (*d*) A survey should be made at the expense of Lever's Pacific Plantations, Limited, of the land so sold.

(*e*) A Conveyance should be executed by the natives to the Government of the land shown in the survey plans.

(*f*) A lease should be granted to Lever's Pacific Plantations Limited, for the same term and on the same conditions as nearly as possible as the Certificate of Occupation. The provision as to survey being revised H to meet the case of a complete survey and other consequent modifications made.

(*g*) A Regulation should be passed validating the transaction.

No objections were raised to the recommendations which were duly confirmed by the Secretary of State for the Colonies. Effect was given to recommendation (*g*) by the enactment on 12th December 1923 of King's Regulation No. 8 of 1923, entitled " The Solomons Land Claims Regulation 1923 ". On 24th November 1924 a Conveyance to the Crown was executed by the 4 representatives of the lines Kirwa and Kaiseling who owned Pavuvu Island. The native owners were duly paid the purchase price of £500. A

On 27th January 1927 Levers Pacific Plantations Limited surrendered their Occupation licence, and in lieu thereof, took from the Crown a lease for 999 years from 1st June 1905 of the land concerned in this appeal, as shown in a new survey plan. B

Pursuant to the provisions of the Land and Titles Ordinance, 1968, the Commissioner of Lands applied to the Registrar of Titles for registration of its ownership pursuant to the conveyance of the 24th November 1924 and subject to the lease it had granted to Levers Pacific Plantations Ltd. The record of proceedings which has reached this Court is notably deficient as to who were the objectors or parties to the proceedings before the Registrar, but it is clear that the present appellant Tura was an appellant to the High Court against the decision of the Registrar, which was given in favour of the Commissioner of Lands. In some way the name of Levers Pacific Plantations Pty. Ltd. was added as a respondent in the heading of the judgment of the learned Chief Justice and that company was served with the papers as a respondent in the present appeal. Mr. Saunders, appearing for the company, maintained that the company had at no stage been a party, and was not correctly cited as a respondent to the present appeal. The correctness of this submission appeared to be common ground and the Court upheld Counsel's objection. The appeal proceeded on the basis that the company was not a party to the appeal, and had not been a party to the proceedings below. C D

Mr. Nazareth, for the Crown, raised a preliminary point, that the appeal was out of time and that this Court had no jurisdiction to hear it. The facts relevant to this application are as follows:— E

> The Learned Chief Justice, after hearing the appeal, made the following note:
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> *Decision*: Appeal dismissed.
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> Reasons to be handed down in writing later. F
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> Reasons explained orally to Appellant now in advance of reducing them to writing.
>
> Jocelyn Bodilly.
> 1/12/69.

The written judgment was issued by him at Honiara on 5th December 1969. On 18th March, 1970, Mr. Keating, Solicitor for the appellant wrote to the Registrar of the High Court, Honiara, lodging his notice of appeal. He asked that an extension of the period of the appeal be granted until the full grounds of appeal were submitted within the next few days. The Chief Justice endorsed the following note on the letter: " Time extended to grounds of appeal, J.B.". G

The appeal is made under the provisions of the Lands and Titles Ordinance No. 6 of 1968. Section 232(4) of that Ordinance reads as follows:— H

> " Any person aggrieved by any such decision is as referred to in subsection (3), may, within 3 months after the issue of the decision, appeal to the Court of Appeal in Fiji, if, and only if:

A (*a*) the decision was not given by the Court in exercise of its jurisdiction under Sections 18, 56, 65, 105(6), 130(2), 190(8), or 231(5); and

(*b*) some question other than a question of fact is raised by the appeal; and

(*c*) the person aggrieved obtains leave to appeal either from the High Court or from the Court of Appeal in Fiji."

This is the only right of appeal given under the Ordinance.

B The Western Pacific (Courts) Order in Council 1961 No. 1506 deals with the powers and rules of the High Court of the Western Pacific. The relevant part of Section 19 says: "subject to any provision contained in any law which applies to the cause or matter concerned, an appeal shall lie, in accordance with the rules of Court made under Section 22 of this order, from a judgment of the High Court, whether in the exercise of original or appellate jurisdiction, in any civil or criminal cause or matter, to the Fiji Court of Appeal constituted under the Court of Appeal Ordinance of the Colony of Fiji, and, subject to the provisions C of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction under this section, the Fiji Court of Appeal shall have the power, authority and jurisdiction vested in the High Court."

We are informed that no rules of Court have been made under Section 22 of the order. However, Section 23 provides as follows:—" all laws or rules of Court relating to practice, procedure and fees in the High Commissioner's Court including D rules relating to appeals to the Fiji Court of Appeal under Article 88 of the Principal Order in force on 1st August, 1961, except in so far as they may be inconsistent with the provisions of this Order or of any rules of Court made under Section 22 of this Order, ... shall remain in force. . . . in respect of Appeals from the High Court".

Rule 23 of " The Court of Appeal Rules (No. 2) 1956 says:

E " The Court of Appeal shall have power to extend the time for appealing or to amend the grounds of appeal or to make any other order on such terms as the Court shall think fit to ensure the determination on the merits of the real question in controversy between the parties ".

Mr. Nazareth, for the Crown, submits that the right of appeal is strictly limited by the provisions of Section 232(4) of the Land and Titles Ordinance 1968 and that no rule of Court can extend the time of 3 months, laid down by the Ordinance F as the time within which any appeal may be brought. There is no power given by the Ordinance itself to extend the time. It is, I think, clear that the appeal was not brought within 3 months of the issue of the judgment. Whether that time commenced on the 1st December, 1969, when the appeal was dismissed and the reasons explained orally to appellant, or whether it be taken as 5th December, when the formal judgment in writing was issued at Honiara, more than 3 months had expired before notice of appeal was given on 18th March, 1970.

G Mr. Nazareth also submits that Section 19 of the Western Pacific (Courts) Order in Council No. 1506 of 1961 expressly states that any appeal shall lie " subject to any provision contained in any law which applies to the cause or matter concerned ". This means, in this case, that the appeal lies subject to the provisions of the aforesaid Section 232(4), that is within 3 months after the issue of the decision. He submits, therefore, that any rule giving power to extend the time cannot apply because it would have the effect of extending the provision contained in H that section setting a limit of 3 months to the right of appeal. Consequently, he submits no rules of Court made under Section 22 or Section 23 could be invoked to give a right of extension under rule 23 of the Court of Appeal Rules No. 2 of

1956. Mr. Kermode, for the appellant, submitted that there was no sufficient evidence to show when the judgment was issued, but I think it is clear that the time for appeal commenced not later, in any event, than 5th December, 1969. He also submitted that a proper interpretation of Section 232(4) did not preclude the operation of a rule enabling an extension of time when it was necessary to do justice between the parties. But I do not think it is possible to vary in this way the express provision made for appeal under the Land and Titles Ordinance. There are numbers of cases where the Courts have refused to extend the time for appeal where the language of the Act limiting the time does not permit ot the grant of an extension. In *Barraud and Abraham v. Fitzherbert* [1915] 34 N.Z.L.R. 1098 a notice of appeal was given after the expiry of the 7 days set out in the Magistrate's Courts Act 1908. Chapman J. at 1101 said: " Section 153 gives either party the right to appeal on terms there prescribed. There is no other right of appeal than that given by the statute. That right is given " provided that the appellant gives notice of appeal within 7 days after such determination or direction and also gives the required security within 7 days. I find myself obliged to say that the power given by Section 3 (i.e. to make regulations) is inapplicable to this case, and can find no grounds for saying that the time for appealing is not a matter specially provided for by the Act. It is specially provided for by a provision that makes compliance a condition of the right to appeal"." In *Hermans v. Hermans* [1961] N.Z.L.R. 390, Cleary J. in giving the judgment of the Court of Appeal said at 392: " the difficulty in the way of invoking this rule to overcome a non-compliance with rule 34 is that the latter rule provides in express terms that if the security is not given, the notice of the appeal shall be deemed to be abandoned: . . . We think this wording is intractable ". Later at 393 he said: " The Court is always unwilling to construe a rule relating to time in a manner that does permit of relaxation ". Later, he said: " We think that the Court has no power to make the order sought ". Similar decisions refusing to extend the time for appeal were given in *Quarterman v. Parcell* [1936] N.Z.L.R. 798 and in *Berryman v. Hawkes Bay Farmers* [1939] N.Z.L.R. 59.

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While, if there were power to do so, this is clearly a case where I consider an extension of time should be granted, particularly having regard to the fact that the appellants were not represented at the appeal by Counsel, I have, however, reluctantly come to the conclusion, that the language of Section 232(4) is so definite in limiting the right of appeal that the rules of Court giving powers of extension do not apply. Accordingly, the appeal is out of time and must be dismissed.

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However, in case I should be held to be wrong in this, I think I should express an opinion upon the substantive grounds of the appeal.

Mr. Kermode submits that the King's Regulation known as the Solomons Land Claims Regulation No. 8 of 1923 is invalid and *ultra vires*. It will be remembered that this regulation purports to give the force of law to the recommendations already set forth, relating to this land. Section 2 provides as follows:—" Any recommendation of the Commissioner confirmed by the Secretary of State on notification of such confirmation in the Gazette in such manner as the High Commissioner may from time to time prescribe, shall thereupon become binding upon the parties affected by such recommendation and subject to compliance with the provisions of this regulation, shall have the force of law ". Section 4 of the Regulation says: " Any person failing within the time fixed by the said notice to comply with any obligations, terms or conditions imposed by any recommendation as aforesaid or committing any breach thereof, shall be liable on conviction to a fine not exceeding £100, recoverable in default of payment in

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distress, or in default of distress by imprisonment with or without hard labour for any term not exceeding 6 months, and if an occupier of land to the cancellation of his right of occupation".

This regulation purports to be made under the provisions of the Pacific Order in Council, 1893. That Order in Council in turn purports to be made by virtue of the following powers:—

(1) under S. 2 of The British Settlements Acts 1887, which states that it shall be lawful for Her Majesty the Queen in Council from time to time to establish all such laws and institutions, and constitute such Courts and officers and make such provisions and regulations for the proceedings in the said Courts and for the administration of justice, as may appear to Her Majesty in Council to be necessary for the peace, order and good government of Her Majesty's subjects and others within any British settlement;

(2) under The Pacific Islanders Protection Act 1875, the relevant part of S. 6 gives power to Her Majesty to make regulations for the Government of Her subjects in such islands and places and to impose penalties, forfeitures or imprisonments for breach of such regulations. S. 6 goes on to say, "it shall also be lawful for Her Majesty, by any order or orders in Council, from time to time to ordain for the Government of Her Majesty's subjects, being within such islands and places, any law or ordinance which to Her Majesty in Council may seem meet, as fully and effectually as any such law or ordinance could be made by Her Majesty in Council for the government of Her Majesty's subjects within any territory, acquired by cession or conquest". S. 7 says "nothing herein or in any such order in Council contained shall extend or be construed to extend to invest Her Majesty her heirs or successors, with any claim or title whatsoever to Dominion or Sovereignty over any such islands or places as aforesaid or to derogate from the rights of the tribes or people, inhabiting such islands or places or of chiefs or rulers thereof, to such Sovereignty or Dominion".

The order goes on to cite the Foreign Jurisdiction Act, 1890, s. 1 of which is as follows:—

"It is and shall be lawful for Her Majesty the Queen to hold, exercise and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample manner as if Her Majesty had acquired that jurisdiction by the Cession or conquest of territory."

Section 12 of that Act is as follows:—

(1) If any Order in Council made in pursuance of this Act as respects any foreign country, is in any respect repugnant to the provisions of any Act of Parliament extending to Her Majesty's subjects in that country, or repugnant to any order or regulation, made under the authority of any such Act of Parliament or having in that country the force and effect of any such Act, it shall be read subject to that Act, order, or regulation, and shall, to the extent of such repugnancy but not otherwise, be void.

(2) An Order in Council made in pursuance of this Act shall not be or be deemed to have been void on the ground of repugnancy to the law of England unless it is repugnant to the provisions of some such Act of Parliament, order or regulation as aforesaid.

Article 108 of the Pacific Order in Council 1893 (as substituted by S. 4 of the Pacific (Amendment) Order in Council 1958) says:— A

"(1) Subject to the provisions of this Order, the High Commissioner shall have power to make regulations (to be called Queen's Regulations) for the peace order and good government of the British Solomon Islands Protectorate and of the Central and Southern Line Islands, that is to say, Malden, Starbuck, Vostock, Caroline and Flint Islands."

Furthermore, S. 5 of that Order in Council, says:— B

"For the avoidance of doubt it is hereby declared that any regulations which the High Commissioner purported to make under the authority of Article 108 of the Principal Order, as in force at any time before the date of the commencement of this Order shall be deemed to have been validly made in so far as they would have been so made if Article 108 as replaced by this Order had been then in force."

Mr. Kermode submits that King's Regulation No. 8 of 1923 is *ultra vires* the powers given, because the effect of the regulation is that the land is acquired compulsorily; this, he submits, is against the provisions of Section 7 of the Pacific Islanders Protection Act, 1875, in that it derogates from the rights of the tribes or people to Sovereignty or Dominion over their land. C

Mr. Nazareth, for the Crown, submits that the regulations can be supported under two general grounds, first, the prerogative power of the Crown and, secondly, under the Foreign Jurisdiction Act, 1890, giving the Crown power to legislate for protectorates in exactly the same way as for lands acquired by cession or conquest. D

In *Nyali v. Attorney-General* [1956] 1 Q.B. 1 Denning L.J. in giving the judgmen of the Privy Council, said at 15: "Although the jurisdiction of the Crown in the Protectorate is in law a limited jurisdiction, nevertheless the limits may in fact be extended indefinitely so as to embrace almost the whole field of government. They may be extended so far that the Crown have jurisdiction in everything connected with the peace, order and good government of the area, leaving only the title and ceremonies of sovereignty remaining in the Sultan. . . . Once jurisdiction is exercised by the Crown, the Courts will not permit it to be challenged". E

In *Sobhuza II v. Miller* [1926] A.C. 518 Viscount Haldane said at 528: "For the Order in Council of 1907, after providing for power to set apart certain lands in Swaziland, the subject of concessions by the paramount chiefs, enabled the High Commissioner to acquire the remaining land and to deal with it. He had therefore full power to make the Crown grant of March 16th 1917. The power of the Crown to enable him to do so was exercised either under the Foreign Jurisdiction Act or as an Act of State which cannot be questioned in a Court of Law" F

The power to make laws for peace, order and good government of a territory is said by Sir Kenneth Roberts-Wray in his Commonwealth and Colonial Law p. 370 to connote "the widest law-making powers appropriate to a sovereign". Furthermore, the prerogative of the sovereign gives the widest discretion possible in making laws for the governing of a state. G

The setting up of such a commission to resolve disputed land problems must be within the Crown prerogative in governing the Protectorate. It would also, in my view, come within the power to make regulations for the peace, order and good government of this territory. It seems to me also that, having investigated the disputes and made recommendations for resolving them, it is also within H

the powers given by the soverign prerogative to make a regulation giving the force of law to those recommendations and to provide penalties for failure to implement those recommendations. This is an " act of state which cannot be questioned in a Court of Law ", as Viscount Haldane said in *Sobhuza's case* (*supra*).

Furthermore, it seems to me that the Regulation No. 8 of 1923 can also be supported as made " for the peace, order and good government " of the Protectorate. It is, in my view, conducive to the peace order and good government of the Protectorate that disputes regarding land should be settled by a duly constituted Commissioner appointed for that purpose, and that a regulation should be passed giving those recommendations the force of law. Furthermore, it would render those regulations unenforceable if no penalties were provided for refusing to carry them out.

Thus it seems to me that, upon a general view of the King's Regulation No. 8 of 1923, there is ample power for their issue under the Pacific Order in Council of 1893.

But, looking at the particular recommendation here under review, the facts are strongly in favour of the validity of the Regulation.

Here a Commission was lawfully set up to consider this land dispute. After hearing all the parties to the dispute the record shows that the Commissioner asked the representatives of the Lines who claimed the lands whether they were willing to sell the freehold of the land to the government. After conferring together, they agreed to sell the freehold for £500. The Commissioner made his recommendations accordingly. The recommendations included the surrender by Lever Pacific Plantations Limited of their existing occupation licence and the granting in lieu thereof of a lease, on as nearly as possible the same terms. To enable this to be done it was necessary to have validating legislation. Consequently recommendation (*g*) was that a regulation should be passed validating the transaction. In view of the agreement of the natives concerned, it can hardly be called a compulsory purchase of land; but, even if it were, it seems to me that it would lie well within the powers to make regulations conferred by the Pacific Order in Council 1893 and the various Acts under which that order in Council was made. In particular, I do not think there is any repugnancy in King's Regulation No. 8 against section 7 of the Pacific Islanders Protection Act 1875. It in no way derogates from their rights of sovereignty or dominion to make it compulsory for them to carry out what they have agreed voluntarily to do.

I think therefore that the appellant has failed to show that King's Regulation No. 8 of 1923 is either *ultra vires* or void for repugnancy under the Foreign Jurisdiction Act, 1890, or otherwise. It is noteworthy that this King's Regulation has stood unchallenged now for more than 47 years.

Mr. Kermode also challenged the validity of the conveyance of the land executed in favour of the Crown on 24th November, 1924, on several grounds. I deal with these seriatim:—

(1) That it is executed by only 4 of the natives concerned, namely Mandika, Toku, Kapu and Komi, but is not executed by the representative of the fifth line, namely Vangaveli. But, it is clear from the record of the Commissioner's proceedings, put in evidence by consent, that Vangaveli claimed only to own the islands contained in the original occupation licence. By recommendation (*b*) Levers Pacific Plantations Limited are to give up all claims to islands comprised in the certificate of occupation. Accordingly they were excluded from the conveyance to the Crown and from the lease to the company. In my view there is on necessity for Vangaveli to be joined in the conveyance;

(2) The lease which is recommended to be given to Levers Pacific Plantations Limited was for 999 years. Under King's Regulation No. III of 1914, the maximum term for a cultivation lease is 99 years; but King's Regulation 8 of 1923, S. 2, gives the recommendations the force of law and therefore validates recommendation (*f*), which provides that the lease should be for the same term and on the same conditions as nearly as possible as in the certificate of occupation; A

(3) Mr. Kermode points out that the conveyance was not executed within the 6 month period provided by the gazette notice by which the Secretary of State confirmed the recommendations. The same objection applied to the cancellation of the occupation licence and to the granting of the lease. I agree with Mr. Nazareth that these breaches as to time, do not invalidate the transaction but merely render the persons concerned liable to prosecution under King's Regulation No. 8 S. 4; B

(4) Mr. Kermode suggests that the lease has been given over an area of 11,914 acres, whereas the conveyance described the land as containing 9,500 acres more or less. This difference in area would certainly appear to require explanation. There is nothing on the Court file to show why the area leased should be so much greater than the area conveyed, nor is there anything on the Court file to show what land has been registered by the Commissioner of Lands as being owned by the Crown as a result of the conveyance from the natives. I certainly think this aspect of the matter should be looked into and if necessary rectified. It must be remembered, however, that Levers Pacific Plantations Ltd. are not a party to these proceedings and we are totally unaware of exactly what has been done by the Commissioner of Lands. Accordingly we can only express the opinion that the matter should be further looked into and rectified if necessary. C D

In view of the fact that this appeal has been dismissed on the very technical ground of being out of time, we do not think it is a case for costs against the appellant. Accordingly I would think that each party should pay his own costs. E

GOULD V.P.:

I have had the advantage of reading the judgment of Tompkins J.A. and fully agree with his reasoning and conclusions.

In relation to the finding that the appeal is out of time, I would add that on the question of interpretation of section 232 of the Land and Titles Ordinance, 1968, I am impressed not only by the clear and decisive wording of subsections (3) and (4) but also by the statement in subsection (5) that the provisions of the section shall have effect notwithstanding anything contained in any other written law. The general power to extend time contained in rule 23 of the Court of Appeal Rules (No. 2) 1956, at least primarily referable to the time limit imposed by the immediately preceding rule, could not, I am sure, prevail against the imperative wording of section 232. F G

I would observe further that there is no indication in the Record that the requirement of section 232(4) (c) has ever been complied with. That subsection makes it a condition precedent that the appellant shall have obtained leave to appeal either from the High Court or from this Court. No such application appears to have been made; an application by letter to the Registrar of the High Court dated the 18th March, 1970, asked for an extension of time for appeal and this was granted by the learned Chief Justice. But an application to extend time is not an application for leave to appeal and different principles apply in each case. This seems equally to point to the fact that this Court has no jurisdiction to entertain the appeal. H

Although anything further is not necessary for the determination of the appeal, I would add a few words to what has been said by Tompkins J.A. in his judgment, upon the argument of Counsel for the appellant that the Solomons Land Claims Regulation, 1923, is *ultra vires*, to any extent that it confers a power of compulsory acquisition of land upon the Crown or any person. It was not argued that the power conferred by section 108 of the Pacific Order in Council, 1893, was *ultra vires* when it conferred upon the High Commissioner power to make regulations for the peace order and good government of the British Solomon Islands Protectorate, but that the 1923 King's Regulation, made pursuant to that power, was contrary to section 7 of the Pacific Islanders Protection Act, 1875 because it, in effect, authorised compulsory acquisition of land. That section reads:—

> " Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty with any claim or title whatsoever to dominion or sovereignty over any such islands or places as aforesaid, or to derogate from the rights of the tribes or people inhabiting such islands or places, or of chiefs or rulers thereof, to such sovereignty or dominion . . . . "

While that section may have applied to the Solomon Islands in 1875, I very much doubt whether it did so in relation to the British Solomon Islands after it became a Protectorate towards the end of last century. There is a significant distinction in section 5 of the Pacific Order in Council 1893, the first part of which reads:—

> " In islands and places which are not British settlements, or under the protection of Her Majesty, jurisdiction under this Order shall be exercised (except only as in this Order otherwise expressly provided) only over Her Majesty's subjects. . . . "

I think that it is to the class of island territory there described that section 7 of the Pacific Islanders Protection Act, 1875, applies, as section 6 of that Act limits its scope to " any islands and places in the Pacific Ocean not being within Her Majesty's Dominions, nor within the jurisdiction of any civilised power ". Once a territory becomes a Protectorate, of the kind which involves internal administration, it is not thereby made part of Her Majesty's Dominions, but it is brought within the jurisdiction of a civilised power, viz. Great Britain. The regulation in question was made many years after the British Solomon Islands Protectorate was proclaimed, and at least from the date of such proclamation I do not consider that section 7 of the Pacific Islanders Protection Act, 1875, presented any impediment to the full exercise of the prerogative or statutory right to legislate by Order in Council for the Protectorate. For completeness I would add that the limitation of the scope of the words: " peace order and good government " contained in the wording of the original section 108 of the Pacific Order in Council, 1893, was retrospectively removed, so far as the British Solomon Islands Protectorate is concerned, by section 5 of the Pacific (Amendment) Order in Council, 1958.

I am satisfied that the Solomons Land Claims Regulation, 1923, is fully within the scope of the authority to legislate for peace order and good government; for the reason I have given, as well as those expressed in the judgment of Tompkins J.A. it is my opinion that the authority so to legislate was validly conferred upon the High Commissioner by the Pacific Order in Council, 1893, and that that order in Council, in relation to a protectorate, cannot be challenged in this Court.

The Court being unanimously of the opinion that the appeal must be dismissed, but that there should be no order for the costs of the appeal, it is ordered accordingly. A

MARSACK J.A.:

I have had the advantage of reading the careful judgment of Mr. Justice Tompkins and agree, for reasons set out in that judgment, that the appeal must be dismissed as being out of time. In these circumstances any comments on the merits cannot strictly form part of the judgment of the Court; but there is one B matter upon which I would like to make some observations. I refer to the description of the land to be included in the Certificate of Title issued in the name of the Crown.

At the hearing before us Mr. Nazareth conceded—very properly in my opinion—that if the plan attached to the Certificate of Title showed a greater area of land than that comprised in the Conveyance dated 24th November, 1924, action should C be taken to have the matter rectified. It is true that the description of the land set out below the plan attached to the Conveyance appears in places at variance with what is shown in the plan itself; and the plan may lack complete mathematical accuracy. None the less the Conveyance is the basis on which the Crown title should be founded.

On the face of it substantial discrepancies exist between the land described D in the Conveyance, and the two plans produced to us, namely that referred to as No. 1594, and that attached to the 999 years lease granted to Lever Pacific Plantations Limited. These discrepancies cannot, in my view, be fully covered by the explanation given as to the inaccuracies of the old Admiralty chart.

Accordingly, I fully agree with the opinion of my brother Tompkins that this matter should be looked into and if necessary rectified. No doubt, in view of the undertaking given by Mr. Nazareth at the hearing of the appeal, the attention of the appropriate authorities will be drawn to the position, and steps taken to E ensure that the title in the name of the Crown be issued for no area other than that actually conveyed by the Indenture of 24th November, 1924.

Appeal dismissed.