Cayman Islands,

No. ....

Courts Office
Grand Cayman
P. O. Box 495

October 12, 1973

TO: Hon. Attorney General

FROM: Clerk of the Court

DATE: October 12, 1973

THE JUDICATURE (ADMINISTRATION OF JUSTICE)
(SCHEDULES AMENDMENT) ORDER, 1973

Validity of Order made by Governor
Taxing of Costs by Haig Bodden

I enclose herewith for your information my ruling on the question as to the retrospective effect of the above Order published on the 2nd March, 1973, in Government Order No. 28 of 1973.

The matter came before me as a result of a Bill of Costs filed for Taxation by Mr. Haig Bodden, a Respondent in the Bodden Town Petition, in which Mr. James Macdonald questions the validity of the Order made by the Governor.

G. N. Sim

Clerk of the Court

TO: His Excellency the Governor
Mr. O.L. Panton, for Respondent Haig Bodden
Mr. Jim Bodden, Respondent
Mr. James Macdonald, for Petitioners
Judge of the Grand Court

Courts Office, George Town

Petition No. 2 Relating to the General Elections held on 22/10/72, for the Fourth Election District of Bodden Town.

TAXING OF COSTS OF RESPONDENT HAIG BODDEN

Mr. O. L. Panton appears for Respondent, Haig Bodden

Mr. J. Macdonald appears for Petitioners Mary Lawrence, et al

Mr. Macdonald submits:-

(1) That Bill of Costs as filed with the Clerk of the Court relates prior to and up to the 28th February, 1973. Quantum is not questioned.

(2) That on the 2nd March, 1973, a Government Notice No. 28 of 1973, was published purporting to bring into force a new scale of costs retrospective from February 22, 1973.

(3) That the Government Notice as to retrospective operation or effect is invalid.

(4) That the effective date of operation or effect of the Notice and new Scale of Costs must be the date of publication that is on 2nd March, 1973.

Cites Section 29, Chapter 70, on commencement of operation of regulations as date of publication.

Cites Section 3, Chapter 70, Gazette in Section 29, Chapter 70, means Government Notice.

Cites Section 235, Chapter 74, on Governor's power

Cites CRAIES, Statute Law, 5th Edition, page 359, on non-retrospective effect - 1878 3 Appeal Cases 582, 601 in support that date of coming into force of Law must not be retrospective but operative from date of publication.

Mr. O. L. Panton replies:-

Relies on Government Notice 28 of 1973, dated March 2, 1973, as enabling a new Scale of Costs from 22nd February, 1973. Last three lines of page 9 says "made in Council this 22nd day of February, 1973." and that order says "The Judicature (Administration of Justice) (Schedules Amendment) Order, 1973, was made by the Governor on the 22nd February, 1973, and come into operation on the same day."

Construction to be placed on Section 29, Chapter 70, "unless it be otherwise provided" is to give effect to retrospective operation. Refers to Section 31 and 32 of Chapter 70.

Adjourned to 9:30 a.m. Friday, October 12, 1973, for ruling submissions.

R. N. Trim

R. N. Trim
Clerk of Court
8th October, 1973

RULING

The Jurisdiction of the Clerk of the Court to Tax a Bill of Costs is derived from Section 166 of the Judicature (Administration of Justice) Law, Chapter 74.

Costs, fees, and other sums of money payable or allowable on Taxation flow from the provisions of Section 92 of the same law and from the schedules A, B, and C, forming part of that Section.

The Legislature, by Section 235, Chapter 74, gives authority to the Governor after considering recommendations from the Judge of the Grand Court, by order, to change or amend or revoke and/or to substitute new schedules for Schedules A, B, or C.

On March 19, 1973, the Judge of the Grand Court dismissed the Petition brought by Mary Lawrence, et al, and ordered costs against them to be taxed in favour of the Respondents, one of whom was Haig Bodden.

On May 11, 1973, Mr. O. L. Panton, Attorney for Haig Bodden filed for taxation with the Clerk of the Court, a Bill of Costs in the sum of $517.00, in favour of Haig Bodden.

Prior to the filing of this Bill of Costs, and on March 2, 1973, there was published a Cayman Islands Government Notice, No. 28 of 1973, cited as "The Judicature (Administration of Justice) (Schedules Amendment) Order, 1973, purporting to be the Act of the Governor in the exercise of the powers con-

Section 3 of the Interpretation Law, Chapter 70, defines a "Government Notice" as the "Gazette," and by the same law an "Order" is defined as a "Regulation".

Provision as to when a Regulation shall come into effect and provision as to the proof of a Regulation are contained in Section 29, Chapter 70, which reads as follows:-

> Section 29(1): "All regulations made under any law or other lawful authority and having legislative effect shall be published in the Gazette and unless it be otherwise provided shall take effect and come into operation as law on the date of such publication."
>
> Section 29(2): "The production of a copy of the Gazette containing any regulations shall be prima facie evidence in all Courts and for all purposes of the due making and tenor of such regulations."

The moment when a law or regulation comes into force is provided for in Section 16 of the Interpretation Law, Chapter 70.

That Section reads as follows:-

> Section 16: "When any law, or part of a law, or any regulations made thereunder come or comes into operation on a particular day, it shall be deemed to have come into operation immediately on the expiration of the day next preceeding such day."

On October 8th when the question of Taxation came before me, Mr. James Macdonald, Attorney for the Petitioners took the following objections.

(1) That Government Notice dated 2nd March, 1973, No. 28 of 1973, purported to give retrospective effect to the new Scales of Fees and Costs from the 22nd February, 1973, and that that retrospective effect

(2) That although Section 235, Chapter 74, gave the Governor power to amend Section 92, Chapter 70, and the Schedules thereto, it gave the Governor no power to cause retrospective effect in the operation of the law, which must come directly from the Legislature and that since Section 235, Chapter 74, gave the Governor no such authority, the purported exercise of the power by the Governor to give retrospective effect to the New Scales was invalid.

(3) That the Governor's purported exercise of his power can only have prospective effect from the date of publication on 2nd March, 1973. Accordingly, the Bill of Costs could only be taxed as from 2nd March, 1973, and therefore fell to be taxed under the old Scales before the amendment as contained in Schedules A, B, and C.

Mr. O. L. Panton, learned Attorney for Haig Bodden ontends that Government Notice No. 28 of 1973, dated 2nd arch, 1973, is a valid exercise of the Governor's power under ection 235 of Chapter 74, and that Section 92 of Chapter 74 as effectively and legally amended. Further, that Section 9 of Chapter 70, clearly indicates that a new Regulation or rder may be operative as and when stated therein, since the erm "unless it be otherwise provided" rules out the operation f the new Scales of Fees as from date of publication.

he places reliance on Section 29, Chapter 70, and emphasis on the commencement of the operation of the Order on the date of publication and the non-retrospective nature of Statutes.

In re Robb's Contract (1941), Chancery 463, at page 478, Lord Green, Master of the Rolls, speaking on the construction of a Statute said, "If the language of a Statute is clear, it must be enforced though the result may be harsh or unfair and inconvenient.", and Tindal, Chief Justice in Warburton vs. Loveland, (1831), 2D and CL (H.L.) 480 at page 489, remarked, "Where the language of an Act is clear and explicit, we must give effect to it whatever the consequences, for in that case the words of the statute speak the intention of the legislature."

A look at Section 235, Chapter 74, shows the language to be clear, and permitting the Governor, after acting on the Judge's recommendations to amend the Schedules to Section 92 thereof. That he has legally done so is evidenced by the production of the Gazette or Order referred to in Section 29(2) of Chapter 70. That he did not act on the Judge's recommendations is unchallenged by Mr. Macdonald.

Let me now apply the rule of construction postulated by both Lord Green, M.R., and Tindal, C.J., to Section 29(1), Chapter 74.

Section 29(1) reads as follows:-

"All regulations made under any law or other lawful made must be published in the Gazette or Government Notice and becomes operative or commences on the date of publication.

What then is the purport, intent or use of the phrase "unless it be otherwise provided"? To my mind, the clear and unequivocal intention of the legislature is to provide, allow, or permit an earlier or later date, other than the date of publication on which a law, order or regulation shall become operative. It is in the content of this section itself that the germ of retrospective or prospective action is founded. The language of the Statute is in my view clear and the construction consonant with common sense and allows that construction. And it is this construction and interpretation that gives legislative validity to the Governor when he otherwise provided on March 2, 1973, that the Judicature (Administration of Justice) (Schedules Amendment) Order, 1973, shall come into effect on 22nd February, 1973.

Finally, CRAIES Statute Law, and the case cited by the learned Attorney for the Petition could not seriously be advanced as authority for the proposition that a legislature possesses legal ability only to enact laws which is to affect something in the future. Lindley L. J. in the case of Lauri vs. Renod (1892) 3 Chancery 402, at page 421 sets out the correct legal rule when he says "It is a fundamental rule of English Laws that no Statute shall be constructed so as to have a retrospective operation unless its language is such as plainly to require such a construction and the same that retrospective effect may be supplied by express enactment or by implication and that this latter is the much more frequent method."

Again, applying the above rule to Section 29(1) of the Interpretation Law, Chapter 70, and to the above phrase "unless it be otherwise provided" contained therein, I am compelled to the view that the provision, if not expressly then by implication, does give retrospective operation or commencement to the new Schedules on the 22nd February, 1973, contained in the Order 28 of 1973, and published in Government Notice on the 2nd March, 1973.

Accordingly, I rule that the Bill of Costs filed by Mr. O. L. Panton, Attorney for the Respondent Haig Bodden, is within the ambit of the new Schedules contained in Order 28 of 1973, and taxation must proceed in accordance therewith.

Dated this 12th day of October, 1973.

Clerk of the Court