

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 6 OF 1989

BETWEEN:

COMPTON FRASER

Appellant

and

CALVIN GREENAWAY

Respondent

BEFORE: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice Byron
The Honourable Miss Justice Joseph, (Ag.)

APPEARANCES: Mr. J. Simon for the Appellant
Miss B. Lake Q.C. and Miss J. Kentish for the
Respondent

24th, 25th and 28th February, 1992

JUDGMENT

FLOISSAC C.J.

This is an appeal against a judgment which was delivered by Mitchell J. on the 3rd April 1989 and whereunder the learned Judge declared that the appellant was not a licensed surveyor under the Land Surveyors Act No. 15 of 1975 and the learned Judge refused the appellant's application for an order of mandamus directing the respondent (qua Chief Surveyor) to perform certain statutory duties imposed upon him by the said Act. The performance of those duties was necessary for the execution by the appellant of his functions as a licensed surveyor - a status which he claimed to enjoy.

In the course of the argument of this appeal, counsel for the appellant correctly conceded that a Court could not properly make an order of mandamus directing the respondent to facilitate a survey which was being executed illegally. Counsel also conceded that the appellant does not belong to the State of Antigua and Barbuda and has no work permit to execute surveys in the State. Consequently, the execution of the surveys which the order of mandamus was designed to facilitate was illegal or contrary to the Antigua Labour Code No.14 of 1975. Counsel was therefore constrained to concede that in those circumstances, the learned

Judge could not properly make the order of mandamus sought and this Court could not be expected to reverse the learned Judge's refusal to make that order. Accordingly, the sole issue in this appeal is whether the appellant is a licensed surveyor.

The appellant claims the status of licensed surveyor by virtue of his appointment under the Land Surveyors Act No.14 of 1879 or Cap.280 (the old law) and by virtue of Sections 31 and 32(1) of the Land Surveyors Act No.15 of 1975 (the new law). On the 13th November 1964, the appellant was appointed to be a Surveyor of Land under section 2 of the old law which provides that:

"It shall be lawful for the Administrator from time to time by Commission to appoint during pleasure any person whom he shall consider qualified after such examination as the Administrator shall think fit to be a Surveyor of land."

The old law was repealed by the new law section 31 of which provides that:

"Without prejudice to any rights and liabilities existing or capable of arising thereunder, the old law is hereby repealed."

Section 32(1) of the new law further provides that:

"Every Surveyor of Land who at the commencement of this Act was commissioned under section 2 of the old law shall be deemed to have been licenced under section 7 of this Act."

The issue in this appeal therefore revolves around the meaning of the phrase "shall be deemed" appearing in section 32(1) of the new law. In an endeavour to ascertain that meaning, the learned judge and counsel for the appellant and the respondent invoked several judicial authorities which merely demonstrate the chronic ambiguity of the phrase. These authorities show that the word "deemed" has been used to predetermine opinions or judgments, to declare persons and things to be what they are not, to declare

events to have occurred contrary to reality, to express rebuttable or irrebuttable presumptions of law or fact or most commonly to extend the primary or statutory meaning of a word or phrase.

In **St.Aubyn (LM) v A-G (No.2) (1951) 2 AER 473 at 498** Lord Radcliffe said:

"The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

In **Barclays Bank Ltd. v Inland Revenue Comps. (1951) AC 509 at 523**, Viscount Simmonds said:

"I bear in mind what Lord Radcliffe said in **St.Aubyn's** case about the word 'deem' but nevertheless regard its primary function as to bring in something which would otherwise be excluded."

In view of the wide ranges of meanings of the words "deem" and "deemed" and the phrase "shall be deemed", I prefer to be guided by the fundamental rule that the interpretation of a statutory word or phrase is the ascertainment of the meaning which the legislature intended that the word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it consistent with the statutory context. The statutory context comprises every other word or phrase used in the statute and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention. Those surrounding circumstances include the evident object of the statute or section in which the word or phrase under construction

appears and the fact that the interpretation of the word or phrase in its primary sense would result in manifest absurdity.

The marginal caption of section 31 of the new law reads "Repeal with Savings Cap. 280" and the marginal caption of section 32 reads "Future savings Cap.280." Section 31 of the new law repeals the old law but "without prejudice to any rights and liabilities existing or capable of arising thereunder." Therefore, the evident object of sections 31 and 32 of the new law is to protect the status and rights of Surveyors of Land appointed under the old law and to do so by transmuting the status of Surveyor of Land into the status of licensed surveyor without the assistance or intervention of any person and without the need for compliance with the preconditions and formalities prescribed by the new law for the granting of a surveyor's licence thereunder.

Section 32 of the new law cries for a purposive construction. Any interpretation of section 32 by which a Surveyor of Land appointed as such under the old law is required to establish his qualifications as a surveyor to the satisfaction of a Board before being licensed under the new law is an interpretation which would defeat the evident object of the section and its twin section 31. Such an interpretation would render sections 31 and 32 nugatory and would result in absurdity which the legislature could not conceivably have intended.

Accordingly, section 32(1) must be construed purposively. So construed, the subsection means that every Surveyor of Land commissioned under the old law is deemed or must *ipso facto* be held or considered or irrebutably presumed to be a licensed surveyor under the new law without the need for any of the pre-licensing formalities prescribed by the new law. Consequently, the appellant (being a Surveyor of Land commissioned under the old law) is a licensed surveyor under the Land Surveyors Act No.15 of 1975.

I would therefore allow the appeal against the judgment in so far as it denied the appellant of his status as a licensed surveyor. There will be no order as to costs.

(Sgd.) V.F.Floissac, Q.C.
Chief Justice

I concur.

(Sgd.) Dennis Byron
Justice of Appeal

I concur.

(Sgd.) Monica Joseph
Justice of Appeal, (Ag.)