

It is to be noted that no question was put to the plaintiff with regard to the production of such a statement, and I hold that the inclusion of a statement in the written pleading is sufficient for the purposes of the section. The question therefore to be determined is whether the particulars set out in the statement of claim fulfil the requirements of the section. The statement of claim is not in the form given in the schedule to the Ordinance, but that is immaterial, provided it contains the information required by s. 18 (1) of the Ordinance.<sup>1</sup>

The statement of claim sets out the particulars required by paragraphs (a), (b) and (c): as regards (d) it is true that it does not include an express admission that no further sum beyond that claimed in the writ is due upon the promissory note; nevertheless it is clear from the statement of claim that the plaintiff is suing for the whole amount due in respect of principal and interest, and I hold therefore that it fulfils the requirements of s. 18.

As to the claim upon the promissory note dated 22nd August 1940, therefore, the plaintiff is entitled to succeed.

The promissory note dated 17th February 1941 was made in favour of the plaintiff. The defence in respect of this note is that the sum of £5 was paid to the plaintiff on the 27th March 1943; and that the balance due, namely 13s. 8d., has been paid into Court.

The defendant has produced a receipt for the sum of £5 bearing on its face the words "on a/c P/Note" and I hold that this defeats the plaintiff's allegation that the receipt was actually given in respect of a different debt. As regards the note dated 17th February 1941, the plaintiff's claim to that extent fails.

Judgment will be entered for the plaintiff's for £50 6s. 11d., in respect of promissory note No. 306, and for 12s. and interest in respect of promissory note No. 116407; such interest to run from 27th March, 1941. The defendant will pay the costs of the action.

## NUKHAI & ORS v. ATTORNEY-GENERAL.

[Civil Jurisdiction (Corrie, C.J.) September 29, 1942; September 14, 1944.]

*Right of resumption of land without compensation reserved by Crown Grant—whether void as contrary to the rule against perpetuities—effect as regards registered proprietors (by subsequent transfers) of portion of the land in the Grant—whether void as an exception by the rule in Horneby v. Clifton—whether registerable—whether binding in equity—effect of cancellation of Crown Grant—whether restriction as to proportion of land in Crown Grant operates as to proportion of land owned by a transferee of part only of land comprised to Grant—road constructed before act of resumption—whether resumption invalid—what formalities are required—authority of District Commissioner to waive right of resumption questioned.*

<sup>1</sup> Vide Cap. 185 s. 19.

The petitioners were registered proprietors of land portion of which the Crown purported to resume for the purposes of constructing a public road at Vatia Point. The land originally formed part of a Crown Grant which reserved to the Crown the right to resume up to one twentieth part of the land comprised in the Grant for such purpose without compensation. On the face of the certificate of title held by the petitioners was a reference to the "provisions and reservations" contained in the Crown Grant. Registration of the Crown Grant itself had been cancelled in compliance with s. 43 of the Real Property Ordinance.

The steps taken on behalf of the Crown towards constructing the road and resuming the land for that purpose were in the following sequence :—

- (a) (1938) Survey commenced.
- (b) (1939) Road completed.
- (c) (23rd November 1939) Proclamation of public road.
- (d) (19th September 1939) Notice of resumption signed by Director of Lands served on petitioners.
- (e) Memorial of resumption registered.

The petitioners gave evidence that they were informed by the District Commissioner that they would be compensated. The petitioners prayed a declaration that the notice (e) was ineffectual and that they could not be divested of title other than by "appropriate procedure pursuant to the provisions of Part I of the 'Crown Acquisition of Lands Ordinance, 1878'" and upon terms of reasonable compensation.

In these proceedings an important issue was determined as a preliminary question of law upon the Attorney-General taking out a summons to raise the question whether on the 1st day of June 1938 (an arbitrary date prior to any disturbance of the petitioners occupation) the Crown was legally entitled to resume without compensation the portion of petitioners' land in question.

**HELD.**—(1) The rule against perpetuities does not apply to a Crown Grant made in the Colony in 1884.

(2) The reservation of a right to resume land in a Crown Grant is not an exception within the rule in *Horneby v. Clifton*.

(3) Even if the provisions of the Crown Grant are not registerable on the registered proprietor's title in law they are, in so far as they are still in force, binding upon the registered proprietor in equity.

(4) The effect of a reference on the face of a certificate of title to the provisions and reservations contained in the Crown Grant is to incorporate those provisions and reservation in the certificate of title and render them binding upon the registered proprietor, notwithstanding that registration of the Crown Grant has been cancelled.

(5) Where the right of resumption is limited to not more than one twentieth part of the land comprised in a Crown Grant this may be exercised notwithstanding that it involves resumption of more than one twentieth of a portion of the land comprised in the certificate of title of a transferee of part only of the land comprised in the Grant.

(6) There are no formalities prescribed or required for the exercise of the right of resumption by the Crown, nor is any document under seal required.

(7) None of the following acts by or on behalf of the Crown constitutes the act of resumption :—

- (a) Proclamation of a public road.
- (b) Entry on the land.
- (c) Registration of a memorial of assumption.

(8) Resumption is not invalid because made after completion of the road for which the land is resumed.

Points (1) to (5) were held in the judgment on a preliminary question of law delivered on 29th September, 1942 and the remainder in the final judgment delivered on 14th September, 1944.

[**EDITORIAL NOTE.**—This decision does not indicate what steps the Crown should take to exercise its right to resume nor does it indicate positively what will be regarded as the act of resumption.]

Cases referred to :—

- (1) *Cooper v. Stuart* [1889] 14 A.C. 286.
- (2) *Horneby v. Clifton* [1567] 73 E. R. 586 ; 17 Dig. 381.
- (3) *R. v. Price* [1904] 24 N.Z.L.R. 291 ; 38 Dig. 753.
- (4) *Winslaw Hall Estates Company v. Glass Bottle Manufacturers Ltd.* [1941] 3 A.E.R. 124.
- (5) *Carltona Ltd. v. Commissioners of Works* [1943] 2 A.E.R. 560.

PETITION OF RIGHT praying for a declaration that resumption of certain land by the Crown was invalid and could be effected only on terms of reasonable compensation.

A preliminary question of law was raised by the Attorney-General and decided by a judgment delivered on 29th September, 1942. Final judgment on the petition was delivered on 14th September, 1944.

The facts are fully set out in the two judgments.

*P. Rice and K. A. Stuart* for the petitioners.

*A. G. Forbes* for the Crown.

On 29th September, 1942 judgment was given on the question of law whether the Crown was legally entitled to resume the land in question on the 1st day of June 1938 without compensation.

CORRIE, C.J.—The petitioners, Nukhai and Ramadhin were registered on the 16th August, 1930, as proprietors of a piece of land containing 20 acres 2 roods in the district of Tavua comprised in certificate of title 5413.

The land formed part of an area 5,000 acres which was granted to Sydney Grandison Watson by Crown Grant 1089 dated the 7th July, 1884.

The Crown Grant contained the following provision :—

“ Provided nevertheless that it shall at all times be lawful for  
“ Us Our Heirs and Successors, or for any person or person acting  
“ by Our of their authority to resume without compensation  
“ any part of the said lands which it may be deemed necessary  
“ to resume for making roads, canals, bridges, towing-paths or  
“ other works of public utility or convenience. So nevertheless  
“ that the lands so to be resumed shall not exceed one twentieth  
“ part of the whole of the lands hereby granted and that no such  
“ resumption shall be made of any land upon which any building

“ may have been erected or which may be in use as gardens or  
“ otherwise for the more convenient occupation of any such build-  
“ ings ”.

After certain intermediate transfers, an area of 290 acres, forming part of the 5,000 acres comprised in the Crown Grant, was transferred on the 11th June, 1925, to Badal in whose name certificate of title 4895 was issued. Upon the face of the certificate immediately above the signature and seal of the Registrar of Titles were the words:—

“ (See certificates of title book 39 folio 3867 and Crown Grant,  
“ register of titles book E folio 1089 with the provisions and  
“ reservations therein contained.) ”

On the 29th April, 1930, the whole of the 290 acres were transferred from Badal to Lilawati, a memorial of the transfer (numbered 2386) being noted upon certificate of title 4895.

On the 16th August, 1930, Lilawati transferred 20 acres 2 roods (being part of the 290 acres comprised in certificate of title 4895) to the petitioners, and certificate of title 5413 was issued in their names. Upon the face of the certificate, immediately above the signature and seal of the Registrar of Titles, were the words:—

“ (See certificates of title book 49 folio 4895 and Crown Grant,  
“ register of titles book E folio 1089 with the provisions and  
“ reservations therein contained.) ”

In 1938 officers of the Government of Fiji entered upon the land comprised in the petitioner's title for the purpose of constructing a public road; and an area of 2 acres 1 rood and 27.3 perches has been included in the road, which is now known as the Vatia Point road, and was proclaimed as such in *Fiji Royal Gazette* No. 64 of 1939.

The question upon which the judgment of this Court is now sought is:—

“ Whether by virtue of the reservation in the Crown Grant 1089  
“ the Crown was on the 1st day of June 1938 legally entitled to  
“ resume without compensation a portion of the petitioners land  
“ comprising an area of 2 acres 1 rood 27.3 perches included in  
“ certificate of title 5413.”

The first question that arises is whether the proviso in the Crown Grant, reserving the right to resume without compensation part of the land comprised in the Grant, is void as being contrary to the rule against perpetuities.

The leading case upon this question is *Cooper v. Stuart*, 14 Appeal Cases, page 286, decided in 1889. The facts in that case were that on the 27th May, 1823, the Governor-in-Chief of New South Wales made a Grant to William Hutchinson, his heirs and assigns of 1,400 acres of land in that Colony, reserving to His Majesty, his heirs and successors (*inter alia*) “ such parts of the said land as are now or shall hereafter be required by the proper officer of His Majesty's Government for a highway or highways; and further, any quantity of water, and any quantity of land, not exceeding ten acres, in any part of the said grant as may be required for public purposes.” In an appeal from the Supreme Court of New South Wales to the Judicial Committee of the Privy Council, the successor in title of William Hutchinson sought



a declaration that the reservation to the Crown to resume any quantity of land not exceeding ten acres was void on the ground (*inter alia*) that it violated the rule against perpetuities. The Judicial Committee in their judgment held at page 294 that :—

“ Assuming the Crown to be affected by the rule against perpetuities in England, it was nevertheless inapplicable, in the year 1823, to Crown Grants of land in the Colony of New South Wales, or to reservations of defeasances in such Grants to take effect on some contingency more or less remote, and only when necessary for the public good.”

In applying the principle of that judgment to Fiji, one point must be noted. In *Cooper v. Stuart* the Judicial Committee observed at page 292 that :—

“ Their Lordships have not been referred to any Act or Ordinance declaring that the laws of England, or any portion of them, are applicable to New South Wales.”

That is not the position in Fiji. S. 31 of the Supreme Court Ordinance 1875 (Ordinance 4 of 1875)<sup>1</sup> provides that :—

“ The common Law the Rules of Equity and the Statutes of general application which were in force in England at the date when the Colony obtained a local legislature that is to say on the second day of January 1875 shall be in force within the Colony subject to the provisions of s. 33 of this Ordinance.”

S. 33 provides that :—

“ All Imperial Laws extended to the Colony by this or any future Ordinance shall be in force therein so far only as the circumstances of the Colony and its inhabitants and the limits of the Colonial jurisdiction permit.”

In considering the effect to be given to s. 33, a passage (at page 293 and 294) of the judgment in *Cooper v. Stuart* is highly relevant : it reads :—

“ Assuming next (but for the purposes of this argument only) that the rule (against perpetuities) has, in England, been extended to the Crown, its suitability, when so applied, to the necessities of a young Colony raises a very different question.

“ The object of the Government, in giving off public lands to settlers, is not so much to dispose of the land to pecuniary profit as to attract other colonists. It is simply impossible to foresee what land will be required for public uses before the immigrants arrive who are to constitute the public. Their prospective wants can only be provided for in two ways, either by reserving from settlement portions of land, which may prove to be useless for the purpose for which they are reserved, or by making Grants of land in settlement, retaining the right to resume such parts as may be found necessary for the uses of an increased population. To adopt the first of these methods might tend to defeat the very objects which it is the duty of a Colonial Governor to promote ; and a rule which rests on considerations of public policy cannot be said to be reasonably applied when its application may probably lead to that result.”

<sup>1</sup> Revised Edition Cap. 2.

This passage appears to apply very closely to the circumstances of Fiji at the time when the Crown Grant of 1884 was made, that is to say within ten years of the establishment of the Colony. I hold that the principle upon which the judgment in *Cooper v. Stuart* is based is applicable to Fiji; and without discussing the question whether the rule against perpetuities does or does not bind the Crown in England, I hold that it does not apply to a Crown Grant made in this Colony in 1884.

The petitioners have put forward another ground upon which they argue that the proviso in the Crown Grant must be held to be void, namely, that it affects the whole of the land included in the Grant, and is therefore contrary to the rule in *Horneby v. Clifton*, 73 English Reports, page 586. The same objection however was taken in *Cooper v. Stuart* and was dismissed by the Judicial Committee on the ground that the rule in *Horneby v. Clifton* applies only to an exception which takes effect immediately and not to a reservation which, as their Lordships said :—

“ Looks to the future and possibly to a remote future. It might  
“ never come into operation and when put in force it takes effect  
“ in defeasance of the estate previously granted, but not as an  
“ exception.”

This objection therefore fails.

The next point put forward by the petitioners arises upon the wording of the Real Property Ordinance 1876 (Ordinance 6 of 1876), which remained in force until its repeal by the Land (Transfer and Registration) Ordinance, 1933,<sup>1</sup> and thus governed both the registration of the Crown Grant and the issue of the petitioners' certificate of title. Ss. 13 and 14 of the Real Property Ordinance are in the following terms :—

“ When lands contained in a Crown Grant have been transferred  
“ or transmitted in manner hereinafter provided for the Registrar  
“ shall issue in duplicate a certificate of title in favour of the new  
“ proprietor in the form contained in Schedule A hereto annexed  
“ one duplicate of which he shall register in the same manner as  
“ hereinafter provided for Crown Grants and the other shall deliver  
“ to the new proprietor and in like manner a fresh certificate of  
“ title shall be issued at every fresh transfer or transmission and  
“ the previous certificates of title shall be held as cancelled and  
“ the title of the proprietor under each fresh certificate shall be  
“ as valid and effectual in every respect as if he had been the  
“ original grantee in the Crown Grant of the land contained in the  
“ certificate.”

“ The duplicate certificate of title issued by the Registrar upon  
“ a genuine transfer shall be taken by all courts of law as con-  
“ clusive evidence that the person named therein as proprietor of  
“ the land is the absolute and indefeasible owner thereof and the  
“ title of such proprietor shall not be subject to challenge except on  
“ the ground of fraud or misrepresentation to which he shall have  
“ been proved to be a party or on the ground of adverse possession  
“ in another for the prescriptive period.”

<sup>1</sup> Revised Edition Cap. 120.

The form of certificate of title set out in Schedule A to the Ordinance is :—

“ Fiji.

(ROYAL ARMS).

“ Register vol. , folio.

“ A.B. of [here insert description, and if certificate be issued pursuant to any transfer, reference to transfer] is now proprietor, subject nevertheless to such mortgages and encumbrances as are notified by memorial underwritten or indorsed hereon of that piece of land known as containing [here insert area] be the same a little more or less and situated in the district of and (where the land does not consist of a whole island) delineated and described in the plan and description in the margin hereof (or on the reverse hereof) being (part of) the land originally included in Crown Grant registered in Register of Titles Vol. , Folio .

“ In witness whereof I have hereunto signed my name and affixed my seal.

“ Registrar of Titles (L.S.)

“ (Indorse memorial of mortgages and encumbrances.)”

The term “ encumbrance ” is defined in s. 2 of the Ordinance in the following manner :—

“ In the construction and for the purposes of this Ordinance and in all the instruments purporting to be made or executed in pursuance thereof the following terms shall (if not inconsistent with the context and subject matter) bear the respective meanings set against them :—

“ Encumbrance ” any charge on land created for the purpose of securing the payment of an annuity or sum of money other than a debt and all life-rent interests and other provisions affecting land ;”

The petitioners argue that in this definition the words—“ other provisions affecting land ”—must be construed *ejusdem generis*, and hence that a reservation of the right to resume a portion of the land granted cannot be included among the encumbrances which may be registered under the Ordinance. They further argue that as, in virtue of the terms of the certificate of title and of s. 14, the registered proprietor is the absolute and indefeasible owner of the land comprised in the certificate of title, subject only to the registered mortgages and encumbrances, it follows that a reservation such as the Crown now seeks enforce cannot override their title as registered proprietors.

In support of this argument the petitioners rely upon the judgment of the Court of Appeal of New Zealand in the *King v. Price* (24 N.Z. LR, page 191). The petitioners also say that the words :—

“ (See certificate of title book 49 and Crown Grant register of titles book E folio 1089 with the provisions and reservations therein contained)”

on the face of the certificate of title are merely the reference to the original Grant required to be made by the Registrar under s. 44 of the Real Property Ordinance, and do not affect their title as registered proprietors.

In considering this submission of the petitioners it must be noted that the only provisions affecting land specifically mentioned in the definition of encumbrances in s. 2 of the Ordinance are charges to secure the payment of money and "life-rent interests". The latter is not a term of English law, but is apparently taken from the law of Scotland; it must be understood to mean what are known in English law as estates for life; and these clearly are not *ejusdem generis* with a charge created to secure the payment of money.

Again, the Ordinance must be read as a whole, and it was clearly the intention of the Ordinance that, while equitable interests were kept off the register, all legal rights and interests affecting the land should be noted on the register. It follows that there should be on the face of the certificate of title a reference to any provision affecting the registered proprietor's title to the land in law, even though such provision were not *ejusdem generis* with either a charge upon land to secure money or a life estate.

But even if the provisions in question were not registerable in law, it does not follow that they do not bind the petitioners in equity. S. 117 of the Real Property Ordinance declares that :—

"Nothing contained in this Ordinance shall take away or affect  
"the jurisdiction of the Courts of Law . . . over equitable  
"interests generally."

The petitioners had express notice of the provisions of the Crown Grant as affecting the title of their transferor, Lilawati: and they have themselves been given a certificate of title which contains express reference to these provisions. The petitioners therefore stand in a different position from the registered owners in the *King v. Price*, upon which they rely, as in that case the certificate of title was issued without any reference to the restriction upon alienation contained in the original Crown Grant of the land. I hold that in equity the provisions of Crown Grant 1089, in-so-far-as they are still in force, are binding upon the petitioners.

The petitioners however argue that as the registration of the Crown Grant in the register of titles is marked as cancelled, the provisions contained in the Grant must be held to be no longer in force. Registration of the Grant was cancelled in compliance with s. 43 of the Real Property Ordinance. The effect of cancellation under that section is that the instrument cancelled ceases to be in force as evidence of the title of the proprietor named therein; but it does not follow that provisions and reservations set out in the Crown Grant cannot be incorporated by reference into a certificate of title issued to the transferee of the land: and I hold that the effect of the reference to the "provisions and reservations" contained in the Crown grant, which appears on the face of the petitioners' certificate of title, as well as upon that of the transferor to the petitioners, was to incorporate in those certificates of title, by reference, the provisions and reservations in the Crown Grant, and to render them binding upon the petitioners.

For these reasons I hold that the Crown was, on the 1st June 1938, entitled to exercise with regard to the land of which the petitioners were the registered proprietors, the right of resumption reserved in the Crown Grant, 1089.



There is finally the question whether such right can be exercised with respect to more than one-twentieth of the land comprised in the petitioners' certificate of title.

To this question the answer is to be found in the wording of the reservation :—

“ To resume without compensation any part of the said lands  
“ (i.e. of the lands comprised in the Crown Grant) which it may be  
“ deemed necessary to resume for making roads . . . So  
“ nevertheless that the lands so resumed shall not exceed one  
“ twentieth part of the whole of the lands hereby granted.”

and there is no provision which restricts the exercise of this right in favour of a transferee of part only of the lands comprised in the Grant.

After argument on the remaining issues final judgment was given on 14th September, 1944 as follows :—

CORRIE, C.J.—By the judgment of this Court given on the 19th September, 1942, it was held that the Crown was, on the 1st day of June 1938 entitled to exercise, in respect of the land of which the petitioners were the registered proprietors, the right of resumption reserved in the Crown Grant numbered 1089.

Two further questions remain to be determined. In the first place, the petitioners maintain that the Crown has waived its right to resume any part of the land without payment. In support of this argument evidence was given by the petitioner, Nukhai, to the effect that he was informed by the District Commissioner upon several occasions that he would be paid compensation for his freehold land taken for the road.

We have not the District Commissioner's evidence, but accepting the petitioner's statement as correct, it cannot be held that the Crown has waived its rights. In the first place, there is nothing to show that the District Commissioner had any authority to waive the rights of the Crown or to make any statement binding upon the Crown with regard to payment for the land. And further, it is clear that a mere statement of an intention not to exercise a right is not effectual unless made with consideration.

The petitioners argue that there was consideration in the fact that the petitioners refrained from blocking up the part of the road which crossed their land ; but I am quite unable to see how, in refraining from so acting, the petitioners can be regarded as having given consideration for a waiver.

The other question raised by the petitioners is that, as they maintain, the rights to resume was never duly exercised.

The various steps that were taken on behalf of the Crown have been set out in the petition. The survey was begun in 1938 ; a road was constructed over part of the petitioners' land and was completed in 1939 ; and, by proclamation dated the 23rd November, 1939, published in the *Fiji Royal Gazette*, No. 64 of 1939, at page 534, the road was proclaimed a public road. A notice of resumption dated the 12th September, 1940, was served upon the petitioners on the 19th September, 1940 ; and finally, a memorial of resumption was registered in the Land Registry, in accordance with s. 172 of the Land (Transfer and Registration) Ordinance, 1933.

On behalf of the Crown, it is argued that no formal act of resumption is necessary, and that entry upon the land, followed by registration of a memorial, was all that was required for a valid exercise of the Crown's right of resume. In support of this argument, the judgments *in re, Winslow Hall Estates Company v. Glass Bottle Manufacturers* (4) and *Carltona Ltd. v. Commissioners of Works* (5) have been cited.

It is to be noted, however, that the cases cited for the Crown both arise out of temporary occupation of land under defence regulations; that is clearly a totally different matter from the present where what is involved is not a temporary occupation but permanent acquisition of title.

In the present case there was nothing in the fact that the Crown's servants entered upon the land and began work upon the road from which it could be inferred that such entry was made by virtue of the Crown's right of resumption. It might equally have been made in accordance with an intention to acquire the area taken for the road under the Crown Acquisition of Lands Ordinance, 1940. The entry might even have been made in reliance upon powers exercisable under the Defence Regulations. I am unable, therefore, to hold that entry upon the land, in the circumstances in which it was made, constituted a valid exercise of the right to resume.

The proclamation issued on the 23rd November, 1939, and published in the Gazette No. 64 on the following day, declared the road to Vatia Wharf to be a public road for the purposes of the Roads Ordinance 1914. It purported to be made in exercise of powers conferred by s. 10 of that Ordinance, and there was nothing in the proclamation to suggest that the Crown was resuming ownership of the land over which such road passed by virtue of its right under the Crown Grant, or, indeed, that it was acquiring ownership of the land at all. Clearly, therefore, the Crown cannot rely upon the proclamation as an act of resumption.

Nor can the registration of a memorial under s. 172 of the Land (Transfer and Registration) Ordinance be relied upon as an exercise of the right to resume. The opening words of the section are; "When land has been resumed for public purposes the Commissioners of Lands shall file with the Registrar a notice of resumption". Clearly the section contemplates that the act of resumption shall have taken place before a notice is filed.

There remains only to be considered the document dated the 12th September, 1940. That document recites the Crown Grant, the reservation of a right of resumption and the necessity for making a public road, and then continues: "Take notice that in accordance with the proviso above mentioned we have this day resumed for the aforesaid purpose all that portion of the said land so granted by us as aforesaid as is herein particularly described . . ." There follows a description of the parcels and a plan showing the land resumed. The document concludes: "Witness the Honourable Frederick Raymond Charlton Director of Lands in and for our Colony of Fiji this 12th day of September, 1940.

(Sgd.) F. R. CHARLTON,  
*Director of Lands."*

The petitioners argue that the document cannot effect a resumption of the land by the Crown because it is not under seal.

The document, however, does not purport to be a formal resumption of the land : it is merely notice of the fact that the Crown has exercised its right to resume.

No formalities for the exercise of the right of resumption by the Crown are prescribed either by the law of the Colony or under the terms of Crown Grant No. 1089 ; all that is prescribed by law is a means whereby, under s. 172 of the Land (Transfer and Registration) Ordinance, 1933, the Crown after exercising its right to resume, is enabled to have its title to the land resumed registered in the Land Registry.

The attention of the Court has been drawn to the fact that in the case of the resumption of land in New South Wales which gave rise to the judgment in *Cooper v. Stuart*, resumption was effect by a proclamation of the Governor. Between that case and the present, however, there is one clear distinction, namely that the resumption which gave rise to *Cooper v. Stuart* took place before the introduction into New South Wales of a system of registration of title. Such a proclamation, therefore, might well be required to revest the whole legal and equitable title to the land in the Crown. In Fiji, however, where registration of title is in force, declaration of resumption, even if under the public seal of the Colony, would, as it seems to me, operate only to vest in the Crown the equitable title to the land, and would leave the legal estate outstanding in the petitioners until registration of a memorial under s. 172 of the Land (Transfer and Registration) Ordinance, 1933. The notice dated the 12th September, 1940, specifies the date of resumption and the exact extent of the land resumed. It is authenticated by the signature of the officer in whose name the title to freehold land in respect of which a Crown Grant has been issued is, under s. 2 of the Crown Lands Ordinance, 1888 (as now amended), to be taken when such land is acquired by the Crown.

It follows that it is not open to the petitioners to argue that there was any lack of formality in the exercise of the right to resume.

A further objection has been put forward by the petitioners. They say that at the date of the notice, namely the 12th September, 1940, the construction of the road had been completed and that it follows that it could not be deemed necessary that a portion of the land should be resumed for the purpose of making a public road thereon.

I can see no force in this argument. Making a public road obviously involves its maintenance as a road, and it cannot be held that, because work on the road had been begun and the road actually completed before the actual resumption, such resumption was invalid.

There remains only a question of date. For the purpose of this petition, the date of exercise of the Crown's right was fixed as the 1st June, 1938, and it was with respect to that date that the judgment of this Court of the 29th September, 1942, was given. Clearly, nothing that occurred between the 1st June 1938 and the 12th September 1940 would in any way interfere with the Crown's right to resume on the latter date under the reservation in Crown Grant No. 1089.

The action is therefore dismissed.

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