

the purpose of passing personal estate could not include property which apart from its words would be real estate.

Bennett J. had decided that section 75 (5) did not effect a conversion because the alteration of the law of devolution of realty on intestacy by the Administration of Estates Act, 1925, prevented the sub-section from operating to change the course of devolution of personal estate, which was, according to the learned judge, the basis of the opinions expressed in *Re Twopeny's Settlement* (*supra*) on section 22 (5) of the Act of 1882. Sir Wilfrid Greene said that this view was based upon a misapprehension of the effect of the Administration of Estates Act, which, far from abolishing the distinction between realty and personalty for any purpose, merely provided for devolution of realty on intestacy to persons different from those entitled under the law previously in force.

As the word 'land' in section 75 (5) has to be construed in relation to the facts of each case, it is submitted that the decision would have been different if the investments in the present case had been purchased with the proceeds of the sale of settled leaseholds: see *Re Grassi* [1905] 1 Ch. 584.

M. E. B.

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CONSTITUTIONAL LAW—COLONY ACQUIRED BY VOLUNTARY CESSION—GRANT OF REPRESENTATIVE INSTITUTIONS TO COLONY BY LETTERS PATENT—CROWN'S PREROGATIVE TO LEGISLATE THEREAFTER HELD TO BE RESERVED.

*Sammut v. Strickland.* [1938] A. C. 678.

THIS case arose out of a claim by X, the respondent, for a refund of 3s. 9d. paid under protest as duty on articles imported into Malta, on the ground that it had been exacted under an invalid Ordinance. The Court of first instance in Malta decided against her, but this was reversed by the Malta Court of Appeal, and Y, the customs official, appealed to the Judicial Committee of the Privy Council.

In 1921 Malta was given by letters patent representative assemblies with power to legislate on local matters, more important affairs of Imperial interest being reserved to the Crown. One of the provisions of the Malta (Letters Patent) Act, 1936, was that the letters patent of 1921 were to be considered revocable. Accordingly by a new set of letters patent dated August 12, 1936, they were revoked, and the Governor was given power to make laws 'for the peace, order and good government of Malta', under which provision there was enacted the Temporary Additional Duties Ordinance No. 27 of 1936, whose validity was now disputed.

X claimed, first, that as Malta was acquired by the British Crown by voluntary cession and the will of the inhabitants, and not by conquest or forcible cession, the Crown never had a prerogative right to legislate. The Lord Chancellor in delivering their Lordships' opinion denied that any distinction could be drawn for this purpose between territory acquired by voluntary cession and territory acquired by other forms of cession. In any event, the Common Law doctrine, which laid down that the Crown's prerogative right to legislate for territories acquired by conquest or cession had no existence where territory was acquired by settlement, was founded

upon the view that settlers of British nationality took their own law with them, and this could have no application to Malta.

Alternatively it was argued on the authority of *Campbell v. Hall* (1774) 1 Cowp. 204 that the effect of the grant of representative institutions in 1921 was to extinguish the Crown's prerogative power to legislate except in matters where it was specifically reserved, and that no revocation of the letters patent making the original grant could revive this power in the Crown. On this point it was held that the rule in *Campbell v. Hall* was that where there had been a grant of representative institutions and a concurrent power to legislate had not been reserved there could be no legislation while those institutions continued to exist. In the present case there was no attempt at concurrent legislation in matters which were not specifically reserved for it was not disputed that the grants made by the letters patent of 1921 had been lawfully revoked, and hence this case could not be brought under the rule. With regard to the contention that it was usual in instruments granting representative institutions to reserve to the Crown power to legislate as if the grant had not been made, and that if this reservation was not inserted the power ceased to exist except where it was reserved on special matters, their Lordships believed that this also applied to concurrent legislation and had no relevance when the grant had been validly revoked. Hence the letters patent of August 12, 1936, were valid, the Ordinance made under them was enforceable, and their Lordships advised that the appeal should be allowed.

The attempt to place territory acquired by voluntary cession on a special footing is supported by little direct authority. The second point, however, as was remarked in the case, is not one which has been considered in the text-books, and such statements as that in Keir and Lawson, *Cases in Constitutional Law*, p. 408, 'once a legislature has been granted to a conquered colony, the power of the Crown to legislate by prerogative is irrevocably taken away', must now be read to mean that this is so only during the existence of the colonial Legislature.

R. R. P.

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CONTRACT—FRUSTRATION—LONG INTERRUPTION OF PERFORMANCE OF CONTRACT, WHICH IN EFFECT MAKES IT A DIFFERENT CONTRACT—EVENT CAUSING DESTRUCTION IN CONTEMPLATION OF PARTIES—CONTRACT VOID FOR FRUSTRATION.

*W. J. Tatem, Ltd. v. Gamboa.* [1939] 1 K. B. 132.

THE Spanish Republican Government, acting through its agent Gamboa, chartered the S.S. *Molton* from the plaintiffs for thirty days commencing July 1, 1937, for carrying refugees from North Spain to French Bay ports. On July 14 the *Molton* was seized by a Nationalist ship and taken to Bilbao. She was kept there in custody until September 7, when she was released and proceeded to Bordeaux, where she was re-delivered to the owners on September 11. The hire rate of £250 a day was paid for a month in advance, and the owners now claimed hire for the period from August 1 to September 11, as it was stipulated in the charterparty that the £250 a day should be paid until the ship was re-delivered to the owners. The defendant denied liability on the ground that the adventure had been frustrated by seizure of the ship.