

IN THE PRIVY COUNCIL

of 1977  
No. 8 of 1975

ON APPEAL

FROM THE COURT OF APPEAL OF THE BAHAMA ISLANDS

B E T W E E N :

KENNETH MCKINNEY HIGGS and

ERIC ALLIDAY HIGGS

Substituted for Clotilda Eugenia  
Higgs deceased (Plaintiff)

Appellants

- and -

CAVES COMPANY LIMITED (Defendant)

Respondent

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RECORD OF PROCEEDINGS

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*Philip Conway Thomas & Co.,*  
*61 Gutter Lane, Place*  
~~WILSON FREEMAN,~~  
~~67 Westminster Palace Gardens,~~  
London, SW1E 6HB  
Solicitors for the Appellants

STEPHENSON HARWOOD & TATHAM,  
Saddlers Hall, Gutter Lane,  
London EC2V 6BS.

Solicitors for the Respondent

ON APPEAL

FROM THE COURT OF APPEAL OF THE BAHAMA ISLANDS

B E T W E E N :

KENNETH MCKINNEY HIGGS and

ERIC ALLIDAY HIGGS

Substituted for Clotilda Eugenia  
Higgs deceased (Plaintiff)

Appellants

- and -

CAVES COMPANY LIMITED (Defendant)

Respondent

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RECORD OF PROCEEDINGS

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DOCUMENT TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT REPRODUCED

Description of Document	Date
<u>In the Court of Appeal</u>	
Order granting Conditional Leave to Appeal to Her Majesty in Council	20th December 1974

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L  
FROM THE COURT OF APPEAL OF THE BAHAMA ISLANDS

B E T W E E N :

KENNETH McKINNEY HIGGS

and ERIC ALLIDAY HIGGS

Substituted for Clotilda

Eugenia Higgs deceased (Plaintiff)

Appellants

- and -

CAVES COMPANY LIMITED (Defendant)

Respondent

RECORD OF PROCEEDINGS

No. 1

In the Supreme  
Court

WRIT OF SUMMONS

No. 1

THE COMMONWEALTH OF THE BAHAMA ISLANDS  
IN THE SUPREME COURT

1971

Writ of Summons  
29th November  
1971

COMMON LAW SIDE

No. 838

B E T W E E N

CLOTILDA EUGENIA HIGGS

Plaintiff

AND

10

CAVES COMPANY LIMITED

Defendant

ELIZABETH, THE SECOND, by the Grace of God of the  
United Kingdom of Great Britain and Northern Ireland  
and of Our other realms and territories Queen, Head  
of the Commonwealth, Defender of the Faith.

TO :

CAVES COMPANY LIMITED,  
C/O MESSRS. McKINNEY, BANCROFT & HUGHES,  
CHAMBERS,  
SHIRLEY STREET,  
NASSAU, BAHAMAS.

20

In the Supreme Court

No. 1

Writ of Summons  
29th November  
1971  
(continued)

WE COMMAND YOU THAT within eight days after service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of

CLOTILDA EUGENIA HIGGS

And take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS, The Honourable Sir William Gordon Bryce Our Chief Justice of Our Commonwealth the 29th day of November in the year of Our Lord One thousand nine hundred and seventy one

10

REGISTRAR

N.B. This Writ is to be served within twelve calendar months from the date thereof, or if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may enter appearance personally or by Attorney either by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court, Public Square in the City of Nassau in the Island of New Providence, Bahama Islands, or by sending them to that office by post.

20

THE PLAINTIFF'S CLAIM IS FOR :

1. An order that the certificates of title and relative Orders made thereunder in Supreme Court Action Number 62 of 1965 issued to and made in favour of the Defendant on 17th August, 1965, 28th March, 1966, 5th April, 1966 and 6th April, 1966 be set aside under the provisions of Section 27 of the Quieting Titles Act 1959 or alternatively,

30

2. A Declaration that the Defendant holds as Trustee for the Plaintiff the whole of the said lands.

3. An Injunction restraining the Defendant, its servants and/or agents from any further dealings with the said lands pending the outcome of this action.

40

4. Such further or other relief as the Court

shall seem just.

In the Supreme Court

5. Costs.

No. 1

Dated the 29th day of November, A.D., 1971.

JAMES M. THOMPSON  
ATTORNEY FOR THE PLAINTIFF

Writ of Summons  
29th November  
1971  
(continued)

This Writ was issued by James Maxwell Thompson of and whose address for service is Frederick Street, Nassau, Bahamas, Attorney for the said Plaintiff who resides at Nassau, Bahamas.

10 This Writ was served by me at MCKINNEY, BANCROFT & HUGHES on the Defendant CAVES CO. LIMITED on Tuesday the 30th day of November A.D., 1971

Indorsed the 30th day of November A.D., 1971

(Signed) Con. H. Smith

(Address) Yellow Elder Gardens  
Blue Hill Road  
Nassau, N.P. Bahamas

No. 2

No. 2

STATEMENT OF CLAIM

Statement of Claim  
16th December  
1971

20 IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMA ISLANDS 1971  
No. 838

COMMON LAW SIDE

B E T W E E N

CLOTILDA EUGENIA HIGGS Plaintiff

And

CAVES COMPANY LIMITED Defendant

1. On the 30th day of January, A.D., 1965, Mr. Clifton Borer an Agent of the Defendant falsely



In the Supreme  
Court

—  
No. 2

Statement of  
Claim

December  
1971  
(continued)

represented to this Honourable Court in Quieting Titles Petition No. 62 of 1965 that the Petitioner alone was in possession of the land the subject matter of the said Petition notwithstanding his personal knowledge to the contrary gained from visits to the said land and the negotiations relative to the subject land held between the parties hereto and their Attorneys during the year 1955 and 1956 wherein it was agreed that the Plaintiff would restrict her activities to that portion of the land situate to the East of Gladstone Road in the Western District of the Island of New Providence aforesaid and the Defendant would be entitled to the quiet enjoyment of the remainder of the said land situate to the West of Gladstone Road aforesaid. It was also known to the deponent that no servant or agent of the Defendant was ever permitted to enter on the subject land by the Plaintiff or her agents for the purpose of exercising any acts of ownership on its behalf.

10

20

2. On the 9th day of AUGUST, A.D., 1965 the Defendant again for purposes of obtaining a Certificate or Certificates of Title from this Honourable Court in the Petition above referred to by their Agent, Paul H. Bethel Esq., intentionally misrepresented to this Honourable Court that the documents produced in support of its claims fully and clearly disclosed all the facts material to its claims and all contracts and dealings which affected its title thereto or any part thereof or gave any rights against it being fully aware of the long occupation of the Plaintiff, the quality and quantity of such occupation, the title documents of the Plaintiff to parts of the subject land submitted to the agents or the Defendant at the meetings held between the parties hereto above referred to and the terms of such agreement, the same subsequently performed and honoured by the parties hereto until the commencement of the Petition by the Defendant above referred to.

30

40

3. The Agents for the Defendant as regards that portion of the subject land situate to the West of Gladstone Road aforesaid had within their knowledge, the fact that the Plaintiff had in her possession documents of title for portions thereof, a number of the same since mislaid or destroyed, yet failed or refused to inform this Honourable Court to that effect.

50

4. The Defendant either fraudelently, knowingly and with intent to deceive or recklessly not caring whether the Court might be deceived or not withheld the above-mentioned material facts from this Honourable Court, such evidence, facts and related matters of material importance so withheld thereby induced this Honourable Court to deliver Judgments and Orders adverse to the Plaintiff.

In the Supreme  
Court

—  
No. 2

Statement of  
Claim  
December  
1971  
(continued)

10 5. Further by the information contained in the Affidavit of the said Paul H. Bethel Esq., dated the 9th day of August, A.D., 1965 the Defendant falsely and intentionally misled this Honourable Court by unduly deducing evidence known to be false, whereby the Defendant acknowledged the presence of the Plaintiff on the subject land but swore that such occupation were acts of trespass by agents of the Plaintiff and the representation that there were no other occupiers on the same when in fact there was knowledge in the agents of the Defendant to the contrary as to the Plaintiff's occupation and the absence of tenants of the Defendant who many years prior to the commencement of the said Petition had been forced by the Plaintiff to vacate the same following a brief occupation thereof.

20

AND THE PLAINTIFF CLAIMS :-

- 30 1. An order that the Certificates of Title relative Orders made thereunder in Supreme Court Action Number 62 of 1965 issued to and made in favour of the Defendant on 17th<sup>m</sup> August, 1965, 28th March, 1966, 5th April, 1966 and 6th April, 1966 be set aside under the provisions of Section 27 of The Quieting Titles Act 1959 or alternatively.
2. A declaration that the Defendant holds as trustee for the Plaintiff the whole of the said lands.
- 40 3. An injunction restraining the Defendant, its servants and/or agents from any further dealings with the said lands pending the outcome of this action.
4. Such further or other relief as the Court shall seem just.

In the Supreme Court

5. Costs.

Dated the 16th day of December, A.D., 1971

No. 2

Statement of Claim  
December 1971  
(continued)

James M. Thompson  
Attorney for the Plaintiff

To : The Defendant  
or its Attorneys,  
Messrs. McKinney, Bancroft & Hughes,  
50 Shirley Street,  
Nassau, Bahamas.

No. 3  
Summons  
4th January 1972

No. 3

10

SUMMONS

COMMONWEALTH OF THE BAHAMA ISLANDS  
IN THE SUPREME COURT  
1971  
No. 838

Common Law Side

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

And

CAVES COMPANY LIMITED Defendant

LET ALL parties concerned attend before His Lordship Mr. Justice Hedworth Cunningham Smith in Chambers in the Supreme Court Building in Nassau on Monday the Twenty fourth day of January, 1972 at 2.45 o'clock in the afternoon on the hearing of an Application on behalf of Defendant for an Order that 20

A. Plaintiff do within fourteen (14) days supply Defendant with further and better Particulars of the following matters contained in the Statement of Claim dated 16th December, 1971. 30

Under paragraph 1

(1) Of the false representation alleged

to have been made by Mr. Clifton Borer on the 30th January, 1965.

In the Supreme Court

(a) In what precise words was such representation made?

—  
No. 3

(2) Of Mr. Borer's alleged contrary knowledge

Summons  
4th January  
1972  
(continued)

(a) What visits did Mr. Borer make to the land with dates, times, and particulars of other parties alleged to have been present, and the area and extent of the land alleged to have been visited on each occasion?

10

(b) What negotiations took place between the parties and their Attorneys in 1955 and 1956 with details of date, time and place of each meeting alleged to have been held, the parties alleged to have attended each such meeting, the matters discussed at each such meeting, any conclusion reached at each such meeting and details of all documents and writings submitted to and arising out of each such meeting?

20

(3) Of the alleged agreement regarding the land to the East of Gladstone Road

(a) the date

(b) the Parties

(c) was the agreement in writing or

(d) oral, and

(e) the exact terms and conditions thereof?

(4) Of the alleged agreement regarding the land to the West of Gladstone Road

(a) the date

(b) the Parties

(c) was the said agreement in writing or

(d) oral, and

(e) the exact terms and conditions thereof?

30

(5) Of the Deponent's alleged knowledge that no servant or agent of Defendant was permitted to

In the Supreme Court

          
No. 3

Summons  
4th January  
1972  
(continued)

enter the subject land

(a) On what occasions, with dates, was any servant or agent of Defendant prevented from entering?

(b) By whom was such servant or agent so prevented?

(c) What other parties were present on each alleged occasion?

(d) What servant or agent was involved on each occasion?

10

(e) What particular area of land was involved on each separate occasion?

(f) The method used to prevent such entry.

Under paragraph 2

(1) As to the misrepresentation alleged to have been made by Paul H. Bethel

(a) What words constituted such alleged misrepresentation?

(2) As to the said Paul H. Bethel's alleged awareness of contrary facts

20

(a) How and in what manner is he alleged to have been aware of Plaintiff's long occupation?

(b) Of the quality and quantity of such occupation

(c) What title documents are alleged to have been produced with particulars of dates parties and details of recording?

(d) Description of land alleged to have been dealt with in each conveyance

30

(e) At what meetings were such documents alleged to have been produced with details of dates and persons present?

(3) Details of acts alleged to have been done in performance of alleged agreement with dates, places and parties involved in

each separate act.

In the Supreme Court

Under paragraph 3.

No. 3

(1) As to the allegation that Agents for the Defendant as to land situate West of Gladstone Road knew of certain title deeds

Summons  
4th January  
1972  
(continued)

(a) Who are the Agents referred to?

(b) How and in what manner is it alleged that such agents acquired such knowledge?

10

(c) What title deeds are referred to with particulars of dates parties and details of recording?

(d) What lands are alleged to have been conveyed or referred to in each Deed?

(e) What deeds have since been mislaid or destroyed with details of surrounding circumstances ?

20

(f) In what manner is it alleged that such mislaying or destruction should have come within the knowledge of the Defendant's agents?

Under paragraph 4

(1) Having regard to the fact that the said matter was tried in open court, details of the grounds on which Plaintiff alleges that the court was deceived or could have been deceived.

Under paragraph 5

(1) As to the allegation that Paul Henry Bethel knew to be false his statement that Plaintiff's occupation was an act of trespass

30

(a) In what manner is it alleged that he acquired or should have acquired contrary knowledge?

(b) What Tenants of Defendant had occupied the subject lands?

(c) For what period had such tenants occupied?

In the Supreme Court

          
No. 3

Summons  
4th January  
1972  
(continued)

(d) What part or parts of the subject land were occupied by each such tenant?

(e) Who on Plaintiff's behalf forced each such tenant to leave and on what date did each such tenant leave the land?

(f) By what method was each such tenant induced to leave?

B. That the time for service of the Defence herein be extended for Fourteen (14) days after the service of the said Particulars.

10

C. That all further proceedings be stayed until service of the said Particulars.

D. That the costs of this application be costs in the cause.

DATED the Fourth day of January, 1972.

Sgd: Illegible  
REGISTRAR

This Summons was taken out by McKinney, Bancroft & Hughes, Chambers, 50 Shirley Street, Nassau, Bahamas

20

Attorneys for Defendant.

TO the Plaintiff, Clotilda Eugenia Higgs

AND TO Her Attorney, James M. Thompson, Esq., Chambers, Frederick Street, Nassau, Bahamas.

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11.

No. 4

In the Supreme  
Court

SUMMONS FOR JUDGMENT IN DEFAULT

THE COMMONWEALTH OF THE BAHAMA ISLANDS      1971  
IN THE SUPREME COURT      No.838  
COMMON LAW SIDE

—  
No. 4

Summons for  
Judgment in  
default  
6th January  
1972

BETWEEN

CLOTILDA EUGENIA HIGGS      Plaintiff

AND

CAVES COMPANY LIMITED      Defendant

10      LET ALL PARTIES concerned attend the Registrar  
of the Supreme Court in Chambers at the Law Courts<sup>m</sup>  
Building, Public Square in the City of Nassau on  
Thursday the 13th day of January, A.D., 1972, at  
10.00 o'clock in the forenoon, on the hearing of an  
application on the part of the Plaintiff for an  
order that no defence having been served by the  
Defendant herein judgment be entered for the  
Plaintiff against the Defendant for :

20      1. An Order that the Certificate of Title  
relative to Orders made thereunder in Supreme  
Court Action Number 62 of 1965 issued to and  
made in favour of the Defendant on 17th August  
1965, 28th March, 1966, 5th April 1966 and 6th  
April, 1966 be set aside under the provisions  
of Section 27 of the Quieting Titles Act 1959  
or alternatively

2. A declaration that the Defendant holds as  
trustee for the Plaintiff the whole of the said  
lands.

30      3. Such further or other relief as the Court  
shall deem just.

4. Costs.

and that the costs of this application be taxed and  
paid by the Defendant.

Dated the 6th day of January, A.D., 1972.

Sgd:  
REGISTRAR



In the Supreme Court

No. 5

RULING

No. 5

BAHAMA ISLANDS  
SUPREME COURT

1971

Ruling  
28th February  
1972

No.838

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS

Plaintiff

AND

CAVES COMPANY LIMITED

Defendant

10

H.C. Smith, J:

In this case the defendant company was served with a Writ of Summons on 30th November 1971. A defence was not filed by the prescribed time - instead the defendant's attorney, after a request to the plaintiff's attorney for particulars of the claim and an extension of time for lodging a defence had been refused, filed a Summons asking the Court to make an order for particulars and for due extension of time within which to file a defence.

20

There is nothing wrong about this procedure - if the circumstances of the case warrants it.

The present action is to set aside a Certificate of Title granted by the Supreme Court in Action 62 of 1965 on grounds of fraud and misrepresentation. These are serious allegations. The rule of practice is that any charge of fraud or misrepresentation must be pleaded with the utmost particularity. The Statement of Claim can hardly be said to measure up to that standard.

30

A Certificate of Title to certain land was granted to the defendant after a full hearing in Court, the plaintiff being represented by counsel. Now, some six or seven years later, comes this action to set aside the judgment in that case on the grounds that it was obtained by fraud. The allegations as generally indicated in the Statement of Claim must have been known to the plaintiff at the time of the

40

hearing.

It is in order, in the circumstances of this case, for the defendant to ask for the particulars as set out in his Summons. The defendant is not endeavouring to find out the "evidence" upon which the plaintiff bases her case, as the plaintiff's attorney contends. The defendant is only seeking "particulars", the proof of which and the method of proof remains in the plaintiff's own hands.

10

I make an order, therefore, in terms of the plaintiff's Summons - that further and better particulars be supplied within fourteen days and that the time for filing a defence be extended to fourteen days, from the date the particulars are supplied.

H.C. Smith, J:  
28th February, 1972.

In the Supreme  
Court

—  
No. 5

Ruling  
28th February  
1972  
(continued)

No. 6

ORDER

COMMONWEALTH OF THE BAHAMA ISLANDS

1971

IN THE SUPREME COURT

No. 838

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS

Plaintiff

AND

CAVES COMPANY LIMITED

Defendant

UPON HEARING Mr. James Liddell of Counsel for the Defendant and Mr. James M. Thompson of Counsel for the Plaintiff IT IS HEREBY ORDERED as follows :

30

A. That the Plaintiff do within fourteen (14) days supply the Defendant with further and better Particulars of the following matters contained in

No. 6  
Order  
28th February  
1972

In the Supreme  
Court

the Statement of Claim dated 16th December, 1971.

Under paragraph 1.

(1) Of the false representation alleged to have been made by Mr. Clifton Borer on the 30th January, 1965.

(a) In what precise words was such representation made?

(2) Of Mr. Borer's alleged contrary knowledge

(a) What visits did Mr. Borer make to the land with dates, times, and particulars of other parties alleged to have been present, and the area and extent of the land alleged to have been visited on each occasion?

10

(b) What negotiations took place between the parties and their Attorneys in 1955 and 1956 with details of date, time and place of each meeting alleged to have been held, the parties alleged to have attended each such meeting, the matters discussed at each such meeting, any conclusion reached at each such meeting and details of all documents and writings submitted to and arising out of each such meeting?

20

(3) Of the alleged agreement regarding the land to the East of Gladstone Road

(a) the date

(b) the Parties

30

(c) was the agreement in writing or

(d) oral, and

(e) the exact terms and conditions thereof?

(4) Of the alleged agreement regarding the land to the West of Gladstone Road

(a) the date

—  
No. 6  
Order  
28th February  
1972  
(continued)

- (b) the Parties
- (c) was the said agreement in writing or
- (d) oral, and
- (e) the exact terms and conditions thereof?

In the Supreme  
Court

—  
No. 6

Order  
28th February  
1972  
(continued)

(5) Of the Deponent's alleged knowledge that no servant or agent of Defendant was permitted to enter the subject land

10

(a) On what occasions, with dates, was any servant or agent of Defendant prevented from entering?

(b) By whom was such servant or agent so prevented?

(c) What other parties were present on each alleged occasion?

(d) What servant or agent was involved on each occasion?

(e) What particular area of land was involved on each separate occasion?

(f) The method used to prevent such entry.

20

Under paragraph 2.

(1) As to the misrepresentation alleged to have been made by Paul H. Bethel

(a) What words constituted such alleged misrepresentation?

(2) As to the said Paul H. Bethel's alleged awareness of contrary facts

(a) How and in what manner is he alleged to have been aware of Plaintiff's long occupation?

30

(b) Of the quality and quantity of such occupation

(c) What title documents are alleged to have been produced with particulars of dates parties and details of recording?

(d) Description of land alleged to have been dealt with in each conveyance.

In the Supreme  
Court

          
No. 6

Order  
28th February  
1972  
(continued)

(e) At what meetings were such documents alleged to have been produced with details of dates and persons present?

(3) Details of acts alleged to have been done in performance of alleged agreement with dates, places and parties involved in each separate act.

Under paragraph 3.

(1) As to the allegation that Agents for the Defendant as to land situate West of Gladstone Road knew of certain title deeds

10

(a) Who are the Agents referred to?

(b) How and in what manner is it alleged that such agents acquired such knowledge?

(c) What title deeds are referred to with particulars of dates parties and details of recording?

(d) What lands are alleged to have been conveyed or referred to in each Deed?

(e) What deeds have since been mislaid or destroyed with details of surrounding circumstances?

20

(f) In what manner is it alleged that such mislaying or destruction should have come within the knowledge of the Defendant's agents?

Under paragraph 4.

(1) Having regard to the fact that the said matter was tried in open court, details of the grounds on which Plaintiff alleges that the court was deceived or could have been deceived.

30

Under paragraph 5.

(1) As to the allegation that Paul Henry Bethel knew to be false his statement that Plaintiff's occupation was an act of trespass

(a) In what manner is it alleged that he acquired or should have acquired contrary knowledge?

(b) What Tenants of Defendant had occupied the subject lands?

In the Supreme Court

(c) For what period had such tenants occupied?

          
No. 6

(d) What part or parts of the subject land were occupied by each such tenant?

Order  
28th February  
1972  
(continued)

(e) Who on Plaintiff's behalf forced each such tenant to leave and on what date did each such tenant leave the land?

10

(f) By what method was each such tenant induced to leave?

B. That the time for service of the Defence herein be extended for Fourteen (14) days after the service of the said Particulars.

C. That all further proceedings be stayed until service of the said Particulars.

D. That the costs of this application be costs in the cause.

Dated the Twenty eighth day of February, 1972.

20

BY ORDER OF THE COURT

Sgd: Illegible

for REGISTRAR

TO the Plaintiff, Clotilda Eugenia Higgs

AND TO her Attorney, James M. Thompson, Esq.,  
Chambers,  
Frederick Street,  
Nassau,  
Bahamas.

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In the Supreme Court

AFFIDAVIT OF PAUL HENRY BETHEL

No. 7

Affidavit of Paul Henry Bethel 10th April 1972

COMMONWEALTH OF THE BAHAMA ISLANDS 1971  
IN THE SUPREME COURT No. 838  
COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

I, Paul Henry Bethel of the Western District of the Island of New Providence Attorney-at-Law make oath and say as follows: 10

1. I am a partner in the firm of McKinney, Bancroft & Hughes the Attorneys for the Defendant.

2. On the 28th day of January 1965 the Defendant petitioned this Court to have its title to 253.23 acres of land at Gladstone Road in the Western District of the Island of New Providence investigated determined and declared under the Quieting Titles Act and for a Certificate of Title to be granted under that Act. 20

3. An Adverse Claim was entered and filed on behalf of the Plaintiff and the issues between the Petitioner and the Adverse Claimant duly tried before the Supreme Court commencing on the 17th January 1966 and lasting for several days.

4. In her adverse claim the Adverse Claimant alleged that she was the owner of the said land by virtue of adverse possession.

5. On the 28th day of March 1966 the Court delivered its judgment in the said Quieting Titles Action and dismissed the said Adverse Claim and granted a Certificate of Title to the Petitioner. 30

6. On the 25th day of June 1970 in Court of Appeal Action No. 14 of 1970 four years after the grant of the said Certificate of Title the Plaintiff,

then represented by a different Attorney Mr. James M. Thompson, applied for leave to appeal against the grant of the said Certificate of Title.

In the Supreme Court

—  
No. 7

7. This application was duly heard on the 20th day of November 1970 by the Court of Appeal and dismissed with costs.

Affidavit of  
Paul Henry  
Bethel  
10th April  
1972  
(continued)

8. On the 25th November 1970 application was made by the Plaintiff for leave to appeal to the Privy Council against the refusal by the Court of Appeal to grant leave to appeal to the Court of Appeal.

9. This application was also refused by a Judge of the Court of Appeal on the 18th day of December 1970.

10. On the 14th day of November 1969 in Action No. 627 of 1969 the Defendant applied for an injunction (inter alia) to restrain the Plaintiff her servants agents or otherwise from entering or crossing the Defendant's said land and removing soil and rock and cutting down trees or bush and otherwise damaging the said land and carrying on farming activities thereon.

11. On the 5th day of January 1970 a Defence to the said Action was filed by the Plaintiff Clotilda Higgs and other defendants in that action alleging fraud on the part of the Defendant, Caves Company Limited, in obtaining the Certificate of Title in Action No. 62 of 1965 but no particulars of such fraud were given.

12. On the 11th day of February 1970 the Defendant, Caves Company Limited, applied to have the said Defence struck out as being frivolous and vexatious and an abuse of the process of the Court and that judgment be entered against the Plaintiff Clotilda Higgs and others.

13. On the 3rd day of July 1970 judgment was duly entered by the Court against the Plaintiff Clotilda Higgs and others and an injunction issued against the Plaintiff the said Clotilda Eugenia Higgs and others restraining them from doing the acts complained of in the Statement of Claim.

14. On the 7th day of May 1971 the Defendant, Caves Company Limited, applied to the Court to have



In the Supreme  
Court

—  
No. 7

Affidavit of  
Paul Henry  
Bethel  
10th April  
1972  
(continued)

the Plaintiff and others committed to prison for contempt of Court by reason of their breaches of the said injunction.

15. On the 28th day of June 1971 by Affidavit dated the 22nd June 1971 the Plaintiff Clotilda Eugenia Higgs apologised to the Court and no further order except for costs was made against her but in the same proceedings two of her tenants Leonard Barr and Ronald Evans were ordered to be committed to Prison for their contempt unless they had vacated the said land by the 1st December 1971.

10

16. The Plaintiff Clotilda Eugenia Higgs and the said Leonard Barr and Ronald Evans appealed against the said Order made in the said committal proceedings and on the 18th day of November 1971 the said appeal was dismissed with costs by the Court of Appeal.

17. I am informed by the Defendant Caves Company Limited that the said Leonard Barr has vacated the said land but the said Ronald Evans continues to occupy a portion thereof.

20

18. On the 29th day of November 1971 the Plaintiff Clotilda Eugenia Higgs brought this present action against the Defendant to declare the Certificate of Title void on the alleged ground that it was obtained by fraud.

19. On the 30th December 1971 the Defendant by letter requested further and better particulars of the matters alleged in the Statement of Claim but these were not supplied by the Plaintiff.

30

20. On the 4th day of January 1972 the Defendant Caves Company Limited applied to this Court for an Order that such particulars be supplied and the Court on the 28th day of February 1972 ordered such further and better particulars to be supplied within fourteen (14) days.

21. No further and better particulars have been supplied by the Plaintiff to the Defendant to this date.

40

22. The repeated applications by the Plaintiff to the Court in respect of the Defendant's land has caused and is causing considerable embarrassment and harassment to

the Defendant especially in view of the fact that the main issues between the Plaintiff and the Defendant were settled by this Court in the Quieting Titles Action tried in the year 1966 in Action No. 62 of 1965.

In the Supreme Court

No. 7

Affidavit of Paul Henry Bethel 10th April 1972 (continued)

10 23. By reason of these repeated applications substantial costs have been incurred by the Defendant and the Defendant has not been able to deal safely with its land Further it appears that the only purpose for these repeated applications is to prevent or delay the enforcement of the order of committal obtained by the Defendant in Action Number 627 of 1969.

20 24. In Action Number 650 of 1969 the Defendant and others are being sued by Roxborough Estates Limited for specific performance of a contract to sell the said land along with other land and damages and in such action it is alleged that the Defendant could not give good title to the said land because of the presence of squatters (the Plaintiff or the Plaintiff's servants tenants or agents) on the said land.

30 25. This Affidavit is made in support of a Summons taken out on behalf of the Defendant to have the Plaintiff's action dismissed for not complying with an Order of the Court to supply further and better particulars or alternatively as being frivolous and vexatious and an abuse of the process of the Court and for an Order that the Plaintiff Clotilda Eugenia Higgs be prohibited from bringing any further action relating to the said land without leave of the Court and the facts herein are true to the best of my information knowledge and belief.

Sworn at Nassau, )  
New Providence, )  
this 10th ) sgd: PAUL H. BETHEL  
day of April 1972. )

Before me,

40 sgd: Illegible.



In the Supreme  
Court

22.

No. 8

SUMMONS

No. 8  
Summons  
12th April  
1972

COMMONWEALTH OF THE BAHAMA ISLANDS 1971

IN THE SUPREME COURT No. 838

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

LET ALL PARTIES CONCERNED attend before the 10  
Honourable Hedworth Cunningham Smith in Chambers  
at the Law Courts Building in the City of Nassau  
on the 24th day of April 1972 at 10 in the fore-  
noon on the hearing of an application on the  
part of the Defendant.

1. That this action be dismissed with costs  
on the ground that the Plaintiff has failed to  
carry out the Order of the Court made on the 28th  
day of February, A.D. 1972 to supply further and  
better particulars of the Statement of Claim 20  
within 14 days.

2. Alternatively that this action be  
struck out with costs on the ground that it is  
frivolous and vexatious and an abuse of the  
process of this Court by reason of the fact that  
the relief sought has been previously adjudicated  
upon in Quieting Titles Action No. 62 of 1965 in  
the matter of the Petition of the Defendant Caves  
Company Limited in which matter the Plaintiff  
Clotilda Eugenia Higgs was an Adverse Claimant 30  
and the issues between the Petitioner (the  
Defendant) and the Adverse Claimant (the  
Plaintiff) were substantially the same as those  
sought to be resolved in this action namely that  
the Plaintiff Clotilda Eugenia Higgs is entitled  
to the land in question by reason of adverse  
possession.

3. That the Plaintiff be prohibited from  
bringing any further action in respect of the  
land the subject of this action without leave 40

of the Court, the Plaintiff having made repeated frivolous applications to the Court in respect of the same land.

In the Supreme Court

            
No. 8

4. Such further or other relief as to the Court shall seem just.

Summons  
12th April  
1972  
(continued)

5. That the costs of this application be given to the Defendant.

Dated the 12th day of April 1972.

Sgd: J. STRACHAN

10

for Registrar.

This Summons was taken out by McKinney, Bancroft & Hughes of 50 Shirley Street, Nassau, Bahamas, Attorneys for the Defendant.

To Clotilda Eugenia Higgs  
and to Mr. James M. Thompson  
Chambers,  
Federick Street  
her Attorney

No. 9

No. 9

20

FURTHER AND BETTER PARTICULARS

Further and  
Better  
Particulars  
28th April  
1972

IN THE SUPREME COURT  
OF THE COMMONWEALTH OF  
THE BAHAMA ISLANDS

1971

No. 838

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS

Plaintiff

AND

CAVES COMPANY LIMITED

Defendant

30

Further and Better Particulars of the Statement of Claim pursuant to the Order of the Judge dated 28th day of February, A.D., 1972.

Under Paragraph 1.

(1) Ref. Affidavit of Mr. Clifton Borer dated

In the Supreme  
Court

\_\_\_\_\_  
No. 9

Further and  
Better  
Particulars  
28th April  
1972  
(continued)

the 30th day of June, 1965 and more particularly to paragraph Nos: 2 and 3 of the same.

(2) (a) Full Particulars of this representation are within the knowledge of Mr. Borer. He has admitted, however, going to the land sometime in 1950 - 1951 on which occasions he saw persons in the bush at which time he was accompanied by a Mr. Martin of Nassau Engineering Co. Ltd. This or these particular visits concerned the land on the East and West of Gladstone Road. The admitted visits by Mr. Noel Plante and other agents of the Defendant are imputed to Mr. Borer.

(b) At least two meetings were held at the Chambers of the Plaintiff's Attorney at which Mr. Kenneth Higgs attended on behalf of the Plaintiff and Mr. Gordon O'Brien, a representative from the Oakes Estate in addition to the Plaintiff's Attorney. At the second meeting, persons lastly hereinbefore mentioned attended but were joined by the Attorney for the Oakes Estate. At the third meeting held at the above-mentioned office during the 3rd or 4th week of April, 1956 Messrs. Oliver Higgs, Kenneth Higgs and the late Richard C. Adderley with their Attorney represented the Plaintiff and Mr. Gordon O'Brien with the Oakes Estate Attorney attended for and on behalf of the Defendant. The negotiations concerned the ownership of the lands known as "Sugar House" and "Goodmans" and it was finally agreed that the Plaintiff and her agents would restrict all activities to the East Side of Gladstone Road and the Defendant would remain undisturbed as regards those portions situate to the West of Gladstone Road aforesaid. The terms of the Agreement were not put to writing but the Plaintiff has since that date abided by the same. Full information of all documents submitted are within the knowledge of the Defendant's Agents. However, refer to Quieting Titles Petition No. 96/1967 for a number of documents submitted in addition to the items listed hereunder.

1. Agreement dated 17th March, 1883 made between William Campbell Adderley and Joseph Alexander Thompson - not recorded.

2. Evidence of documents listed hereunder which are now mislaid was submitted to the meetings.

In the Supreme Court

—  
No. 9

Further and  
Better  
Particulars  
28th April  
1972  
(continued)

(a) Conveyance dated about the year 1890 made between Pierson Dean and Hercules Pinder concerning portions of "Sugar House"

(b) Sarah Ann Bain nee Adderley by Will devised her  $\frac{1}{4}$  share in the Adderley's Estate to her God Children.

10. Her Executor subsequently sold to Hercules Pinder. Sarah Ann Collins his sister in 1910 sold the remaining portions in "Sugar House" and "Goodmans" to R.C. Adderley. The above documents are not recorded and are now mislaid.

(3) (a) April, 1956.

(b) Refer Paragraph (2) above.

(c) & (d) Refer Paragraph (2) above.

(e) Refer Paragraph (2) above.

20 (4) Refer Paragraph (3) above.

(5) (a) Mr. Calvin Cooper then an employee of O'Brien Engineering Co. Ltd., sometime in 1953-1954 was stopped from entering the land. Messrs. Calvin Cooper, Nigel Bain and Wimore Brown with others were again run off the land in 1954 or 1955 resulting in the first meeting referred to in Paragraph (1) (2) (b) above.

(b) By the servants and agents of the Plaintiff.

30 (c) Ref. (a) and (b) lastly mentioned.

(d) Refer (a) lastly referred to.

(e) The tracts on the East and West of Gladstone Road.

(f) Warned that if they did not voluntarily vacate the land, they would be physically carried off.

Under Paragraph 2.

(1) Ref. Affidavit dated 9th August, 1965 and

In the Supreme  
Court

—  
No. 9

Further and  
Better  
Particulars  
28th April  
1972  
(continued)

more particularly Paragraph No. 4 of the same. In addition, this deponent failed to comply with the Order dated 5th February, 1965 as it was the duty of the Defendant to notify not only all adjoining land owners but in addition all occupiers of the same.

(2) (a) The knowledge not only of the Defendants' Agents but of his own agents is imputed to him, as principal and Attorney.

(b) The Agents of Mr. Bethel fully knew the type of occupation and the extent thereof by the Plaintiff through her agents. 10

(c) and (d) Full particulars of these documents are within the knowledge of the agents of the Defendant. Refer also to Paragraph No. (1) (2) (b) above.

(e) At the meetings referred to in (1) (2) (b) above.

(3) As a result of the Agreement, the Plaintiff in 1956 withdrew from the land situate to the West of Gladstone Road and subsequently in reliance of the said Agreement surveyed the tract situate to the East of Gladstone Road aforesaid. 20

Under Paragraph 3.

(1)(a) Refer to Paragraph (2) (1) (b)

(b) The documents and papers were submitted to the meetings where the contents of the same were read and discussed. 30

(c) Refer Paragraphs Nos: (1) (2) (b) above.

(d) The lands situate to the East and West of Gladstone Road, the subject of this action, and including all lands situate to the West of Harold Road now in possession of the Plaintiff.

(e) Refer to Paragraph (1) (2) (b) above.

(f) Having seen the documents and having been subsequently informed that their whereabouts could not be accounted for. 40

Under Paragraph 4.

(1) By the denial of the Agreement and facts leading up to same and the non-admission of the quality and quantity of the occupation of the Plaintiff and her agents and servants.

Under Paragraph 5.

(1) (a) The knowledge of the Agents of his principal is imputed to him as Attorney.

(b) One Albury and One Claridge.

10 (c) Mr. Claridge for one growing season.

(d) As to the land to the East of Gladstone Road, Mr. Albury occupied a portion of the same for one growing season and was forced by the agents of the Plaintiff to vacate the West of the said Gladstone Road where according to information received by the Plaintiff is still located.

20 (e) The late Mr. Higgs husband of the Plaintiff assisted by his sons was instrumental in such removal.

(f) After having been informed that they were trespassing they were requested to move voluntarily or be forcibly ejected.

Dated this 28th day of April, A.D., 1972.

James M. Thompson

Attorney for the Plaintiff

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In the Supreme  
Court

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No. 9

Further and  
Better  
Particulars  
28th April  
1972  
(continued)



In the Supreme Court

No. 10

DEFENCE

No. 10

Defence  
16th May 1972

COMMONWEALTH OF THE BAHAMA ISLANDS 1971  
IN THE SUPREME COURT No 838  
COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

1. The Defendant admits representing to this Honourable Court in Quieting Titles Petition No. 62 of 1965 by an Affidavit sworn by its Agent Clifton D. Borer on the 30th January 1965 that the Defendant alone was possessed of the land the subject of the Petition by virtue of the documentary title particulars whereof were contained in the Abstract of Title therein but denies that the said representation was false as alleged or at all. The Defendant further states that if the Plaintiff was in fact on any portion of the said land she was there as a trespasser. Further the Defendant denies that it was known to the said Clifton D. Borer that no servant or agent of the Defendant was ever permitted to enter on the subject land by the Plaintiff or her agents for the purpose of exercising acts of ownership and states that since the date of its purchase of the said land the Defendant or its servants agents licencees or tenants have continuously entered on to the subject land for the purpose of exercising acts of ownership, as was fully disclosed at the hearing of the Petition. The Defendant further denies that it or any of its agents during the years 1955 or 1956 or at any other time agreed that the Plaintiff would restrict her activities to that portion of the land situate to the East of Gladstone Road in the Western District of the Island of New Providence and that the Defendant would be entitled to the quiet enjoyment of the land situate to the West of Gladstone Road aforesaid. Further the Defendant says that any information regarding any such agreement as alleged and which was within the knowledge of the Plaintiff should

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have been disclosed by the Plaintiff at the hearing of the Petition in which the Plaintiff was the adverse claimant. The Defendant will also say that any such agreement even if made as alleged and which is denied would be void under the Statute of Frauds as not having been evidenced in writing and signed by the party to be charged.

In the Supreme  
Court

—  
No. 10

Defence  
16th May 1972  
(continued)

10           2. The Defendant denies that on the 9th  
day of August 1965 or at any other time the  
Defendant for the purposes of obtaining a  
Certificate or Certificates of Title in the  
Petition above referred to by its Agent Paul H.  
Bethel intentionally misrepresented to this  
Honourable Court that the documents produced in  
support of its claim fully and clearly disclosed  
all the facts material to its claims and all  
contracts and dealings which affected its title  
20           thereto or any part thereof or gave any rights  
against it as alleged or that the said Paul H.  
Bethel was aware of any long occupation of the  
Plaintiff or of the quality or quantity of such  
occupation or of any title documents of the  
Plaintiff to parts of the subject land or of any  
agreement between the parties as alleged. The  
Defendant will refer to the Affidavit of the said  
Paul H. Bethel dated the 9th day of August 1965 at  
the trial for its full terms. Further at the  
30           time the alleged meetings were said to be held  
namely in 1955 or 1956 or prior thereto the said  
Paul H. Bethel was a law student and only started  
to represent the Defendant in the year 1964.  
Further the Defendant says that any such  
agreement even if made as alleged and which is  
denied would be void under the Statute of Frauds  
as not having been evidenced in writing and signed  
by the party to be charged. The Defendant also  
says that in the year 1956 The Caves Company Limited  
40           brought an action in the Supreme Court against  
Leonard Higgs husband of the Plaintiff for trespass-  
ing on the Defendant's land known as "Peter Deans  
land" and "Sarah A. Potier land" in the Western  
District of the Island of New Providence. On the  
10th April 1956 Mr. Godffrey K. Kelly then acting  
for the Defendant met with Mr. W.E.A. Callender the  
then Attorney for the Plaintiff at Mr. Callender's  
Chambers. Two of the sons of the said Leonard Higgs  
and a Mr. Richard Adderley were also present. Mr.  
Callender and Mr. Kelly went through the Defendant's  
50           documents of title and both agreed that the Defendant  
had an unassailable documentary title going back 57  
years (to 1899). The trespassers were unable to  
produce any documentary title and their claim if any

In the Supreme  
Court

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No. 10

Defence  
16th May 1972  
(continued)

would be through quiet possession for 20 years. They were unable to find with any accuracy the boundaries of the land they were claiming although their claim seemed to be along the eastern portion of the Defendant's land. Since it was not known what area of land they were claiming Mr. Kelly agreed to allow them to go on the land for the purpose of preparing a map of the area they were claiming and that after the map had been prepared Mr. Kelly and Mr. Higgs would go into the merits of the claimant's possessory title, if any. The trespassers also agreed to stay off the land. No map was ever produced.

10

3. The Defendant denies that it or any of its Agents knew that the Plaintiff had any documents of title for portions of the subject land situate to the West of Gladstone Road as alleged. The Defendant says that in the course of the above mentioned Quieting Titles proceedings, the Plaintiff was an adverse claimant and the Plaintiff's Attorney Paul L. Adderley advised this Court that the Plaintiff had no claim to the land to the West of Gladstone Road whereupon a Certificate of Title in respect of such land to the West of Gladstone Road was granted to the Defendant, and that after a trial lasting several days between the Defendant as Petitioner and the Plaintiff as Adverse Claimant whereby the Plaintiff claimed the subject land to the East of Gladstone Road by virtue of long adverse possession, the Court dismissed the adverse claim of the Plaintiff and granted a Certificate of Title to the Defendant. In his Judgment dated the 28th March 1966 in the said Quieting Title proceedings the learned Judge stated inter alia "the claim of the Adverse Claimant is based on adverse possession - Mr. Adderley, of Counsel, conceded that the Petitioners having built a road through the tract in 1937 and having leased substantial portions of the land thereafter (to Mr. Albury and Mr. Claridge) had in the absence of any action by the adverse claimant, repossessed the land. In effect, therefore, he conceded that the adverse claimant, to obtain title had to prove uninterrupted possession for at least 20 years prior to 1936". The learned Judge went on to say "There is on the evidence no sufficient proof of adverse possession by the claimant of either the whole or any part of the land in question".

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4. The Defendant denies paragraph 4 of the Statement of Claim and says that all material facts relating to its title to the subject land

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was disclosed to this Honourable Court at the time of the hearing of the Petition

In the Supreme Court

5. The Defendant denies paragraph 5 of the Statement of Claim and says that any acts of occupation of the subject land by the Plaintiff or her agents or servants were acts of trespass.

No. 10

Defence  
16th May 1972  
(continued)

10 6. The Defendant says that by virtue of the matters stated in paragraph 3 hereof the Plaintiff is estopped from denying that in order to obtain title to the subject land she had to prove uninterrupted possession for at least 20 years prior to the year 1936.

7. The Defendant further says that the issues between the Plaintiff and the Defendant having been duly tried in the year 1966 in the said Petition No. 62 of 1965 the matter is res judicata and is frivolous and vexatious and an abuse of the process of the Court.

20 8. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out herein and specifically traversed.

McKinney, Bancroft & Hughes  
Attorneys for the Defendant

Served the 16th day of May 1972 by McKinney, Bancroft & Hughes of 50 Shirley Street, Nassau, Bahamas, Attorneys for the Defendant.

30 TO : The Plaintiff,  
Clotilda Higgs or  
her Attorney  
James M. Thompson,  
Frederick Street,  
Nassau, Bahamas.

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In the Supreme  
Court

32.

No. 11

RULING

          
No. 11

Ruling  
5th July 1972

BAHAMA ISLANDS 1971  
IN THE SUPREME COURT No. 838  
COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

H.C. Smith, J:

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This is a summons asking that the action be dismissed for failure of the plaintiff to supply further and better particulars of his Statement of Claim within fourteen days. Alternatively, it is sought by the Summons to have the action struck out, the subject of the action having been previously adjudicated upon in Quieting Titles Action No. 62 of 1965.

The short point is that the plaintiff appealed to the Court of Appeal against the order made by me that she should supply further and better particulars of her claim but that order being an interlocutory order, leave to appeal should have been sought. Accordingly the plaintiff's notice of appeal had to be struck out. In the circumstances, the plaintiff is now willing to supply the particulars she has been asked to give and asks for further time. I am disposed to grant further time. Since it was the defendant who asked for the further and better particulars from the plaintiff to enable a defence to be filed, it is hardly appropriate for me to accede at this stage to the prayers two and three of the defendants Summons of 12th April, 1972 and I think the best thing to do is to grant an extension of time to the plaintiff to file the particulars

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30

within fourteen days from today and otherwise adjourn the defendant's summons.

In the Supreme Court

H.C. Smith, J.

No. 11

5th July, 1972.

Ruling  
5th July 1972  
(continued)

No. 12

No. 12

JUDGE'S NOTES

Judge's Notes  
8th December  
1972

COMMONWEALTH OF THE BAHAMA ISLANDS

COMMON LAW SIDE

BETWEEN

10 CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

In Chambers

8th December, 1972

A. Pinder for defendant - Applicant

J. Thompson for plaintiff - Respondent.

Pinder: Summons of 12th April, 1972 heard by H.C. Smith, J. and ruling given 5th July granting extension of time to file particulars.

Reads summons.

20 Writ of summons in action seeks to set aside four orders of this Court in Action No. 62/1965.

Affidavit in Support of summons sworn 10th April, 1972.

Para 2 of Affidavit refers to No. 62/1965.

In the Supreme  
Court

          
No. 12

Judge's Notes  
8th December  
1972  
(continued)

Para 6 line 3 should read defendant not plaintiff.

Paras 19 and 21 - Particulars have since been supplied.

(2nd May, 1972)

Plaintiff was an adverse claimant in respect of the 253.23 acres.

Judgment granting certificate of title to defendants was given on 26th March, 1966 and adverse claim dismissed. 10

Application for leave to appeal out of time on 20th November, 1970.

On 25th November, 1970 application for leave to appeal to P.C. from refusal of Court of Appeal to grant leave. This application also refused by a judge of Court of Appeal on 18th December, 1970. There the matter rested until the present action 838/1971 asking for certificate of title to be set aside on the ground it was obtained by fraud. 20

As to present Summons ground 1 has been dealt with.

Ground 2 asks that the action be struck out as frivolous and vexatious.

The whole matter is res judicata. Plaintiff is seeking to re-open the same issues as in No. 621/1965, that is the question of possession.

The Statement and further and better particulars filed by plaintiff 16th December, 1971 and 2nd May, 1972 respectively. 30

Plaintiff in present action claims she was in possession of the land and the certificate ought not to have been granted. She seeks to raise in this action that there was an agreement between herself and defendant that she would be allowed to remain on the land and defendant acknowledged her ownership. This was raised in the first action. (para 4 of Mr. Bethell's affidavit). 40

Parties to No. 62/1965 and present action are the same and issues are substantially the same. Plaintiff raises the new issue of an agreement which according to further and better particulars is merely an oral agreement.

In the Supreme Court

No. 12

Judge's Notes  
8th December  
1972  
(continued)

O. 78, 19 jurisdiction to dismiss actions as frivolous or vexatious.

Note 18/19/10A. (p.289 at p.290).

"So if a party seeks to raise ....."

10 MacDougall v Knight 25 Q.B.D. 1. at p.p.1 and 2 and 10 per Fry L.J. (1890).

Greenhaigh v. Mallard (1947).

1947 2 All E.R. 255.

at p.p. 255, per Somervell L.J. 258.

quoting Maugham J. citing Wigram V.C.

20 Para 4 Bethel affidavit - plaintiff claim based on adverse possession. In present action plaintiff seeks to prove an oral agreement. She has lost her opportunity and failed to raise it. She should be not allowed to do it in a new action.

Humphries v Humphries 1910 2 K.B. - headnote.

Plaintiff is also alleging fraud on part of defendant. O.18 r.8.

Particulars of fraud supplied are insufficient to make out a prima facie case. Note 18/8/4 "Fraud" p.252. White Book.

Ground 3. of Summons

30 Bethel affidavit sets out the various applications that have been made. These have prevented defendant from dealing safely with his land.

I submit plaintiff should be prohibited from bringing further action in respect of this matter.



In the Supreme  
Court

0.18 r.19 - Note 18/19/10 (p.290)

\_\_\_\_\_  
No. 12

Grepe v Loam 1888 37 Ch. D. 168.  
headnote.

Judge's Notes  
8th December  
1972  
(continued)

J. Thompson: Basis of present Action is section 27 of Q.T. Act. Parties in 62/1965 and present action are the same. The cause or matter is not the same.

Consequently authorities cited from Note 18/19/10A do not apply to the present action.

10

I have filed an affidavit generally in answer to the Summons.

Reads affidavit filed 8th December, 1972.

There is an earlier summons outstanding. That is plaintiff's summons of 7th January, 1972 asking for judgment in default of defence.

The writ herein was issued on 29th November, 1971.

Statement of Claim filed and served on 16th December, 1971.

20

Defence should have been filed and served by 30th December, 1971.

On 30th December 1971 attorneys for defendants wrote to me for further and better particulars.

I filed summons on 7th January 1972 for judgment in default of defence with affidavit in support sworn 6th January, 1972.

Defendants summons for further and better particulars was filed on 4th January, 1972.

30

That summons was subsequently heard and a ruling delivered on 28th February for further and better particulars.

Further and better particulars were supplied by me and filed on 2nd May, 1972.

Defence was filed on 10th May, 1972.

On 12th April, 1972 defendant filed

summons on which Mr. Pinder has made submissions this morning.

In the Supreme Court

Defendant would be estopped from filing any documentation from 30th December, 1971, more specifically his defence, without leave.

No. 12

Judge's Notes  
8th December  
1972  
(continued)

O.19. r.l. Note 19/1/2. Default by Defendant. Clough v. Clough 1968 1. All. E.R. 1179.

per Lord Denning p. 1181 B.

Allen v McAlpine & Sons Ltd.

10 1968 1 All E.R. 543 at F.

Defendant has attempted to file a defence which he was not entitled to under these rules.

Pinder: Summons of 7th January, 1972 is still outstanding.

20 If my learned friend proposes to proceed on his summons of 7th January, I would first refer to the ruling of 28th February, 1972 and the order for further and better particulars. The order also provided for a defence to be filed within fourteen days of the filing of particulars. Our defence was filed within that time. If plaintiff wishes to proceed with summons of 7th January he should have appealed against the ruling of 28th February, 1972. Both parties are now bound by the ruling.

Thompson: I concede that by filing further and better particulars I submitted to the order of 28th February.

30 The order would automatically vitiate the summons of 7th January, 1972.

Adjourned to 11.15 a.m. Thursday 14th December, 1972.

J.A. Smith, J.

8th December, 1972.

Resumed 14th December, 1972.

14th December  
1972

Counsel as before.

Adjourned for copy of claim and judgment in 62/65 to be filed by applicant or produced by consent.

40 Adjourned to 11.15 a.m. on 28th December 1972.

In Chambers

28th December 1972

In the Supreme  
Court

Appearances as before.

No. 12

Judge's Notes  
28th December  
1972  
(continued)Pinder: with consent of Mr. Thompson I produce  
the following documents.

Exh. C.C.1. Petition in No. 62 of 1965

" " 2 Affidavit of C.D. Borer in Support  
of Petition

" " 3 Adverse Claim of Clotilda E. Higgs.

" " 4. Affidavit of Paul H. Bethel as to  
compliance with order to advertise.

5. Judgment of H.C. Smith, J.

10

Thompson: No objection.Judge: Let the documents be admitted by consent  
and marked respectively Exhs. C.C.1. to 5.Pinder: In the petition - two tracts of land  
one W. and one E of Gladstone Road. Exh. C.C.1.Affidavit of Mr. Borer (C.C.2) para 3 states  
petitioner alone is possessed of the land. Para 5  
states all facts and documents disclosed.Adverse claim of Mrs. Clotilda E. Higgs  
(Exh. C.C.3) is in respect of land of 50 acres  
part of the tract to E of Gladstone Road, and  
also to the whole of a tract of 175 acres with  
area claimed in petition to E of Gladstone Road.

20

No adverse claim in respect of land to  
West of Gladstone Road.I correct the earlier statement the 175  
acres is part of the 253 acres the second  
parcel in the petition and some of that 253  
acres is to the West of Gladstone Road.The plaintiff in 838/1971 seeks to re-open  
the question of her possession after it has  
already been dealt with in No. 62 of 1965.

30

Thompson: I have now received a copy of the  
record of No. 62 of 1965. but I have not yet  
had the opportunity to consult my client thereon.

Summons of 12th April, 1972.

Identical arguments submitted by Mr. Pinder are identical with those submitted by Mr. Bethel before H.C. Smith, J. on 24th April and considered.

In the Supreme Court

—  
No. 12

Judge's Notes  
28th December  
1972  
(continued)

Ruling of 5th July, 1972 of H.C. Smith, J.  
- reads.

In this ruling I submit H.C. Smith, J. dealt with the whole summons.

10 If defendant wants to come in again on grounds 2 and 3 of the 12th April summons should come in on a new summons.

0.32. r.1. Note 32/1 - 6/10 (p.459)

Order made in Ruling of 5th July: no formal order filed because orders which extend period to comply with court order had not been drawn up.

The summons of 12th April set out prayers for alternate orders and an order was made on para 1 of the summons.

20 If my submission is correct, I would refer to Volume 2 p.557 - para 2007 liberty to restore (White Book).

If my order is automatically perfected we are re-hearing a summons already dealt with. There should have been a fresh summons.

Judge: What of Order 2.

Thompson: 0.2. deals with irregularities by the parties not something done by the Court itself.

Adjourned to 3.30 p.m.

Resumed.

30 Appearances as before.

Thompson: The sole question before Court in 1965 was an investigation of title.

Now there is a distinct cause of action under section 27, Q.T. Act arising out of the investigation.

What plaintiff now claims is a distinct action from 62/1965.

In the Supreme Court

No. 12

Judge's Notes  
28th December  
1972  
(continued)

Statement of Claim para 1 alleges an agreement particulars of which are in (2) (b) of the further and better particulars.

Para 2 Statement of Defence (p.3) refers to agreement and defendant admits at least one meeting was held though results alleged differ from the conclusions alleged by plaintiff.

Mrs. Clotilda Higgs adverse claim alleged she had a document for 50 acres of the land.

This I submit is part of the documents referred to in para 2 (p.3) of Statement of Defence at the meeting at which Mr. Callender and Mr. Kelly went through Defendants documents. (i.e. Caves Co.Ltd. documents).

10

Para 1 (2) (b) line 5 etc. p.2 of Further and Better Particulars "At the third meeting" is relevant to show plaintiff in this action at one time had in her possession documents affecting part of the land being quieted. Agreement of 17th March, 1883 refers to part of land called "Sugar House" or "Goodmans".

20

The Further and Better Particulars filed on 29th June, 1965 in No. 62/1965 by the Adverse Claimant.

Para 4 of Mr. Paul H. Bethel's affidavit.

In Mr. P.H. Bethel's affidavit (C.C.4) para 4 alleges acts of trespass by Mrs. Clotilda Higgs or by persons claiming under her. Other than that no occupiers other than petitioner his agent or tenants.

30

Judgment of H.C. Smith, J. (C.C.5) para 3.

Mrs. Higgs conceded through her counsel that adverse possession would have had to occur prior to 1936.

P.2 of Judgment - on the evidence I find no acts of possession proved against the petitioners predecessors in title.

P.3 of Judgment - No sufficient proof of adverse possession by Mrs. Higgs.

In present action 838/1971.

40

Statement of Claim para 1 last sentence - alleges Mrs. Higgs was in possession.

In the Further and Better Particulars filed 2nd May, 1972. P.I. sub para (2) plaintiff seeks to open up question of possession in 1950 -51 while counsel conceded in 621/1965 that adverse possession relied on was prior to 1936.

Sub para (5) (a) (at p.3) - the same applies.

Under Para 5 (1) (d) and (e) and (f) at p.5 - possession implied again by Mrs. Higgs.

10 He is referring to the 62/65 adverse claim and is only partially correct.

Paras 6, 7, 8 and 9, 11 and 12 of the same affidavit.

My affidavit of 13th December, 1972 in reply to the above paras.

Reads affidavit.

20 I admit there have been a number of applications but none have been decided on the merits. There were applications consequential upon the judgment in No. 62/1965.

If the matter is res judicata, I admit the Court has a discretion to strike my pleading and writ as there should be an end to litigation.

Before coming to a decision on the present application the Court must take into consideration all facts relevant to Action 62/65.

Odgers 18 Ed. Pleadings and Practice p.145. Defendant is deemed to admit the facts in pleadings for purposes of the plea of res judicata.

30 O.18.r.19. Note 18/19/10A.

Macdougall v Knight distinguished from present action. These two actions arising out of same action. Here you have fraud arising out of investigation.

In Greenhalgh there were two actions of conspiracy arising out of same facts. Thus this is also distinguishable.

In the Supreme Court

—  
No. 12

Judge's Notes  
28th December  
1972  
(continued)

In the Supreme  
Court

Inherent jurisdiction under O.18 r.19.  
Adjourned to 10 a.m. 26th February, 1973.

\_\_\_\_\_  
No. 12

Judge's Notes  
28th December  
1972  
(continued)

J.A. Smith, J.  
28th December, 1972.

26th March,  
1973

In Chambers

Resumed 26th March 1973.

Appearances as before.

J. Thompson: Defendants application to strike out is based on two grounds.

- (1) the matter is res judicata ? 10
- (2) claim is frivolous and vexatious.

A condition precedent to such an application the complete record on transcript of the case to which res judicata applies should be before the Court.

Para 3361 of Vol. 2 White Book 1970

The Annie Johnson - G Laurie & Co. v.  
H.M. Procurator

General 126 L.T.R. 614.

Power O.18.r.19 to strike out is only to be used in plain and obvious cases. 20

Note 18/19/3.

Statement of Claim of plaintiff shows a triable issue. Paras 1, 2, 3 and 5.

The affidavits Exh. C.C.2. Exh. C.C.4. set out facts and it is on those facts that the present action is based. They show an arguable issue.

Wenlock v Maloney and Others 1965 2 All E.R. 871. per Sellers L.J. 872B, 873D. F. 30

Here (present case) there is a dispute as to whether there was in fact an alleged agreement.

The defendants admit there was a meeting. Plaintiff contends there was an agreement at that meeting which was acted upon. That is an issue of facts

In the Supreme Court

—  
No. 12

Judge's Notes  
26th March  
1973  
(continued)

per Danckwerts L.J. at 874 D. to I.

Waters v Sunday Pictorial Newspapers  
1961 2 All E.R. 758.

per Wilmer L.J. at 761 C to E.

0.19.r.27 & 0.25 r.4 now 018.r.19

10 Danckwerts L.J. at 763 F - G.

Amendment Note 18/19/4. (p.301).

I ask leave to amend the S/C as to parties and as to the cause of action.

My intention is to join in this action as defendants certain parties, namely Mr. Paul Bethel and Mr. Paul Adderley.

20 Intend to amend my Statement of Claim to ask the Court for a declaration that due to the manner in which the trial was conducted the results are against the principles of natural justice.

Judge: This brings in new parties. We will deal with the matter before the Court first.

Thompson: Note 18/19/5 No reasonable cause of Action or Defence para 2 (1973 Ed.) 302.

Note 18/19/7 "Frivolous or vexatious"

Pleadings in Statement of Claim do disclose a cause of action.

Note 18/19/10A - Inherent jurisdiction.

30 Even if Court record of previous case was before Court the matter is not res judicata because the pleadings discloses an arguable issue.

Pinder: As to submission there should be a new summons, I refer to ruling of 5th July, 1972 last sentence. There paras 2 and 3 of summons were adjourned.

Judgment Exh. C.C.5 - claim of adverse claimant



In the Supreme Court

No. 12

Judge's Notes  
26th March  
1973  
(continued)

was based on adverse possession. I submit the claim to possession was dealt with. It is possession that the plaintiff is substantially claiming in this present action. Contents of Exhibit C.C.2 and C.C.4 were dealt with in the judgment Exh. C.C.5 and he found present plaintiff (then adverse claimant) has established no claim to the land.

As to res judicata point by Mr. Thompson, Exhs. C.C.1 to 5 are sufficient to satisfy Court that the plaintiff's title to the land the subject of this present action was fully investigated and was dismissed in the earlier action. It is not necessary to produce the entire record from No. 62 of 1965.

10

Thompson: Exh. C.C.1 to 5 are not conclusive.

Adjourned for ruling.

Adjourned to 18th April 9.30 a.m.

J.A. Smith, J.

26th March, 1973.

20

No. 13

Summons  
17th April  
1973

No. 13

SUMMONS

IN THE SUPREME COURT 1971  
OF THE COMMONWEALTH  
OF THE BAHAMA ISLANDS No. 838

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

30

LET ALL parties concerned attend Mr. Justice James Smith in Chambers, Law Courts Building, Public Square in the City of Nassau on Wednesday the 18th day of April, A.D., 1973 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel may be heard on the hearing of an application on the part of the

Plaintiff herein for an Order that:

In the Supreme  
Court

\_\_\_\_\_  
No. 13

Summons  
17th April  
1973  
(continued)

(1) The Plaintiff be at liberty to amend her pleading by the joinder of the undermentioned persons as Defendants to this action namely, Paul H. Bethel, Paul L. Adderley and Hedworth Cunningham Smith.

10 (2) That the Plaintiff be at liberty to amend the Indorsement of Claim on the Writ of Summons herein by the addition of the following prayers as numbered, namely:

1A. Damages for conspiracy to procure the issue of a Certificate of Title under the Quieting Titles Act Chapter 133 and for damages for wrongfully procuring the same.

4. Damages for unlawful conspiracy which has injured her.

20 (3) The Plaintiff be at liberty to amend the Statement of Claim filed herein in the manner underlined in red ink on the Draft attached hereto and marked "J.M.T.I." for purposes of identification.

30 (4) The transcript of the oral evidence taken at the hearing of The Quieting Titles Petition No. 62 of 1965 in addition to all relevant Orders made therein be accepted and be deemed to be a part of the Pleadings herein, a copy of which said transcript is attached hereto and marked "J.M.T.II" for purposes of identification.

(5) That leave be given permitting the Plaintiff to serve the said Hedworth Cunningham Smith who upon reliable information is said to be resident in Scotland, United Kingdom.

40 (6) That the Plaintiff be permitted to amend her pleadings to show that the same are entered on the Equity Side of the Court and not as inadvertently shown to be entered on the Common Law Side.

Dated the 17th day of April A.D. 1973.

Sgd. Illegible

Registrar.

In the Supreme Court

This Summons was taken out by James M. Thompson whose address for service is Chambers, Frederick Street in the City of Nassau on the Island of New Providence one of the Islands of the Commonwealth of the Bahama Islands.

No. 13

Summons  
17th April  
1973  
(continued)

No. 14

No. 14

Amended  
Statement of  
Claim  
(Undated)

AMENDED STATEMENT OF CLAIM

IN THE SUPREME COURT  
OF THE COMMONWEALTH  
OF THE BAHAMA ISLANDS

1971

No. 838

10

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS

Plaintiff

AND

CAVES COMPANY LIMITED  
PAUL HENRY BETHEL  
PAUL L. ADDERLEY  
HEDWORTH CUNNINGHAM SMITH

Defendants

1. On the 30th day of January, A.D., 1965 Mr. Clifton Borer an Agent of the First-named Defendant falsely represented to this Honourable Court in Quieting Titles Petition No. 62 of 1965 that the Petitioner alone was in possession of the land the subject matter of the said Petition notwithstanding his personal knowledge to the contrary gained from visits to the said land and the negotiations relative to the subject land held between the Plaintiff and the First-named Defendant parties hereto and their Attorneys during the years 1955 and 1956 wherein it was agreed that the Plaintiff would restrict her activities to that portion of the land situate to the East of Gladstone Road in the Western District of the Island of New Providence aforesaid and the First-named Defendant would be entitled to the quiet enjoyment of the remainder of the said land situate to the West of Gladstone Road aforesaid.

20

30

It was also known to the deponent that no servant or agent of the First-named Defendant was ever permitted to enter on the subject land by the Plaintiff or her agents for the purpose of exercising any acts of ownership or user on its behalf.

In the Supreme Court

—  
No. 14

Amended  
Statement of  
Claim  
(Undated)  
(continued)

10 2. On the 9th day of August, A.D., 1965, the First-named Defendant again for purposes of obtaining a Certificate or Certificates of Title from this Honourable Court in the Petition above referred to by their Agent, Paul H. Bethel Esq., intentionally misrepresented to this Honourable Court that the documents produced in support of its claims fully and clearly disclosed all the facts material to its claims and all contracts and dealings which affected its title thereto or any part thereof or gave any rights against it being fully aware of the long occupation of the Plaintiff, the quality and quantity of such  
20 occupation, the title documents of the Plaintiff to parts of the subject land submitted to the agents of the First-named Defendant at the meetings held between the Plaintiff and the agents of the First-named Defendant parties hereto above referred to and the terms of such agreement, the same subsequently performed and honoured by the Plaintiff and the First-named Defendant parties hereto until the commencement of  
30 the Petition by the First-named Defendant above referred to.

3. The Agents for the First-named Defendant as regards that portion of the subject land situate to the West of Gladstone Road aforesaid had within their knowledge, the fact that the Plaintiff had in her possession documents of title for portions thereof, a number of the same since mislaid or destroyed, yet failed or refused to inform this Honourable Court to that effect.

40 4. The First-named Defendant and its agents either fraudulently, knowingly and with intent to deceive or recklessly not caring whether the Court might be deceived or not withheld the above-mentioned material facts from this Honourable Court, such evidence, facts and related matters of material importance so withheld thereby assisting to induce this Honourable Court and the Judge of the same to conspire and to deliver Judgments and Orders adverse to the Plaintiff.

5. Further by the information contained in the

In the Supreme  
Court

No. 14

Amended  
Statement of  
Claim  
(Undated)  
(continued)

Affidavit of the said Paul H. Bethel Esq., dated the 9th day of August, A.D., 1965 the First-named Defendant and its Agents falsely and intentionally attempted to mislead and in fact misled this Honourable Court such falsity therein accepted by unduly deducing evidence known to be false, whereby the First-named Defendant acknowledged the presence of the Plaintiff on the subject land such fact seen by the Defendants upon the visit to the locus in quo but swore that such occupation were acts of trespass by agents of the Plaintiff and the representation that there were no other occupiers on the same when in fact there was knowledge in the agents of the First-named Defendant to the contrary as to the Plaintiff's occupation and the absence of tenants of the First-named Defendant who many years prior to the commencement of the said Petition had been forced by the Plaintiff to vacate the same following a brief occupation thereof.

10

20

6. The Third-named Defendant with intent to defraud the Plaintiff and in concert with the other Defendants herein wrongfully admitted that the Plaintiff alleged no interest in Parcel "A" of the Petition without conditioning such admission which was contingent on the results of the agreement reached at the meeting referred to in Paragraph Number 1 hereof which said admission by itself was false in that the same was consideration for the Plaintiff to forbear from further acts of user on the land west of the Sarah Poitier Grant. This fact was known to the Defendants.

30

7. The said Third-named Defendant with further intent to defraud the Plaintiff and in concert with the other Defendants failed in his duty as Attorney for the Plaintiff in admitting the Plaintiff was claiming only by way of adverse possession when in fact the Further and Better Particulars filed on the 29th day of June, A.D., 1965 disclosed the possession of a document in the custody of the Plaintiff for a portion of the subject land thereby raising the question of possession of the whole by reason of colour of title. The Defendants and each of them well knowing the legal effect of this fact wrongfully conspired among themselves with intent to injure the Plaintiff by refusing either to raise the subject with the Learned Judge who

40

himself wrongfully failed or ignored this material fact or by appealing the said Judgment and contrary to natural justice simply disregarded the said Judgment or to inform the Plaintiff of the same and the consequences consequent thereto.

In the Supreme Court

—  
No. 14

Amended  
Statement of  
Claim  
(Undated)  
(continued)

10 8. The Third-named Defendant further failed in his duty as Attorney by failing to inform the Plaintiff of the Orders and Judgment in the Petition delivered on the 28th day of March, A.D., 1965 thereby permitting the time within which to appeal to lapse to the detriment of the Plaintiff

9. The Fourth-named Defendant failed to act judicially or in accordance with the principles of natural justice and in concert with the other Defendants:

(a) failed to keep and record a proper and/or true transcript of the oral evidence led at the trial.

20 (b) failed to honestly, impartially and without bias to appreciate and/or properly assess the evidence and refused to draw the obvious inferences that were to be drawn from the same.

30 (c) failed, because of his relationship with agents, servants and members of the First-named Defendant either to disqualify himself from adjudicating on the matter before him in which he had a personal interest resulting from his social relationship with such agents, servants and members or bring such to the attention of the parties before him so that they might elect whether or not he should adjudicate on the issues between the parties

40 10. In consequence of the wrongful acts of the Defendants the Fourth-named Defendant in breach of the principles of natural justice and his statutory duty refused to fairly adjudicate on and determine the Plaintiff's claim and in lieu thereof wrongly and maliciously declared in the face of abundant evidence to the contrary that the First-named Defendant was entitled to the subject land.

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AND EACH OF THEM:-

In the Supreme  
Court

\_\_\_\_\_  
No. 14

Amended  
Statement of  
Claim  
(Undated)  
(continued)

1. An Order that the Certificates of Title relative Orders made thereunder in Supreme Court Action Number 62 of 1965 issued to and made in favour of the First-named Defendant on 17th August, ~~1965~~, 28th March, 1966, 5th April, 1966 and 6th April, 1966 be set aside under the provisions of Section 27 of The Quieting Titles Act 1950 ~~or-alternatively-~~
- 1A. Damages for conspiracy to procure the issue of a Certificate of Title under the Quieting Titles Act Chapter 133 and for damages for wrongful procuring the same. 10
2. A declaration that the First-named Defendant holds as Trustee for the Plaintiff the whole of the said lands.
3. An injunction restraining the First-named Defendant and each of them by themselves or himself his or its servants and/or agents from any further dealings with the said lands pending the outcome of this action. 20
4. Damages for unlawful conspiracy which has injured her.
5. Such further or other relief as the Court shall seem just.
6. Costs.

Dated the                      day of                      A.D., 1973

James M. Thompson

Attorney for the Plaintiff

To: The Defendant  
or its Attorneys,  
Messrs. McKinney, Bancroft and Hughes,  
Chambers,  
Shirley Street,  
Nassau,  
Bahamas. 30

AFFIDAVIT OF JAMES MAXWELL THOMPSON

IN THE SUPREME COURT  
OF THE COMMONWEALTH  
OF THE BAHAMA ISLANDS

1971

No. 838

No. 15

Affidavit of  
James Maxwell  
Thompson  
17th April  
1973

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS

Plaintiff

AND

10

CAVES COMPANY LIMITED

Defendant

I, JAMES MAXWELL THOMPSON of Chambers,  
Frederick Street in the City of Nassau on the  
Island of New Providence one of the Islands of the  
Commonwealth of the Bahama Islands Attorney-at-Law  
make oath and say as follows:-

1. I am Counsel for the Plaintiff herein and  
am duly authorized to swear this Affidavit on her  
behalf.

20

2. That on the 18th day of August, A.D., 1967  
I first applied to the then Registrar for a copy of  
the transcript of the evidence taken in the Quieting  
Titles Petition Numbered 62 of 1965 and continued  
during the following years to make such requests  
both by letter and orally.

30

3. That this action was commenced on the 29th  
day of November, A.D., 1971 without the benefit of the  
said transcript, the material facts for such  
commencement having been obtained from the type-  
written copies of the Affidavits, Abstract of Title  
and other documents filed therein.

4. That a copy of the said transcript was  
finally delivered to this deponent on the 22nd day  
of December, A.D., 1972.

5. That as a result of the contents of the  
said transcript the Amendments as prayed are humbly  
requested since I verily believe the said contents  
discloses in my humble submission a good cause of  
action in which the Plaintiff ought to succeed.



In the Supreme Court

No. 15

Affidavit of James Maxwell Thompson 17th April 1973 (continued)

6. That as regards Paragraph 6 of the Summons of even date herein I inadvertently designated that the Action was commenced on "the Common Law Side" although it was always my intention to bring the same on the Equity Side of this Honourable Court since the matter is one which should properly come within the Court's Equitable Jurisdiction.

7. That this Affidavit is supplemental to my previous depositions filed herein and I make this Affidavit from my own knowledge and in support of the application to amend the Pleadings herein as set out and prayed for in my Summons herein of even date.

10

SWORN to this 17th day of April A.D., 1973 } sgd: a JAMES M. THOMPSON

BEFORE ME,

sgd: Illegible

No. 16

Transcript of Proceedings, Quieting Titles Petition No.62 of 1965 17th January 1966

No. 16

TRANSCRIPT OF PROCEEDINGS, QUIETING TITLES PETITION NO. 62 OF 1965

20

No. 62 of 1965

JUDGE'S NOTES

Paul Bethel for petitioners.

Paul Adderley for Mrs. Higgs (adverse claimant).

Plan B is the only plan that affects these proceedings. Plan A - land - certificate of title already granted. Plan B. Adverse claim from Mrs. Higgs represented by Mr. Paul Adderley. Plan of land claimed by Mrs. Higgs is also on the file. Adverse claim - acres - will be based wholly on possession.

30

Petitioners claim - on documentary title. Will make prima facie case and rebut the adverse claim by evidence of possession, if necessary.

In the Supreme Court

—  
No. 16

Transcript of Proceedings, Quieting Titles Petition No.62 of 1965

17th January 1966

(continued)

10 I now produce documents:- Ex. 1 - 7 as in supplementary Abstract Ex. 8 - 23 (as in Abstract of title - items 21 - 36 inclusive). Paragraph 21 of Abstract of Title. Supplementary Abstract:- Produce and then from para. 21 of the original abstract. These documents complete documentary title of Caves Company Ltd. to the land in toto. Plan attached to Ex. 7.

Ex. 7 - no plans except those in 1900 until we come to the present time.

Calls:

SAMUEL STUART SPENCE sworn examined Bethel:

20 Employee of O'Brien Engineering Company. I am a Surveyor and Draftsman. I have been one for seven years. I am not a qualified Surveyor. I know about the plans prepared for Caves Company in 1962.

Shown a plan - that is done by O'Brien Engineering Company. I have worked on the plan. But I did not draw it. The plan shown to me is an accurate plan of the land comprising the 253.23 acre tract.

30 This plan comprises a part of the 400 acres I had in the plan attached, to Ex, 7. The plan was made by Mr. Yarally, who is now in school in Jamaica, doing a course in Engineering and is furthering his studies.

I produce the plan. Ex. 24. The survey was executed by Yarally whose name is upon the plan. It is an "Office Plan". I can say on behalf of my company that this plan is an accurate one. I mark Goodman's tract and Poitier's tract on the plan. The adverse claimant is claiming Poitier's tract.

40 I would say that "Goodman" tract is the same as "William Moss" tract. The "50 Acre" tract is the northeast portion of the tract coloured pink - and definitely in the area - on the filed plan. I mark on the plan this tract. The plan attached to the conveyance Ex. 7. included the 50 acre tract and the whole area shown on the plan.

In the Supreme  
Court

Cross Examined - Adderley:

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No. 16  
Transcript of  
Proceedings,  
Quieting Titles  
Petition No.62  
of 1965  
17th January  
1966  
(continued)

In plan attached to Ex. 7 file plan of adverse claimant put in and marked Ex. A (by consent), I have marked on Ex. 7, the area claimed by the adverse claimant shown on Ex. A. (approximately). I mark Goodman's land from my experience of deeds in the office. Western boundary of Goodman's land would be a line running south west of the Bosfield grant: i.e. - eastern boundary of land claimed by the petitioners. Plan of area dated 1st February, 1920 put in and marked A. 2. (no objection). 10

The eastern boundary of the land claimed by the petitioners is the western boundary of William Moss Grant shown on Ex. A.2. If Ex. A.2. is correct Goodman's tract would extend west of the eastern boundary of the petitioners' land.

Plan of area surveyed 20th - 31st August 1945 put in and marked Ex. A3. (no objection). The line separating "The Grove" from Goodman's on A3 is the same as eastern boundary of petitioners' land and the western boundary of the William Moss grant on Ex. A2. Ex. A3. shows Goodman's land as west of petitioners eastern land. The 50 acre tract could therefore be further west or further north of the area I have marked on the filed plan. If Ex. A.2 and 3. are correct, the 50 acre tract may not be included in the 250 acre tract at all of the plan Ex. 24. Plan tracing of Crown Office plan put in and marked Ex. A.4 (no objection). This purports to show areas of land granted by the Crown in New Providence to: 20 30

1. 312 acres to William Moss
2. 240 acres to Sara Poitier
3. 280 acres to Peter Dean

Looking at 1 and 3 - at south end of Moss grant and north end of Poitier grant, they are not adjoining properties. This plan shows western boundary of Moss grant is 60 feet east of the eastern boundary of the Poitier boundary. According to Ex. A.4, Poitier's land is not bounded on the east by William Moss grant. 40

If Ex. A.4 is correct, then the plan on Ex. 7 is wrong. I referred to Para. 1 of "Particulars" of Adverse claimant. I am not familiar with "Killarney" or "Sugar House". Would not find the 50 acres described in that para. in the absence of any plans or deeds. Shown Ex. 1 I cannot say the land described therein is the same as in para. 1 of the Particulars, one common factor - bounded on the east by Goodman's.

In the Supreme Court

—  
No. 16

Transcript of Proceedings,  
Quieting Titles  
Petition No.62,  
of 1965

17th January  
1966

(continued)

10 Shown Ex. 2 - the only common factor with Ex. 1 is the eastern boundary of Goodman. I cannot say from the description that Ex. 2 and Ex. 1 describes the same piece of land. Shown Ex. 4 - description of first 50 acre tract in Ex. 4 is the same as in Ex. 2.

20 Ex. 6, has the same description as in Ex. 2. In Ex. 6, description of four parcels of land. All four parcels are in the area coloured pink in the filed plan: all four parcels are said to be within the Poitier grant. I cannot pinpoint on the plan the four parcels.\* Shown Ex. 7 and Ex. A. (4). Poitier tract in Ex. A.(4) is shown to be bounded on the east by land granted to Dr. Robert Moodie and not shown to be bounded on the east by the Moss Grant. (Sic)

30 Shown Ex. 8, northwardly - to plan shows the lake as a part of the northern boundary - and partly a public road and partly by Bosfield land. Eastern boundary - nothing in the plan of Ex. 8 - shows any vacant crown land or any vacant land. In plan, all southern boundary is shown to be vacant Crown land. Eastern boundary in plan coincides with eastern boundary as described in the deed. (correct above).

I was not employed in the actual survey. I was on the site for the first time last week.

RXD.:

40 Shown Ex. 8. - I see a tract of 400 acres - I see the Poitier grant. The description of the land "ties up" with the plan in Ex. 8 if you refer to the small white tract - indenting into the plan. Ex. 7 is identical with Ex. 8, as regards description of the deed. Ex. 6 is the same as Ex. 2. Ex. 1 compared with Ex. 2: Ex. 1 - (1) no northern boundary. (2) On the east - Goodman's.

In the Supreme  
Court

—  
No. 16

Transcript of  
Proceedings,  
Quieting Titles  
Petition No. 62,  
of 1965  
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Ex. 2 is the same land as in Ex. 1. I would not go further to identify the land. Ex.2 from northern boundary and eastern boundary I say the land must be situated in the north west corner and part of the land.

Shown Ex. "4" - that is a compiled plan - no bearings and a compiled plan is not accurate. Possible because the Moss Grant could be contiguous with Poitier and Moodie grants. Shown Ex. 7 - on the plan there are indications of a stone wall separating a part of the land in Ex. 7 from a part of the Moss grant. 10

In the filed plan the wall is shown. There is a wall in Ex. 7 on the Poitier (western) boundary - as in the filed plan. The plan in Ex. 7 coincides with the filed plan. Wall actually located at time of survey. No doubt about the identity of the land in my opinion. The wall found on the ground if it agrees with the survey information will be produced as having established that boundary line. 20

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Bethel:

I put in Power of Attorney by Hon. H.J. Bell to Robert Johnstone. (no objection). Marked Ex. 7. A.

and Calls:

GORDON O'BRIEN sworn examined Bethel:

Head of O'Brien Engineering Company - started in 1949. Have been a surveyor since 1925: trained by the company by correspondence (International school) and Columbia University, New York. 30

Shown Ex. 7 plan drawn by Aranha father of William Aranha, the Crown surveyor. Our office made plans of the plan in Ex. 7 i.e. Ex. 24. (prepared in April 1962). I did not do this survey: the man who did is in Jamaica, West Indies, Yarally. I did not work on the plan myself. Compare Ex. 7 and Ex. 24. Ex. 24 represents the easterly portion of Ex. 7. There is a line drawn. Shown Ex. A (1) that covers very much it seems to me the same land as Ex. 24 - but smaller. Triangular portion shown on Ex. 2 not on Ex. A. Eastern boundary 40

of Ex. 7 (plan) and western shown walls, or portions of wall. As a surveyor, I would say they showed a recognised boundary. Shown Ex. a (1) and Ex. A (4). On Ex. A (4) Poitier grant (240 acres) - the eastern portion of plan on Ex. 7 - is Poitier grant of 240 acres. Shown Ex. A (4) - Ex. 7 - Moss land contiguous in the latter - not in A (4) therefore compiled plan of grant to people at different times - unless all the grants were plotted from one starting point and all the bearings and distances co-ordinated you would get gaps.

10

If there is any land found not to have been granted as e.g. land between two adjacent grant the Crown has the right to such land. I would say the Poitier grant is properly located in Ex. A (4)

Plan of the Bosfield grant put in and marked Ex. 25. That plan shows Poitier grant south of Bosfield - no intervening land is there on Ex.25 between Poitier and Moss tracts. Between Poitier and Moss there is a wall - boundary. "Wall not straight". I would say that a wall is indicated in the same position in all three plans - Ex. 7, Ex. 24 and Ex. 25. Ex 25 plan tied in with Ex. 24 and Ex. 7, so far as that boundary is concerned.

20

Shown a tracing of the grant - diagrams on the Sara Poitier grant put in and marked Ex. 26 (no objection). From the tracing, that grant is well defined: it shows a stone wall on the west and on the east and a roadway on the north and the end of Lake Cunningham. I would say that the grant plan on the deed - our office plan - are drawings of the same tract of land.

30

I have been on this particular land at various times.

I do not know the date when Caves Company bought this land. I do not know the President of the Company in the early 1940's. I knew Sir Harry Oakes. I know he ran a road through this property which comes out in Harrold Road I cannot point it out on the plan. I identify this track road on Ordinance Map of New Providence (of 1961) - plan put in and marked Ex.27 (no objection). Aerial photograph made by southern Air surveys for O'Brien Company - put in and marked Ex. 28. I identify the track road put through by Sir Harry Oakes. I know it was there in 1942 - I had to run a line of levels from Oakes Airport. There is another road running through the property from south

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west to north east. Do not know if it was put through by Sir Harry Oakes. The yellow lines in this plan represent the survey shown on Ex.24.

When I was in charge Nassau Engineering Company the Oakes Estate asked us to put up markers on their boundary lines, that could be seen easily when driving along the roads in the respective areas.

This was done by G.P. Martin an employee of Nassau Engineering Company I commissioned this job. There was a marker put on John F. Kennedy Drive. It is still there. These markers were 4" galvanised pipes, set in the ground to extend three or four feet above the ground. They were filled with cement and at the top, a piece of stell\*with a circular piece of iron to indicate an "O" for Oakes. Two were put where the line crosses Gladstone Road at the southern boundary.

10

There were also two put where the north line crosses Gladstone Road. One was put where the west line meets John F. Kennedy Drive. I do not know of any other on this property. These were put to mark property where it abuts on High Road and so none were put in Eastern boundary. These marks were put up prior to 1949.

20

The properties were all owned by the Oakes Estate.

Cross Examined Adderley:

Shown Ex. 7 - Bearings on north line are south 69 degrees east; Distance - 45.5 Chains: That is the length for what we say is the Poitier grant. Shown Ex. 24 - Bearings on north line - north 67 degrees 59.2" west and north 67 degrees 56.17" west and north 67 degrees 01' 17" west and north 67 degrees 04'.02" west and north 66 degrees 58'.25" west and north 71 degrees 47' 10" west. That is generally a straight average 67.5 degrees.

30

Length on our plan 2,847.11 feet. Difference is bearings - one Tone and one Magnetic: Variation could be more than 2 degrees - varying over time. In a boundary of that length - 2 degrees mistake could make a 54' variation in line.

40

Photostat of Sara Poitier grant put and marked Ex. A.5. The bearings south is 70 degrees.

Ex. 7 - has a bearing on the north - but no southern bearing. On Ex. 24, there are three bearings :-

1. South 66 degrees 14'.28" east.
2. South 66 degrees 12'.58" east.
3. South 66 degrees 15'.28" east.

Our survey does not show our lines as parallel. Crown Grant lines are parallel. 4 degrees difference in direction - the bearings should be constant for the same period of time. Crown 70 degrees south and ours 66 degrees - variation due to True and Magnetic bearings.

On Ex. 7 there is a bearing on east of "North 11½ east" and on the west of "North 24 ¾ east". Ex. A 5, on the east lies "South 5 degrees west" and on the West Line "North 20 degrees East". On our plan (24) there are several bearings. (1) North 13 degrees 32'32" east.

2. North 13 degrees 25'40" east.
3. South 13 degrees 25'20" west.
4. South 13 degrees 24'50" west.
5. South 13 degrees 26'50" west.
6. South 11 degrees 51'50" west.
7. South 11 degrees 23'50" west.

Differences - on our plan certain pillars and walls in accordance with which we drew our lines. Length of Wall - from north boundary to end of wall - about 670 feet - on the eastern line. A wall shown on the Crown Grant and the line on the eastern wall of our plan (24) I maintain that they are both on the same line. 8 degrees difference in direction of one line and the other - I cannot account for it.

Western boundary on our plan (ex. 24)

- South 26 degrees 31' 17" west.
- South 25 degrees 12' 11" west.
- South 25 degrees 26' 08" west.
- South 26 degrees 13' 21" west.

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This agrees nearly with Ex. 7. 5' or 6 degrees difference between Crown Grant and our Plan. Wall on our plan accurate. Since Crown Grant, a road has been put through - Gladstone Road. Ex. 25 does not show Poitier Grant. I first became aware of this particular grant, when Nassau Engineering Company was asked to put up monuments - in the 1940's.

In 1941/42, I did some work on a road - coming from Harolld\*Road not shown on Ex. 28. I had nothing to do with the long road running through the land. We have been asked to locate certain trespass on the land. First time - before 1949 - before death of Sir Harry Oakes. I know that the markers were put up before I left Christie's Office. I left Nassau Engineering Company in 1949. First survey was before I left that company - but was not done by me. It was done by an American. I send the man out, whoever he was. A report would have been made. No report of anyone then in possession. Survey was not made to find out how much of the land was occupied. I have my own office records from 1949. We would have notes of any persons in possession: not the extent.

(sic) 10

20

The owners were afraid that someone was in occupation and we (our company) had instructions to go and see. Survey for Nassau Engineering to set up markers.

30

Adjourned 10.00 a.m. 19th January, 1966.

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19th January, 1966: Hearing continued.

O'Brien cross examination continued:

Shown Ex. 28 - the track road through the property was not made on an effort to get a route from Oakes field to Interfield. I do not know who put the track road through. There is a track road running through this property into Harrold Road. That is not the same road as I pointed yesterday. (Eoad now marked on plan with red crosses). (Road pointed yesterday - marked on plan with a T. (18)). T. (18) appears to have been opened by a tractor - I tell this by the width of the road. I do not know if this track road has been there for generations. Winding nature of the road - depends on the terrain. I do not know of the existence of a track road,

40

which appears to run on only the northern boundary of the plan. I have seen a track road which I mark as "Foothill Road" (name for identity only).

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10 I have surveyed since 1925 Bahamas. Am familiar with line methods and methods for the burning of coal. Coal burning - Charcoal - Pine logs are cut and stacked - covered with earth or grass and then ignited. Pine logs - essential raw material. Pine forests are the source.

20 South of north east/south west straight road - towards the hill side - to the east - Pine Forest area (mostly). There are other areas from the base of the high ground - to the top - generally "Coppice". Do not know if area cut down over many years. Coal burners may move their kilns - or not - as the case may be. I do not know where any kilns can be located on this property. I know of one lime kiln - but not sure whether it is on the land or not. Raw material for burning of lime, hardest and slowest burning wood sought could be pine or other wood. Lime stone rock also goes into the making and conch shell. For coal burning grass and earth used as cover: I have not seen anything used to cover lime. I know of an area used on this side of Gladstone Road (East) was leased to M. Paul Albury for tomato farming. I mark this farm Albury Tomato Farm, on the map. I knew he moved off that property to the other

30 side of the road. I do not know why or the circumstances. I do not know of any other areas of this property under cultivation. I have never looked for any other areas. Do not know that a large part of the area north of the "Centre Road" has been under cultivation.

In 1949, my office was not commissioner\* to ascertain cultivated areas on the land - but only to mark the boundaries.

(sic)

We were commissioned to locate a lime kiln: I am not sure when - late 50's or early 60's.

40 We were asked to locate a clearing and a road leading to that clearing and that was last year, 1965. I have never been on the land north of the "Centre Road". From Interfield Road, you cannot see into the land north of the "Centre Road". I mark on the plan the general direction of the Hill Top.

Re-examined:

The southern portion of New Providence has pine

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trees. Shown Ex. 27 - the key or legend shows the pine lands. I mark on Ex. 27 - the property with which we are dealing. There is cultivation - according to the "key or legend". The cultivated area on the Ordnance and Albury Tomato Farm which I have marked on Ex. 28, do not correspond Albury had a tomato farm, as I have said - of about four or five acres. I do not know how long he had the farm. Tomato farmers do not stay in one spot: one year and then plant out with peas or other crops and move on for the tomato growing. 10

From Gladstone Road or Interfield Road - not possible to see areas of cultivation on the land. Most is high bush along Gladstone Road - until south where there is low scrub land. Ordnance plan describes interior of this property as "pine and broad leafed coppice". The lime kiln - between Gladstone Road and Interfield Road. Am not sure if it was within this particular property. Not asked to locate any others - nor coal kilns. Most coal burning is near Adelaide and Carmichael Village, by people who live there themselves. The clearing I located in 1965, I marked upon another plan. I do not know who made this clearing. Plan with clearing indicated thereon put in and marked Ex. 29. When I pointed out the Road T (18) yesterday - that was a mistake on my part for "Centre Road". I do not know how T 18 got there. 20 30

Bethel:

I put in Annual Returns of the Caves Company Limited for the years 1938 - 1940 and 1942 - (no objection) Ex. 30.

Adderley:

Adverse claimants - claim by possession. Title to same parts of this land may not be in Bell, title obtained by Mrs. Bell from the Robertsons. There are other documents of title not put in which relate to this piece of land. Gaps between Crown Grant of Poitier and the petitioner's predecessor in title. There is evidence of title of land in the two Robertsons (S and D.S.) referred to in Ex. 2 (description) 240 acres to Poitier and 50 acres Ex. 6. 40

Adderley - I call:

LEONARD EUGENE HIGGS: sworn examined Adderley:

I live in Augustus Street - South. I am

aged 80 years: born in 1886. I came here to Nassau in 1922 - from Florida. I was married 50 years ago. I have lived in Nassau ever since. My wife is Clotilda Adderley Higgs.

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10 My brother-in-law Richard Adderley came to me and he persuaded me to come to Nassau, as his father was old and had hundreds of acres of land. He asked me to come over and take care of the Estate for him. His father's name was Daniel D. Adderley (my father-in-law).

When I came to Nassau I lived with my father-in-law in the same house. My father-in-law lived up to 84 years. (he died in 1934).

20 Mr. D. Adderley took me out to the land - to "Goodman's" land. He told me the "Sugar House" was the western boundary of his land. He told me he owned hundreds of acres of land, and that if anyone came out and said anything to me, to tell them that the land was his own personal land and his brothers had sold their portions to other people.

He showed me the eastern boundary "Sanka Johnstones' Hill". The northern boundary was "Sweeting Coppice" the southern boundary was Crown Land. He had lots of tenants at the time on the land and registered them. Mr. Knowles, Mrs. Johnstone (both alive) were tenants - as also Felix Taylor. My son followed after me.

30 Mr. Knowles I met as a tenant, when I came from Florida. Mr. Knowles was burning coal and raising sugar cane - and bananas and burn lime. I pulled bags and bags of coal from the land. I worked very hard on the land. I began in 1925 $\frac{1}{2}$  I raised tomatoes and shipped them to Warner and Sons in New York and W.P. Adderley used to pack for me. I made money out of tomatoes. I grew corn/cassava/bananas potatoes/yams. I burnt lime until about two years ago. I also burnt coal myself. I got my wood from the same land. I cut wood myself. My father-in-law cut wood. 40 He sold to the hospital. They used boilers. I sold wood - from the same land. Gladstone Road did not exist, when I came. That road divided the western boundary: by that I mean it left land on the east and west of the road.

I was a seaman. After 1922, I ran a liquor ships on several occasions to U.S.A. Otherwise I

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farmed on the land and I am still farming on the land. Never stopped. I had to give up coal and lime burning. I collected the thirds from the tenants for Mr. Adderley until his death. Before Mr. Adderley died, we had eight or ten persons from whom we collected "thirds". These tenants used to burn coal and farm: Mr. Knowles also burnt lime and so did William Johnstone.

Mr. Knowles has practically given up farming. He collects peas and oranges. 10

I planted peas trees/mango/sugar apple/banana. Some of the trees are still there. I can show my farm, and where I used to burn coal and lime, and where I cut wood.

After Mr. Adderley died, there were still tenants. I collected "thirds" and gave them to his daughter - my wife. After Mr. Adderley's death - I collected from about six people right on. I burnt lime on the north and south side of the hill. My sons worked on the land - Kenneth and Oliver and Sam and Livingstone and Osborne. My wife used to go on to the land. She lost her sight 19 years ago. I remember a Mr. Cash now dead. He worked side with Mr. Knowles. I shot over part of this land. My father-in-law said keep part of the coppice for shooting. Some of the people who worked on the land did not shoot - only our friends. I remember Sir Harry Oakes. He met me on the land and bought tomatoes from me. I told Sir Harry that the land belonged to Mr. Adderley and he said he would buy it at any time. My father-in-law did not sell. He was still alive when Sir Harry first came. 20 30

I got to the land by donkey and cart and used it to get the thirds from the tenants. I used to hire labourers from Cat Island and Long Island - one is Gerald McMinns. When I came in 1922, Mr. Adderley had people working for him. They continued working with me. I know where the Rock Crusher is - I farmed west of it. I know of a wall running north and south - along Gladstone Road. The wall is east of Gladstone Road. On the eastern side of the wall is Mr. Adderley - my father-in-law. He told me so. The tenants began 200 feet east of the wall and continued east up to the wall. We did not go over the wall. The wall did not go the whole way south - so far and then it stopped. 40

There is a wall on the eastern boundary up to

where the crusher is now. Where my greatest farm is, is west of the wall and south from there to the cave.

Cutting down but things can grow. Cave is south of the hill. We got soil from the cave. Large Cave. We had to blast the top to get into it, to get the soil out. I farmed from one place to the other: and sometimes I go back again. I continued farming during the last war: Could not use the old road it was closed. I had to get a "pass" - to use the old road and the tenants had to get a pass to go to the farm.

I know Mr. Claridge. He met me. He used to raise olives. He was on the land about a year. He had pigeon peas: my wife warned him off and he did not come back. He left a crop of pigeon peas.

I have tenants on the land now - Mr. Knowles is the only one there now. Oliver has a farm near the wall - near Gladstone Road. I do not go there often myself now. I remember Sidney Wyllie - he used to farm near me - tomatoes - he burned lime and coal. I remember Felix Taylor. He used to work for me and was a tenant. I cut pines from every place I could find them - taking the biggest. Most of the pine was on the south part of the land and that is where I got it.

Cross Examined Bethel:

I was in Nassau before 1922. In 1922, I lived in Augusta Street. I knew Adderley Road. Adderley Road runs to the lake. I know the airfield. The "pass" office was somewhere near the gas station opposite airport entrance. I had four miles journey to the office. From the office, I went west. There were two gates. From Augusta Street, to get to the farm, I went along Meadow Street pass across Nassau Street, "Quarry Hill", where St. Joseph Church is - and straight to my farm. It was not a gas station before. I had to go through a gate - and then straight to the farm 300 or 400 feet west of the gate to get to my farm. I know where Gold Been factory is - my farm is south of that factory. I had 800 trees - and the Government took this property in the war and paid me. I know the City Dump. My farms were south and continued west of the City Dump. I farmed east of the City Dump as well. There was a lake near the Old City Dump. That has now been filled in. Harold Pond is to the south of that.

The Building Estate behind the Been factory was

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part of my farm. Mr. Adderley told me his east boundary was Sanko Johnstone - South was Government - West Sugar House - North Sweeting Coppice. I never farmed down to the Sugar House - not within hundreds of feet from "Sugar House".

I know Poitier grant. The various tracts have never been separated. Sugar House land - Poitier land - "Goodman"s" land starts from the sea, and comes back south. I farmed east of the Sugar House. I know Harold Road. Sweeting Coppice is north of Harold Road. From Mr. Edwards' House I farmed west from there. Part of the land south was taken by the Government and Mr. Adderley went to Court about it.

10

The land taken over and which I was farming overlooks Oakesfield. I burnt coal for a number of years. That ;is the only estate I have been on. I farmed as much as anyone man could do. I know one road south of the hill, that I used to go through to headquarters. Gladstone Road goes over to Headquarters Road. Road - east to west and going to Lake Killarney: There is only one road that I know and that leads to the airport.

20

Tenants were registered. Mr. D. Adderley had them on his will. I cannot say the number There were so many. These tenants worked where I am working now. I am still working. I am working now east of Gladstone Road. I was there last week. I go to my farm when I feel able. Last year I went every week. In my farm - now fruit trees pine, cassava, bean vines.

30

The hurricane destroyed my farm. I keep two acres of land under cultivation. I have had this present farm, for two or three years. Farm I had before this one was out in Sweeting Coppice. In that one, I had the 800 fruit trees. I keep a farm until I am tired and then give them up. I cut down and go on. I leave the old farms for the next generation to clear up. My present farm is about 600 feet from Gladstone Road. It is quite a distance. I hire to cut and I cut down myself. Present produce I now use in the house.

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"Farming" is, nowadays, just enough for oneself. I left Sweeting Coppice farm - when

I cannot say. Never returned. I continued on the south.

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10 One Ted Knowles blocked the road to my farm on Gladstone Hill - and Road - two blockings and I moved them. Blocks were put up two or three times. Mrs. Oakes came over to me and said it was "Oakes" Land. My brother-in-law put Saunders on the land. Saunders brought Mrs. Oakes to me. We made Saunders quit - by proving to him that it was not Oakes land. The road blockings were four or five years ago. I quit Sweeting Coppice when Government took it away from me. Hearing adjourned:

LEONARD EUGENE HIGGS reminded of oath cross examined Bethel continued.

20 It was taken from me during the war. Before Sweeting Coppice I had farmed "overback" further south and west near the Cave. Do not know how far that is away from Lake Cunningham - I know Harold Road. Harold Road comes right around the back of the property taken over during the war. I farmed west of Harold Road. The rock crusher was to the north east of the place where I farmed.

I farmed south of the rock crusher and west. I cannot even say roughly, how many acres I farmed over the years. I left the Bahamas within the last four years. I was in New York a few months ago, when the Pope was there - and on several other occasions

30 I went to New York when I was eighteen for the first time. I stayed three months on that occasion.

40 I was a seaman. I have been going and coming all the time. I left Mr. Knowles to collect the thirds of the coal and lime from the tenants. He collected for Mr. Adderley. Mr. Adderley died 32 years ago. I lived in his house for 24 years before he died. I came here in 1922. I got my water from Wells dug in the land. I met the wells there. Plenty of them. They are now overgrown. No coal or lime burning recently. The pine is burnt out. Lime is burning now. Coal burning has stopped: I cannot say when. I met my father-in-law cutting wood all over no particular place. After Mr. Adderley's death I gave the thirds from the land to my wife of corn, bananas, sugar cane, cassava, yam, coal and lime. My son sold whatever we could not use ourselves. My father-in-law shot. Chris and Joe did when they were young - wherever they could find the birds. Others could go shooting too.



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They could not claim the land, if it did not belong to them. The blasting of the cave was many years ago. I and Sidney Wyllie did the blasting. Do remember when. Cannot say the size of the cave never went to the end of it. Nothing in the cave. South of the cave we farmed up to the Government land. I had a tomato farm west to Government land. Mr. Knowles worked up to the Cave and to the Crown land south of the Cave. I cannot tell how near to the cave I farmed.

I knew Carl Claridge he farmed to west of me on Adderley's land (as I was told). That was east of Gladstone Road, but to the West of me. Mr. Knowles was next to me on my west. Claridge raised okras. Cannot say exact time he was there. He left because my wife spoke to him and to avoid confusion. He may have raised tomatoes as well as okras. I knew Sir Harry Oakes. Saw him once.

A track road ran through the land to Lake Killarney. This was there, when I came on the land in 1922. I do not know how it got there nor who put it there. There is a road going east from Headquarters Road and put there by Sir Harry Oakes.

Mr. Adderley ever\* said it would make the land more valuable - but it has caused trouble. If that road had not been put there, there would have been no case in Court today.

Sir Harry Oakes had no right to my knowledge, to put the road through. He must have used a tractor. I was not there to see, myself. I cannot say how many farms on the land today. I do not visit often now because of my age.

I used fertiliser for tomatoes. We had to buy it. I cannot say the acres. But not 20 acres at one time. Could not slip up to that amount. Tomatoes raised in Sweeting Coppice and Lake Hill and around the Cave. Do not know the last time I grew tomatoes.

Re-examined Adderley:

I farmed not on Sweeting Coppice myself but South - it was the boundary to Mr. Adderley's land. When Mr. Adderley was alive, he had people burning coal for him and lime.

10

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(sic)

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40

When I had my citrus orchard Mr. Daniel Adderley was alive and he had a farm west of me.

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Daniel Adderley had people raising tomatoes for him. William Johnstone worked for him personally and Daniel Taylor (now dead).

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The land reverts to bush four feet high within a year. Most of our land is rocky farm in pockets of earth between rock.

CLOTILDA EUGENIA HIGGS sworn examined Adderley:

10 I live in Augusta Street, Nassau wife of Leonard Higgs married in 1914. My age 75. My father Daniel Adderley. He died in 1934. His age 84. I was born in Nassau. I spent two years in Florida - 1920 1922. My father lived in Augusta Street. Later he moved south. Daniel Adderley was a tailor. Also shipped fruits to New York and Key West. He got fruits from his own land and bought from others. He had a petty shop in his last days. I lost my  
20 sight about seventeen years ago. I know the land in question. I used to go there with my husband to collect coals. We called the land "Headquarters Land". I used to go on the land with my mother, when I was a little girl - by horse and cart. My father's land was 1/3 of 700 odd acres. He never farmed - had the farming done by tenants. They grew crops - burnt lime and coal for him. Cut wood also for hospital and the prison.

30 Since I can remember, my father had tenants over six. Sweeting Coppice is north of Adderley's land. There is a wall on that boundary Western boundary was "Sugar House" land. I know Gladstone Road goes over to Headquarters. I knew when it was being built. My father's property on the eastern side of the road. There is a wall on the western side of Adderley's land and on the east. Do not know if there was a wall on the southern side.

40 Before marriage I used to go to the land in the holidays. I was a teacher in St. Francis Catholic School. I have seen the coal and lime kilns.

There were plenty farms when I was a girl. They used to burn on the north and south side of the "Hill". My father's tenants were scattered over the land - on the hill and in the valley. After marriage 1914 - 1920 I went onto the land with my husband.

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After 1922 I went often to my husband's farm on land. I went with him also, when he went to collect the thirds from the tenants.

My husband used to go to sea - and his absence may be six months or three months or even one week. The six months trip would be the Cuba trip - 47 years ago. This was before I went to Florida.

After my father died, my husband made a trip or two. The tenants burning coal and lime, were working for my father. 10

My father had no employees of his own burning coal and lime.

After my father died, there were tenants on the land. My husband collected the thirds. After his death, (my father's) there were six or seven tenants on the land.

My husband brought the thirds to me. Tenants were Knowles, William Johnson, a Miss Ward - Mrs. Green (dead) Mrs. White (dead) Mr. Jones (dead) Mr. Cash (dead). Several others - Mr. Wyllie (dead) and his nephew - Sidney Wyllie (still working on the land). 2

Cross Examined Bethel:

My father visited the land in question. He had coal burners there. He and two brothers and one sister had about 700 acres of land. The boundaries north by Pearson Dean on the south by vacant land on the east by Robert Hunt and on the north east by one Barrow (near Maxwell Thompson. He has the Barrow's land - I think. On the west the boundary was "Sugar House" owned by the two Robinson brothers. 30

My uncle bought 50 acres or more from the two brothers. My uncle was W.C. Adderley. My grandfather sold 100 acres to Mr. Sweeting (Sweeting Coppice) part of the 700 acres or so. My two uncles sold 312 acres including the Golf Course to Clough and Menandez. 4

A plot was sold to Bri

Government took 145 acres. Some of the land was still left. I cannot say what was

left. I know Harold Road. This ran across south from Adderley Road. Adderley Estate land was west of Harold Road and adjoining Sanko Johnston's land now owned by Mr. Edwards. Gladstone Road is New Road running north and south. Adderley estate went to Gladstone Road. We collected coal from land on the western side of Gladstone Road. Coal burners and tenants were on the eastern side of Gladstone Road. 10 The New Road (H.Q.) was built about 1933. My husband used horse and cart to collect the coal: donkey first then a horse.

These were used until he (my husband) got a truck after the second war. Adderley's road goes east to west through the property. South of Adderley Road only track road. I do not know much about a road put there by Sir Harry Oakes to Lake Killarney. He put in a road going south on the east side of the "New Road". 20 Farming was going on. Oakes spoke to the tenants. My husband had farms on this property. I used to go to them two or three times a week. My husband was on southside of Sweeting Coppice: this was before the war. Tenants had farms. Coal was burnt on the south side of Adderley Road. Cash and Knowles had pretty big farms. Some had farms about three acres. They moved about. They travelled further west. I cannot say exactly where the rock crusher is. The 30 city dump - the farms were south west of the City dump. Between 1914 - 1920 I was in Nassau. I was then going on the land

We were on the west side of the New Road. Sometimes my husband sailed to Cuba or Florida. Some were weekly trips - 1915 was the last trip to Cuba.

Weekly trips up to about 1924. Yes, he continued to farm. The tenant, Knowles would look after the farm or neighbours. Sara Poitier grant is connected with ours. Do not know if it was part of the Adderley grant. Do not know how far south of the hill any farming went on. The land is on the lake on the south side. Impossible to consume on the land what was produced by my husband and tenants. Had to be sold. Some of the tenants were near my husband some far off - all around. 40

One tenant was at the pond on Harold Road. It may still be there. Pond was south and a good

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distance from the City Dump. I am talking now  
after the death of my father.

          
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I told my husband to tell Claridge to get  
off the land. I would take him to Lawyer  
Callender. He only made a season and got off.  
He left his pigeon peas behind. Claridge farm  
was round the "Cave". I lost my sight after the  
Claridge incident.

(continued)

Re-examined:

None.

Adjourned to 10.00 a.m. 27th January, 1966.

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WILLIAM M. KNOWLES sworn examined Adderley:

I live in Brougham Street West. Aged 93  
farmer. Knew Mr. Daniel Adderley. I worked on  
his land from 1930 - up to today. I am still  
there. He gave me permission to farm. He  
gave me a paper. I cannot find it now. It was  
to let me work on the land life and gave him  
thirds. In 1930 I met a man we called "Showder"  
a Jamaican - on the land. Others were also  
working but I did not get their names. Adderley's  
land was from S. Johnston to a wall (on the west)  
over the wall was Maura Collins. Some of the  
wall is still there. Eastern boundary was Sanka  
Johnston. Northern boundary was a road - where  
Prospect Road is now. On the south is a pillar -  
but no wall. Mr. Adderley land is on both sides  
of Gladstone Road. The wall is on the west side  
of the land. The wall runs north and south. I  
know where the Rock Crusher is. To get to my  
farm from the crusher you go south over the hill.  
I walked through the land and found the best part  
to farm. No one ever tried to put me off the  
land. I used to burn coal - from the new road  
from Headquarters up to Sanka Johnston's land.  
I know Gladstone Road. I farmed on the east part  
of Gladstone Road not on the western.

I burnt coal on the eastern and western  
sides of Gladstone Road. I cut the wood right  
there. I stopped burning coal about 20 years ago.

I went to burn coal in 1930 - and I began  
farming in the same year. I grew tomatoes/fruit  
trees e.g. pears - oranges - guavas - potatoes

10

2

3

4

- peas - beans - olives and sugar cane.

I remember Mr. Adderley's death. After his death, I paid the thirds to Clotilda Higgs. I had labourers to work with me. I do not keep much farming now - as age creeps on.

Court:

I made rain shelters on the land.

Cross Examined - Bethel:

Land on west of me was owned by Maura Collins. Do not know R.G. Collins. A. Collins got wed to Bryce's daughter. Maura Collins is not the Collins who got married to Bryce's daughter. No one ever troubled me. My farm is south of where the rock crusher is now. I am now farming near to the cave. I farmed west and to the south of the rock crusher. I know Adderley Road and Harold Road. I farmed south of Adderley Road - over the hill. I worked on Adderley's land. From Johnston to the wall is sixty acres. I have not less than one acre under cultivation now. I never measured. I just cut down and planted. I might say I have kept the same farm for two years.

I ran more than one farm at one time. I know the City dump. That is not near to my farm. I farmed near the Dump - on its south side. The wall (north and south) is near where the rock crushing is being done. Wall on the west is a boundary for one plot of land. Richard Adderley bought Mama Collins land. Richard is Daniel Adderley's son. I was not there when it was bought. I was told. I farmed on the east - the south and north of the wall. "Pine Yard" is the same land - that is - where the trees are.

Plenty people worked on the coal burning - on Adderley land - and Mama Collins land. I did not farm on Mama Collins land.

Mr. Higgs worked on Collins land. I knew Sir Harry Oakes. He was good for the poor people in this land. He gave them work and fed them. He gave me work - hole digging.

Oakes put through a road - from Gladstone Road to Big Pond. He came through Adderley's land. The road was a help to Adderley - hence no doubt it was

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made. Oakes did not put any boundaries over the  
land.

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I knew Claridge. He farmed below me and  
left when he knew it was Adderley's land. He was  
not there a year. He planted okra. He began  
with tomatoes. He left his peas behind. Claridge  
had a big farm. Bigger than mine. I do not know  
where Claridge went or where he came from.

Do not know that Oakes had a land claim to  
Adderley's land. Sir Harry Oakes never warned  
me off. He met me farming. Do not know if he  
sank any wells. There was a well on the south of  
the land, by Sancha Johnston's land. I farmed  
during the second World War. I never kept more  
than one labourer. I have burnt many coal kiln,  
since 1920 - on this very land. I stopped  
burning coal ten or twelve years ago.

I did not burn coal in the last war.

Re-examined:

Sir Harry Oakes never told me I was on his  
land. No one ever troubled me. Do not know  
Paul Albury. Claridge was on the Adderley land  
and so he stopped.

WILLIAM JOHNSON sworn examined Adderley:

Live Farrington Road. Construction worker.  
Farm : Left it in 1931. Began 1921. On  
Adderley's property. Permission from Daniel  
Adderley. He took me on the land. I farmed  
corn, peas and potatoes. Burnt lime.  
Adderley's land - the eastern boundary was  
Harold Road. In 1921 I was living in Chipman's  
place - which used to be on Harold Road. I  
know Gladstone Road. Burned lime west of that  
road. And farmed east. I paid thirds to  
Mr. Leonard Higgs - son-in-law of Adderley.  
Knowles was a tenant - a Mr. Cash a cousin of  
mine - dead now and White (dead)

Walls are on the western side of the  
property - running north and south - on the west  
of Gladstone Road. I farmed east of the wall.  
Near the rock crusher and on the east. Gladstone  
Road is north of the rock crusher. The wall is  
400 to 500 feet from the rock crusher. I could  
show now where I farmed in 1921. I farmed six  
or seven acres of land.

Cross Examined - Bethel:In the Supreme  
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10 Mr. Aranha had men cutting lines out. He said the Crown was one side and Adderley on the other. Adderley on the west and Crown on the east. This was 1921. Aranha was a Government Surveyor. The boundary which Aranha pointed out was twelve feet from where I was working. The rock crusher was about 300 yards from where I was working east of the crusher. I farmed different farms on the land. I farmed on the western side of the crusher as well. I burnt lime on the south but no farm. I am 57. I had two farms - each six or seven acres: one to the north and one to the south. I hunted racoons on the land since 1931.

Re-examined:

I heard of Daniel Adderley's death. I was not then working on the land. I began work, as a boy. In 1939 I got married. I worked for Mr. Daniel Adderley. I gave him "thirds".

20 SIDNEY WYLLIE sworn examined Adderley:

Born 1916. Age 49. Live Meadow Street. Government employee. Know Leonard Higgs. From 1927 went out to help him not working for him. We grew tomatoes. Carried bushels of lime. Used to go after school. No payment for work. At 18, he gave me a portion of land. I burnt lime and farmed. I burnt lime for eighteen years. Farmed fifteen years. From the rock crusher (that is where it is now) I went west until we reached Lake Hill.

30 From that Hill, you can see both lakes at same time.

40 My farm was on the south side of the hill. My farm on the same place - all the time. My farm is ten acres. Task is 100' X 100'. Four tasks make an acre. Burnt lime all about from the crusher to the Lake Hill. Top on the south side. Burnt little coal - four kilns. Knew Sir Harry Oakes. Do not know of any road put through by him. Know Gladstone Road. My farm is about 50 - 60 hundred east from Gladstone Road. Burnt lime on west side of Gladstone Road - that road runs to Headquarters Road (Carmichael Road. My farm was south and west of where the rock crusher is now.



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Cross Examined Bethel:

I began to farm 500 from the rock crusher - west and south. I called it one farm. Burnt lime near the farm and within 500 feet from my farm. This was on the south side of the hill. Cannot tell, number of lime kilns. I burnt lime west of Lake Hill. I got my water from Lake Cunningham. I carried the water in a truck. City Dump is not near the crusher. I made my own road to get to the farm 200 feet south from the rock crusher. I went to my farm most every day. Grew pineapples; tomatoes, potatoes, onions, peas, beans and bananas. I knew Knowles. I never saw him on Adderley's property. Western boundary of Adderley's land is - Sugar House - West of the Hill. Sugar House from the crusher is sixty acres. Sugar House is west on the south side of the Main Street. Sugar House is still there. There is a well - near the crusher.

I worked on the west of the wall and never on the east. No one ever told me to move off the property. Crown Lands never gave permission to burn coal and lime. No one ever came from the Lands office about this.

Re-examined:

Sugar House was empty and broken down - when I first saw it. Remains are still there.

FELIX TAYLOR sworn examined Adderley:

Gardener. Aged 55. Came to Nassau in 1929. From Long Island. Knew Leonard Higgs. Began to work for him in 1933 - I cut bush - planted seeds - helped him to build lime kiln. Worked until 1937. 1938 - left returned Nassau in 1943. Occasionally have worked for Mr. Higgs.

In 1933 - got to foot of Lake Hill and then south on a track road. I am the only one who worked for Mr. Higgs. Worked up to near where the rock crusher is now from west to east. I remember Mr. Wyllie on the land. Also Knowles and Johnston: they were east of the rock crusher. Mr. Higgs - land south of the Lake Hill. Higgs farmed three or four acres. He kept moving. Never burnt coal. Worked since 1943 - when I had time - when I had a day off. I could show the farm now.

Cross Examined - Bethel:

I got to our farm - from the foot of Lake Hill then by foot track to the south and you reach the farm. The farm is between the Lake Hill and the rock crusher.

Saw no stone wall. Higgs farm on south side of Lake Hill. Harold Road is not near the hill. I was on the spot six months ago. Saw no farms. But never went to Mr. Higgs farm. Saw no people on the land. Saw farmers near the rock crusher - last year. Do not know "Gladstone Road", that is by name. Do not know anything about boundaries. Built lime kilns in the same direction as where the farm is. Cannot remember how many. Do not know Mr. Edward's house. Higgs farms were not near Harold Road - a great distance away. But got to the farm from Harold Road. Higgs farm about three acres. No other farms round there at the time. Wyllie's farm was not near Higgs. William Johnston did not farm where Mr. Higgs was. Johnston farmed east of the Rock Crusher. Sidney Wyllie farmed north of Higgs. Knowles farmed - east of the Rock Crusher.

Re-examined:

None.

OLIVER W. HIGGS sworn examined Adderley:

Live Farrington Road. Age 42. I know the land in question all my life. I have a farm on the land. Since 1945. Before 1945, I helped my brother build lime kilns on the eastern portion.

I go up Gladstone Road Hill - reach the lamp post up through the track road (southerly) and then to the second lamp post where I go into my farm. My farm is 75 yards from where I turn off Gladstone Road. I have been in the same area since 1945. I occupy roughly six or seven acres. I have burnt lime myself. The lime kilns are west of where the rock crusher is here now, and south of the crusher. I have a farm on the west side of the wall - and my old farm was on the east side.

This wall, you meet, when you go up Gladstone Road Hill. The wall is on the south of Gladstone

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Road. I think the wall is a boundary wall. I know the road from Gladstone Road to Harold Road, put through by Sir Harry Oakes. I saw the track cut out. He had not been given permission. I and my mother went to see Sir Harry. He was not there. Afterwards, I went to Orange Hill - legal discussion. No one tried to put me off the land or block my ingress.

I used to visit the land when I was a boy and see my father's fields which are east of where I am now. There were other tenants on the land, Knowles, Strowder (who burned coal on the south side of Sweeting Coppice and not on the land in question.

Sidney Wyllie worked on the land as did Bistol Adderley. Western boundary of my father's property is "Sugar House" Estate. Eastern boundary is Sancha Johnston Hill. I often went with my mother's brother to collect thirds from the tenants.

The track road that Sir Harry put through is still there. My father (Leonard) farmed north and south of this road. Coal kilns were also south of the road.

Cross Examined - Bethel :

I know where the rock crusher is. Knowles farm is south and a little west of the crusher. He has not always been there. Sir Harry's road is straight now. That road and another road - intersect and there were farms at such place. My father kept going from place to place. My father had an orchard "south of the farm at the corner". This is the road that runs to the east of the rock crusher. My father's farm was on the west and south of that road. He had many farms. You can still see the old farms, and lime kiln decks. Never saw Sir Harry Oakes. The road was put in in the 1930's. My uncle was executor of Adderley Estate. I was not on the site when the Oakes Road was put through.

There is a wall near the crusher. It might have been a boundary line. I never

farmed near Sweeting Coppice. Father's first orchard was at the back of the Beer Factory. I do not know of a case against my father by Caves Company. I was at a meeting. My brother Kenneth, Uncle Richie and I saw Mr. Callender, about the property.

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10 Since 1945 I was constantly on the land. I remember seeing Mr. Albury on the land. He had farms on the land. Do not know who permitted him. He once said he leased from Oakes. He was told to get off. I burnt lime east and west of Gladstone Road. I never got permission to do so from Crown Lands Office. I have never seen Knowles on the land nor tractors going round the land. Cannot say acreage farmed altogether. One can still see the total acreage farmed.

Re-examined:

None.

KENNETH HIGGS sworn examined Adderley:

20 Augusta Street, Nassau. I am 38, I was born in 1927. I know the land in question. I know my brother Oliver's farm. The crushing plant belongs to me and my younger brother Osbourne Higgs. Oliver's field is westerly and southerly direction from the crusher.

1. Aerial photo taken in 1958 put in by consent of Counsel and marked Ex. 31.

Shown Ex. 31 - I mark the spot where the crusher is.

30 I also mark with an "O" Oliver's field and my father's land. East of where Oliver is now marked with an "L". I also mark Knowles Farm with a "K". I also mark the Cave with a "C" - north or north west of the "K.K" (Knowles farm). I mark Claridge's land with a "C .L." and Albury's with an "A.L". I remember Knowles burnt coal and Kathleen Brennan - and "Niley" - Riah Brown - (deceased) - Bernard Taylor, Sidney Wyllie -  
40 burning was north and east of the square marked on the plan and within. I can still see the coal and lime kilns.

I had a farm in the land west of my fathers -

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I farmed on the north over the Hill, in 1949 or 1950 (my first farm).

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Other tenants of the land were Sidney Wyllie his wife - Saunders (Oliver's father-in-law). There are others on the land now.

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I used to go on the land with my father, when I was a boy - and to collect the thirds. I do not farm on the land now. I get rock from the place, where Claridge farm used to be. Anyone can use the road from Gladstone Road to Harold Road. No one has been blocked off that road.

10

That road was put through when I was a boy. A road was blocked which came from Interfield Road and turns east. I do not know who blocked it up. We removed it. Another road was blocked leading into the Dean grant.

Cross Examined - Bethel :

The above were the only blockings. Claridge was one year on the land. Claridge went to Dean grant - western portion and Sound Area. I know the boundaries of the Crown grants. Land to east photograph - "Moss Grant". It is owned by Adderley Estate. Adderley Estate own land west of the Moss Grant. They bought it. I saw no papers except for a certain portion of it. (50 acres or more). My uncle bought land - a lot in that area - R.C. Adderley was my uncle. Adderley owns land east of the tract in Ex. 31, and the land where the rock crusher is. A wall does not meet Adderley Estate - western boundary. It was probably at one time a boundary line. Adderley Estate sold 300 acres on the northern boundary - comprising some of John Brown and Moss' land. Cannot say if the papers referred to Poitier Grant. I do not know of Mr. Knowles' farm before the present one. Albury had a farm for a year and a half. He quit in 1956. Knowles had his farm in that area - since the 1930's. One can tell how long a farm has gone on for or has been worked - if one knows the land. Some farms have been cleared and some not. My father worked farms - south of Sweeting Coppice where the Pepsi Cola factory is now situated. Land behind this factory was taken by the Military.

20

30

40

My father's biggest farm - about four or five acres. My father has been out to the farm last week. He goes to the farm nearly every day. I have never been chased off the land. I chased off one Munro.

Re-examined:

None.

Adjourned 31st January, 1966 at 10.00 a.m.

31st January, 1966:

10 Bethel - I call:

FERRIS NAIRN sworn examined Bethel:

Age 68 years. Nassau - skilled labourer.

20 I know tract of land near Gladstone Road - on the east side. I remember being on this land in 1937 - to clear the boundaries. I was working for Sir Harry Oakes at the time. I was with workers. Mr. Collins and Sir Harry came one morning - they began on the west side of Collins Ridge - to cut a road right through to Gladstone Road. We got south - onto a cart road, where we turned east. I was in a tractor. The road was cut until we came to a wall which runs north and south. At this well\* - top of the ridge and we turned round and came down.

(sic)

The road was a long way from Gladstone Road.

I do not know why Mr. Collins was on the land except he showed Sir Harry his land, which he said he had bought from Mr. Collins. Mr. Collins was showing the land he had sold.

30 I did not go through the land I saw no signs of occupation. There was high bush on the land - poison wood and Camalome trees. No signs of farming - no coal or lime kilns. I did not see anyone or meet anyone.

40 Boundary clearing took me two days used a tractor to clear it out. Sir Harry pointed the boundaries to me. Mr. Collins had gone. I cleared the boundaries again in 1938. No farms then. I only know the road which Sir Harry cut with a tractor. At that time I was in the Caves. I went along the road after it was cut.

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1937 - my first visit to the land. We came down from Collins Ridge on the western side of Lake Cunningham. From Gladstone Road, we turned south - tractor road from the ridge going south. In 1937 Gladstone Road goes straight to Carmichael Road. Gladstone Road - top of the hill and then south, long way as far as the crush from British Colonial Hotel and then east. Sir Harry was on the tractor, Mr. Collins the operator and I was behind walking.

10

We got up to the wall and then turned back. From Collins Ridge to the wall took us half a day. That was the first time I went on the land. 1938 - I returned to the land. I cleared this boundary from the Cave to Lyford Cay. In 1937 we made a road. I did not clear the boundaries in 1937. Sir Harry showed me the boundaries in 1938.

In 1938 I got to the land in the same way as in 1937 - by Collins Ridge. I and my helper cleared the boundaries in 1938. He showed me then in 1937. In 1938 he told me to clear the boundaries. He did not accompany me in 1938. I knew some of his boundaries long before 1937.

20

The tract of land was called - "Collins Ridge" - from west to east.

I can show the boundaries today.

Have not been back since 1938. Pine yard on the south side. I cut a boundary the eastern one through Pine Barren. Not much pine on the north. None on the western side. No wall on the west. But a wall on the east. Southern line went through the Pine Yard. No pine much on the east. Do not know what particular bit of land Collins was showing Sir Harry. Western boundary joined on to the caves. Northern boundary came to the head of the lake - eastern end. I do not know Adderley Road. A year ago, I was in Interfield Road. Before you get to Gladstone Road - I know a road east - (Adderley Road?)

30

40

I cut no boundary near that road. Do not know of any road east and west through the property. I could have seen any farming if there had been any. Western boundary of the tract by the Caves. Southern boundary -

western boundary - road from Bay Street to Windsor Field. Collins land begins from the western end of the lake and to the tract. I cleared the east boundary and the Lyford Cay boundary. I could show the land in question and boundaries now if they are there.

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Re-examined:

10 We went south from Gladstone Road - across the road and then east a long way. The Caves is not the land in question.

He owned land at the Caves. At the bottom of the hill we went east and came across a little pine. But most of the pine was on the southern side.

20 The wall on the east of the property a long wall. And we did not go east of it. Do not know who owned land on the east. Saw no other walls on the property. Land east of Gladstone Road. I saw no signs of any farming. I did other work for Sir Harry - besides this one.

ARCHIBALD MACKENZIE - sworn examined Bethel:

30 Age 52. Knew Sir Harry Oakes. Worked for him. Drove a D8 - tractor for him in 1937. I made roads for him. I know Gladstone Road. I know property east of Gladstone Road. I put a road through this property - 1,800 feet south from the foot of the hill. We went straight to Big Pond and went up and down making the road. The road went into Oakes Air field. When I cut the road it was high bush. Knocked down some pine trees. I pushed through a wall, running north and south. Land between Gladstone Road and this wall - I saw no one on it - or any cultivations. No one ever stopped me. I had a lot of labourers picking up rocks. I saw no coal mine or lime burning.

Cross Examined Adderley:

40 Road put through in 1937, it began on west side of Gladstone Road and then east. To do the road took me four months. Sir Harry showed me where to put the road. Had not been on the land before 1937 or after. I put a well in on the western side of Gladstone Road.

Re-examined:

None.



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TED KNOWLES sworn examined Bethel:

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(continued)

Age 61. Live in Nassau. Am a foreman.  
Knew Sir Harry Oakes. I worked for him in 1937  
up to the present time. I know of tract of 240  
acres east of Gladstone Road. I made that road  
for the Government. The land east of the road  
belonged to Collins.

I did not see any farming going on.

The road south of Collins ridge - went to  
Big Pond - the road went through to Lake Killarney.  
Sir Harry showed me the boundary of the land east  
of Gladstone Road and the other boundaries. Boundary  
on west side was almost the western end. There is  
now a chicken farm where the southern boundary of the  
land is. I went along that boundary easterly until  
we came to a pillar on a hill from that pillar mark  
we went north.

10

There was a wall on the eastern boundary south  
west of where the rock crusher is at present.  
We cleared along the boundary. The wall is south  
west of the rock crusher. The northern boundary  
joined up with Gladstone Road. There is a pillar  
on the western side of Gladstone Road as it goes  
into Kennedy Drive. I went through the property  
- we cleared the boundary - we took the tractor  
through the land up to the hill. South of the  
Hill was a Pine Yard. North of the Pine Yard  
was pigeon plum - camalome trees (high land).

20

In 1938 saw no cultivation. No one claimed  
land against me - or tried to turn me off.

30

When Sir Harry was living I went on the  
property twice a year and went on the land after  
his death about three times a year. After  
putting the road through I caught people  
stealing soil. I used to tell them they were  
on private property. They moved off -  
probably came back after I left.

Put boundary mark with pipe marked "O"  
- these marks were put in round the boundaries.  
I do not know when they were put in. I am  
still working for the estate. Around 1957, I  
saw some coal burners. I chased them off.

40

I know Mr. Paul Albury he leased part of  
the land west and east of Gladstone Road and  
he grew okra, tomatoes and bananas. I believe

he is still farming there. The coal burning was on the western side of Gladstone Road. None on the eastern side. After Sir Harry Oakes death we put road blocks on the roads going through his estate. We only blocked for 24 hours. I sometimes moved the blocks - and sometimes found them already moved. Road blocks were put up over a year.

10 We worked on the east as well as the west of Gladstone Road.

Cross Examined Adderley:

I do not know of a wall on the western boundary. I see one on the east but not on the west. I have been through the land. First time I went on the land was around 1937. Sir Harry put through the road from Lake Killarney to Big Pond in 1937.

20 I cleared the boundaries in 1937 - boundary clearances were made by the tractor after the road was put through. Clearance with cutlass in 1937 - or in 1938. I know some one to whom land was leased and he grew okras and peas. I knew Claridge he never had a farm on the land. No one on the land in 1937/38. I saw some farms cut on the east side of Gladstone Road, in 1957. North and south of the road Sir Harry Oakes had put through. No signs of lime or coal burning, on the eastern side of Gladstone Road. No signs of cutting Pine trees. I knew the Cave but have not  
30 seen it. Do not know the Higgs. North of the road Sir Harry put up no signs of cultivation nor west of the rock crusher.

Sugar cane patch in 1958 near John Kennedy Drive. Albury had a farm north of the cross road for many years.

Re-examined:

40 Boundary west of Gladstone Road saw no wall running north and south. I never saw Mr. Claridge on the land east of Gladstone Road. Albury farmed on both sides of Gladstone Road. I do not know the Higgs. I do not know who is operating the rock plant.

EUNICE LADY OAKES sworn examined Bethel:

Widow of late Sir Harry Oakes. He died 1945. I know land bought by him in Gladstone Road Area.

In the Supreme Court

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Transcript of Proceedings  
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Shown Ex. 28 - the particular piece of land I know is delineated thereon. I was on the land. Soon after the road was cut by Sir Harry. I was my husband's companion. He was anxious for me to see. I went with him on all the land matters.

I began on the tractor and then joined his car. The land in question was bush land. This was in the late thirties.

I do not remember seeing any trespassers on the land. I was looking on the road all the time. I saw no signs of occupation. I was not looking for them. If there had been farms on either side of the road - I should have seen them.

10

No one tried to exclude me. I never knew of any trouble my husband had either. Sir Harry bought the land for development. It was in trust after his death - the trustees were restricted. In Caves Company Limited I was a director. That was the original company.

The estate was divisible on each child's attaining 30. The youngest child is 33. It is the intention of the Company to develop the land.

20

Cross Examined - Adderley:

I cannot say I have been on this particular property - except on this occasion except I have been within a few feet on the land off the road, from time to time.

Re-examined:

None.

30

CARL CLARIDGE sworn examined Bethel:

Age 59. I live in Village Road, Nassau. I know the property east of Gladstone Road shown Ex. 28 that is the area delineated. I had a farm between fourteen and sixteen years ago. I grew tomatoes for two years and then okras. I had three farms. I worked on the low lying land, and just partly on the rise.

I worked up to the foot of hill. In 1950 or so, I had a formal lease from Caves Company to farm on the land. I just paid £2.0.0. or so. I had no documents.

40

I farmed sixty acres first then forty acres and then eight acres and fifteen acres. Some of the land was on the west, three on the eastern side and one on the west. Grew tomatoes and okras.

I moved to Andros fourteen years ago for sawmill.

10 Albury was leasing some of the land on the western side mostly. I think he had one place on the eastern side. When I first went on there had been no cutting of bush except on the top of the hill, there could have been a few fields where I worked had not been cut for twenty or thirty years.

I know the site of the rock crusher. Mr. Higgs said he had a boundary at the north east corner.

20 Where "L" is marked on Ex. 31 I would say that is Mr. Higgs farm near enough. I think Mr. Higgs had a couple of acres. He told me not to go against his boundary. He did not tell me to go. If I left my peas behind it would be that they were not worth picking up.

Cross Examined Adderley:

30 I first farmed the sixty acres. I do not remember seeing any coal burnt in the areas south of the road, running through the property. I mark "CAVE" is Ex. 31. It is a natural cave on the south side of the ridge. £2.0.0. a year for rent, per acre. I moved west to a better piece of land. I did not speak to anyone about Mr. Higgs remark to me about his boundary. In the south east part of the land none of the pine trees had been cut by the time I got there. I do not think I cut trees on this tract. Do not remember if I saw coal or lime kilns. The bush has not grown up to the height when I first farmed and since I left the land.

DAVID PAUL ALBURY sworn examined Bethel:

40 Age 34. My father Paul. Farmer and canner. I am farming at lake hill on the Oakes Estate.

I or my father say ten or twelve years farmed land on the north of Sir Harry Oakes Track Road - and farming now north west and west of Gladstone Road.

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(continued)

I leased land from the Oakes Estate at £2.0.0. per acre. We put a little road on west to east in the tract in question. I do not remember. Mr. Claridge farming. I only left school in 1949.

I am farming east of Gladstone Road.

On the west side of the Gladstone Road, Mr. Borer or someone from Oakes Estate used to inspect what was going and block the road.

I understood Higgs had their farm west of Gladstone Road. I know the rock crushing plant that is, where Higgs is. I never ran across anyone else in the disputed area. I warned someone on the west to get off the land - no one east or west warned me.

10

Cross examined Adderley:

We were on the land before 1950. Before 1949, I do not know where my father was. Never saw Mr. Claridge. Do not know where he farmed. Nor that he had been on the land.

20

Re-examined:

None.

1st February, 1966

1st February, 1966:

CLIFTON DONALD BORER sworn examined Bethel:

I was a trustee of the Oakes Estate and I am President of Caves Company Limited. I joined the Oakes organisation 1949 and I became a trustee in 1956. Have been 17 years with the company. When Sir Harry died he had several companies.

30

(sic)

I know the property in question in so far as I examined the documentary title and see that the areas were defined by independent surveyors by Nassau Engineering Company in 1949. The survey was made on the ground - working from the planes an\* the conveyances - and there were no discrepancies.

I believe there are markers on the land - plinth - concrete "O", at the top. In 1951 or 1953 - there were many bush fires on the island. I spoke to the Crown Lands Officer - I think De Freitas, I went personally on to

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the land and I had the charcoal burners removed from the spot.

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I went on to the land with two or three men: the burners were removed by us for the western side of Gladstone Road. We could see no charcoal burners or lime kilns on the eastern side of Gladstone Road.

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On the western side on the Peter Dean tract, there was lime burning going on - I told Mr. Godfrey Kelly to take out an injunction against those burning and this was in 1956.

It was Mr. Higgs in fact against whom action was taken: and this was on the western side of Gladstone Road on the Peter Dean tract. (Case No. 75 of 1956 - copy of Statement of Claim put in). Ex. 32.

There was a meeting of lawyers. Callender for Higgs. It was agreed that a plan should be made on the land claimed and we did not take further steps in the action. The actual trespass was discontinued. But the plan was never produced.

The presence of Higgs on the land had been reported to me. No report was made of burning on the tract of land, the subject of this suit.

I have been leasing portions of the tract of land nominal rents - to ensure the land is not idle. But short notice intention to develop. I put in lease with Albury Ex. 33 (no objection).

I gave Albury permission to choose his own area on which to farm. I cannot therefore say where.

At the time I regarded the tracts east and west of Gladstone Road as one tract.

In 1952 or 3, one Griffiths joined us as a Junior Assistant. I produce a memorandum from him to me dated 31st March, 1954 - Ex. 34.

I produce lease to P.W. Albury dated 14th May 1953, Ex. 35. I produce lease to P. W. Albury dated 31st March, 1954 Ex. 36. I produce letter to P.W. Albury dated 24th April, 1958 - Ex. 37. and 10th June, 1964 - Ex. 38.

I noticed that a road had been cut from Gladstone Road to the top of the hill, going east. I went

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there and found someone with a tractor. I explained it was our property and the person told me he was in employ of Jack Donald, who was Nassau Ready Mix Company. The road was made for rock collection for crushing.

I got in touch with Jack Donald he said negotiating with Higgs for lease. I said our land and he stopped work. I then put the whole matter in the hands of Mr. Bethel.

I did not see Mr. Higgs. Shown Ex. 29  
- I identify the road I saw, leading to a cleared area - as written on the plan. 10

Shown the filed plan - Ex. 24 the Caves Company own 1/4 interest in the tract of "Goodwins" and comprising 92.33 acres. They had two further tracts which were expropriated by the Government. I produce conveyance of 2nd November 1939 from Johnson to the Caves Company Ltd. of a 1/4 interest in 90½ acres - part of the William Moss tract with plan attached - Ex. 39. 20

Since this case started, I have been around this land. I saw many loads of soil carefully sifted which had not been done by our company: I saw someone clearing the land. I questioned him. He said he had met Mr. Higgs, who had asked him if he wanted land and on saying he did, he was offered that plot. This person had been on the land but two or three weeks. 30

I saw a man carrying on a small chicken farm, who said he was a tenant of Mr. Higgs. He had been there recently, he said. This meeting took place two weeks ago or so. No prior reports of occupation had been made to me.

File put in of Case No. 75 of 1956  
Caves Company v Higgs - Ex. 40.

Cross Examined - Adderley:

I did not attend the lawyers meeting in 1956. It was reported to me by Mr. Kelly. Reported that Higgs was burning coal on the west. No report that they were on the east of Gladstone Road. Between 1949 and 1966 I cannot speak of the occupation of the land on the east except in 1950 I went 40

along the boundaries after they were marked -  
"O" - Main road boundaries.

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Re-examined:

None.

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Bethel:

I produce

- (a) Conveyance by G.A. Robertson to James Austin Thompson of 70 acres of land, dated 10th April 1896 - recorded R.9. - 175 Ex. 41.
- 10 (b) Conveyance by T.P. Dean to J. A. Thompson of two parcels of land of 75 acres - part of a tract of 250 acres originally granted to Sarah A. Poitier, dated 24th January 1890. Ex. 42
- (c) Conveyance by G. A. Robertson to T.P. Dean of two parcels of land 50 + 25 acres dated 26th November 1889 and recorded P. 8. 197. Ex. 43.
- (d) Conveyance - Renunciation of dower by wife of T. P. Dean to J. A. Thompson dated 23rd September 1890. P. 9 259. Ex. 44.
- 20 (e) Conveyance J. A. Thompson to Bell dated 10th January 1898 of 50 acres recorded in Y 9 307 to 310. Ex. 45.
- (f) Conveyance of 48/10 acres by G.A. Robertson to James Austin Thompson dated 19th November 1895 - recorded 2.9.162. Ex.46.
- (g) Conveyance by J.A. Thompson to Hon. H. Bell (1) 25 acres (2) 4/8/10 acres dated 10th January 1898 - recorded Y 9. 310 to 313. Ex. 47
- (h) Renunciation of Dower 10th January 1898 wife of J.A. Thompson recorded P. 9 254 - 257 in respect of three parcels of land. (50 acres) (25 acres) and (4/8/10) acres) (Ex. 48).
- (j) Conveyance (not recorded) of 1st April 1890 by G.A. Robertson to T.P. Dean of 5 acres part of land granted to Poitier. Ex. 49
- (k) Conveyance by G.A. Robertson to Bell dated 9th May 1899 - of two tracts of land - 240 acres (Poitier Grant) and the Peter Dean tract (which is on the western side)



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recorded in D. 10 242 - 244. Ex. 50

(l) conveyance by H.A. Robertson to Hon. H. Bell dated 29th April 1898 - D. 10 218 to 220 in whole of Poitier tract and Peter Dean tract. Ex. 51.

(m) Original memo of Agreement of 21st August 1899 between Hon. H. Bell to H. S. Gladstone P. 9 413 - 415. Dealing with a right of way over this property in the possession of Hon. H. Bell. Ex. 52.

(n) Memo of agreement (unrecorded) May 1900 between H. G. Gladstone and W. P. Adderley on sale of pineapples. Evidence of use by Gladstone. Ex. 53.

(o) Photograph Will made by Harold Stuart Gladstone. (says whole property reverts to "my brother - Evelyn Gladstone"). Ex. 54

(p) Plan marked "cancelled" showing parts of Poitier grant. Ex. 55

Adjourned 2.30 p.m. at corner of Gladstone Road and Kennedy Drive.

H. C. Smith, J.

3rd February,  
1966

3rd February, 1966:

Visit to the land.

Present: The court. Paul Bethel for petitioner

Paul Adderley for Adverse claimant.

Parties and witnesses.

Farms pointed out by Mr. Albury, Mr. Claridge, Mr. Leonard Higgs, Mr. Knowles, Mr. Oliver Higgs, (who also pointed out the area from where he has been taking soil, since September 1965).

The court walked over the whole area, with the counsel.

H.C. Smith, J.

10.

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7th February, 1966:

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Mr. Bethel - I call.

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FRANCIS ALEXANDER GARROWAY - sworn examined  
Bethel:

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Land Surveyor - Lands Office. Aerial  
photos from the fall of 1941 - 1943 and March  
1958, in this office. I know the area east of  
Gladstone Road. I have photographs of that area.

10 I produce 1941 photographs of this area -  
Ex. 56.

I am accustomed over 10 years to examining and  
comparing aerial photographs with the actual  
ground.

On Ex. 56 I see two clearly marked lines  
comprising the eastern and southern boundary.  
The northern and western boundaries are not  
apparent on the photograph. I would say  
eastern and southern boundaries cut in 1941 or  
so clearly can see wall on eastern boundary.

20 In 1941 I can only see some small cart roads,  
as they appear to me. The white patches, on Ex. 56  
except for the lake appear to be clouds. I can see  
coppice type vegetation - trees like poison wood  
probably madeira and horse flesh and a few scattered  
pine trees. The coppice trees I would say varied  
from 10 - 30 feet in height. Pines a little  
higher.

30 I see no signs of farm clearances or any  
felling of trees except for the road areas. If  
lime kilns had been there before 1941, it would be  
possible to see signs on the photograph. One would  
see circular whitish patches: coal kilns would not  
be so apparent you would just see a clearing in the  
area. If the kilns had been grown over, you would not  
see any signs on the photographs.

If there had been production of beans, peas,  
tomatoes and pumpkins you would see clearances on  
the photograph though you would not identify the  
specific crop.

40 The east and west road through the tract, would  
appear to have been made shortly before 1941 as there  
are no signs of an overgrowth.

Scale of this photograph is one inch to 1250 feet

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approximately on the ground. Photo taken from  
1500 feet. Photograph taken by U.S. Airforce.

I now produce photographs (2) taken in  
1943 - Ex. 57 Scale 1 inch to 2500 feet nearly  
twice the height of 1941 photograph.

On Ex. 57, the eastern and southern  
boundaries are still apparent. There seems to  
be a greater number of roads in the area compared  
with 1941. Those roads must have been made  
shortly before the photo was taken no overgrowth.  
The roads are smaller than the east to west road.  
Could be track lines or reconnaissance roads. I  
see no clearances which support farming or  
clearances of the bush. 10

I produce three photographs taken in 1958,  
comprising the whole area (A photograph  
reproduction of these three photographs in  
Ex. 31). Ex. 58 (a) (b) (c). There seems to  
have been quite a bit of clearing and what seems  
to be lime kilns - little white circular spots  
and a cart road leading to the lime kilns. 20

There seems to be quite a bit of clearing  
on the eastern side of Gladstone Road from the  
Road side but outside the tract with which  
are dealing. That is a clear farming tract.  
East of that, within the area in question,  
there is clearing along by the lime kilns going  
west. There might have been some farming going  
on - or just cut down areas?

South of Oakes Road there is some intensity  
of Pine Trees and Palmetto trees (small palm  
trees). South of the road, in 1959 no  
clearances, no cutting down it would appear but  
I cannot say if at any time there had been a  
previous cutting down and a regrowth. 3

Shown Ex. A. 4 - I identify the Sarah  
Poitier grant.

I produce grant and diagram of Sarah  
Poitier Grant - Ex. 59. It is dated 15th  
April 1829. I produce grant diagram of John  
Goodman's Grant - Ex. 60. Ex. A 4 seems to  
be a compiled plan. 40

Cross Examined - Adderley:

Shown Ex. 56 - differing shades of colour

intensity of growth - shadow there could be explanations. Differing shades in coppice. Palm trees. The latter being high would certainly catch the light and they would stand out and show lighter than coppice. By casting a shadow, the pines area would make darker the adjoining areas. What might in fact be sparse vegetation therefore might appear intense - but that would appear to be shadow. In some of the areas, we might not, therefore, be looking at 10 - 30 feet coppice.

For Ex. 56, the sun is to the south west and the photo appears to have been taken in the afternoon.

The lighter areas are not cultivated areas they seem more low lying and not so densed. I do not think they are cultivated areas. The area south west of Oakes road, where it crosses the eastern boundary. The lower you get increasing clarity - talking of photographing from heights. In the 1943 photo areas as light as the south west of Oakes Road, where it crosses the eastern boundary. The lighter this area on the photos the less the density of vegetation. Lime kilns would not be visible if they are overgrown on the surrounding vegetation is thick: or if the lime had been carted off and just a mound was there.

The shadings must be related to the position of the sun, in relation to the camera - the type of film used - the type of emulsion.

In my view, these photographs are reliable to determining whether there are clearances or vegetation.

it is possible that difference in density in the photographs could have areas utilised at some time - perhaps there may have been forest fires and they might account. In 1941 photograph the clouds across Oakes Road, would cast a shadow and indicate a density.

Re-examined:

The Golf Course and Country Club would show on the photograph 56. Compared with the property

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we are dealing with there no comparable areas  
neither in the 1943 photographs. There are  
clearances in 1958 but not to the same extent.  
Cut down land and farmed land, would show more  
like the land in the "loop" and there is nothing  
in the tract we are dealing with which shows like  
the "loop" area. That appears in 1941 and 1943  
but there are a few corresponding areas in 1958.

Case

Mr. Bethel:

I produce list of early documents already put  
in Ex. 61. Adjourned to Wednesday 9th February,  
1966.

Adderley

Necessary for adverse claimants to prove  
possession over a period of twenty years -  
uninterrupted. Adverse claimants do not claim  
parallel title.

If adverse possession twenty year period  
say expired in 1939, a legal owner then barred,  
a subsequent reentry by the title holder would  
not affect the adverse claimants position.  
Adverse claimants must prove possession of :

1. Whole of land for statutory period.
2. Give definable part of the land for  
twenty year period.

Petitioner:

First Act - making of the road in 1937  
or 1938. Subsequent evidence of possession  
by Albury and Claridge - 1949 for Albury and  
Claridge after that. Repossession by  
petitioner in absence of any action against  
them by the adverse claimants.

First repossession by owner 1949 and  
not 1937, when Albury went into possession by  
the permission of the owners. Construction  
of road - a repossession by the owner?  
Adverse claimant must prove possession of a  
whole or part of the land for a 20 year period

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of time ceasing in 1936.

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Abundant evidence:

—  
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1916 - 1936

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Uncontradicted evidence. What land can be found to have been possessed by adverse claimant or her father. If court an act of repossession the period would extend up to 1949. Evidence of Higgs (Mr. and Mrs.) and William Knowles.

10 After 1936 - their evidence is expended by the younger generation - Wyllie and Higgs sons and Johnston. Petitioner no evidence to contradict any of the adverse claimants evidence for the twenty years prior to 1936. Land almost unknown to petitioner prior to that time. Has adverse claimant satisfied the court?

Evidence of Mrs. Higgs. Boundaries: East by S. Johnston Hill. South by Crown Land. West by Sugar House.

Mrs. Higgs:

20 Married in 1914. Know the land before and after marriage. Her father had tenant farmers. Page 41 (met them). Wood cutting for hospital and prison. Knowledge of the land before 1916.

30 Not necessary to have physical possession of the whole of the land because wood cutting coal - lime kilns amount to possession of the land: land capable of such use. Pines - south of Oakes Road. Mrs. Higgs father's tenants burnt coal and lime, as well as farmed the land. Mr. Higgs evidence continues Mrs. Higgs evidence after 1922. Tenants recorded. Collected thirds.

Mr. Knowles evidence:

Higgs said he met Knowles on the land that is 1922. But Knowles said he came on to the land in 1930 (See page 49) gave evidence of his farming.

40 Area south of Oakes road - occupation by Mr. Knowles and removal of soil and cutting down of Pine trees. The use to which the land is put is inconsistent with the ownership in any one else.

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Area north of Oakes road - Higgs put himself in that area - farming lime and coal burning. South west when the Oakes crosses to Eastern boundary and north west of Oakes the Oakes road crosses to east boundary - concentration of possession by the adverse claimants.

Claridge stopped by Higgs (1950).

Two areas, which Knowles claimed he worked upon - south west of where Oakes Road crosses the eastern boundary. Higgs in the north west of where Oakes Road crosses eastern boundary. But the cutting down place over a large area. Possession of wider area - by cutting cannot prove farming. Wyllie farmed later than 1936 South of the northern boundary on the northern side of the hill, whilst Mr. Higgs was on the southern side of the hill.

1937/38: First entry upon the land of one who claimed to be the owner. Actual conveyance to the petitioner 1938.

Possession by adverse claimant for twenty years prior to 19 prior to the purchase by the petitioners in 1938. Uncontradicted evidence. Has the adverse claimant discharged the burden upon of possession of the period of time.

After 1938 - do not have an uninterrupted period of twenty years. Albury's possession through the owner.

1929 - 1949 - period cutting of the boundaries not a repossession a mere re/entry not sufficient to dispossess the possessor.

Purpose of the road? Albury farm can be regarded as repossession of the whole but not the road, unless made for a specific purpose and used by the Caves Company.

Adverse claimants must stand or fall on possession prior to 1936. If adverse claimants in possession - up to 1936 - has never abandoned his possession. The owner repossession would only be repossession of what has not been lost by the owner before 1936 - since the possession continued in possessor.

Court has to find what adverse claimant

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was in possession of prior to 1936 - the concentration of possession I have already submitted. The cutting down that area not substantial evidence of possession.

Area of land in fact in possession that can be found by the Court - the adverse claimants is narrowed to that, upon reading the evidence as a whole.

Bethel:

253 acres of land. Adverse claim - 250 acres. Adverse claimant on possession. Petitioner documentary title.

First document:

Root of title - document of 1925 - by Gladstone and to Collins. The title was properly conveyed in 1925. Adverse claimant possession - 1936 - prior to the time the petitioners actually bought the land. No acts of possession proved against petitioner's predecessors in title. Owner need make no use of his land. He had documents from 1900; fact of non use by owner does not mean that he has lost his ownership of it.

Page 899 "Law of Real Property" by Megarry. Possession must be taken of all of the land that the adverse possessor is claiming.

Adverse claimants:

Prior to 1922, based on evidence of Clotilda Higgs. Prior to 1922 no evidence to pin point exactly what land of which possession was taken. Concentration in 1958 - nothing to show such concentration were there in 1922.

No clearing shown in 1941 photographs. 1941 - 1943 - no appeal.

Conveyance (In Ex. 1) :-

Claimants western boundary - Sugar House. See Ex. 39 - Plan attached of "Adderley Holdings". Adderley property is east of the land the subject of the petitioner.

Mr. Higgs was not on this land until after 1942: He said he had farms and trees south of Sweeting Coppice, which is roughly in the neighbourhood of the beer factory.

In the Supreme Court

—  
No. 16

Transcript of Proceedings  
Quieting Titles  
Petition, No. 62  
of 1965  
7th February  
1966  
(continued)



In the Supreme  
Court

—  
No. 16

Transcript of  
Proceedings  
Quieting Titles  
Petition, No. 62  
of 1965  
7th February  
1966  
(continued)

This is east of the land in question and he began to move west, when he was put off the Sweetings Coppice land by the Government in 1942. Then he moved west, cutting down areas and going on.

Possession only since 1942 - no signs of clearing in the photographs. Adverse claimant must have gone west from the Adderley land sometime in 1942 or so.

William Knowles said the Adderley land was 60 acres and started from Sancha Johnston Hill. That 60 acres is in the William Moss Tract.

10

"Adderley" land was clearly defined from 1920 on a plan and all the sharing of the land by tenants - share cropping could have been on the Adderley land, where it was supposed to have been.

Even if they were told that Adderley land included Sarah Poitier tract, it gave them no title to it. Tenant farmers kept moving on size of farms they were on they vary.

Glynn v Howell - 1909 1 Ch. 666 "Coal mine" case but no difference in principle. Wood v Le Blanc - Cert. Page 634 (Similar type of property).

20

Total acreage farmed 10 acres - must be continued possession for twenty years on the whole of the tract.

No defined areas within the tract which adverse claimants have fenced off as it was and occupied for twenty years. No building no fencing: isolated acts of trespass - cannot establish title in the whole tract or any part thereof.

30

Possession hopelessly short of what is required under Statute of Limitations.

Cat Island Farms Ltd. No. 81 of 1964. See page 9 and page 18 adverse claimant left farms and moved on and said the 15 left was left for the younger generation. And so discontinuance of possession and possession of new piece. Fruit trees young not more than fifteen acres. Cutting down of trees no title. Wood v Le Blanc. No ousting over any part of the land of the true owner.

40

User of land:

Lady Oakes and Mr. Boreham, evidence.

Intention of user to develop. Also restriction.  
See Letters of Letting. e.g. Albury.

In the Supreme  
Court

There has not been the possession that is  
adverse to the time intention of the occupier.

          
No. 16

Running of road through the land by Sir  
Harry Oakes is an act of possession.

Transcript of  
Proceedings  
Quieting Titles  
Petition, No. 62  
of 1965  
7th February  
1966  
(continued)

Adderley in reply:

10

Adverse claimant never said this land was  
"Adderley Land". The eastern boundary is the  
Sancha Jonston Hill and the evidence is that  
occupation has been west of the eastern wall of  
the Poitier grant and east of the western wall:  
and that the Sugar House, (west of Gladstone  
Road) was an old house, the remnants of which can  
be seen.

Mr. Higgs showed us land on the Poitier  
grant, which puts him off the Adderley part of  
the land. Land is south of Sweeting's Coppice  
- west Mr. Higgs must have been confused.

20

Adjourned for judgment.

H.C. Smith, J.

9th February, 1966.

No. 62 of 1965:

Paul Bethel for petitioners.

Paul Adderley for adverse claimants.

Judgment delivered.

H.C. Smith, J.

28th March, 1966.

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In the Supreme  
Court

No. 17

PROCEEDINGS

No. 17  
Proceedings  
18th April,  
1973

Resumed 18th April, 1973.

Appearances as before.

Thompson: Before ruling is delivered I mention that I filed a new summons and affidavit. If put before the court further causes of action that the plaintiff is praying and for the joinder of other parties and for the amendment of the Statement of Claim and endorsement on the writ and brings before the Court the transcript of the oral evidence taken.

In my new summons I raise new issues.

I regretfully have been forced to make this application. I see no other alternative.

The Court has notice of the new summons and that has the effect of staying the ruling.

Pinder: We were only served late yesterday afternoon and we have not had sufficient notice to consider.

The ruling I submit should be delivered and not be affected by a summons. It would seem to be done to obstruct the ruling the summons having been filed the day before the ruling was due to be delivered.

Thompson: Since the matters raised in my summons goes to the root and is material to the questions raised in the summons of my learned friend. I submit the ruling made on the facts before hearing the material which is contained in my summons could be superfluous.

On construing the summons there may be no need for a ruling.

Judge: I consider that I should deliver my ruling on the summons that has already been argued. The new summons according to Mr. Thompson raises new issues and those should not in my view impede a decision on what has already been argued.

Ruling read and delivered.

J.A. Smith, J. 18th April, 1973.

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103.

No. 18

In the Supreme  
Court

JUDGMENT

No. 18

IN THE SUPREME COURT OF THE BAHAMA ISLANDS

HOLDEN AT NASSAU

Judgment  
18th April,  
1973

This 18th day of April, 1973

Before: Mr. Justice James Smith

Suit No. 838 of 1971

BETWEEN

CLOTILDA EUGENIA HIGGS                      Plaintiff

AND

CAVES COMPANY LIMITED                      Defendant

In this summons the defendant sought an order:

(1) that the action be dismissed with costs on the ground that the plaintiff failed to carry out an order of the Court dated 28th February 1972 to supply further and better particulars.

(2) alternatively that the action be struck out on the ground that it is frivolous and vexatious and an abuse of the process of the Court.

(3) that the plaintiff be prohibited from bringing any further action in respect of the land the subject of this action.

The summons came up for hearing before Mr. Justice H.C. Smith on 24th April 1972 and he later ruled on paragraph one thereof, granting an extension of time within which plaintiff was to file further and better particulars and adjourned the remainder of the summons. As the action was not dismissed under paragraph one of the summons, the alternative prayers in paragraph 2 and 3 have come before me on the adjourned summons.

The writ of summons issued by the plaintiff on 29th November 1971 seeks in effect a declaration that the judgment of the Supreme Court in action No. 62 of 1965 be set aside under the provisions of section 27 of the Quieting Titles Act. The statement of claim in the present action alleges that the defendant in

In the Supreme Court

          
No. 18

Judgment  
18th April,  
1973  
(continued)

action No. 62 of 1965 falsely represented, fraudulently withheld or intentionally misrepresented facts material to the issues before the Court at the hearing of action No. 62 of 1965.

It is an accepted rule that a plea of fraud must be distinctly alleged and as Lord Selbourne said in Wallingford v Mutual Society (1880) 5 A.C. 685 at 697, "if there be any principle which is perfectly well settled, it is that general allegations however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice." In the present instance the statement of claim is couched in strong language but shorn of the general words alleging fraud and misrepresentation what are the facts upon which the plaintiff relies? An analysis of the statement of claim as supplemented by the further and better particulars shows, paragraph by paragraph:

10

20

1. that it was deposed in an affidavit of 30 June 1965 sworn on behalf of the defendant that the defendant was in sole possession of the land when the deponent knew that in 1955-56 there were negotiations between plaintiff and defendant and their attorneys whereby it was agreed that plaintiff would restrict her activities to that part of the land east of Gladstone Road and the defendant would have quiet enjoyment of the land to the west of Gladstone Road and that it was also known to the deponent that no servant or agent of the defendant was ever permitted to enter the land by the plaintiff or her agents for the purpose of exercising any acts of ownership on its behalf.

w

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2. that it was deposed in an affidavit of 9th August 1965 sworn on behalf of the defendant that the documents produced in support of its claim fully and clearly disclosed all the facts material to its claim and all contracts and dealings which affected its title thereto whereas the defendant or the deponent was fully aware of the long occupation of the plaintiff and of its quality and quantity and of the title documents of the plaintiff

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to parts of the land submitted to agents of the defendant at meetings held between the parties and the terms of the agreement which was subsequently honoured by the parties until the commencement of Petition No. 62 of 1965.

In the Supreme Court

—  
No. 18

Judgment  
18th April,  
1973  
(continued)

10 3. that the agents of the defendant knew the plaintiff possessed documents of title (since mislaid or destroyed) to part of the land west of Gladstone Road yet failed to inform the court.

4. that by withholding the above facts from the court, the defendant induced the court to deliver judgments adverse to the plaintiff.

20 5. that in the said affidavit of 9th August 1965 it was also deposed that the occupation by the plaintiff of the said land were acts of trespass by agents of the plaintiff and that there were no other occupiers of the land when the defendant's agents knew to the contrary as to the plaintiff's occupation and that tenants of the defendant had been absent from the land for many years having been forced after brief occupation to vacate the land by the plaintiff.

The allegations in the statement of claim have been denied and traversed in the statement of defence. But for the purpose of the present application I assume these allegations in the statement of claim to be facts.

30 The claim in the writ is to set aside the judgment in the quieting of title proceedings No.62 of 1965 in which the defendant was the petitioner and the plaintiff the adverse claimant. At the hearing of that action it was for each party by oral and documentary evidence to set up proof of his claim, and for each by cross-examination of the witnesses of the other to test the credibility of the witnesses and reliability of the evidence. In action No. 62 of 1965 both parties were represented by counsel at the hearing  
40 which started on 17th January 1966 and lasted several days, judgment being delivered on 28th March 1966

The matters alleged in the statement of claim in the present action were matters within the plaintiff's own knowledge which she now alleges would have supported her adverse claim in action No. 62 of 1965. The onus lay upon her to present this evidence to the Court at the hearing of action No. 62 of 1965 and by cross-examination

In the Supreme  
Court

—  
No. 18

Judgment  
18th April,  
1973  
(continued)

of the petitioner's witnesses to challenge them with the allegations she now makes in the statement of claim. The situation may have been different had the plaintiff not been an adverse claimant in action No. 62 of 1965. But she was a party in those proceedings and as such had the opportunity of presenting this evidence to the Court in support of her adverse claim at that time. Her remedy if she was dissatisfied with the judgment in action No. 62 of 1965 was to appeal to the Court of Appeal. In 1970 application was made for leave to appeal out of time but the application was refused. There were further proceedings between the parties arising from the refusal of the plaintiff to abide the orders of the Court in action No. 62 of 1965. The facts relating to those matters are set out in the affidavit in support of the summons. During the hearing of the summons copies of the petition, the adverse claim, and the judgment in action No. 62 of 1965 together with copies of the affidavits of 30th January 1965 and 9th August 1965 were put in evidence by consent as Exh. C.C.1 to C.C.5. I have not however thought it necessary to examine the contents of these documents and for the purpose of this ruling I have assumed that facts contained in the statement of claim as amplified by the further and better particulars which I have outlined earlier in this ruling are for the purposes of the present application to be accepted as correct, though I am aware that they have been denied and traversed by the defendant.

As the matters which are alleged by the plaintiff as facts in her statement of claim were within her own personal knowledge it seems to me to be begging the question to say that the defendant or its agents were fraudulent in failing to put those matters fully before the court in action No. 62 of 1965 when the plaintiff herself as adverse claimant in that action had the opportunity to do so. It appears to me that she now seeks by means of the present action to blame the defendant for not doing what she herself as adverse claimant should have done. By alleging in paragraph 4 of her statement of claim that the trial court in action No. 62 of 1965 was influenced in its decision by the alleged fraudulent conduct of the defendant's agents described in the other paragraphs of the statement of claim, the plaintiff has sought to show that she was thereby deprived of the land

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the subject of the quieting of title action. But all she has done by her allegations is to show that there were matters within her knowledge which she alleges were not properly brought to the notice of the Court when she herself as adverse claimant should have put those facts to the Court through the evidence of her own witnesses and cross-examination of the petitioner's witnesses thereon.

In the Supreme Court

—  
No. 18

Judgment  
18th April,  
1973  
(continued)

10 Paragraph 2 of the summons is based on O.18 r.19. The object of that order, as Lindley L.J. said of O.25 r.4. in *Attorney General of the Duchy of Lancaster v London and Northwest Railway Company* 1892 3 Ch 274 at 277., 'is to stop cases which ought not to be launched - cases which are obviously frivolous or vexatious or obviously unsustainable'. It seems to me that the present action is such a case for the reasons I have already given. I also think this is a case which is an abuse of the process of the Court.

20 I order that the statement of claim be struck out and the action be dismissed with costs. I also order that the plaintiff be prohibited from bringing further proceedings relating to the land in quieting action No. 62 of 1965 except by leave of the Court.

J.A. Smith, J.

18.4.73.

No. 19

No. 19

ORDER

Order  
18th April,  
1973

30 IN THE SUPREME COURT OF THE COMMONWEALTH OF  
THE BAHAMA ISLANDS 1971

COMMON LAW SIDE

No. 838

BETWEEN

CLOTILDA EUGENIA HIGGS

Plaintiff

AND

CAVES COMPANY LIMITED

Defendant

UPON READING the Summons filed herein and dated the 12th day of April 1972 and the Affidavit of Paul Henry Bethel dated the 10th day of April



In the Supreme Court

          
No. 19

Order  
18th April,  
1973  
(continued)

1972 in support thereof and UPON HEARING Mr. Hartis Eugene Pinder of Counsel for the Defendant and Mr. James Maxwell Thompson of Counsel for the Plaintiff IT IS HEREBY ORDERED as follows :-

1. That the Statement of Claim in this matter be struck out and that this action be dismissed on the ground that it is frivolous and vexatious and an abuse of the process of this Court.

2. That the Plaintiff is prohibited from bringing any further proceedings relating to the land the subject of Quieting Titles Action No. 62 of 1965 except by leave of the Supreme Court.

3. That the Defendant's costs of this action and of this Summons be paid by the Plaintiff.

Dated the 18th day of April 1973.

BY ORDER OF THE COURT

REGISTRAR.

TO: Clotilda Higgs and  
James M. Thompson, Esq.,  
her Attorney,  
Chambers,  
Frederick Street,  
Nassau.

10

2

No. 20

No. 20

Summons  
2nd May 1973

SUMMONS

IN THE SUPREME COURT OF THE COMMONWEALTH  
OF THE BAHAMA ISLANDS

1971

COMMON LAW SIDE

No. 838

BETWEEN

CLOTILDA EUGENIA HIGGS                      Plaintiff

AND

CAVES COMPANY LIMITED                      Defendant

LET ALL PARTIES concerned attend before

30

Mr. James Justice Smith in Chambers, Law Courts Building in the City of Nassau on Monday the Twenty first day of May A.D., 1973 at 10.00 o'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the Plaintiff herein for an Order that:

In the Supreme Court

No. 20

Summons  
2nd May 1973  
(continued)

10

(1) The Statement of Claim herein ordered to be struck out on the 18th day of April, A.D., 1973 be reinstated and that leave be given the Plaintiff to amend the said Statement of Claim as prayed in the Summons filed herein and dated the 17th day of April, A.D., 1973, or alternatively that,

20

(2) The Plaintiff be given leave to Appeal the said Judgment or Ruling delivered on the 18th day on the grounds specified in the said Summons dated the 17th day aforesaid and in the Affidavit in support of the same and on the grounds contained in the Affidavit of even date.

Dated the 2nd day of May, A.D., 1973.

Sgd: Illegible

Registrar

This Summons was taken out by James M. Thompson of Chambers, Frederick Street in the City of Nassau, New Providence.

30

TO: THE DEFENDANT or its  
Attorneys,  
Messrs. McKinney, Bancroft & Hughes,  
Chambers,  
50 Shirley Street,  
Nassau, Bahamas.

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In the Supreme Court

110.

No. 21

AFFIDAVIT OF JAMES MAXWELL THOMPSON

No. 21  
Affidavit of  
James Maxwell  
Thompson  
2nd May 1973

IN THE SUPREME COURT OF THE COMMONWEALTH OF THE  
BAHAMA ISLANDS 1971

COMMON LAW SIDE No. 838

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

I, JAMES MAXWELL THOMPSON of Chambers,  
Frederick Street in the City of Nassau on the  
Island of New Providence one of the Islands of  
the Commonwealth of the Bahama Islands Attorney  
-at-Law, make oath and say as follows :-

10

1. I am Counsel for the Plaintiff herein  
and am duly authorized to swear this Affidavit on  
her behalf.

2. That on the 18th day of April, A.D.,  
1973 the Learned Judge ruled that the Statement  
of Claim be struck out and the action dismissed  
with costs.

20

3. That the Learned Judge was wrong in  
principle in that he arrived at his conclusion  
notwithstanding that there was an application by  
the Plaintiff for the consideration of additional  
evidence which was in fact on file and thereby  
of notice to the Court.

4. That the Learned Judge failed to use his  
discretion judicially by refusing to allow the  
Plaintiff to amend thereby frustrating her legal  
right to a fair adjudication of her claim.

30

5. That in arriving at his Ruling the  
Learned Judge failed to give the necessary weight  
which ought to have been given to the whole of  
the evidence.

6. That the Plaintiff as of right is  
entitled to be heard and I verily believe that  
if all the facts relevant to her claims were duly

111.

considered that she would most likely succeed.

In the Supreme Court

SWORN to this 2nd)  
day of May A.D., ) sgd: JAMES M. THOMPSON  
1973 )

No. 21

Affidavit of  
James Maxwell  
Thompson  
2nd May 1973  
(continued)

BEFORE ME,

sgd: Illegible

No. 22

No. 22

SUMMONS

Summons  
25th May 1973

THE COMMONWEALTH OF THE BAHAMA ISLANDS 1971

10 IN THE SUPREME COURT No.838

COMMON LAW SIDE

BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

LET ALL PARTIES concerned attend before Mr.  
Justice James Smith in Chambers in the Law Courts  
Building in the City of Nassau on Monday the 28th  
day of May 1973 at 2.30 o'clock in the afternoon  
20 or so soon thereafter as Counsel may be heard on  
the hearing of an application on the part of the  
Defendant herein for an Order that the Summons  
dated the 17th day of April 1973, the Amended  
Statement of Claim referred to therein and the  
Affidavit dated the 17th day of April 1973 of  
James Maxwell Thompson in support thereof be struck  
out and removed from the file on the grounds that  
the same are scandalous, irrelevant and an abuse  
of the process of the Court and that the costs of  
30 this application be paid by the Plaintiff to the

In the Supreme Court

Defendant.

Dated the 25th day of May, 1973.

No. 22

Summons  
25th May 1973  
(continued)

BY ORDER OF THE COURT

sgd: Illegible

REGISTRAR

This Summons was taken out by McKinney, Bancroft & Hughes of Chambers, 50 Shirley Street in the City of Nassau, New Providence.

To The Plaintiff or her Attorney,  
James M. Thompson, Esq.,  
Chambers,  
Frederick Street,  
Nassau, Bahamas.

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No. 23

Affidavit of  
Hartis Eugene  
Pinder  
25th May 1973

No. 23

AFFIDAVIT OF HARTIS EUGENE PINDER

THE COMMONWEALTH OF THE BAHAMA ISLANDS 1971

IN THE SUPREME COURT No. 838

COMMON LAW SIDE

BETWEEN

2

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

I Hartis Eugene Pinder of the Eastern District of the Island of New Providence, Attorney-at-Law make oath and say as follows :

1. I am an associate in the firm of McKinney,

Bancroft & Hughes the Attorneys for the Defendant herein.

In the Supreme Court

No. 23

Affidavit of  
Hartis Eugene  
Pinder  
25th May 1973  
(continued)

10

2. On the 22nd day of May, 1973 the above-named firm as attorneys for the Defendant was served with a copy of the Summons dated the 23rd April 1973 filed herein on behalf of the Plaintiff and set down for Monday the 21st day of May 1973 seeking an order to reinstate the Statement of Claim herein ordered to be struck out on the 18th April, 1973 and praying for leave to amend the same and alternatively requesting leave to appeal to the Court of Appeal.

20

3. On the 22nd day of May 1973 the said firm also received a copy of the affidavit of James Maxwell Thompson dated the 2nd May, 1973 filed herein and a copy of the Notice dated 21st May, 1973 of adjournment of the said Summons dated the 23rd April 1973 from the 21st day of May 1973 to the 28th day of May 1973.

30

4. On the 26th day of April, 1973 I caused the Order of this Court dated the 18th day of April 1973 striking out the said Statement of Claim and dismissing this Action as being frivolous and vexatious and an abuse of the process of this Court to be perfected and on the 27th day of April 1973 served on the said James Maxwell Thompson the attorney of record for the Plaintiff and no Notice of Appeal has been received by the above firm within Fourteen days thereafter in accordance with the Court of Appeal Rules.

Sworn to this 25th day)  
of May, 1973 ) sgd: HARTIS E. PINDER

BEFORE ME,

Sgd: Illegible

Ag. Regr.



114.

In the Supreme  
Court

No. 24

PROCEEDINGS

—  
No. 24  
Proceedings  
21st May 1973

Application for Leave to Appeal

In Chambers

21st May, 1973

Thompson for applicant

Thompson: Application for leave to appeal against the ruling but it has not been served on the respondent and I ask for an adjournment.

Adjourned to 28th May 1973.

J. A. Smith, J.

21st May, 1973.

28th May 1973

In Chambers

28th May, 1973.

J. Thompson for plaintiff

P. Bethel for defendant  
(with Mr. Pinder)

Applications by plaintiff and defendant.

Thompson: Summons filed 2nd May, 1973 and affidavit in support.

Court of Appeal Act Section 10 (f) Hunt and Allied Batteries 1956 3 All E.R. 513.

O.18.r.19. Note 18/10/4.

Plaintiff seeks leave to appeal to Court of appeal.

Ward v James 1966 1 Q.B. 273 at p.293.

Judge in his ruling of 18th April, 1973 is not only wrong in law but wrong in principle in that he reached a conclusion to the detriment of the plaintiff without giving consideration to all the evidence.

The summons of 17th April I submit was regularly issued in that it complied with O.32. r.2. I submit no ruling could or should have

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been made on the facts since not all the evidence was considered as he failed to consider the evidence filed after he adjourned the summons for ruling but before the ruling was delivered.

In the Supreme  
Court

—  
No. 24

Proceedings  
28th May 1973  
(continued)

There has been a failure to comply with the principles laid down in Ward v James.

10 As by the filing of the Summons by plaintiff seeking not only to amend but seeking to bring to the attention of the Court evidence which had recently been obtained and was most relevant to the issues between the parties.

The judge should have considered the summons filed 17th April before delivering his ruling on 18th April.

O.18.r.19 Notes 18/19/3 and 18/19/3A.

The grounds of appeal are indicated in paras 3, 4 and 5 of my affidavit of 2nd May.

Evans v. Bartlam. 1937. 2. All E.R. 646.

at p.650 per Lord Atkin.

20 and at p.656 per Lord Wright.

P. Bethel: I first wish to draw attention to plaintiff my summons of 2nd May, 1973. Para 1 of the Summons, I cannot see how this para can be entertained at all. No leave is being sought in respect of para 1.

As to para 1, the applicant is asking for a rehearing of a matter which Court has disposed of. Supreme Court can reinstate a Statement of Claim which it has already struck out.

30 Para 2 of the Summons:

Summons of 17th April could not be a ground of appeal from ruling delivered on 18th April.

These are not proper grounds.

The matter had been heard and the Court adjourned for a ruling. At that stage both the cases from plaintiff and defendant had been closed and that was the end of that case subject only to the handing down of the ruling on the facts before the Court at the time.



In the Supreme  
Court

—  
No. 24

Proceedings  
28th May 1973  
(continued)

On the very day the ruling was to be handed down the Court's attention was drawn to a further summons that had been filed which sought to add to plaintiff's case which had already been closed.

The filing of the summons of 17th April was to prevent Court from ruling on the original matter without first looking at this summons. It seems to me it was an attempt to obstruct the course of justice.

The new matters raised may or may not form the basis of a further action but they could not be entertained in an action already disposed of.

10

The application for leave to appeal is out of time.

Court Appeal Rules. R.12. Notice of Appeal from a interlocutory order to be 14 days from the date of the order.

(sic)

Order was perverted\*on 26th April, 1973. No notice of appeal has yet been filed but what we have is a summons filed on 2nd May, 1973.

20

I don't think Section 10 of the Court of Appeal Act leave of the Court is required.

Refers also to R.21.

Defendants Summons: This application is connected with the application for leave to appeal. The matters in the summons of 17th April are themselves scandalous.

Leave to appeal ought not to be given when it brings in matters which are frivolous and vexatious.

30

Court: Is this not for the Court of Appeal to deal with.

Bethel: It may be I would ask my summons remain in the file and be adjourned until after the application for leave to appeal be dealt with.

J. Thompson: I would object to this summons. It was filed on 25th May and should not be heard as I am entitled to two clear days notice.

40

In order for something to be scandalous it must not relate to the subject matter and it is not scandalous if it is relevant to the issue.

In the Supreme Court

—  
No. 24

Proceedings  
28th May 1973  
(continued)

As to the submission my application being out of time the date runs from the perfection of the order served on me on or after 26th April 1973. My summons was filed within 7 days. If time runs it runs from that date the order was perfected.

10 I cannot file a notice of appeal without leave.

Ruling: I consider the application for leave to appeal to be within time and reading Rules 21 and 22 together. I apprehend the period of 14 days runs from the date of the perfection of the order granting leave to appeal.

20 The substance of the application for leave to appeal is that the Court erred in dismissing the action without in the particular circumstances of this case, having first considered the summons of 17th April, 1973.

On this point I grant leave to appeal to the Court of Appeal.

The respondents summons of 25th May is adjourned sine die with liberty to apply.

J.A. Smith, J.

28th May, 1973.

—  
No. 25

No. 25

ORDER

Order  
6th June 1973

30 IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMA ISLANDS  
COMMON LAW SIDE  
BETWEEN

CLOTILDA EUGENIA HIGGS Plaintiff

AND

CAVES COMPANY LIMITED Defendant

Dated the 28th day of May, A.D., 1973.

In the Supreme Court

UPON HEARING Mr. James M. Thompson of Counsel for the Plaintiff and Mr. Paul H. Bethel of Counsel for the Defendant IT IS HEREBY ORDERED that

No. 25

Order  
6th June 1973  
(continued)

(1) Leave as prayed be granted the Plaintiff to appeal to the Court of Appeal and;

(2) The Summons of the Defendant dated the 25th day of May, A.D., 1973 be adjourned sine die with liberty to apply.

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Sgd: Illegible

Registrar.

In the Court of Appeal

No. 26

NOTICE OF APPEAL

IN THE COMMONWEALTH OF THE BAHAMA ISLANDS  
IN THE COURT OF APPEAL 1973

No. 26  
Notice of Appeal  
14th June  
1973

No.

BETWEEN

CLOTILDA EUGENIA HIGGS Appellant

AND

20

CAVES COMPANY LIMITED Respondent

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named Appellant on Appeal from the Judgment or Ruling herein of The Honourable Mr. Justice James Smith given at the Trial of this Action on the 18th day of April, A.D., 1973 whereby it was ordered:-

1. That the Statement of Claim in this matter be struck out and that this action be dismissed on the ground that it is frivolous and vexatious and an abuse of the process of this Court.

30

2. That the Plaintiff is prohibited from

bringing any further proceedings relating to the land the subject of Quieting Titles Action No. 62 of 1965 except by leave of the Supreme Court.

In the Court of  
Appeal

—  
No. 26

Notice of  
Appeal  
14th June  
1973

(continued)

3. That the Defendant's costs of this action and of this Summons be paid by the Plaintiff.

10 FOR AN ORDER that the said Order made the 18th day of April, A.D., 1973 be set aside and the Statement of Claim be reinstated and for a further Order that the Appellant be granted Leave to amend her said Statement of Claim as prayed in the Summons herein dated the 17th day of April, A.D., 1973 and to prosecute her claims.

AND FURTHER TAKE NOTICE that the grounds of this Appeal are :-

20 1. That the Learned Judge was wrong in principle in determining that the Appellant's Statement of Claim be struck out and the Action dismissed with costs since without due consideration being given to all the evidence relevant to the facts in issue the Ruling was made in ignorance of those facts which ought to be known before the rights of the parties hereto were definitely decided.

30 2. That the Learned Judge erred and failed to act judicially on the limited, minute and protracted facts before him since an examination of the written documentation before him would have disclosed the absence of any valid ground to support the Judgment in the original Action between the parties which finding should have raised the questions of negligence and bias thereby nullifying the said Judgment.

40 3. That the Learned Judge fully realizing that all the facts were not before him erred and was wrong in law since in so doing he refused to give due consideration and weight to those things which ought to have weighed with him and was influenced by other considerations which ought not to have weighed with him.

4. That the said Ruling frustrates the legal rights of the Appellant and is an infringement of her constitutional right to a fair impartial and unbiased determination of her rights and

In the Court of  
Appeal

therefor contrary to natural justice.

          
No. 26  
Notice of  
Appeal  
14th June  
1973  
(continued)

Dated this Fourteenth day of June, A.D.,  
1973.

James M. Thompson  
Attorney for the Appellant

To: The above-named Respondent  
and to Messrs. McKinney, Bancroft &  
Hughes,  
Chambers,  
50 Shirley Street,  
Nassau, Bahamas,  
its Attorneys.

10



No. 27

Affidavit of  
Hartis Eugene  
Pinder  
7th September  
1973

No. 27

AFFIDAVIT OF HARTIS EUGENE PINDER

COMMONWEALTH OF THE BAHAMAS 1973

IN THE COURT OF APPEAL No. 5

BETWEEN

CLOTILDA EUGENIA HIGGS Appellant

AND

CAVES COMPANY LIMITED Respondent

I Hartis Eugene Pinder of the Eastern  
District of the Island of New Providence, make

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oath and say as follows :

In the Court of  
Appeal

—  
No. 27

Affidavit of  
Hartis Eugene  
Pinder  
7th September  
1973  
(continued)

1. I am with the firm of McKinney,  
Bancroft & Hughes, Attorneys for the  
Respondent.

2. The Ruling made by Mr. Justice James  
Smith in this matter was handed down on the  
28th day of May A.D. 1973 and the Order  
perfecting the Ruling was filed in the  
Registry of the Supreme Court on the 6th  
June 1973.

3. The last day for filing an appeal  
thereunder in terms of Rule 12 (b) of the  
Appeal Court Rules was the 20th June  
1973. The Notice of Appeal hereunder  
was not served on the Respondent's  
Attorneys and the Respondent's Attorneys  
were unaware that an Appeal had been  
filed until served with a Summons By  
the Registrar to Settle the Record  
on the 29th August, 1973. Accordingly  
the said Notice of Appeal was not served  
within the time limited by the said  
Rule.

4. No application was made to the  
Court below for an extension of time  
for serving the Notice of Appeal under  
Rule 22 of the Appeal Court Rules.

5. In the learned Judge's Ruling of  
the 28th May, 1973 and referred to in  
paragraph 2 above leave was granted to  
the Appellant to appeal on the ground  
that the learned Judge had failed to  
look at the Appellant's Summons of 17th  
April, 1973 before delivering his  
Ruling.

6. The Appellant in her Notice of  
Appeal seeks to include other grounds  
of appeal for which no leave has been  
obtained.

In the Court of  
Appeal

—  
No. 27

Affidavit of  
Hartis Eugene  
Pinder  
7th September  
1973  
(continued)

7. This Affidavit is in support of a  
Summons on behalf of the Respondent  
that the said Notice of Appeal be  
struck out.

SWORN to this 7th )  
day of September ) sgd: HARTIS E. PINDER  
1973 )

BEFORE ME,

sgd: Illegible

Ag. Regr.

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123.

No. 28

SUMMONS

In the Court  
of Appeal

—  
No.28

COMMONWEALTH OF THE BAHAMAS

1973

IN THE COURT OF APPEAL

No. 5

Summons  
11th September  
1973

BETWEEN

CLOTILDA EUGENIA HIGGS

Appellant

- and -

CAVES COMPANY LIMITED

Respondent

10 LET ALL PARTIES ATTEND before the Honourable  
The Chief Justice in Chambers sitting as a single  
Judge of the Court of Appeal on Friday the 21st day  
of September 1973 at 9:30 o'clock in the forenoon  
ON THE HEARING OF an Application on the part of the  
Respondent in this matter FOR AN ORDER THAT

1. The Notice of Appeal dated the 14th day of  
June, 1973 and filed on behalf of the Appellant in  
this matter be struck out on the grounds that

20 (a) the Notice of Appeal herein was not  
served within the time limited for serving an  
appeal in terms of the Court of Appeal Rules,  
Rule 12 (b).

(b) no application was made to the Court  
below for an extension of time for serving the  
said Notice of Appeal in terms of Rule 31 (1)  
(e)

(c) no application has been made to this  
Honourable Court for leave to appeal out of  
time

30 (d) the Notice of Appeal herein is contrary  
to the terms of the leave to appeal granted to  
the Appellant by the court below

2. The costs of this application be given to the  
Respondent.

Dated the 11th day of September 1973.

Sd. Illegible

REGISTRAR



In the Court  
of Appeal

This Summons was taken out by McKinney, Bancroft  
& Hughes, Chambers, 50 Shirley Street, Nassau,  
Bahamas, Attorneys for the Respondent.

No.28

To the Appellant  
or her Attorney  
James M. Thompson  
Chambers,  
Nassau, Bahamas.

Summons  
11th September  
1973  
(continued)

No.29

No. 29

Judgment of  
Bourke P.  
13th November  
1974

JUDGMENT OF BOURKE P.

10

BAHAMA ISLANDS

C.A. No. 5 of 1973

IN THE COURT OF APPEAL

KENNETH HIGGS  
ERIC HIGGS

Appellants

- and -

CAVES COMPANY LIMITED

Respondent

Mr. Kenneth Higgs and Mr. Eric Higgs have  
been substituted for the original appellant, the  
late Mrs. Clotilda E. Higgs, who for convenience  
and present purposes will be referred to as "the  
Appellant".

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The appeal is against an Order made by J.A.  
Smith J. on 18/4/73 directing that the statement  
of claim in civil action No. 838 of 1971 between  
the Appellant as plaintiff and the Respondent,  
Caves Company Ltd., as defendant, be struck out  
and the action be dismissed on the ground that it  
is frivolous and vexatious and an abuse of the  
process of the court; and further that the  
Appellant be prohibited from bringing any further  
proceedings relating to the land the subject of  
Quieting Titles Action No. 62 of 1965 except by  
leave of the court. The summons on which this  
Order was made was brought by the present  
Respondent and was supported by the affidavit of  
Mr. Paul Bethel of the firm of Attornies acting for  
the Respondent.

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The contents of that affidavit stand  
uncontradicted and it is evident that they were

accepted as establishing the facts by the court below. It is deposed to as a fact (paragraph 22) "that the main issues between the Plaintiff and Defendant were settled by this court in the Quieting Titles Action tried in the year 1966 in Action No. 62 of 1965".

In the Court  
of Appeal

—  
No. 29

Judgment of  
Bourke P.  
13th November  
1974  
(continued)

10 In January, 1965, the Respondent Company lodged a petition in the Supreme Court under the provisions of the Quieting Titles Act to have its title to 253.23 acres of land investigated and a certificate of title granted. In those proceedings (No. 62 of 1965) the Appellant filed an adverse claim alleging that she was the owner of 225 acres of the land. This claim was founded on adverse possession and it failed after several days hearing of the evidence. Mr. Paul Adderley acted throughout for the Appellant as adverse claimant. The judgment of H.C. Smith J. (exh. C.C.5) was given on 28/3/66; the adverse claim was dismissed and a certificate of title was granted to Caves Company Ltd. as Petitioner, which had established a good documentary title that was, as is stated in the judgment, unchallenged.

20

30 Four years later, in June 1970, the Appellant, represented by Mr. J. Thompson, who appears on the present appeal, applied to this Court (C.A. No. 14 of 1970) for leave to appeal against the grant of the said certificate of title. This application was heard on 20/9/70 and dismissed; a following application for leave to appeal this dismissal to the Privy Council was refused by a single judge of this Court on 18/12/70.

40 In November, 1969, Caves Company Ltd. applied for an injunction, inter alia, to restrain the Appellant and her agents from occupying and doing damage to the said land of which it was the legally recognised owner. In that action (No. 627 of 1969) a defence was filed alleging fraud on the part of Caves Company Ltd. in obtaining the certificate of title in C.A. No. 62 of 1965. No particulars of such fraud were given. The plaintiff, Caves Company Ltd., promptly moved to have such defence struck out as being frivolous and vexatious and an abuse of the process of the court and asked for the entering of judgment as sought.

In July, 1970, such judgment was duly entered granting the relief prayed by way of injunction.

In May 1971, Caves Company Ltd. applied to the

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Bourke P.  
13th November  
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(continued)

court to have the Appellant and others committed to prison for contempt by reason of their breaches of the said injunction. By an affidavit of 22/6/71 the Appellant apologised to the court and no further order except as to costs was made against her; but two of her "tenants" were ordered to be committed for contempt unless they had vacated the land by 1/12/71. The Appellant and her two "tenants" appealed unsuccessfully, against this Order. About ten days subsequent to the dismissal of this appeal the Appellant brought the action No. 838 of 1971 against Caves Company Ltd. seeking to have the certificate of title granted to it in respect of the land under dispute in C.A. No. 62 of 1965 declared void, on the alleged ground that it was obtained by fraud.

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On the 30/12/71 Caves Company Ltd. by letter requested further and better particulars. It then applied to the Court to order such particulars. On 28/2/72 particulars were directed to be furnished within 14 days. This direction was not complied with. The summons with which we are now concerned of 12/4/72 also asked for a dismissal of the action (No. 838 of 1971) on the ground of this failure to comply: this part of the summons was dealt with separately and an extension of time granted by H.C. Smith J. The particulars were supplied on 2/5/72.

20

The remaining part of the adjourned summons came to be determined by J.A. Smith J. It is plain that on the material before him the judge was satisfied on the point of res judicata: the Appellant was seeking to re-open the issue as to ownership of the land that was determined in favour of the Respondent in the Action No. 62 of 1965. I think, with respect, that the learned judge was right in this. He proceeded to analyse the facts as pleaded by the Appellant through her statement of claim and particulars and approached the matter on the assumption that these allegations constituted the facts. He concluded that these were circumstances within the Appellant's own knowledge which she now alleges would have supported her adverse claim in Action No. 62 of 1965. The onus lay upon her to present this evidence to the court at the hearing of that action and by cross-examination of the Respondent's witnesses to challenge them with the allegations she now made in the statement of claim. To quote from the judgment:

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"As the matters which are alleged by the plaintiff as facts in her statement of claim

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In the Court  
of Appeal

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No.29

Judgment of  
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13th November  
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(continued)

were within her own personal knowledge it seems to me to be begging the question to say that the defendant or its agents were fraudulent in failing to put those matters fully before the court in action No. 62 of 1965 when the plaintiff herself as adverse claimant in that action had the opportunity to do so. It appears to me that she now seeks by means of the present action to blame the defendant for not doing what she herself as adverse claimant should have done. By alleging in paragraph 4 of her statement of claim that the trial court in action No. 62 of 1965 was influenced in its decision by the alleged fraudulent conduct of the defendant's agents described in the other paragraphs of the statement of claim, the plaintiff has sought to show that she was thereby deprived of the land the subject of the quieting of title action. But all she has done by her allegations is to show that there were matters within her knowledge which she alleges were not properly brought to the notice of the Court when she herself as adverse claimant should have put those facts to the Court through the evidence of her own witnesses and cross-examination of the petitioner's witnesses thereon."

The arguments on this summons brought by the Respondent were heard on various dates from 8/12/72 and were closed on the 26/3/73 when the matter was adjourned to 18/4/73 for delivery of the judgment. On the 17/4/73 Mr. Thompson for the Appellant filed a summons seeking to amend the writ and statement of claim by the inclusion of further allegations and joinder of other persons as defendants to the action: it was further sought that a transcript of the evidence and Orders in the original action No. 62 of 1965 as attached "be accepted and be deemed to be part of the Pleadings herein." By his affidavit in support of his summons of 17/4/73 Mr. Thompson deposed:

"2. That on the 18th day of August, A.D., 1967 I first applied to the then Registrar for a copy of the transcript of the evidence taken in the Quieting Titles Petition Numbered 62 of 1965 and continued during the following years to make such requests both by letter and orally.

3. That this action was commenced on the 29th day of November, A.D., 1971 without the benefit of the said transcript, the material facts for

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such commencement having been obtained from the typewritten copies of the Affidavits, Abstract of Title and other documents filed therein.

4. That a copy of the said transcript was finally delivered to this deponent on the 22nd day of December, A.D., 1972.

5. That as a result of the contents of the said transcript the Amendments as prayed are humbly requested since I verily believe the said contents discloses in my humble submission a good cause of action in which the Plaintiff ought to succeed."

I suppress any expression of astonishment, if that is not too weak a word, that it should take nearly 4½ years (and nearly 7 years from the date of determination of the Quieting Title action) to come into possession of a copy of notes of evidence amounting to 41 double-spaced typed pages, if any diligence at all had been exercised.

The arguments on the Respondent's summons now under review were heard, as I have said, on various dates commencing on the 8/12/72. On the 28/12/72 Mr. Thompson was heard to say: "I have now received a copy of the record of No. 62 of 1965 but I have not yet had the opportunity to consult my client thereon." Then at the hearing of 26/3/73 he is recorded as saying - "I ask leave to amend the statement of claim as to parties and as to the cause of action. My intention is to join in this action (No. 838 of 1973) as defendants certain parties, namely Mr. Paul Bethel and Mr. Paul Adderley (the Counsel appearing for each side in the said action). I intend to amend my statement of claim to ask the court for a declaration that due to the manner in which the trial was conducted the results are against the principles of natural justice." The comment by the judge was: "This brings in new parties. We will deal with the matter before the court first." The arguments proceeded accordingly to the order of adjournment for delivery of judgment on 18/4/73. On that date and before the judgment was delivered Mr. Thompson submitted that his summons filed the day before had the effect of staying such judgment. Counsel for the present Respondent objected and also pointed out that he had had insufficient notice having only been served the preceding afternoon. Mr. Thompson contended that on consideration of his summons

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it might be found that there was no need for the judgment. The judge stated: "I consider that I should deliver my ruling on the summons that has already been argued. The new summons according to Mr. Thompson raises new issues and those should not in my view impede a decision on what has already been argued." The judgment now under appeal was thereupon delivered.

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(continued)

10 There was then the necessary application on the part of the Appellant for leave to appeal. In ruling on this the learned judge said: "the substance of the application for leave to appeal is that the court erred in dismissing the action without, in the particular circumstances of this case, having first considered the summons of 17th April, 1973. On this point I grant leave to appeal to the Court of Appeal." No such limitation, however, appeared in the perfected Order of 28/5/73 and, without objection, the Appellant has been heard at large on the grounds of appeal raised.

20

30 Now the application by the Appellant through the summons of 17/4/73 is upon our record and has been the subject of reference by both sides. Had it been an instance of an application to amend so as to remove any objectionable matter in a pleading open to criticism - an attempt to remedy things, then it might well be said that even at such a late juncture it would be proper to entertain it and permit the amendment rather than proceed with the more drastic order: in such case it is unlikely anyway that there would be any objection by the party complaining, who could be met as to costs. But in the present instance it is nothing of the sort. Mr. Bethel submits that on the contrary, if acceded to, it would constitute a serious aggravation. The statement of claim under objection is repeated and the amendments sought are to add as defendants to the action (No. 838 of 1971) the Counsel then appearing for the Appellant in Action No. 62 of 1965 and Counsel appearing for the Respondent, Caves Company Ltd., together with the judge who tried the Action - or rather investigated the title and determined the point in issue in favour of the Respondent and against the Appellant as adverse claimant to the land. There are allegations of dishonesty and bias and wrongful and malicious adjudication and distortion of the record of evidence on the part of the judge. There is an additional cause of action and damages are claimed for unlawful conspiracy on the part of the Respondent, Counsel engaged, and the judge, to work

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In the Court  
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(continued)

injustice to the Appellant and injure her through wrongfully procuring the issue of a certificate of title to the Respondent.

The amendments seem to me not only to constitute an aggravation but also to carry the hall-mark of irresponsibility.

In my opinion the learned judge came to a correct decision both on the merits and in proceeding as he did to the delivery of his judgment.

10

I find no substance in the grounds of appeal. I would dismiss the appeal with costs

Signed 16th August, 1974. Paget J. Bourke.  
President.

Delivered 13th November 1974 in presence of  
Counsel for parties

P.J.B.

No.30

Judgment of  
Hogan J.A.  
13th November  
1974

        
No.30

JUDGMENT OF HOGAN J.A.

COMMONWEALTH OF THE BAHAMAS

1973

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IN THE COURT OF APPEAL

No.5

CIVIL SIDE

KENNETH HIGGS and ERIC HIGGS

Executors

of

CLOTILDA EUGENIA HIGGS  
(Plaintiff)

Appellants

- and -

CAVES COMPANY LIMITED

Respondent  
(Defendant)

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This is an appeal from a judgment or order dated the 18th April, 1973, whereby it was ordered:-

"1. That the statement of claim in this matter be struck out and that this action be dismissed on the ground that it is frivolous and vexatious and an abuse of the process of this court.

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2. That the Plaintiff is prohibited from bringing any further proceedings relating to the land the subject of the Quieting Titles Action No. 62 of 1965 except by leave of the Supreme Court."

Judgment of  
Hogan J.A.  
13th November  
1974  
(continued)

10 On the 29th November, 1971 the then Plaintiff, Clotilda Eugenia Higgs, hereinafter called the plaintiff, had issued a writ claiming, inter alia:-

20 "1. An order that the certificates of title and relative orders made thereunder in Supreme Court Action No. 62 of 1965 issued to and made in favour of the defendant on the 17th August, 1965, 28th March, 1966, 5th April, 1966 and 6th April, 1966, be set aside under the provisions of section 27 of the Quieting of Titles Act 1959".

30 This was followed by a Statement of Claim, dated the 16th December, 1971, which alleged that an agent of the defendant, who is the respondent before us but whom I will continue to call the defendant, falsely represented to the court in Quieting Title Petition No. 62 of 1965 that the defendant as petitioner was alone in possession of the land the subject matter of the petition notwithstanding personal knowledge to the contrary gained from visits to the land and negotiations relative to it between the parties and their attorneys.

40 The Statement further alleged that the defendant through its agent intentionally misrepresented to the court in that action that the documents produced in support of its claim fully and clearly disclosed all the facts material to its claims and all contracts and dealings which affected its title thereto or any part thereof or gave any rights against it, when such agent was fully aware of the long occupation of the plaintiff, the quality and quantity of such occupation and the title documents of the plaintiff to parts of the land which had been submitted to agents of the defendant; that such documents, some of which had since been mislaid or destroyed, were not brought to the attention of the court by the defendant;



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(continued)

and that the defendant either fraudulently, knowingly and with intent to deceive or recklessly withheld these material facts from the court and thereby induced the court to deliver judgments and orders adverse to the plaintiff.

The Statement of Claim also asserted that the defendant falsely and intentionally misled the court in that action by deducing evidence which, whilst acknowledging the presence of the plaintiff on the land, asserted that she and her agents were there as trespassers only and that there were no other occupiers on the land, when this was known to be untrue and it was also known to the defendant that the plaintiff had forced tenants of the defendant to vacate the land.

10

We have been told that a defence was filed in the matter but that document has not been included in the papers put before us on this appeal.

On the 12th April 1972 the defendant took out a summons seeking dismissal of the action because of failure to supply further and better particulars. Such particulars dated the 28th April, 1972 were supplied subsequently and the prayer in that portion of the summons was consequently refused. We are not further concerned with it but the summons included an alternative prayer that the action should be struck out, on the grounds that it was frivolous and vexatious and an abuse of the process of the court, because the relief sought had previously been adjudicated upon in the said Quieting Title Action No. 62 of 1965, in which the defendant was the petitioner and the plaintiff was an adverse claimant and where the issues between the defendant and the plaintiff were substantially the same as those sought to be resolved in the present action.

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There was an additional prayer that the plaintiff be prohibited from bringing any further action in respect of the land the subject of the action without leave of the court because the plaintiff had made repeated frivolous applications to the court in respect of this land.

40

An affidavit filed in support of the summons by the attorney of the defendant recapitulated the proceedings in the title quieting action, including unsuccessful attempts by the plaintiff to appeal against the decision in that matter, and went on to say that, on 14th November 1969, in action No. 627 of 1969, the defendant applied for an

10 injunction to restrain the plaintiff from interfering with the said land; that on the 5th January 1970 a defence was filed by the plaintiff alleging fraud on the part of the defendant in obtaining the certificate of title in action No. 62 of 1965; that on the 11th February 1970 the defendant applied to have the said defence struck out as being frivolous and vexatious and an abuse of the process of the court and for judgment to be entered against the plaintiff; and that on the 3rd day of July 1970, judgment was duly entered and an injunction issued against the plaintiff.

20 The affidavit went on to say that repeated applications by the plaintiff to the court in respect of the defendant's land had caused considerable embarrassment as the main issues had been settled by the court in the quieting of titles action. It concluded with a request that the action be dismissed for not complying with the order to supply further particulars or alternatively as being frivolous and vexatious and an abuse of the process of the court, and that the plaintiff be prohibited as requested in the summons.

30 Argument on the summons extended over a number of days and eventually concluded on the 26th March, 1973, on which date, in the course of his argument, Mr. Thompson, counsel for the plaintiff, indicated to the court that he intended to amend his Statement of Claim by bringing in additional parties and seeking a declaration that the trial in the earlier proceedings was against the principles of natural justice. According to the notes before us the learned judge said that this would be bringing in new parties and that the matter before the court should first be dealt with. The argument continued and the matter was adjourned for ruling on the 18th April, 1973.

40 On the 17th April, 1973, the plaintiff filed a summons purporting to require the parties to attend next day before the judge in chambers on the hearing of an application by the plaintiff for liberty to amend her pleadings by the addition, inter alia, of a prayer that:

"The transcript of the oral evidence taken at the hearing of the quieting titles petition, No. 62 of 1965 in addition to all relevant orders made therein be accepted and be deemed to be a part of the pleadings herein, a copy of which said transcript is attached hereto and

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marked J.MT. 2 for purposes of identification."

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Judgment of  
Hogan J.A.  
13th November  
1974  
(continued)

On the 18th April, before the judge's ruling was delivered, Mr. Thompson, counsel for the plaintiff drew attention to the summons which had been filed by his client and submitted that a ruling on the existing Statement of Claim would be superfluous. Counsel for the defendant said he had insufficient notice to consider the summons and submitted that the ruling should be delivered. The learned judge decided to deliver it as the argument had been concluded and the plaintiff's summons raised new issues which, in the view of the learned judge, should not impede a decision on what had already been argued.

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The decision was to the effect already indicated. Subsequent to its delivery and the filing of this appeal the plaintiff died. She has been replaced in these proceedings by her executors, hereinafter called the appellants.

The grounds of appeal filed against the decision of the lower court are somewhat lacking in precision and it is not easy to deduce and distinguish the distinctive grounds of complaint raised by each but Mr. Thompson, in the course of his argument, maintained that they challenged the validity of the actual decision given by the learned judge on the material before him and also questioned his right to reach such a decision, without taking account of the request for amendment and the additional material which it sought to put before the judge. Counsel has indeed submitted that this is his main ground of appeal.

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Whilst amendment would of course have made it unnecessary to determine whether the original Statement of Claim in its unamended form should be struck out and dismissed, a decision that the judge was wrong, as counsel contends, in striking it out on the material before him, and dismissing the action would of course leave the way clear for consideration of the amendment in the lower court in the ordinary way. Furthermore any consideration of the amendment in this court would have to take account of the attack on the pleadings as they stood and the case made out for dismissal. Either way there would appear to be advantage in first dealing with the validity of the judge's ruling on the material before him before considering whether he was right to make it without taking into account the proposed amendment.

40

In his ruling, on the material before him, the learned judge, putting on one side the allegations of fraud and misrepresentation as being merely general averments, said that although the allegations of fact in the Statement of Claim had been denied and traversed by the defendant he would, for the purposes of the application, assume those allegations, as supplemented by the further and better particulars, to be facts.

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Judgment of  
Hogan J.A.  
13th November  
1974  
(continued)

10 They included, inter alia, the following allegations:

"3. That the agents of the defendants knew the plaintiff possessed documents of title (since mislaid or destroyed) to part of the land west of Gladstone Road yet failed to inform the court

4. That by withholding the above facts from the court the defendant induced the court to deliver judgments adverse to the plaintiff."

20 The learned judge went on to say that it was for the defendant, as petitioner, and the plaintiff, as adverse claimant, in Quieting of Titles proceedings No. 62 of 1965, to set up proof of their respective claims by oral and documentary evidence and since the matters alleged to have been withheld were matters within the knowledge of the plaintiff, which would have supported her adverse claim, the onus lay upon her to present that evidence to the court at the hearing. The  
30 situation, he said, might have been different had the plaintiff not been an adverse claimant in action No. 62 of 1965 but as the matters allegedly withheld were matters within her own personal knowledge it was "begging the question" to say that the defendant or its agents were fraudulent in failing to put those matters fully before the court when the then plaintiff as adverse claimant had an opportunity to do so.

40 The learned judge went on to say that all she had done by her allegations was to show "that there were matters within her knowledge which she alleges were not properly brought to the notice of the court when she herself as adverse claimant should have put those facts to the court through the evidence of her own witnesses and cross-examination of the petitioner's witnesses thereon". From this he concluded that the proceedings before him were "obviously frivolous or vexatious or

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No.30

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1974  
(continued)

obviously unsustainable" and that they were also an abuse of the process of the court and, as already recounted, he thereupon ordered that the Statement of Claim be struck out, the action be dismissed with costs and the plaintiff be prohibited from bringing further proceedings.

From this it would appear that the learned judge granted to the defendant the relief it had requested but on grounds other than those set out in the defendant's summons and the accompanying affidavit. 10

The defendant had said that the plaintiff was estopped by res judicata. The judge seems to have leaned towards the view that she had disclosed no cause of action.

The plaintiff's claim had been made under the provisions of section 27 of the Quieting of Titles Act, which must of course be read with other provisions of the enactment, particularly section 5. These two sections state as follows:- 20

"5. The affidavit in support of the petition shall confirm all the facts set out in the petition and shall be made by the petitioner or may, with leave of the court, be made by some person other than the petitioner or as to part by one person and to part by another and shall in addition set out whether any person is in possession of land and under what claim, right or title, and shall state that to the best of the deponent's knowledge, information and belief, the affidavit and the other papers produced therewith fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the title of any part thereof or give any rights as against him." 30

"27. If in the course of any proceedings under this Act any person either as principal or agent fraudulently, knowingly and with intent to deceive makes or assists or joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding or concealing from the court of any material document, fact or matter of information, any certificate of title 40

obtained by means of such fraud or falsehood shall be null and void except as against a bona fide purchaser for valuable consideration without notice."

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10 It is difficult to see how the mere fact of adjudication in the Quieting of Title Action could provide a res judicata in respect of an action under section 27. Any such conclusion would seem to contradict the terms of the section and make it virtually nugatory. The section recognizes that the title has been determined and a certificate issued in the quieting proceedings but says that if there has been fraud the certificate will be null and void. Whether, in obtaining the certificate, there was suppression, withholding or concealment amounting to fraud appears on the face of it to be a new issue. Presumably it was on that account that the learned trial judge appears to have based his decision on grounds other than those put forward in the summons.

20

Before us Mr. Bethel, counsel for the defendant, has sought to justify the grounds advanced in the summons by directing attention to section 8(2) of the Quieting Titles Act, which limits the title required of the Petitioner to the period mentioned in section 3(4) of the Conveyancing and Law of Property Act and dispenses with any evidence which would not be required as between vendor and purchaser under that Act. This section cannot, I think, help the defendant in the present proceedings where the learned trial judge assumed that information about relevant facts and documents of title had been withheld from the court. There was nothing to show that the facts and documents in question fell within the categories excluded by section 8(2).

30

As I understand the reasons for the decision of the learned trial judge, he took the view that if an adverse claimant in a title quieting action has knowledge of documents or facts alleged to be relevant to the proceedings before the court and chooses not to bring these to the attention of the court then the failure of a petitioner to put such documents or facts before the court would not, despite the provisions of section 27, invalidate any certificate of title issued as a result of such failure.

40

Whilst one may recognise the justice of the ultimate decision in the circumstances of the

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present case I think the principle thus enunciated or implied goes too far and may involve a measure of conflict with the terms of the relevant section.

Certainly the obligation placed on the petitioner by section 5 would not appear to be reduced by the subsequent action or inaction of an adverse claimant and one can well understand why, for the purposes of an inquisitorial procedure such as that involved in a title quieting action, full disclosure should be required, including disclosure of facts, contracts and dealings giving adverse rights. 10

Whether the documents and facts alleged to have been withheld in the present instance actually came into this category we do not know. The plaintiff alleged that they did and the trial judge was content to assume that that allegation was correct and to decide the matter on this basis.

Precisely how, in such circumstances, the subsequent action and inaction of the plaintiff would preclude the operation of section 27 does not, to my mind, emerge very clearly from the reasons given by the learned trial judge in his decision or judgment. 20

Section 27 itself says nothing explicit about the conduct of the individual making the allegations of fraud but is expressed to refer only to that of the person alleged to have perpetrated it. Nevertheless the provision that the latter must have acted fraudulently, knowingly and with intent to deceive may leave room for the argument that where the information alleged to have been withheld is within the knowledge of another party to the proceedings, whose interest would lie in disclosing it, then the non-disclosure cannot be deemed fraudulent and calculated to deceive. 30

Any such construction would appear to have far-reaching implications, particularly where third parties are concerned. Nevertheless it seems to be arguable, though it was not, so far as I can see, argued in the court below nor has it been specifically argued before us. It does emerge from at least one passage in the judgment but no cogent reasons are given for reaching it and the full implications are not shown to have been examined. In any event, it is not, to my mind, matter qualifying for, or justifying, action under 40

0.18 r.19 or the inherent jurisdiction of the court, as being plain and obvious on the face of it; though it might well be a matter of law suitable for preliminary argument under the provisions of 0.18 r.11 and 0.33 r.3 of the Rules of Court. However, for reasons to which I will return later that conclusion does not, in my opinion, dispose of the matter. At this stage it seems desirable to deal first with a further point raised by the defendant.

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10           In the summons for striking out the  
respondent purported to base its claim of res  
judicata solely on the decision given in the title  
quieting Action No. 62 and, so far as I can see  
from the notes of the learned judge, the relevant  
argument in the lower court was directed solely to  
this ground which, as I have already indicated  
cannot, in my opinion, succeed. The affidavit  
supporting the summons did, however, contain  
reference to another case, Action No. 627 of 1969,  
20           where the respondent sought an injunction from the  
Supreme Court against the plaintiff in respect of  
the land in question and the plaintiff sought to  
meet this claim by alleging that the Certificate  
of Title had been obtained by fraud in Action No.  
62 but the injunction was granted. Although  
there is no reference to this in the judgment of the  
lower court, Mr. Bethel, counsel for the  
respondent has, before us, relied on it in the  
alternative as justifying the dismissal of the  
30           present proceedings. In so doing he would  
appear to have brought himself within the  
provisions of Rule 13 of the Court of Appeal Rules  
but no objection was taken to his failure to file  
the appropriate notice under that rule and argument  
has been heard on this ground.

          On the face of it, this assertion would  
appear to show that the allegation of fraud now  
put forward in the present proceedings has in fact  
been determined in earlier litigation. We have  
40           been informed orally that there were other  
affidavits before the judge in the court below but  
none containing any contradiction of this  
assertion in Mr. Bethel's affidavit has been  
produced in the record prepared for the appeal  
or presented to us at the hearing. Mr. Thompson  
has, however, sought to meet Mr. Bethel's  
argument by saying that the proceedings in Action  
No. 627 were determined by default and not on their  
merits. He cited no case in amplification of this  
50           response which nevertheless does open up an issue  
that is by no means free from difficulty or authority.



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In support of his argument, Mr. Bethel had relied on the general proposition propounded in the note No. 18/17/10B appearing in recent editions of the Annual Practice and on the case of McDougal v. Knight 25 Q.B.D.1 as well as the judgment of Lord Justice Somervell in the case of Greenhalgh v. Mallard 1947 2 A.E.R. 255, which referred to a number of cases, including the decision of the Privy Council in Hoystead v. Commissioner of Taxation 1926 A.C. 155, as approving the general rule stated by Wigram V.C. in Henderson v. Henderson 3 Hare 114 in the following terms:-

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"I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertance, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

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30

Whilst this broad proposition certainly seems wide enough to cover a judgment by default, this aspect was not directly in issue. However two of the leading cases amongst the earlier authorities dealing with res judicata are default cases, Howlett v. Tarte 10 CBNS 813 Irish Land Commission v. Ryan (1900) 2IR 565, 576, and there are passages bearing on the point in the important case of Hoystead v. Commissioner of Taxation (supra) where pleadings in the ordinary sense were not involved. But these and the other cases mentioned in the Annual Practice of 1973 in connection with this issue of res judicata must, I think, be read in the light of later cases which, perhaps somewhat surprisingly, are not mentioned under this heading in the Annual Practice.

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50

In the important Chancery case of Carl Zeiss Stiftung v. Rayner and Keeler and others (1971) Ch. 506, which contains important observations on the whole question of estoppel and res judicata, counsel, in the course of a very lengthy argument, said "Res judicata arises not only on investigation but also where the matter is either not argued or is allowed to go by default".

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10 This proposition appears to have been accepted but placed within limited boundaries by the Privy Council in the case, on appeal from Malaysia, of Kok Hoong v. Leong Cheong Kweng Mines Ltd. (1964) A.C. 993, 1010, 1012. The relevant part of the head note reads as follows:-

20 "Held (1), that, while there was no doubt that by the law of England, which was the law applicable for this purpose, a default judgment was capable of giving rise to an estoppel per rem judicatam, the question was what the judgment prayed in aid should be treated as concluding and for what conclusion it was to stand. Default judgments, though capable of giving rise to estoppels, must always be scrutinised with extreme particularity for the purpose of ascertaining the bare essence of what they must necessarily have decided and they could estop only for what must necessarily and with complete precision" have been thereby determined (post, pp. 1010, 1012)".

30

In the course of the judgment, Viscount Radcliffe said:-

40 "Their Lordships are satisfied that, where a judgment by default comes in question, it would be wrong to apply the full rigour of any principle as widely formulated as that of Henderson v. Henderson. It may well be doubted whether the Vice-Chancellor had in mind at all the peculiar circumstances of a default judgment and whether such a judgment would not naturally fall into his reservation of "special cases". In any event it is clear from what has been said in other authorities more immediately directed to the point that a much more restricted operation must be given to any estoppel arising from a default judgment.

Howlett v. Tarte is usually referred to as

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supplying the governing rule in this context. It is at any rate a decision explicitly arising out of a judgment by default. The report of it contains several short and separate opinions, but the effect of them is taken to be that, while such a judgment can give rise to estoppel in subsequent proceedings, the defendant in such proceedings is estopped only from asserting something which, if pleaded in the earlier action, would have amounted to a direct traverse of what was there asserted and founded upon by the party who obtained that judgment. Thus, if what he wishes to set up in the second action would have been matter only for a plea by way of confession and avoidance or, it seems, a special plea in the first action, there is no estoppel.

10

This formula may be all very well for those who practise or are familiar with the old system of pleading that prevailed in the English courts of common law in the first half of the nineteenth century. But it is a valid criticism of its utility for the solution of questions of estoppel that arise now or in the future that the formula itself could hardly avoid being conditioned by the special and very complicated rules by which that system was governed (see per Lord Shaw in *Hoystead's case*), and the exercise of imagination that is required in order to translate modern pleadings into the forms of the older ritual becomes progressively harder to achieve for those for whom the work of translation is by now merely an antiquarian exercise.

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Fortunately, perhaps, *Howlett v. Tarte* has twice been reconsidered in much more recent cases of high authority. One is *Hoystead's* to which reference has already been made. There it was spoken of as being essentially the product of the older system of pleading and as involving no derogation from the true general principle that, for the purposes of estoppel, a judgment stands for every point, whether of assumption or admission, which was in substance the ratio of and fundamental to the decision. The other case is the House of Lords decision in *New Brunswick Railway Co. v. British and French Trust Corporation Ltd.*, in which full

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consideration was given to the authority of *Howlett v. Tarte* (supra) and an attempt was made to decide to what extent it represented a principle of general application for the purposes of modern litigation.

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In their Lordships' opinion the New Brunswick Railway Co. case can be taken as containing an authoritative re-interpretation of the principle of *Howlett v. Tarte* in simpler and less specialised terms. This re-interpretation amounts to saying that default judgments, though capable of giving rise to estoppels, must always be scrutinised with extreme particularity for the purpose of ascertaining the bare essence of what they must necessarily have decided and, to use the words of Lord Maugham L.C., they can estop only for what must "necessarily and with complete precision" have been thereby determined."

20

His Lordship went on to examine a number of cases and to express the view that where, as in *Kok Hoong's* case, the plaint upon which the judgment had been obtained was itself upon, and so formed part of, the record such plaints could be examined for the purpose of seeing what the judgment by default had determined.

30

In the present case we have nothing but the bare assertion by the respondent that the issue of fraud was raised and failed by reason of default. True, we have no answering affidavit seeking to contradict or limit the effect of this assertion but, having regard to the limitations which, in this field, apply to judgments obtained by default and in the absence of any argument at all on the point in the court below, coupled with the incidental and very brief notice that the point received before us, I am not prepared to hold that the bare assertion in the uncontradicted affidavit is sufficient to establish that the present suit must fail because of estoppel arising from the judgment by default in Action No. 627 of 1969.

40

Consequently it is not necessary to reach a conclusion on Mr. Thompson's argument, based on the reference in the Annual Practice (1973 Ed. para 3361) to the case of *The Annie Johnson*, 126 L.T. 614, that no plea of *res judicata* can succeed without production of the record, I would merely say that when Lord Parmoor's brief observation in that case is related to the particular circumstances in which

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it was made it seems hardly sufficient to sustain the more general proposition which might be inferred from the brief reference to it in the Annual Practice, particularly when the dispute turns, not so much on the existence of the decision, as on the consequences flowing from its admitted existence or at least an uncontroverted assertion that it exists.

I return then to the claim that because of what occurred in the Title Quieting Action No.62 of 1965, it would be an abuse of the process of this court to allow the present proceedings to continue.

10

In this respect I see difficulty in the approach adopted by the learned judge in the court below of assuming that the plaintiff had established the assertions made in her original Statement of Claim which, on the face of them, appear to satisfy the requirements of section 27 of the Quieting Titles Act and then holding that she could not rely on the terms of that section because of her own omissions in the earlier action. I would be disposed to approach the matter somewhat differently because, in effect, to protect its procedure from abuse I think the court is entitled to interfere at an earlier stage.

20

I think it would be wrong to allow a litigant who had appeared in a title quieting action, which is designed and provided for the express purpose of investigating title, to withhold, without good reason, documents and information from the judge engaged on that task and then, when the title had been investigated and settled, to come forward with a claim that the earlier proceedings were a nullity because this information was not put before the judge by someone, even a petitioner, whose interest in so doing was clearly less than that of the individual now seeking to upset the title.

30

To allow such conduct would or could lead to a multiplicity of litigation and seriously undermine the whole value of the title quieting legislation. It would be a glaring example of an abuse of the court's process which should not, I think, be allowed. Subject to one reservation I would on this ground have stayed the proceedings in the court below but without making the assumptions adopted by the learned trial judge.

40

I have spoken advisedly of withholding the

information without good reason because, it seems to me, if there was good reason for this action or inaction the litigant should not necessarily be debarred, in subsequent proceedings, from relying on the information withheld.

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10 In the instant case no reason for the plaintiff's inaction in withholding the information was advanced in the original Statement of Claim but, prior to the delivery of the learned Trial Judge's ruling, he had been informed of the possibility that the plaintiff would seek to amend her plaint and, when he came to deliver his ruling, he was informed that a summons had been filed the day before, seeking leave for such amendment. This would seem to have opened up the possibility that good reason might have been advanced in the amended Statement of Claim but the summons had given insufficient notice to the other side and therefore did not comply with the Rules of Court  
20 so that Counsel for the plaintiff was thrown back on asking an indulgence from the court by way of adjournment which would provide an appropriate measure of time or permit a proper summons to be filed. In effect the judge refused any such indulgence and, in doing so, would appear to have adopted an attitude similar to that of Sellers L.J. in the case of Loutfi v. Czarnikow Ltd. 1952 2 A.E.R. 823. where, in dealing with an application made in similar circumstances, he said:-

30 "Whilst it was indicated in the course of the case, and before counsel for the plaintiff finally addressed the court, that some amendment might be asked for, no formal amendment was submitted until both learned counsel had addressed me. I entirely accept the submission for the defendants that that is very late and that the court should be reluctant to grant amendments at such a late stage unless there is very good ground and  
40 strong justification for so doing. Applying those principles to the proposed amendment of the reply, I disallow it."

Whilst not overlooking that amendment is normally allowed at any stage if costs can be an adequate remedy for the other side and that in the case of Hubbock v. Wilkinson 1899 1 Q.B. 94, the Court of Appeal, after striking out a statement of claim, was disposed to see whether any amendment could salvage the action before deciding to enter  
50 judgment for the defendant, it would be extremely

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difficult to say that in the instant case the judge was wrong in refusing to adjourn and in deciding to deliver his ruling on the matter before him. Even if he had adjourned and taken account of the amended pleading for which permission was being sought, I do not think that he could possibly have granted such permission. The application, without advancing any adequate reason for the great delay which led to its being brought forward at the very latest possible moment and in an irregular manner, sought not only to introduce two new parties into the action but also to introduce new causes of action, including a charge of conspiracy. It also sought to add, as part of the Statement of Claim, the whole record of proceedings in the earlier title quieting action, including the notes of evidence in that action, and to have this record made an integral part of the Statement of Claim. Any such request did not begin to comply with the elementary rules as to pleading and in particular, quite apart from any other objection, would be an infringement of O.18 R.7.

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20

For these reasons I would have granted a stay of the proceedings in the court below.

There remains the question of the prohibition imposed on the plaintiff by the learned judge. He advanced no additional reasons for, in effect, treating her as a vexatious litigant, apart from her efforts to reopen the validity of the title, although there was some additional material in the affidavits before him.

30

I do not think that the ground mentioned by the learned judge, even when account is taken of the other material before him, was sufficient to justify the very wide order made. It goes beyond the directions in the leading cases of *Crepe v. Loam* (1887) 37 Ch.D. 168, and *Kinnaird v. Field* (1905) 2 Ch. 306 where there had been several unfounded applications and considerably more ample justification for an order.

40

As the plaintiff is now dead it would have been necessary to determine, if the order was being upheld, whether it should extend to her executors - a point on which we have had no argument, but, as I would set aside the order in any event, it is unnecessary to consider that aspect.

I would vary the Order of the court below in

the manner indicated and agree with the order as to costs proposed by Inniss, J.A.

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Delivered the 13th day of November, 1974.

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COMMONWEALTH OF THE BAHAMAS

1973

IN THE COURT OF APPEAL

No.5

CIVIL SIDE

10

KENNETH HIGGS and ERIC HIGGS

Executors of the Will

of

Clotilda Eugenia Higgs Deceased

Appellants

- and -

CAVES COMPANY LIMITED

Respondent

On this Appeal, which has been brought by the Plaintiff in the Action, the Court is invited to set aside an Order made by James Smith J. on 18th April, 1973, whereby it was ordered -

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"1. That the Statement of Claim in this matter be struck out and that this action be dismissed on the ground that it is frivolous and vexatious and an abuse of the process of this Court.

2. That the Plaintiff is prohibited from bringing any further proceedings relating to the land the subject of the Quieting Titles Action No. 62 of 1965 except by leave of the Supreme Court.

30

3. That the Defendant's costs of this action and of this Summons be paid by the Plaintiff.";

and to order that the said Statement of Claim be re-instated and that the Appellant be granted leave



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to amend her said Statement of Claim as prayed in the Summons herein dated the 17th April, 1973, and to prosecute her claim.

After the filing of the Notice of Appeal but before the Appeal was heard the Plaintiff in the Action was replaced as Appellant by Kenneth Higgs and Eric Higgs, Executors of her Will; but for convenience I will, in this Judgment, refer to the original Appellant whom I will call the Plaintiff.

From the Affidavit of Paul Henry Bethel made and filed in support of the Summons in respect of which the abovementioned Order of James Smith J. was made, it appeared, inter alia, that the Defendant (who is Respondent on this Appeal) had petitioned the Supreme Court in Action No. 62 of 1965 to have its title to 253.23 acres of land at Gladstone Road in the Western District of the Island of New Providence investigated, determined and declared under the Quieting Titles Act and for a Certificate of Title to the said land to be granted under that Act. This Affidavit also stated that an Adverse Claim to the said land had been entered and filed on behalf of the Plaintiff and that, after a trial, the Supreme Court, on the 28th March, 1966, had delivered its Judgment dismissing the said Adverse Claim and has granted a Certificate of Title to the Defendant.

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It further appeared from the said Affidavit that no steps were taken to appeal against the grant of the Certificate of Title to the Defendant until the 25th June, 1970, when the Plaintiff applied for leave to appeal out of time. This application was dismissed by the Court of Appeal; and a further application for leave to appeal to the Privy Council from the decision of the Court of Appeal was also refused by a Judge of the Court of Appeal on the 18th December, 1970.

30

The belated attempts by the Plaintiff to appeal against the grant of the Certificate of Title having failed, the legal position, in my opinion, plainly was that the validity of the Certificate of Title could only be challenged on the ground that it had been obtained by fraud; for section 19 of the Quieting Titles Act, Chapter 133, provides -

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"Subject to the provisions of section 27 of this Act and notwithstanding the provisions of any other Act or law, on and from the date of the certificate of title the same shall be -

(a) conclusive as to the accuracy of the contents thereof (including any schedule thereto and any plan annexed thereto) and binding on the Crown and all persons whomsoever";

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and section 27 of the same Act is in the following terms -

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10 "If in the course of any proceedings under  
this Act any person acting either as principal  
or agent fraudulently, knowingly and with  
intent to deceive makes or assists or joins in  
or is privy to the making of any material  
false statement or representation, or  
suppresses, withholds or conceals, or assists  
or joins in or is privy to the suppression,  
withholding or concealing from the Court of any  
material document, fact or matter of  
20 information, any certificate of title obtained  
by means of such fraud or falsehood shall be  
null and void except as against a bona fide  
purchaser for valuable consideration without  
notice."

30 On 29th November, 1971, almost a year after the  
failure of the last attempt to appeal out of time,  
the Plaintiff brought against the Defendant Action  
No. 838 of 1971, which is the subject of the present  
proceedings. In it, inter alia, an order was  
sought that the abovementioned Certificate of Title  
be set aside under S.27 of the Quieting Titles Act,  
1959, or alternatively a declaration that the  
Defendant held as Trustee for the Plaintiff the  
whole of the said lands.

40 In the Statement of Claim, as supplemented by  
the further and better particulars, it was alleged  
that in certain affidavits sworn by agents of the  
Defendant Company on its behalf, the deponents  
had intentionally made certain false represent-  
ations and had withheld from the Court information  
as to certain material facts which was within their  
knowledge. The matters in respect of which it was  
alleged that false representations were  
intentionally made are analysed and set out in  
paragraphs 1, 2, 3 and 5 at pages 2 and 3 of the  
Judgment of James Smith, J. The principal facts  
of which intentional non-disclosure was alleged  
were -

1. an alleged oral agreement between the Defendant and the Plaintiff whereby the Plaintiff

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was to restrict her activities to that portion of the land in question situate to the East of Gladstone Road and the Defendant would be entitled to the quiet enjoyment of the remainder of the said land situate to the West of Gladstone Road, which agreement the Plaintiff had honoured; and

2. the alleged fact that the Plaintiff possessed documents of title ( a number of which had since been mislaid or destroyed) to portions of the land in question situate to the West of Gladstone Road. 10

The Statement of Claim, in paragraph 4, alleged that -

"The Defendant, either fraudulently, knowingly and with intent to deceive or recklessly not caring whether the Court might be deceived or not withheld the abovementioned material facts from, this Honourable Court, such evidence, facts and related matters of material importance so withheld thereby induced this Honourable Court to deliver Judgments and Orders adverse to the Plaintiff." 20

On 30th December, 1971, the Defendant by letter requested further and better particulars of the matters alleged in the Statement of Claim but these were not supplied and on 4th January 1972, the Defendant applied to the Court for an order that such particulars be supplied. 30

On 7th January, 1972, the Plaintiff filed a Summons for Judgment in default of Defence and a further Summons for an order that the Defendant's Summons dated 4th January, 1972, be struck out.

On 28th February, 1972, the Court ordered further and better particulars as requested by the Defendant to be supplied within fourteen days.

On 12th April, 1972, the Defendant filed a Summons in the Action in which application was made inter alia - 40

- "1. That this Action be dismissed with costs on the ground that the Plaintiff has failed to carry out the Order of the

Court made on the 28th day of February, A.D. 1972 to supply further and better particulars of the Statement of Claim within 14 days.

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- 10 2. Alternatively that this action be struck out with costs on the ground that it is frivolous and vexatious and an abuse of the process of this Court by reason of the fact that the relief sought has been previously adjudicated upon in Quieting Titles Action No. 62 of 1965 in the matter of the Petition of the Defendant Caves Company Limited in which matter the Plaintiff Clotilda Eugenia Higgs was an Adverse Claimant and the issues between the Petitioner (the Defendant) and the Adverse Claimant (the Plaintiff) were substantially the same as those sought to be resolved in this Action namely that the Plaintiff Clotilda Eugenia Higgs is entitled to the land in question by reason of adverse possession.
- 20

3. That the Plaintiff be prohibited from bringing any further action in respect of the land the subject of this action without leave of the Court, the Plaintiff having made repeated frivolous applications to the Court in respect of the same land."

30 It appears from the Judgment of James Smith J., that when this Summons first came before the Court on 24th April, 1972, H.C. Smith J., in a ruling on paragraph 1 thereof granted an extension of time within which the Plaintiff was to file further and better particulars and adjourned the rest of the Summons. It also appears from one of the submissions of Mr. Pinder, Counsel for the Defendant, recorded in James Smith J's notes of the hearing that Smith H.C.J. had also ordered that a defence be filed within 14 days of the filing of particulars.

40

The alternative prayer in paragraph 2 and the claim in paragraph 3 came before James Smith J. on the adjourned Summons on 8th December, 1972.

On 28th December, 1972, in the course of the hearing, counsel for the Plaintiff informed the Court that he had "now received a copy of the record of No. 62 of 1965" but had not yet had the opportunity to consult his client thereon.

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At the adjourned hearing on 26th March, 1973, Counsel for the Plaintiff further informed the Court that he intended to join in the Action as Defendants Mr. Paul Bethel and Mr. Paul Adderley (who had been counsel respectively for the Petitioner and the Adverse Claimant in Action No. 62 of 1965) and to amend the Statement of Claim to ask the Court for a Declaration that due to the manner in which the trial was conducted the results were against the principles of natural justice. It appears, however, from the Judge's Notes that no mention was then made of any intention to join the Trial Judge as a Defendant in the Action.

10

According to those Notes, at the end of the argument the matter was adjourned for a ruling to 18th April.

On that day, before Judgment was delivered, Counsel for the Plaintiff informed the Court that he had filed a new summons and affidavit seeking to put before the Court further causes of action and to join other parties, to amend the Statement of Claim and the endorsement of the writ and to bring before the Court the transcript of the oral evidence taken (that is, in Action No. 62 of 1965).

20

It appeared that this Summons had been filed only on 17th April, the day before Judgment was to be delivered, asking for a hearing on 18th April, 1974, on insufficient notice.

Objection was taken by Counsel for the Defendant Company who submitted that the Summons had been filed to obstruct the Ruling. The learned Judge thereupon remarked that, according to Counsel for the Plaintiff, the new Summons raised new issues and that in his view those should not impede a decision on what had already been argued. He then proceeded to deliver his Judgment which resulted in the Order mentioned at the beginning of this Judgment.

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The grounds of the Plaintiff's appeal against this decision are set out under four heads. The wording of the first two, and particularly the second, can hardly be described as clear. I have read and re-read them and it seems to me that each of them states in different ways the same contention, namely, that the learned Judge erred in delivering his Ruling without taking into account the facts which the proposed amendments sought to bring

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10 before the Court, although he knew that the amendments had been proposed. Ground 3 repeats this contention with the rather vague addition that the learned Judge was "influenced by other considerations which ought not to have weighed with him." Ground 4 alleges that the Ruling of the learned Judge frustrated the legal rights of the Appellant and was an infringement of her constitutional right to a fair and impartial and unbiased determination of her rights and therefore contrary to natural justice.

20 As I understood Counsel for the Plaintiff (Appellant), he stated that the primary issue before this Court was whether the learned Judge erred in not directing his mind judicially to the application to amend, and I am unable to find in the grounds of Appeal any challenge to the correctness of the Judgment of the learned Judge on the issues which had actually been argued before him. However, Counsel for the Defendant has submitted that this is one of the matters for decision by this Court, and I will accordingly express my opinion on it.

Before doing so, however, I wish to advert to two preliminary contentions which were mentioned by Counsel for the Plaintiff in argument. These were -

30 (1) that the order of H.C. Smith J. under paragraph 1 of the Defendant's Summons dated 12th April, 1972, having been made and perfected, James Smith J. had no jurisdiction to adjudicate under paragraph 2, 3 and 4 of that summons;

(2) that because paragraph 2 of the said Summons asked that this action be struck out, James Smith J. erred in ordering that it be dismissed.

40 Neither of these matters was included in the grounds of appeal, which have not been amended. Consequently no ruling of this Court is required on either. I will, however, briefly indicate my opinion that in the circumstances of this case, there is no substance in either contention.

I return now to the Ruling of James Smith J. as delivered.

The learned Judge correctly adverted to the

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fact that the writ mentioned s.27 of the Quieting Titles Act and to the allegations of fraud made in the Statement of Claim - fraud being, by virtue of the combined effect of sections 19 and 27 of the said Act, the only ground on which the validity of the Certificate of Title could be challenged, as I have already said.

Referring to the words of Lord Selbourne in Wallingford v. Mutual Society (1880) 5 A.C. 685 at 697 - "if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated are insufficient even to amount to an averment of fraud of which any Court ought to take notice," he stated - "it is an accepted rule that a plea of fraud must be distinctly alleged." In this statement he is supported by the words of Thesiger J. in Davy v. Garrett 7 Ch. 473 at p. 489 -

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"In the common law courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts. It is said that a different rule prevailed in the Court of Chancery. I think that this cannot be correct."

20

The learned Judge then turned to the Statement of Claim as supplemented by the Further and Better Particulars in order to discover the facts upon which the Plaintiff relied to support the strong language in which the allegations of fraud were made. In other words he looked at the Statement of Claim on its face and in so doing followed the course indicated by Lopez and A.L. Smith L.J.J. in Attorney General of the Duchy of Lancaster v. London and North Western Railway Co. (1892) 3 Ch. 274.

30

Having analysed the said statements of fact he set them out in paragraphs (1), (2), (3) and (5), adding in paragraph (4) the Plaintiff's allegation that by withholding the above facts from the Court the Defendant induced the Court to deliver judgments adverse to the Plaintiff. He then assumed the truth of the allegations set out in the five paragraphs (which were disputed) and addressed himself to the question whether they supported the allegations of fraud (see per Lindley M.R. in Hubbuck & Sons Limited v. Wilkinson, Heywood and Clarke (1899) 1 Q.B. 86 at pp. 91-92).

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In my view he went unnecessarily far in assuming the truth of the allegation set out in his paragraph 4, for this allegation was a contention based on the alleged withholding of information as to the facts from the Court and formed part of the general allegation of fraud contained in paragraph 4 of the Statement of Claim. To my mind the question really was whether assuming that the allegations set out in paragraphs 1, 2, 3 and 5 were true, that the Defendant had withheld them from the Court and that the Court had given judgment in ignorance of them, the omission of the Defendant to bring them to the attention of the Court, in the circumstances of the case as indicated by the Statement of Claim, suggested fraud or an intention to deceive on its part.

10

Nevertheless, in my opinion, the learned Judge was right in his conclusion that the Plaintiff's pleading did not on its face disclose a sustainable case of fraud against the Defendant within s. 27 of the Quieting Titles Act.

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The implications of s.5 of that Act are no doubt that an obligation is placed on the Petitioner, inter alia, to the best of his knowledge, information and belief, fully and fairly to disclose all facts material to the title claimed by him, and all contracts and dealings which affect the title or any part thereof or give any rights as against him. But in this particular case, as the learned Judge pointed out, the Plaintiff was an Adverse Claimant and a Party in the same proceedings. The matters which she now accuses the Defendant of failing to disclose were matters within her own knowledge. As Adverse Claimant she had the onus of proving her claim and, apart from that, presumably a vital interest in bringing to the attention of the Court all facts which tended to support it. As a Party in the proceedings she had full opportunity of adducing evidence before the Court as to all such facts, including the allegations of fact which she now makes, and of challenging the witnesses for the Petitioner in cross-examination by questioning them as to such allegations. Having failed to do so, how can she now be heard to accuse the Defendant of fraud and an intention to deceive the Court because it did not bring these matters to the attention of the Court? To my mind, to countenance such allegations would be to allow an abuse of the judicial process.

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Having found, in my opinion correctly, that the Plaintiff's Pleading on its face did not disclose any cause of action for fraud under section 27 of the Quieting Titles Act, which, let me again point out, was the only ground under which the validity of the Certificate of Title could be challenged, the learned Judge proceeded to find the Action obviously frivolous or vexatious or obviously unsustainable. He also found that it was an abuse of the process of the Court.

10

Whether in making his finding he went somewhat outside the grounds stated in the Summons would depend on the construction to be placed on the Summons. This, however, has not been made a ground of Appeal by the Plaintiff; and I observe from the Judge's Note that the Plaintiff's counsel submitted to the Court that the Defendant's application to strike out was based on two grounds - (1) the matter is res judicata (after which the learned judge has placed a question mark) and (2) the claim is frivolous and vexatious.

20

It is abundantly clear that the learned Judge decided the matter on the second of the above grounds and, it appears, added the opinion that it was an abuse of the process of the Court on that basis rather than on the basis of res judicata as alleged in the Summons. As I have said, however, this matter has not been made the subject of any ground of appeal.

During the course of his argument Counsel for the Defendant referred to paragraphs 11, 12 and 13 of his Affidavit filed in support of the Defendant's Summons to Strike Out, which stated that in Action No. 627 of 1969, in which the Defendant claimed (inter alia) an injunction to restrain the Plaintiff and her servants and agents from entering Defendant's said land, damaging it, and carrying on farming activities upon it, the Plaintiff had filed a Defence alleging fraud on the part of the Defendant, Caves Company Ltd., in obtaining the Certificate of Title in Action No. 62 of 1965 but no particulars of such fraud were given; but on 11th February, 1970, the Defendant, Caves Company Ltd., applied to have the defence struck out as frivolous and vexatious and an abuse of the process of the Court and that judgment be entered against the Plaintiff, Clotilda Higgs and others; and that on 3rd July, 1970, judgment was duly entered by the Court against the Plaintiff, Clotilda Higgs, and others.

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He submitted, as I understood him, that this Judgment constituted Res Judicata as regards the allegations of fraud in the present Action. I note, however, that this was not one of the grounds stated in the Defendant's Summons to Strike Out; and in any event there is insufficient evidence before this Court on which to decide this point.

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10 I turn now to what I understand to be the real subject of this Appeal, which is whether the Judge erred in dismissing the Action without adverting to the amendments proposed in the Plaintiff's Summons dated 17th April, 1973, and also in ordering that the Plaintiff be prohibited from bringing any further proceedings relating to the land in question except by leave of the Court,

As I understand the proposed amendments, which are not always in very clear terms, they sought, inter alia, -

20 (1) to join as additional Defendants in the Action Paul H. Bethel (Counsel for the Petitioner in Action No. 62 of 1965), Paul L. Adderley (Counsel for the Adverse Claimant in the said Action) and Hedworth Cunningham Smith, who presided as Judge in the said Action;

30 (2) to add to the indorsement of Claim on the Writ a Claim for damages for conspiracy to procure the issue of a Certificate of Title under the Quieting Titles Act, Chapter 133, and for damages for wrongfully procuring same, and a claim for damages for unlawful conspiracy which had injured the Plaintiff;

40 (3) to amend paragraph 4 of the Statement of Claim by extending the allegations of fraud made therein so as to include the agents of the Defendant and by alleging that the evidence of facts and related matters of material importance withheld assisted to induce the Court and the Judge of the same to conspire and to deliver Judgments and Orders adverse to the Plaintiff;

(4) to amend paragraph 5 of the Statement of Claim by extending the allegation of falsely and intentionally misleading the Court contained therein against the Defendant so as to apply in respect of the Agents of the Defendant;

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(5) to add to the Statement of Claim five new paragraphs alleging -

(a) that Paul L. Adderley, with intent to defraud the Plaintiff and in concert with the other Defendants had -

(i) wrongfully admitted that the Plaintiff "alleged no interest in parcel "A" of the Petition without conditioning such admission which was contingent on the results of the agreement reached at the meeting referred to in paragraph number 1 hereof", and also that the Plaintiff was claiming only by way of adverse possession when in fact she had in her custody a document for a portion of the subject land;

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(ii) had failed in his duty as Attorney by failing to inform Plaintiff of the Orders and Judgment in the Petition delivered on 28th March, 1965, thereby permitting the time within which to appeal to lapse, to the detriment of the Plaintiff;

20

(b) that H.C. Smith J. had failed to act judicially or in accordance with the principles of natural justice and that he in concert with the other Defendants -

(i) failed to keep and record a proper and/or true transcript of the oral evidence led at the trial;

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(ii) failed honestly, impartially and without bias to appreciate and/or properly assess the evidence and refused to draw the obvious inferences that were to be drawn from the same;

(iii) "failed, because of his relationship with agents, servants and members of the Defendant Company either to disqualify himself from adjudicating on the matter before him in which he had a personal interest resulting from his social relationship with such agents, servants and members or bring such

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to the attention of the parties before him so that they might elect whether or not he should adjudicate on the issues between the parties;

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(iv) "in consequence of the wrongful acts of the Defendants in breach of the principles of natural justice and his statutory duty refused to fairly adjudicate on and determine the Plaintiff's claim and in lieu thereof wrongfully and maliciously declared in the face of abundant evidence to the contrary that the Defendant Company was entitled to the subject land";

20

(c) that the Defendants, and each of them, well knowing the legal effect of the failure to disclose that the Plaintiff had in her custody a document for a portion of the subject land "wrongfully conspired among themselves with intent to injure the Plaintiff by refusing to raise the subject with the learned Judge who himself wrongfully failed or ignored this material fact or by appealing the said Judgment and contrary to natural justice simply disregarded the said Judgment or to inform the Plaintiff of the same and the consequences consequent thereto."

30

40

The Plaintiff also sought to have incorporated in the Pleadings the transcript of the oral evidence taken at the hearing of the Quieting Titles Petition No. 62 of 1965. This was so plainly a breach of the elementary Rules of Pleading that this Court by its Order at the hearing directed that it could not be done. The correct method of bringing the transcript to the attention of the Court, if that was desired, would have been to present it in evidence.

It is plain that the proposed amendments were of a sweeping nature, seeking to add three new Defendants and new causes of action with allegations of a very serious nature.

It appears that, when advised by Counsel for the Plaintiff of the filing of the Summons to amend, the learned Judge gave some consideration to the matter - brief though it was - because it is

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recorded in his Note that he said - "The new summons according to Mr. Thompson raises new issues and those should not in my view impede a decision on what has already been argued".

He then proceeded to deliver his Judgment or Ruling without entertaining the Summons to amend.

As the reason for the lateness of the application to amend, Counsel for the Plaintiff, as I understood him, stated that it was because he had only just received a copy of the transcript of evidence in the 1965 action and it was not until the production of this document to which he had a statutory right that the alleged fraud appeared. In an Affidavit accompanying the Summons to amend he stated that on 18th August, 1967, he first applied to the then Registrar for a copy of the transcript of the evidence taken in the Quieting Titles Petition No. 62 of 1965 and continued during the following years to make such requests both by letter and orally, but did not receive a copy of it until 22nd December, 1972.

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The general principle by which the Court is guided in deciding whether to grant leave to amend is set out in Note 20/5 - 8/6 at p.332 of the Supreme Court Practice 1973 as follows -

"It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings."

30

Incidental to this general rule is the principle that the Court will consider whether the proposed amendment will improve the Pleading of the Party applying for leave to amend.

The same Note, however, goes on to point out that the above-mentioned general principle is not without qualification and cites a number of cases to that effect.

40

In Cropper v. Smith (1884) 26 Ch. D. 700 at pp. 710 - 711 Bowen L.J. said "It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy it is as much a matter of right on his part to have it corrected,

if it can be done without injustice, as anything else in the case is a matter of right".

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In Tildesley v. Harper 27 W.R. 249 (also reported in 10 Ch. 396) Bramwell L.J. said "My practice has always been to give leave to amend unless I have been satisfied that the party was acting mala fide, or by his blunder, has done some injury to the other side which cannot be compensated for by costs or otherwise."

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10 In Clarapede v. Commercial Union Association  
32 W.R. p. 263 the Defendants had applied for leave  
to amend their particulars after evidence had been  
taken abroad on commission and after the evidence of  
a witness had become unprocurable. After reviewing  
the circumstances Brett M.R. said at p. 263 - "The  
rule of conduct of the Court in such a case is that,  
however negligent or careless may have been the  
first omission, and however late the proposed  
20 amendment, the amendment should be allowed if it  
can be made without injustice to the other side."

The qualifications, however, do not end there.  
In Note 20/5 - 8/8 at page 333 ibidem it is pointed  
out that different considerations apply to different  
stages and in Note 20/5 - 8/10 headed "At the Trial  
or Hearing" reference is made to Loufti v. C.  
Czarnikow Ltd. (1952) 2 All E.R. 823 in which it  
was held that unless there is very good ground  
and strong justification for doing so the court  
should be reluctant to grant amendments of the  
30 pleadings after the close of the case but before  
judgment, even though it has been indicated in the  
course of the hearing that some amendment might be  
asked for.

In that case Sellers J. at p. 823 said -  
"Whilst it was indicated in the course of the case,  
and before counsel for the plaintiff finally  
addressed the court, that some amendment might be  
asked for, no formal amendment was submitted until  
after both learned counsel had addressed me.  
40 I entirely accept the submission for the defendants  
that that is very late, and that the court should  
be reluctant to grant amendments at such a late  
stage unless there is a very good ground and strong  
justification for so doing. Applying those  
principles to the proposed amendment of the reply,  
I disallow it".

Sellers J. then proceeded to indicate two  
classes of amendment which might be allowed even at

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that stage. They were stated in the headnote, I think accurately, as follows -

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(i) where the matter involved has been raised in the course of the trial and counsel has addressed the court on it, since it will be incorporating in the pleadings that which has emerged in the course of the case as an issue between the parties;

(ii) where the fact the subject of the amendment has been referred to by Counsel in opening and evidence about it has been given, since there has been sufficient indication in the course of the trial and in the evidence that it is a matter in controversy and the amendment will enable the court to arrive at the view, if it thinks fit, that what is pleaded is a correct interpretation of the facts.

10

In the present case the proposed amendments did not come within measurable distance of falling within the principles indicated by Sellers J. (with which I agree) in stating the sort of amendment which would be permissible at such a late stage; for they sought to add not only new causes of action but new parties. Further, as I understood the submissions of Counsel for the Plaintiff, the very serious allegations contained in them are founded on mere inferences drawn by him from the transcript of evidence.

20

It seems to me that in refusing to entertain the proposed amendments the learned Judge finds support in the case of Loufti v. Czarnikow Ltd. It was submitted that that case did not apply to the case now on Appeal because the latter was not a trial. In my opinion there is really no difference, in principle between the two cases. Loufti dealt with the action to be taken by a Court when amendment of the Pleadings is sought on the verge of the case being concluded - that is after the close of the final address and before judgment. The proceedings, which are the subject of this Appeal, had as their object the final disposal of the Action and the amendments were applied for after the close of the final addresses and only one day before the judgment was to be delivered. In my opinion the learned Judge was right in refusing to entertain amendments of that kind at that stage.

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However, even if the principle stated in *Clarapede v. Commercial Union Association* were applied, what do we find?

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10 Counsel for the Plaintiff, as I have said,  
blames the lateness of the proposed amendments on  
the fact that he had received the transcript of the  
evidence in Action No. 62 of 1965 only on 22nd  
December, 1972, although he had first applied for  
it on 18th August, 1967, and had repeatedly made  
oral and written requests for it. He complained  
too that the Plaintiff's Action No. 838 of 1971,  
which is the subject of the present proceedings  
had been filed without the benefit of referring to  
the transcript of evidence. His attitude appears  
to have been that his legal entitlement to a copy  
of the transcript justified him in taking no steps  
until he received it. Assuming his contention that  
the amendments dealt with matters which only came  
20 to the attention of the Plaintiff after he had  
received the transcript to be correct, I do not  
regard his excuse as satisfactory. As Mr. Bethel  
submitted, if he had gone into the Registry and  
explained his difficulty to the Registrar, I have  
little doubt that he would have been permitted to  
peruse the original record and take notes of its  
contents. One would think that he would certainly  
have taken some such action after or even before  
filing Action No. 838 of 1971; but neither this  
nor the Defendant's application dated 12th April,  
30 1972, to strike out the Action appears to have  
stirred him to take any steps to peruse the  
record.

Further, he did receive the transcript on 22nd  
December, 1972, when the Defendant's Summons to  
strike out the Action had already come before James  
Smith J. and one would have thought that he would  
have lost no time in perusing and getting  
instructions upon it and applying for any necessary  
40 amendment of his pleadings. But this was not  
so; and it was not until 17th April, nearly four  
months after receiving the transcript that he  
filed his Summons. It was in fact filed as late as  
three weeks after he had stated to the Court that  
he would be making amendments.

When it was pointed out to him that O. 32 r. 3  
required that a summons must be filed two clear days  
before the hearing, he said, as I understood him,  
that his reason for not complying with the rule  
was that they were told to come in for judgment and,  
50 anticipating that the Judgment might be of a final



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nature, he made the application.

According to the Judge's note, the position actually was that on 26th March, 1973, at the end of the hearing, the matter was adjourned to 18th April for a Ruling; so that Counsel for the Plaintiff had some three weeks' notice of the date on which the Ruling was to be delivered, and yet waited until the day before the 18th April to file his Summons.

In my opinion there was clearly a lack of diligence and neglect on the part of the Plaintiff in not filing his Summons to amend much earlier. 10

Assuming that the amendments were proposed in good faith and such that the Court would entertain, and also that they would have improved the Plaintiff's case, on which questions I express no opinion, could they have been allowed at that stage without injustice to the Defendant?

In an Affidavit accompanying the Defendant's Summons to strike out Counsel for the Defendant stated, inter alia, that by reason of the repeated applications by the Plaintiff to the Court the Defendant had not been able to deal safely with its land, and in Action No. 650 of 1969 was being sued by Roxburgh Estates Limited for specific performance of a contract to sell the said land along with other land and damages and in such Action it was alleged that the Defendant could not give good title to the said land because of the presence of squatters (the Plaintiff or the Plaintiff's servants, tenants or agents) on the said land. 20 30

To have allowed the amendments would have meant not merely depriving the Defendant Company of the opportunity of having the Action disposed of but continuing to expose it to the claim for damages in respect of its contract to sell the land in question for a period which, having regard to the proposed widening of the scope of the Action by the addition of new parties and new causes of action, might well have been considerable. In my opinion this is not a matter in which the Defendant Company could be compensated by costs and in the circumstances it would have been unjust to it to allow the amendments. 40

In my opinion if the learned Judge had given further consideration to the amendments in question

he could not properly have allowed them at that stage, for the reasons which I have given.

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I come now to the order of the learned Judge that the Plaintiff is prohibited from bringing any further proceedings relative to the land the subject of the Quieting Titles Action No. 62 of 1965 except by leave of the Supreme Court.

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10 In Grepe v. Loam, 37 Ch. D. 168 repeated frivolous applications for the purpose of impeaching a judgment had been made by the same parties; and the Court of Appeal made an order prohibiting "any further application in these actions or either of them to this Court or the Court below without leave of this Court being obtained". This was not as wide an order as that made by James Smith J. in the present case..

20 Apart from the two attempts in 1970 to appeal out of time, and Action No. 838 of 1971, which is the subject of the present proceedings, the only application by the Plaintiff mentioned in Mr. Bethel's Affidavit supporting the Defendant's application for an order prohibiting the Plaintiff from bringing any further action relating to the said land without leave of the Court is an appeal against an order made in committal proceedings brought by the Plaintiff, which was dismissed. It appears from the record, however, that there were the two applications of 7th January, 1972, one of which may have led to the order for the filing of a  
30 Defence within fourteen days after the delivery of Further and Better Particulars and the application to amend filed on 17th April, 1973, which is the subject of the present Appeal.

40 In my opinion this does not add up to a sufficient number of frivolous applications to justify an order of the Court prohibiting any further proceedings relative to the land in question except by leave of the Supreme Court, and I would set aside this part of the order made by James Smith J. I would also vary his order as to the costs of the Defendant's Summons to the extent of ordering that the Plaintiff do pay three fourths of the Defendant's costs of the said Summons.

Apart from this, for the reasons I have given, I would dismiss the Appeal.

As the Appellants have failed on much the more difficult point I would order that they pay three

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fourths of the Respondent's costs of this Appeal.

CLIFFORD INNIS, J.A.

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13th November, 1974.

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Certificate  
of the Order  
of Court  
13th November  
1974

CERTIFICATE OF THE ORDER OF COURT

COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

No. 5

CIVIL SIDE

KENNETH HIGGS and ERIC HIGGS Appellants

- and -

10

CAVES COMPANY LIMITED Respondent

Appeal from the Order of James Smith, J. of  
the Supreme Court dated 18th April, 1973

This Appeal coming on for hearing on the 11th,  
12th, 13th and 14th days of June, 1974, before the  
Bahamas Court of Appeal in the presence of James  
Maxwell Thompson -- counsel for the Appellants  
and Paul Henry Bethel -- counsel for the Respondent

I hereby certify that an order was made as  
follows:

20

Appeal dismissed except as follows:

1. That part of Order of Smith J.  
prohibiting further proceedings is  
set aside;
2. Order as to costs of Defendant's/  
Respondent's Summons in the court  
below varied to the extent that the  
Plaintiff/Appellants do pay three-  
fourths of the Defendant's costs of  
the said summons;

30

3. The Appellants do pay three-fourths of the Respondent's costs of this appeal.

In the Court of Appeal

Given under my hand and seal of the Court this 13th day of November, 1974.

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Sd. Illegible  
Acting Registrar,  
Bahamas Court of Appeal

Certificate of the Order of Court  
13th November 1974  
(continued)

To:

James M. Thompson, Esq.,  
Paul H. Bethel, Esq.

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No.33

ORDER GRANTING FINAL LEAVE TO APPEAL  
TO HER MAJESTY IN COUNCIL

Order granting Final Leave to Appeal to Her Majesty in Council 7th February 1975

BAHAMA ISLANDS

1973

IN THE COURT OF APPEAL

No.5

BETWEEN:

KENNETH MCKINNEY HIGGS

- and -

ERIC ALLIDAY HIGGS

Substituted for Clotilda Eugenie Higgs  
Appellants

20

- and -

CAVES COMPANY LIMITED

Respondent

Dated the 7th day of February, A.D., 1975.

UPON HEARING Mr. James M. Thompson of Counsel for the Appellants, Mr. Hartis Pinder of Counsel for the Respondent and reading the Affidavit of the said James M. Thompson.

30

IT IS HEREBY ORDERED that Final Leave be granted to Appeal to Her Majesty in Council against the Judgments delivered in this Matter.

REGISTRAR

To: The above-named Respondent and to:  
Messrs. McKinney, Bancroft & Hughes,  
Chambers, Shirley Street,  
Nassau, Bahamas, its Attorneys.

Exhibits

Exhibit C.C.1  
Petition  
28th January  
1965

EXHIBIT C.C.1

PETITION

IN THE SUPREME COURT OF THE BAHAMA ISLANDS 1965

EQUITY SIDE No.62

IN THE MATTER OF THOSE two parcels or tracts of land together comprising One thousand One hundred and Fifty-seven and Thirty hundredths (1157.30) Acres situate on the South Side of Lake Cunningham in the Western District of the Island of New Providence

10

AND IN THE MATTER OF The Petition of The Caves Company Limited, under The Quieting Titles Act, 1959.

To the Honourable Judges of the Supreme Court of the Bahama Islands:

The Petition of The Caves Company Limited, a Company incorporated under the Laws of the Bahama Islands and having its Registered Office in the City of Nassau in the Island of New Providence showeth:

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1. That Your Petitioner is the owner in fee simple in possession of the following land:

ALL THAT parcel or tract of land comprising Nine hundred and Four and Seven hundredths (904.07) acres situate on the South Side of Lake Cunningham in the Western District of the Island of New Providence and intersected by a portion of Interfield Road and by a portion of Gladstone Road and bounded Northwardly by Lake Cunningham Eastwardly partly by Crown Land partly by Crown Land and partly by the meanders of Lake Killarney and Westwardly partly by the meanders of Lake Killarney and partly by land the property of the Petitioner excluding therefrom certain land also intersected by Interfield Road and bordering on Lake Cunningham the property of Mrs. Dora Johnson which said parcel or tract of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan marked A filed in this matter and is this matter and is delineated on those parts which are coloured Pink of the said diagram or plan

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AND ALSO ALL THAT parcel or tract of land comprising Two hundred and Fifty-three and Twenty-

three hundredths (253.23) Acres situate in the Western District of the said Island of New Providence and intersected in two places by Gladstone Road and bounded Northwardly partly by the Interfield Road partly by land now or formerly the property of Transportation Company Limited and partly by land now or formerly the property of G.A. and S.G. Bonfield Eastwardly partly by the said land now or formerly the property of Transportation Company Limited partly by land the property of the Petitioner and partly by Crown Land Southwardly by Crown Land some of which is stated to be leased to Niven R. Nutt and Westwardly by land the property of the Petitioner immediately hereinbefore described which said parcel or tract of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan marked B filed in this matter and is delineated on those parts which are coloured Pink on the said diagram or plan.

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2. That there is no charge encumbrance dower or right of dower affecting Your Petitioner's title to the said land.

Your Petitioner therefore prays that its title to the said land may be investigated determined and declared under The Quieting Titles Act 1959

Dated this 28th day of January, 1965.

Sd.

Attorneys for The Caves Company, Limited.

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EXHIBIT C.C.2

AFFIDAVIT OF CLIFTON DONALD BORER

IN THE SUPREME COURT OF THE BAHAMA ISLANDS

1965

EQUITY SIDE

No.

IN THE MATTER OF THOSE two parcels or tracts of land together comprising One thousand One hundred and Fifty-seven and Thirty hundredths (1157.30) Acres situate on the South Side of Lake Cunningham in the Western District of the Island of New Providence

40

Exhibits

Exhibit C.C.1  
Petition  
28th January  
1965

(continued)

Exhibit C.C.2  
Affidavit of  
Clifton Donald  
Borer  
30th January  
1965

AND IN THE MATTER OF The Petition of The Caves Company, Limited under The Quieting Titles Act, 1959.

Exhibits  
Exhibit C.C.2  
Affidavit of  
Clifton Donald  
Borer  
30th January  
1965  
(continued)

I Clifton Donald Borer of the City of Nassau in the Island of New Providence make oath and say as follows:

1. That I am the Vice-President and a Director of The Caves Company, Limited the Petitioner herein.

2. That the facts contained in the Petition filed herein are true to the best of my knowledge information and belief. 10

3. That the Petitioner alone is possessed of the land described in the Petition filed herein.

4. That the Petitioner is in possession of the said land by virtue of the documentary title particulars whereof are obtained in the Abstract of Title filed herein.

5. That to the best of my knowledge information and belief the papers produced herewith fully and fairly disclose all facts material to the title claimed by the Petitioner and all contracts and dealings which affect the title to the said land or any part thereof or give any rights as against it. 20

SWORN at the Registry in )  
the said City of Nassau )  
this thirtieth day of )  
January 1965. )

BEFORE ME,

Sgd. Illegible.

REGISTRAR

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EXHIBIT C.C.3

ADVERSE CLAIM

Exhibits

Exhibit C.C.3.  
Adverse Claim  
15th March  
1965

BAHAMA ISLANDS

1965

IN THE SUPREME COURT

No.62

EQUITY SIDE

IN THE MATTER of the Quieting Titles Act  
1959

- and -

IN THE MATTER of the Petition of The Caves  
Company Limited

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CLOTILDA EUGENIA HIGGS of Augusta Street in the  
Western District in the Island of New Providence  
one of the Bahama Islands claims to be entitled to:

- (a) An undivided interest in a tract of land of  
50 Acres which forms a part of the tract of  
land of 253.23 Acres which is part of the  
subject matter of this Petition.
- (b) The tract of land of 175 Acres which forms  
part of the said tract of land of 253.23  
Acres by virtue of adverse possession.

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Dated the Fifteenth day of March A.D. 1965.

Sgd. P.L. ADDERLEY

Attorney for the Adverse  
Claimant.

TO: The Caves Company Limited

OR

McKinney, Bancroft & Hughes, their Attorneys,  
Chambers,  
Nassau, Bahamas.

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ExhibitsEXHIBIT C.C.4

Exhibit C.C.4  
Affidavit of  
Paul Henry  
Bethel  
9th August  
1965

AFFIDAVIT OF PAUL HENRY BETHEL

IN THE SUPREME COURT OF THE BAHAMA ISLANDS 1965  
EQUITY SIDE No.62

IN THE MATTER OF THOSE two parcels or tracts of land together comprising One thousand One hundred and Fifty-seven and Thirty hundredths (1157.30) Acres situate on the South Side of Lake Cunningham in the Western District of the Island of New Providence 10

AND IN THE MATTER OF The Petition of The Caves Company, Limited under The Quieting Titles Act, 1959

I Paul Henry Bethel of the Western District of the Island of New Providence, Attorney-at-Law, make oath and say as follows:

1. I am a Member of the Firm of McKinney, Bancroft & Hughes the Attorneys for the Petitioner herein. 20

2. Pursuant to an Interlocutory Order made herein the Fifth day of February, 1965 a copy of the Notice of the filing of the Petition herein was advertised in the Nassau Daily Tribune on the 12th February, 1965, the 22nd February, 1965 and the 4th March, 1965 and in the Nassau Guardian on the 12th February, the 22nd February and the 4th March, 1965 and copies of the said advertisement are annexed hereto and marked "A" and "B" for the purposes of identification. 30

3. Pursuant to the said Interlocutory Order I caused a copy of the said Notice together with a copy of each of the filed Plans to be served on:

(a) The Minister for Works, Nassau, Bahamas. A copy of a covering letter dated 10th February, 1965 from the Petitioner's Attorneys to the Minister for Works with which the said Notice and Plans were enclosed is annexed hereto and marked "C". A copy of the said Notice bearing the acknowledgment of the Honourable John H. Bethel the Minister for Works is annexed hereto and 40

marked "C.1" A copy of a letter dated 3rd April, 1965 from the Director of Public Works Nassau, Bahamas stating that the Ministry of Works requires Ten feet on each side of the present Gladstone Road and Interfield Road to widen these roads to Fifty feet is annexed hereto and marked "C.2".

Exhibits  
Exhibit C.C.4  
Affidavit of  
Paul Henry  
Bethel  
9th August  
1965  
(continued)

10 (b) The Crown Lands Officer of the Bahamas. A copy of a covering letter dated the 10th February, 1965 from the Petitioner's Attorneys to the said Crown Lands Officer with which the said Notice and Plans were enclosed is annexed hereto and marked "D". A copy of the said Notice bearing the acknowledgment of Baltron B. Bethel on behalf of the said Crown Lands Officer is annexed hereto and marked "D.1". A copy of a letter dated 24th February, 1965 from the Legal Assistant in the Crown Lands Department regarding a Declaration of possession dated 5th November, 1942 in respect of  
20 the proposed widening of certain roads running through the land of the Petitioner is annexed hereto and marked "D.2".

4. Except for acts of trespass on portions of the land the subject of the Petition by Clotilda Higgs the only adverse claimant in this matter or by persons claiming under her and other possible acts of trespass by persons unknown to the Petitioner there are to the best of my knowledge information and belief no occupiers other than the Petitioner, its agents or tenants, on the land the subject of  
30 the Petition herein. The Petitioner has leased about Fifteen Acres of land in the Gladstone Road area to P.W. Albury & Sons Limited. Notice of the Petition herein was served on the said P.W. Albury & Sons Limited. A copy of a letter from the Petitioner's Attorneys to the said P.W. Albury & Sons Limited with which the said Notice was enclosed is annexed hereto and marked "E" and a copy of the said notice bearing the acknowledgement of the said P.W. Albury & Sons Limited is annexed  
40 hereto and marked "E.1"

5. The following is to the best of my knowledge information and belief a list of the owners or occupiers of land adjoining the land of the Petitioner. This list is taken from the Plans filed in this matter and from knowledge coming to me as Attorney for the Petitioner

(a) Mrs. A. Hugh Johnson (Northern Boundary)

(b) Mr. Charles S. Thompson (Northern Boundary)

Exhibits

Exhibit C.C.4  
Affidavit of  
Paul Henry  
Bethel  
9th August  
1965  
(continued)

- (c) Cunningham Investments Limited (Northern Boundary)
- (d) The Estate of C.J. and S.J. Bosfield (Theodore Roosevelt Bosfield) Northern Boundary.
- (e) Nassauvian Limited and the Estates of Joseph R. Adderley, Daniel D. Adderley and Sarah Ann Adderley.
- (f) The Crown (Eastern and Southern Boundaries)
- (g) Mr. Niven R. Nutt (Southern Boundary). 10
- (h) The Petitioner (Western Boundary)

The above list does not include the road boundaries or the boundaries on Lake Cunningham or Lake Killarney.

6. Pursuant to the said Interlocutory Order I caused notices of the Petition to be served on the above mentioned adjoining owners or occupiers as follows:

(a) Mrs. A. Hugh Johnson. A copy of a letter dated 12th February, 1965 from the Petitioner's Attorneys to the said Mrs. A. Hugh Johnson with which the said notice was enclosed is annexed hereto and marked "F" and a copy of the said Notice bearing the acknowledgement of the said Mrs. A. Hugh Johnson is annexed hereto and marked "F.1". 20

(b) Charles S. Thompson. A copy of a letter dated 17th February, 1965 from the Petitioner's Attorneys to the said Charles S. Thompson with which the said notice was enclosed is annexed hereto and marked "G" and a copy of the said notice bearing the acknowledgment of the said Charles S. Thompson is annexed hereto and marked "G.1." 30

(c) Cunningham Investments Limited. A copy of a letter dated 10th February, 1965 from the Petitioner's Attorneys to the President of Cunningham Investments Limited with which the said notice was enclosed is annexed hereto and marked "H" and a copy of the said Notice bearing the acknowledgment of Harry Oakes the President of the said Cunningham Investments is annexed hereto and marked "H.1". 40

(d) The Estate of C.J. and S.J. Bosfield

(Theodore Roosevelt Bosfield). A copy of a letter dated the 10th February, 1965 from the Petitioner's Attorneys to the said Theodore Roosevelt Bosfield with which the said notice was enclosed is annexed hereto and marked "I" and a copy of the said Notice bearing the acknowledgment of the said Theodore Roosevelt Bosfield is annexed hereto and marked "I.1".

Exhibits

Exhibit C.C.4  
Affidavit of  
Paul Henry  
Bethel  
9th August  
1965  
(continued)

10 (c) Nassauvian Limited, the owner of a one-quarter interest in land adjoining the land of the Petitioner on the East. A copy of a letter dated 13th February, 1965 from the Petitioner's Attorneys to the President of Nassauvian Limited with which the said notice was enclosed is annexed hereto and marked "J" and a copy of the said Notice bearing the acknowledgment of Clifton D. Borer the Vice President of the said Nassauvian Limited is annexed hereto and marked "J.1".

(f) The Adderley Estate:

20 (i) Estate of Joseph R. Adderley (Paul L. Adderley). A copy of a letter dated 20th February, 1965 from the Petitioner's Attorneys to the said Paul L. Adderley on his own behalf and on behalf of his brother Dr. Francis Adderley as the owners of another one-quarter undivided interest in land adjoining the land of the Petitioner on the East is annexed hereto and marked "K". A copy of the said Notice was enclosed with this letter to Mr. Adderley.

30 (ii) Estate of Daniel D. Adderley.  
Daniel D. Adderley was believed to own a one-quarter interest in the said land adjoining the land of the Petitioner on the East. I was informed that Roger Charles Adderley of New York or his Estate was the owner of this interest or a part thereof and a copy of the said notice was sent by registered post to the Estate of Roger Charles Adderley on the 20th February, 1965. A copy of  
40 a letter from the Petitioner's Attorneys to the Estate of Roger Charles Adderley with which the said Notice was enclosed and registered receipt therefor is annexed hereto and marked "L".

(iii) The other one-quarter undivided interest is believed to be owned by the Estate of Sarah Ann Adderley but no person was served in respect of this interest.

(g) Niven R. Nutt. A copy of a letter

Exhibits

Exhibit C.C.4  
Affidavit of  
Paul Henry  
Bethel  
9th August  
1965  
(continued)

dated 10th February, 1965 from the Petitioner's Attorneys to the said Niven R. Nutt with which the said Notice was enclosed is annexed hereto and marked "M" and a copy of the said Notice bearing the acknowledgment of the said Niven R. Nutt is annexed hereto and marked "M.1"

8. One Adverse Claim has been filed in this matter by Clotilda Eugenia Higgs of Augusta Street in the Western District of the Island of New Providence in respect of a part of the land shown coloured Pink on the diagram or plan marked B and filed in the matter. No other Adverse Claim has been filed or served on the Petitioner or its Attorneys in this matter.

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9. I make this Affidavit partly from my own knowledge and partly from information received by me as Attorney for the Petitioner and the facts contained herein are true to the best of my knowledge information and belief.

Sworn at the Registry in )  
the City of Nassau in the )  
Island of New Providence )  
this 9th day of August )  
1965. )

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PAUL H. BETHHEL

BEFORE ME,

REGISTRAR

Exhibit C.C.5  
Judgment  
28th March  
1966

EXHIBIT C.C.5

JUDGMENT

BAHAMA ISLANDS

1965

IN THE SUPREME COURT

No.62

EQUITY SIDE

30

IN THE MATTER OF THOSE two parcels or tracts of land together comprising One thousand One hundred and Fifty seven and Thirty hundredths (1157.30) Acres situate on the South Side of Lake Cunningham in the Western District of the Island of New Providence

IN THE MATTER OF The Petition of the  
Caves Company Limited under the Quieting  
Titles Act, 1959

Exhibits  
Exhibits C.C.5  
Judgment  
28th March  
1966  
(continued)

Cunningham Smith, J.

10 This is a Petition by Caves Company, Limited to quiet a tract of land on the south side of Lake Cunningham and east of Gladstone Road measuring 253.23 acres. This tract has been described throughout the hearing as the "Sarah Poitier" grant and this name is superscribed on the plan. The Adverse Claimant, Mrs. Clothilda Higgs claims ownership of 225 acres of the tract.

The petitioner's claim is based on a documentary title; their root of title being a conveyance in favour of Ralph Gregory Collins dated 18th May 1925. This documentary title is unchallenged.

20 The claim of the adverse claimant is based on adverse possession. Mr. Adderley, her counsel, conceded that the petitioners having built a road through the tract in 1937 and having leased substantial portions of the land thereafter (to Mr. Albury and Mr. Claridge) in the absence of any action by the adverse claimant, repossessed the land. In effect, therefore, he conceded that the adverse claimant, to obtain title had to prove uninterrupted possession for at least 20 years prior to 1936. The years after 1936 do not have to be considered. I am obliged to Mr. Adderley for stating the position of his client so clearly.  
30 It has considerably shortened matters for me - after a very protracted hearing.

40 Mr. Higgs, husband of the adverse claimant said that he was invited by Richard Adderley to look after the estate of Daniel Adderley amounting to "hundreds of acres". This was in 1922 or thereabouts. The boundaries were pointed out to him. There were about eight or ten tenant farmers on the land who paid thirds and these thirds this witness made over to Daniel Adderley until his death in 1934 and thereafter to the adverse claimant, his wife and Daniel Adderley's daughter. He also worked the land himself and his method of farming was to farm one piece of land but continually moving on and abandoning the old farms to the younger generation, to resurrect if they so felt inclined. This is important. Further evidence was given of farming and the burning of lime and

Exhibits  
 Exhibits C.C.5  
 Judgment  
 28th March  
 1966  
 (continued)

coal kilns by the adverse claimant Mr. Higgs and Mr. Knowles one of the tenant farmers.

On the evidence, I find no acts of possession proved against the petitioner's predecessors in title.

The evidence of the adverse claimant is the only evidence of possession prior to 1922 but it is not possible to pinpoint the areas which were farmed at that time, nor in fact relate them to areas cleared by 1958. She said her father never farmed his land but had tenant farmers who collected crops, burned coal and lime and cut wood for the hospital and prison. She said the Poitier tract was connected with her father's land - "the Adderley estate" and that she did not know if the "Poitier tract" was part of the "Adderley estate". When the Court visited the land in dispute, Mr. Higgs her husband and the other witnesses for the adverse claimant pointed out their farms on the ground and these agreed substantially with the location of the farms marked on the aerial photographs (Ex. 31) by Mr. Kenneth Higgs. These farms were on the "Poitier tract" the subject matter of this petition. My conclusion is, and I agree with Mr. Bethel, that the adverse claimant her husband and others must have strayed gradually west from the "Adderley" land and this was probably in about 1942 when the Sweetings Coppice land was taken over by the Government. In my opinion, this is the crux of the matter: the adverse claimant and tenants kept moving from Adderley land and committed trespass on Sarah Poitier's tract, whether they were aware of this or thought "Sarah Poitier's" land was part of the "Adderley" land I do not know. Either way it does not matter.

This view is reinforced by the evidence of Mr. Garroway, land surveyor of the Crown Lands Office. He produced an aerial photograph (Ex. 56) which was taken in 1941. This witness said that on examination of the photograph there were no signs of the farm clearings or any area where there was a large scale felling of trees. Another photograph of 1943 shows more track roads compared with the 1941 photograph and this witness gave his opinion that they had been constructed shortly before the photograph was taken: his reason for this was that there were no signs of overgrowth.

Again this witness said he could not make out

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any large clearances or farming areas in the 1943 photograph. Nor can I. The photograph taken in 1958 does show some clearances indicating farming and lime Kilns. This picture shows a clear cut farming area in the loop on the east side of Gladstone Road. This was Albury's extensive farm. Further east where the adverse claimant and tenants said they farmed there are no comparable markings. On his interpretation and reading of the photographs Mr. Garroway gave his opinion that they were reliable in determining whether there were clearings or vegetation on the tract in those particular years. He was cross-examined thoroughly as to the shade and other effects, the scale and height at which the photographs were taken. Taking all these factors into consideration I accept the interpretation and evidence of Mr. Garroway.

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There is on the evidence no sufficient proof of adverse possession by the claimant of either the whole or any part of the land in question: There is also the evidence of intention of ultimate user of the land by the petitioners from the evidence of Lady Oakes and Mr. Borer.

The case of Wood v LeBlanc Vol 34 (1904) Supreme Court of Canada was cited and there is no point in once again repeating the relevant portions of the Judgment in that case, as to the principles of law which apply.

30

I find for the petitioners and order a Certificate of Title to issue in their favour.

H.C. Smith

Judge

28th March, 1966.

Exhibits  
Exhibits C.C.5  
Judgment  
28th March  
1966  
(continued)



IN THE PRIVY COUNCIL

No. 8 of 1975

ON APPEAL

FROM THE COURT OF APPEAL OF THE BAHAMA ISLANDS

B E T W E E N :

KENNETH MCKINNEY HIGGS and

ERIC ALLIDAY HIGGS

Substituted for Clotilda Eugenia  
Higgs deceased (Plaintiff)

Appellants

- and -

CAVES COMPANY LIMITED (Defendant)

Respondent

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RECORD OF PROCEEDINGS

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*Philip Conway Thomas & Co.,*  
*61, Catherine Place,*  
~~WILSON FREEMAN,~~  
~~6/8 Westminster Palace Gardens,~~  
London, SW1E 6HB  
Solicitors for the Appellants

STEPHENSON HARWOOD & TATHAM,  
Saddlers Hall, Gutter Lane,  
London EC2V 6BS.

Solicitors for the Respondent