

Horace Reid

Appellant

v.

(1) Dowling Charles and  
(2) Percival Bain

Respondents

FROM

THE COURT OF APPEAL OF  
TRINIDAD AND TOBAGO

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE  
13TH JULY 1989  
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*Present at the hearing:-*

LORD ACKNER  
LORD ROSKILL  
LORD LOWRY  
SIR JOHN MEGAW  
SIR ROBERT MEGARRY

*[Delivered by Lord Ackner]*

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This is an appeal by leave of the Court of Appeal of Trinidad and Tobago from a judgment of that court (Hassanali, Braithwaite and Bernard JJ.A) dated 26th January 1984 and their order dated 3rd February 1984. The Court of Appeal allowed both the appeal by the first respondent (the plaintiff in the action, referred to hereafter as "Charles") against the appellant (the defendant in the action, referred to hereafter as "Reid") and the appeal by the second respondent (the Third Party in the action, referred to hereafter as "Bain") against Reid from the order dated 21st July 1975 of Mr. Justice K.C. McMillan. The learned judge had dismissed Charles' claim against Reid, Reid's claim in the third party proceedings against Bain and Bain's counterclaim in the third party proceedings against Reid.

Since the decision of the Court of Appeal on 26th January 1984 there have been further orders of the Court of Appeal concerning the granting of leave to appeal. By order of the Judicial Committee of the Privy Council dated 29th July 1987 Reid was given special leave to enter and prosecute an appeal which concerns that part of the order of the Court of Appeal entered on 15th June 1987 which gave Charles leave "to carry into execution part of his judgment by the

payment" by Reid of the sum of \$50,000.00 representing mesne profits, within 30 days.

### The dispute.

On 6th November 1968 Charles issued a writ against Reid claiming a declaration that he was entitled to a right of way, an injunction restraining Reid from interfering with this right of way, an order that Reid remove the obstruction which he had placed thereon, and other relief. To the statement of claim which was delivered with the writ, there was annexed a sketch plan. This showed Charles' land marked green, the land occupied by Reid marked red and the footpath, alleged to be 10 feet wide, marked blue. There was also marked on the plan a ravine running close to the right of way. Charles' complaint was that Reid on or about 18th July 1967 carried out bulldozing on the land he occupied "thereby blocking the said way" and thereby preventing him from using the right of way.

In his defence Reid denied the existence of the right of way, in the alternative he alleged Charles had used it with his permission and/or with the consent of "his predecessors in title". He admitted that he was "in possession of the land over which a way runs" and that on or about the date alleged he executed work on that land.

Reid brought in Bain as a third party because, by an agreement dated 27th February 1967 referred to in more detail hereafter, Reid had agreed to buy from him the land which he occupied and which included the route of the alleged right of way. His complaint in the third party statement of claim was that the land was to be "free from encumbrances", and in consequence of this, he had entered into possession. Bain in his defence admitted the agreement, but did not admit that it was agreed that the land should be sold free from encumbrances. He contended that in breach of the express terms of the agreement, Reid had wrongfully entered into possession of the land and bulldozed the same despite Bain's protests. Bain counterclaimed for specific performance of the agreement and for the unpaid balance of the purchase price.

### The relevant land and its conveyancing history.

The land which is the subject of the proceedings is situated in the Grand Curacaye area of Santa Cruz in the ward of St. Ann's, Trinidad. Although the trial judge and the Court of Appeal had the benefit of a number of maps and plans, there was available to their Lordships only a large map which apparently came into existence on 19th July 1963, identified as sheet B.17.F and described as "Provisional 1962", of which only the north east corner has any relevance. In addition there was provided, as the only legible plan, a copy of plan

"C" which had been drawn up by a surveyor instructed by Bain in 1972 to define, pursuant to the terms of the sale agreement between Reid and Bain, the land which was to be sold to Reid. This plan plays a significant role in the third party proceedings. On that plan there had been marked during the trial the agreed position of the ravine, and Charles had sketched in the line of the alleged right of way, and its position thus marked was substantially accepted by Reid. On this plan coloured pink is the area of land which, according to Bain, was the subject matter of the sale agreement. East of the line marked 73.7 is Bain's land. Marked on it are dots representing posts which Reid put in the land after the survey for plan "C" was carried out, to indicate what he considered was his correct eastern boundary. The area hatched in the centre of the pink land is the house which Reid at the time of the proceedings was building. North of the pink land and marked "D Charles" is Charles' land. South of the pink land is the Blanc Street extension, which is a dirt road, an extension of Blanc Street proper which has a pitch surface. The alleged way ran due south from Charles' land to the Blanc Street extension. Further south of Blanc Street extension, but not shown on plan "C", is the Grand Curacaye River. To the west of the pink land is further land owned by Bain.

It appears to be agreed that:-

1. In 1920 one Florestine Duchesne owned various parcels of land in the Grand Curacaye area. By deed dated 10th September 1920 Mrs. Duchesne conveyed two parcels of land to one Pedro Fermine. The first parcel of this land is the land identified on plan "C" as belonging to Charles. This parcel was conveyed by successive deeds to Julia Fermine, his daughter-in-law, by deed dated 12th January 1953, to Savia Fermine, sometimes known as Eusebia Fermine, by deed dated 4th November 1960, and finally to Charles by deed dated 28th February 1968. Prior to his purchase, Charles in December 1966 became tenant of a partially completed house on the southern part of this land. He subsequently completed the house, letting it to a Miss Carrington.
2. In 1943 Mrs. Duchesne conveyed land to Bain including the land shown on plan "C" coloured pink, to which reference has already been made. Sometime prior to 1957, Leo Reid, Reid's brother occupied as a tenant a house on Bain's land east of the land marked pink on plan "C". In 1957 Reid took over the tenancy of his brother's house and lived there until 1967.

Matters which were common ground in the action.

1. This litigation was sparked off by bulldozing work carried out by Reid east of the house which he was proposing to build.
2. At the time of the bulldozing "there was a well defined track from Blanc Street extension to Charles' house" (the very terms of an admission made by Reid under cross-examination).
3. Charles' complaint was that Reid had bulldozed the track and made it unusable. This complaint was made orally by Charles to Reid on the site shortly after he carried out the work. It was repeated later in writing by Charles' solicitors by letter dated 18th July 1967 to Bain, a copy of which Bain provided to Reid.
4. The letter of complaint referred to above was never replied to. As to the oral complaint made by Charles, Reid never disputed at the time of the complaint that the track had been affected by the bulldozing.
5. The bulldozing did at least interrupt the track. This was admitted in terms by Reid when giving evidence-in-chief.
6. Although Reid, both in his defence and in his conversation with Bain after the receipt of the letter of complaint, alleged that he gave Charles permission to use the track when he wanted to carry materials to his house, no such permission was in fact ever given.
7. After proceedings, negotiations took place between Charles and Bain with a view to the latter selling to him some land to assist him to get to his property "as land already bulldozed" (Bain's evidence-in-chief).

The consequences of the bulldozing.

When Charles gave evidence he said that as a result of the track being bulldozed he was unable to get access to his land, except by the kind permission of the Montrichards, who owned the land immediately north of his land, and their tenant. He was thus able to gain access to a road which led to Des Ormeaux Street and thus down to Blanc Street. He said "short of permission to go across Montrichards' land I have no other access to my land". The route which he was thus obliged to take involved his crossing the ravine north of his land and when it rained this could not be done. After his tenant, Miss Carrington, had left because of this inconvenience he was unable to relet. He then obtained permission from Mr. Montrichard to

put up a bridge across the ravine. In essence Charles' case was that after the bulldozing his property was landlocked. Miss Carrington corroborated this evidence. She said that when she went there in May 1967 there was a foot track to get to the house from Blanc Street and after the bulldozing it was not possible to get to the house except via the Montrichards' land. She had left in June 1969 "because of inconvenience". She said "When it rained ravine became flooded and one could not get in or out". There was further corroboration of this aspect of Charles' evidence by that given by Bain concerning his offer to sell to Charles a piece of land to enable him to "put a step up to his house instead of walking over ravine in rainy weather". This important aspect of Charles' case, which was opened in detail by his counsel and could therefore have come as no surprise when Charles and Miss Carrington gave the substance of the evidence referred to above, was never challenged. Yet when Reid came to give evidence he said the track was still there, he had never bulldozed it and that four or five evenings after Charles had spoken to him on the site complaining about the matter, he, Charles, Miss Carrington and Mr. Morgan, a tenant of the Montrichards, went up this very track. In short his bulldozing was irrelevant, it had in no effective way hindered Charles from getting to or from his house or Miss Carrington to and from her house. Accordingly there was no need for either of them to rely on the kindness of the Montrichards or to undergo the hazards of crossing the ravine when it had been raining heavily, nor any necessity for Miss Carrington to give up her tenancy. Moreover, the building by Charles in 1974 of a bridge across the ravine was wholly unnecessary, as indeed was the offer by Bain to sell a piece of land to provide him with a right of way and to enable him to put a step up to his house, instead of walking across the ravine.

Although it is clear that during his cross-examination some form of protest was made by Charles' counsel, not only was no application made by Reid's counsel to recall and put his case on this aspect of the matter to Charles and Miss Carrington, but the importance of this evidence appears wholly to have escaped the trial judge, who made no reference in his reserved judgment to this evidence given by either Charles or Miss Carrington or to the corroboration provided by Bain.

#### Reid's motivation for his bulldozing.

Although the sale agreement did not provide for two plots of land, Reid wished to build one house for himself and later another house for some of his relatives. This necessitated land for a second plot. Because of the existence of the ravine and the way he had laid out his first house he was short of land. Hence he bulldozed into the ravine to add to the size

of the plot. To have bulldozed into extinction the right of way, if it existed, would have added still further to the land available for the second house. Even then he was short of land and accordingly, as stated above, he put in the posts shown by dots on plan "C", thus extending further eastwards the land which he wished to be conveyed to him. Indeed in evidence he agreed that the acceptance of the eastern boundary thus laid out by him would necessitate the western boundary as set out by the surveyor in plan "C" being moved further eastwards. This he was prepared, understandably in the circumstances, to accept.

The judgment of Mr. Justice McMillan.

Mr. James Guthrie, in his able submissions on behalf of Mr. Reid, emphasised to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.

In his judgment the trial judge summarised only very briefly the evidence of Charles, omitting any reference to his unchallenged evidence of the consequences of the track being obliterated by the bulldozing. As for Miss Carrington's evidence the only reference which he made was to her statement under cross-examination by counsel for Bain, that the track was only about two feet wide and that vehicles could not go along it. The only evidence which the judge sought critically to analyse was that of two further witnesses called on behalf of Charles, namely Mr. Lezama aged 62 and his uncle Nicholas Appariccio aged 76, both of whom were born and grew up in the area. Both these witnesses saw the bulldozing carried out by Reid and confirmed that as a result the track was no longer capable of being used. Although both witnesses were not conversant with plans, Lezama confirmed that the track ran from Blanc Street extension on plan "C" across Bain's land to Charles' land, that he knew it since boyhood but that it did not exist any longer. He said

under cross-examination that he had seen posts between Bain's land and Reid's land. Those were the posts, which as stated above, Reid erected after the survey for plan "C" in 1972. He said the track from Charles' land to Blanc Street was west of those posts, as is indeed apparent from plan "C". Appariccio confirmed that to get to the houses on Charles' land there was a track on Bain's land from Blanc Street to Charles' land. This had been laid out by his parents and those who lived in the north used to use it to get water from the Curacaye River just south of Blanc Street. He stated that Pedro Fermine, who bought the land in 1920 and died about 1953, lived on the land subsequently sold to Charles and had himself used the track to go down to the river. He, Fermine, used it with his truck to bring out cocoa. He said that when Bain bought his land, which was in 1943, there was no longer any cocoa.

It was common ground on the hearing of this appeal that the evidence of these two witnesses was by no means easy to follow in all its detail, since a number of different tracks over the relevant area were described and in particular Lezama spoke of Lezama Street which does not exist. The word was a corruption of Des Ormeaux, which is a street running north and south, meeting Blanc Street close to where the Blanc Street extension starts. However in his detailed analysis of these witnesses' evidence the judge purported to identify various errors and mis-statements, and ultimately concluded essentially on the basis of their evidence that the track to which they were referring as having been used, *inter alios*, by them and by Fermine, was a continuation of the unnamed street shown on plan "C" on the west of the ravine, indeed to the west of the house which Bain built. Not only was this never suggested to Charles or Miss Carrington, it was supported by no evidence from Reid or Bain and it had no connection with bulldozing work carried out by Reid, the subject matter of Charles' complaint and which, as stated above, had sparked off this litigation. Having reached this conclusion the judge said:-

"That I think is sufficient to dispose of the plaintiff's claim, but since there is evidence both from Appariccio and the defendant that there was a narrow foot track which Appariccio said gave access across Bain's land to the plaintiff's old house, let me just say this. The evidence of the defendant is that it is still there. This is confirmed by Appariccio. I accept that and also find that it was used subsequent to 18th July, 1967 by the plaintiff as stated by the defendant."

Appariccio's evidence which the judge was relying on was, as noted by him, in these terms:-

"Mr. Dowling's [Charles] track has been bulldozed. It was 10 feet wide. It was laid out. One can see part of it still - but high up on the bank. The foot track that he used is not still there."

Their Lordships are quite satisfied, as indeed was the Court of Appeal, that the judge misapprehended the true effect of the evidence of Lezama and Appariccio and they agree with the Court of Appeal that he was wrong to isolate their testimony from the rest of the evidence as to the existence of the way. The judge's acceptance of the evidence of Reid that the way was used subsequent to 18th July 1967 which was one of the cornerstones of Reid's case before their Lordships, can in the circumstances in which it was given, carry no weight. It was never put either to Charles or Miss Carrington, whose evidence was diametrically opposed to this suggestion.

Their Lordships agree with the judgment of the Court of Appeal that there was overwhelming evidence that the disputed track did exist. This was in particular borne out by the evidence of Charles and Miss Carrington, supported by the evidence of Bain of his attempt to settle the dispute by offering another strip of land to replace the bulldozed track, and that after the bulldozing, Charles and Miss Carrington were unable to get into Charles' land or to leave it save via the land of his neighbour Montrichard, to the north of his property. Reid himself conceded the existence of a "well defined track from Blanc Street extension to the plaintiff's house" at the time of the bulldozing and that it was this track which was the subject matter both of Charles' oral and written complaint, to which no or no satisfactory answer was given. Lezama and Appariccio, although their evidence is in some respects difficult to follow, supported rather than detracted from that of Charles and Miss Carrington. The contemporary documents, i.e. Charles' letter of complaint, the pleadings and further and better particulars which Reid supplied of his defence, and which he failed to support, were all consistent with Charles' case, as were the inherent probabilities of his account.

The next question to be considered is the nature of the user of the way and whether it had been enjoyed for a sufficient length of time to entitle Charles to claim a legal easement either under section 2 of the Prescription Ordinance or under the doctrine of Lost Modern Grant. This matter was dealt with somewhat summarily by the trial judge in these terms:-

"I have no evidence from the plaintiff or his witness as to when it was first used or first came into existence. Bain said there was none when he bought in 1943. I accept that evidence. The defendant said in relation to that foot track 'I knew when the right of way started - when one of Fermin's relatives began building a house in the hill somewhere in late 1966'. That would of course be within 16 years from the date of writ issued. But even if that track came into existence before 1966 and after 1943 and Fermin used it he would already have parted with the plaintiff's lot since 1920 and, therefore, any use



made by him of it would not have been as owner of the dominant tenement (the plaintiff's lot). Even if he were still owner of plaintiff's lot, as caretaker of Bain's lands he could not be said to be using the way as of right."

The judge's reasoning is difficult to follow. Reid's evidence that the right of way started in 1966 was in stark conflict with the further and better particulars provided of his defence that permission to use the track was first given by Pedro Fermine in 1957 or thereabouts. Moreover since it was established that Pedro Fermine died in 1953 such permission had to go back earlier in time. The reference to having "parted with the plaintiff's lot since 1920" appears to overlook that Pedro Fermine remained the owner of the land until 1953. Moreover, the fact that Fermine had been asked by Bain, after Bain purchased his land in 1943, to act and acted as caretaker of Bain's land, Bain being an absent owner, could not affect Fermine's entitlement to the use which he was making of the way, the more so if it had begun in 1920 when he acquired the land, since by more than 20 years' use (1920-1943) he would have acquired a right of way under the doctrine of Lost Modern Grant.

The Court of Appeal was satisfied that "on the whole of the evidence and on the balance of probabilities the proper inference of continuous and uninterrupted user as required by law was indeed satisfied". The court, as it was entitled to, relied upon the evidence of Appariccio that the track bulldozed by Reid had been used by Fermine. It was 10 feet wide and Fermine had used the track to take water from the Curacaye River south of the Blanc Street extension, and also to bring out cocoa with his truck. Appariccio said that when Bain purchased his land (which was in 1943) there was no longer any cocoa, from which it must follow that Fermine's use in this regard predated Bain's ownership. Bain provides some corroboration of Appariccio's evidence. Bain described a "water course", although he never saw it other than in a dry condition, which in 1943 Fermine used to cross Bain's property. In his evidence he subsequently referred to it as a track; Bain also referred to Fermine having obtained access to his, Bain's land, by opening a gate on Bain's land. There is no evidence that Bain put the gate there and, given its existence prior to Bain's purchase of the land, this would be wholly consistent with the existence of a way of some 10 feet or thereabouts running from the boundary of Fermine's land - the dominant tenement, over what became Bain's land, the servient tenement.

Appariccio's evidence as to the conveyancing history was substantially borne out by the documents. There is no reason to doubt his recollection that on the plot ultimately purchased by Charles, there were, when Pedro purchased it, two houses which were lived in, one on

some unidentified date, by Fermine's son, Pedrito. Given that the track was some 10 feet wide, which is consistent with its use by a truck for the transport of cocoa, and that it was used for the purpose of getting to and from these dwelling houses, it is common ground that the court should presume that the right acquired is to use the way for all normal domestic purposes. If a truck was used in the transport of cocoa, then no doubt it was used, when required, for the more convenient transport of water from the Grand Curacaye River and other items necessary for ordinary living purposes. Again it is common ground that the mere fact that during a period of prescription the vehicle used was not a motor propelled vehicle does not preclude the use of motor vehicles over the way after the prescription period. It was Charles' evidence that he used to drive his car along the way for some 50 feet of its full length from Blanc Street extension to his house, which he estimated to be about 60 feet (plan "C" shows it to be in excess of 73 feet).

In their Lordships' view there was sufficient evidence to establish that on the balance of probabilities from 1920 to 1953 Fermine and his family habitually used the track, which was about 10 feet wide, for normal domestic purposes and accordingly this established an easement over the way, under the doctrine of Lost Modern Grant. It is therefore unnecessary to consider section 2 of the Ordinance and the fragmented periods between 1953 and 1961 when Julia Fermine was the owner of Fermine's land and from 1961 to 1968 when Savia Fermine was the owner of the plot, which she subsequently sold to Charles. However their Lordships consider that the Court of Appeal were fully entitled to conclude that the way continued to be used to get to and from the dwelling houses on the land and that it was used for all normal domestic purposes prior to the issue of proceedings. Thus a right was acquired under the Prescription Ordinance.

#### The Third Party proceedings.

It is common ground between Reid and Bain that, following certain discussions, they entered into a sale agreement recorded in a letter dated 27th February 1967 which they both signed. This letter reads as follows:-

"

27th February, 1967

Mr. Horace Reid,  
Grand Road,  
Santa Cruz.

Dear Sir,

Sale of Plot of Land at  
Gran Curacaye, Santa Cruz

I hereunder confirm our discussions relating to the proposed purchase and sale of the above.

Size and location plot of land	approximately ten thousand (10000) square feet located west of the lot on which the house you now occupy stands at Gran Curacaye Road, Santa Cruz.
Agreed purchase price	Fifty cents per sq. foot or approximately Five thousand dollars (\$5000.00)
Deposit to be paid on account immediately	Five hundred dollars (\$500.00)

The transaction is to be finalised immediately after the plot of land in question has been surveyed and approval to build has been obtained from the authorities concerned. If, however, approval to build cannot be obtained it is understood that you will accept refund of the said deposit paid without any further liability whatever on my part.

If the above terms and conditions are acceptable to you please indicate your agreement by signing in the space provided below, the original of this letter, which is being forwarded to you in duplicate.

I agree to all the  
above terms and  
conditions

(s) P.S. Bain  
P.S. Bain

(s) H.Reid "

On 10th July 1972 Bain's solicitors wrote to Reid's solicitors stating that Bain had had the parcel of land comprising the 10,000 square feet which was to be conveyed to Reid surveyed and enclosed a copy of the original survey plan together with an account showing the balance of the purchase price then payable. They stated that their client would be prepared to execute the deed of conveyance which should be submitted for their approval. Although the receipt of this letter was acknowledged, neither the balance of the purchase price nor the deed of conveyance was proffered by Reid. Accordingly on 8th August 1972 a further letter was sent by Bain's solicitors asking when their client might expect to receive the balance of the purchase price. This letter was ignored.

The trial judge held that although in his view the sale agreement contemplated that the land to be sold would be free from encumbrances, having remained in possession of the land and having built a house upon it with full knowledge of Charles' claim to the right of way, Reid had unequivocally elected to enforce the agreement and accordingly was not entitled to resist

specific performance, had Charles established his claim. Reid has not appealed against this decision. However the judge held that Reid was entitled to resist specific performance, because he was entitled to choose the boundaries of the land to be conveyed and the area of land comprised in the survey was inadequate. He based that conclusion essentially on the failure of Bain to reply to a letter dated 25th April 1972 written during the course of the proceedings, the material terms of which read as follows:-

"We are also instructed that you have recently intimated to our client that you propose selling a portion of the subject lots to the above named plaintiff [Charles] to be used as a road to his land. We are surprised to learn that these are your intentions and we must insist that you do not persist with them and that you confirm this to us in writing. We trust that you will not make it necessary for us to protect our client's rights by proceedings in Court."

This letter of course predates Bain's solicitors' letter of 10th July 1972 referred to above enclosing the survey plan. This survey plan, which as previously stated is plan "C", clearly leaves sufficient land to the east of the land to be sold to Reid, to enable Bain to sell a road of at least 20 foot to Charles. Their Lordships fully agree with the Court of Appeal that the judge was wrong to draw the inference which he did from the failure to reply to Reid's solicitors' letter of April 25th. Their Lordships further agree with the Court of Appeal that it was an express condition of the agreement that the sale was to be finalised only after the survey, it being the plain purpose of that survey that it would be the instrument for determining the exact acreage and of course the boundaries of "the plot of land in question". The Court of Appeal were fully entitled to draw the inference that, as the plan enclosed with the letter of 10th July received no challenge, despite the further letter of 8th August 1972, it accurately represented the land which had been discussed by the parties immediately prior to the signing of the sale agreement.

Accordingly Reid's appeals against the decisions of the Court of Appeal given on 26th January 1984 in favour of Charles and Bain are both dismissed with costs.

There remains the subsidiary appeal against the interlocutory order entered by the Court of Appeal on 15th June 1987 giving leave to Charles "to carry into execution part of his judgment by the payment of the sum of \$50,000 representing mesne profits ..." such payment to be made by Reid within 30 days: and that Charles "do enter into his own bond to repay the debt of \$50,000 in the event of appeal being successful before the Judicial Committee of the Privy Council".

Under section 6 of the Trinidad and Tobago (Procedure in Appeals to Privy Council) Order in Council 1962:-

"Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon."

It was frankly and very properly conceded by Mr. Knox on behalf of Charles, to whose clear and concise submissions their Lordships would like to pay special tribute, that the judgment which Charles obtained as a result of his successful appeal to the Court of Appeal did not require Reid "to pay money". In so far as any payment by Reid was concerned, the judgment provided that mesne profits and damages for inconvenience had to be assessed by a judge in chambers. No such assessment has yet taken place, although on 15th June 1987 Charles issued a summons to fix a date.

Accordingly on this ground alone Reid's appeal must be allowed and the order set aside. Although little time was spent arguing this subsidiary appeal, having regard to the concession made by Mr. Knox, the appellant Reid is entitled to the costs of the appeal and to set these costs off against the costs that he has to pay to Charles as a result of the dismissal of the main appeal.

