

G. H. G. 3

British Guiana

46, 1954

No. 8 of 1954

In the Privy Council.

8th, 1954

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL.

BETWEEN

GEORGE HANOMAN (Defendant) - - - - Appellant

AND

ARCHIBALD ROSE (Plaintiff) - - - Respondent.

RECORD OF PROCEEDINGS

CAMERON & SHEPHERD,
2 High Street,

Georgetown, British Guiana.

*Solicitors for the (Defendant) Appellant in
British Guiana.*

SIMMONS & SIMMONS,

1 Threadneedle Street,

London, E.C. 2.

Solicitors for the (Defendant) Appellant.

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In the Privy Council.

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

BETWEEN

GEORGE HANOMAN (Defendant) - *Appellant*

AND

ARCHIBALD ROSE (Plaintiff) - - *Respondent.*

RECORD OF PROCEEDINGS

10

PROCEEDINGS ON HEARING OF ACTION.

No. 1.

WRIT OF SUMMONS.

1947 No. 634 Demerara

IN THE SUPREME COURT OF BRITISH GUIANA.

CIVIL JURISDICTION.

Between :— ARCHIBALD ROSE - *Plaintiff*

and

GEORGE HANOMAN *Defendant.*

20 GEORGE THE SIXTH, by the grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith.

TO :— GEORGE HANOMAN of lot 5, Coburg Street, New Amsterdam, in the County of Berbice.

WE COMMAND YOU, that within ten days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for

In the
Supreme
Court of
British
Guiana.

No. 1. Writ
of Summons.
19th
December.
1947.

In the
Supreme
Court of
British
Guiana.

you in an action at the suit of ARCHIBALD ROSE, and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

No. 1. Writ
of Summons.
19th
December,
1947,
continued.

WITNESS, the Honourable Newnham Arthur Worley, Chief Justice of British Guiana, the 19th day of December, in the year of Our Lord one thousand nine hundred and forty-seven. The defendant may appear hereto by entering an appearance either personally or by solicitor at the Registry at Georgetown.

INDORSEMENT OF CLAIM.

The plaintiff's claim against the defendant is—

(a) an injunction restraining him from impounding any cattle or other animal the property of the plaintiff while grazing on any part or portion of land at Plantation Susannah, situate on the Corentyne Coast, in the County of Berbice and Colony of British Guiana. 10

(b) for the sum of \$1,500.00 as damages for having at Susannah, aforesaid, between the 31st day of August, 1947, and the 1st day of November, 1947, wrongfully and unlawfully seized or taken possession of 10 head of cattle the property of the plaintiff and thereafter caused them to be impounded at Albion Pound, Corentyne Coast, aforesaid.

(c) Costs.

Vivian D. P. Woolford 20
Solicitor to Plaintiff.

This Writ was issued by Vivian Dudley Perot Woolford, whose address for service and place of business is c/o Hon. Sir Eustace Gordon Woolford, K.C., 153 Charlotte Street, Lacytown, Georgetown, Solicitor to the plaintiff who resides at Bohemia, Corentyne Coast, Berbice, Cattle Farmer.

Authority to Solicitor filed herewith.

Dated the 19th day of December, 1947.

Vivian D. P. Woolford
Solicitor to Plaintiff.

STATEMENT OF CLAIM

1. On the 22nd day of March, 1878, the plaintiff became the owner by Transport of : *FIRSTLY*, "The western half of the western half of all that plantation or lot of land called Susannah, being lot number 15 (fifteen) situate on the east sea coast of the County of Berbice, containing 500 (five hundred) acres of land, more or less, no buildings thereon, with right of free pasturage to Thomas Howard over the whole of the said plantation, and subject to right of pasturage over the eastern half of the western half of the said plantation to Paris Britton, his heirs, executors, administrators, and assigns;"

and *SECONDLY*, "The owner by Transport No. 122 of 1924, dated the 21st day of June, 1924, of a piece of land part of the east half of the west half of lot number 15 (fifteen), also called Susannah as shown on a plan by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar of British Guiana at New Amsterdam, Berbice, on the 3rd March, 1880, the said piece of land being three roods wide by the whole depth of the said estate and bounded on the east by the property of Seecharan, on the west by the property of A. Rose, on the north by the Atlantic Ocean and on the south by the Grand Canal dam, no building thereon;" and has since doing so depastured his cattle on the said premises and generally on the whole of Plantation Susannah as he is entitled to do.

2. The defendant is and was at all material times the beneficial owner and occupier and in possession as such owner and occupier of the eastern half of Plantation Susannah etc., etc., having on the 25th day of June, 1947, bought the said premises from the former proprietors of the said premises who were under the obligation by their Transport No. 73 of 1937, and dated the 15th day of March, 1937, afford the right to be compelled to graze their cattle over the whole of Plantation Susannah to each of the proprietors of the east and west halves of the said Plantation of which the Plaintiff is one.

3. Between the 31st day of August and the 1st day of November, 1947, the defendant by himself or by his agents and servants wrongfully and unlawfully seized and/or took possession of 8 head of cattle the property of the plaintiff which were at the time grazing on the western half of the western half of Plantation Susannah aforesaid or on some other portion of the said Plantation Susannah as they had a right to do and thereafter caused them to be impounded at the Albion Pound situate on the Corentyne Coast in the County of Berbice in this Colony. The defendant has also since action brought wrongfully and unlawfully impounded certain other cattle belonging to the plaintiff grazing on the said premises or some other portion of Plantation Susannah. The particulars are as follows :—

On the 31st August, 1947 — 2 heads.

On the 21st September, 1947 — 2 heads.

On the 29th September, 1947 — 4 heads.

In the
Supreme
Court of
British
Guiana.

No. 2.
Statement of
Claim 4th
February,
1948,
continued.

4. The plaintiff as the result of the said action and conduct of the defendant as stated in the preceding paragraph was compelled to release the said cattle by paying the necessary pound fees for doing so as required by law and was otherwise put to the expense of having same conveyed back to his premises and to the loss of the use and benefit derived by him from his ownership of the said cattle.

5. The plaintiff claims :—

(a) An injunction restraining him from impounding any cattle or other animal the property of the plaintiff while grazing on any part or portion of land at Plantation Susannah, situate on the Corentyne Coast, in the County of Berbice, and Colony of British Guiana.

10

(b) Payment by the defendant of the sum of \$1,500.00 as damages for his said wrongful and illegal acts.

(c) Costs.

Georgetown, Demerara.

4th day of February, 1948.

Vivian D. P. Woolford
Solicitor for Plaintiff.

Eustace G. Woolford
Of Counsel.

AMENDED STATEMENT OF CLAIM

In the
Supreme
Court of
British
Guiana.

No. 3.
Amended
Statement of
Claim 17th
February,
1948.

1. On the 22nd day of March, 1878, the plaintiff became the owner by Transport of :—

10 *FIRSTLY*, "The western half of the western half of all that plantation or lot of land called Susannah, being lot number 15 (fifteen) situate on the east sea coast of the County of Berbice containing 500 (five hundred) acres of land, more or less, no buildings thereon, with right of free pasturage to Thomas Howard over the whole of the said plantation, and subject to right of pasturage over the eastern half of the western half

of the said plantation to Paris Britton, his heirs, executors, administrators and assigns'; and
SECONDLY, "The owner by Transport No. 122 of 1924, dated the 21st day of June, 1924, of a piece of land part of the east half of the west half of lot number 15 (fifteen), also called Susannah as shown on a plan by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar of British Guiana at New Amsterdam, Berbice, on the 3rd March, 1880, the said piece of land being three roods wide by the whole depth of the said estate and bounded on the east by the property of Seecharan, on the west by the property of A. Rose, on the north by the Atlantic Ocean and on the south by the Grand Canal Dam, no building there-

20 on"; and has since doing so depastured his cattle on the said premises and generally on the whole of Plantation Susannah as he is entitled to do.

2. The defendant is and was at all material times the beneficial owner and occupier and in possession as such owner and occupier of the eastern half of Plantation Susannah, etc., etc., having on the 25th day of June, 1947, bought the said premises from the former proprietors of the premises who were under the obligation by their Transport No. 73 of 1937 and dated the 15th day of March, 1937, *compelled to afford the right to graze their cattle over the whole of Plantation Susannah to each of the proprietors of the east and west halves of the said Plantation of which the plaintiff is one and which said obligation was accepted by the defendant as such beneficial owner and occupier.*

30

3. Between the 31st day of August, and the 1st day of November, 1947, the defendant by himself or by his agents and servants wrongfully and unlawfully seized and/or took possession of 8 head of cattle the property of the plaintiff which were at the time grazing on the western half of the western half of Plantation Susannah aforesaid or on some other portion of the said Plantation Susannah as they had a right to do and thereafter caused them to be impounded at the Albion Pound situate on the Corentyne Coast in the County of Berbice in this Colony. The defendant has also since action brought wrongfully and *unlawfully* impounded certain other cattle belonging to the plaintiff grazing on the said premises or some other portion of Plantation Susannah. The particulars are as follows :—

40

On the 31st August, 1947 — 2 head

On the 21st September, 1947 — 2 head

On the 29th September, 1947 — 4 head

In the
Supreme
Court of
British
Guiana.

No. 3.
Amended.
Statement of
Claim 17th
February,
1948,
continued.

4. The plaintiff as the result of the said action and conduct of the defendant as stated in the preceding paragraph was compelled to release the said cattle by paying the necessary pound fees for doing so as required by law and was otherwise put to the expense of having same conveyed back to his premises and to the loss of the use and benefit derived by him from his ownership of the said cattle.

5. The plaintiff claims :—

(a) An injunction restraining him from impounding any cattle or other animal the property of the plaintiff while grazing on any part or portion of land at Plantation Susannah, situate on the Corentyne Coast, in the County of Berbice and Colony of British Guiana.

10

(b) Payment by the defendant of the sum of \$1,500.00 as damages for his said wrongful and illegal acts.

(c) Costs.

Georgetown, Demerara.

17th day of February, 1948.

Vivian D. P. Woolford
Solicitor for Plaintiff.

Eustace G. Woolford.
Of Counsel.

DEFENCE and COUNTER-CLAIM
DEFENCE.

In the
Supreme
Court of
British
Guiana.

No. 4.
Defence and
Counter-
Claim.
15th July,
1948.

1. Subject to the production of the Transports therefor, and except that the dates given are incorrect, the defendant admits that the plaintiff is the owner by Transport of the immovable property therein described as alleged in paragraph 1 of the Statement of Claim.

2. The defendant denies that the plaintiff has generally depastured his cattle on the whole of Plantation Susannah, or that the plaintiff is entitled so to do, as alleged in paragraph 1 of the Statement of Claim or at all.

3. The defendant will contend that no right of grazing cattle over the eastern half of Plantation Susannah or any part thereof is vested in the plaintiff by Transport or otherwise, and that therefore this action is not maintainable.

4. The defendant admits that he is and was since the 25th day of June, 1947, the beneficial owner and occupier and in possession as such owner and occupier of the following property, namely:—

“The eastern half of Plantation Susannah otherwise known as lot number 15 (fifteen) situate in the East Coast Berbice Country District in the County of Berbice as shown on a diagram by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar at New Amsterdam, Berbice, on 3rd March, 1880, with a building thereon.”

5. The defendant admits that he purchased the said property on the 25th June, 1947, from Bookers Demerara Sugar Estates Limited, and that he is bound by the Transport held by them but denies that the said Company was, under the obligation contained in Transport No. 73 of the 15th day of March, 1937, compelled to afford the right to graze cattle over the whole of Plantation Susannah to the plaintiff as one of the proprietors of the east and west halves of the said Plantation and that such obligation was accepted by the defendant as alleged in paragraph 2 of the Statement of Claim or at all.

6. In Transport No. 73 of the 15th day of March, 1937, passed in favour of Bookers Demerara Sugar Estates Limited, there appears at the end of the description of the property, the following words, namely:—

“and with the right of grazing cattle over the whole of Plantation Susannah to each of the proprietors of the east and west halves of said Plantation”

but the defendant says that —

(a) at the time of the passing of the said Transport, the said right had expired and/or had been surrendered and/or had been abandoned and/or had been lost or had otherwise ceased to exist and the said words were therefore surplusage and ineffective:

In the
Supreme
Court of
British
Guiana.

No. 4.
Deference and
Counter-
Claim.
15th July,
1948,
continued.

(b) the said words and/or the said Transport were not intended to and did not in fact or in law convey, transport or vest in the plaintiff or any other person any right of grazing cattle over the eastern half of the said Plantation or any part thereof;

(c) the said words and/or the said Transport did not and do not impose on the proprietor or proprietors of the eastern half of the said Plantation any legal or other obligation to allow the plaintiff or any other person to graze cattle thereon; and

(d) in the alternative, if any right of grazing cattle was conferred thereby on the plaintiff (which is specifically denied) such right is restricted to cattle used on the immovable property described in paragraph 1 of the Statement of Claim and to a reasonable number thereof and that such right was abandoned and lost in so far as that portion of the eastern half of the said Plantation, which is cultivated and which lies to the South of the public road. is concerned. 10

7. Plantation Susannah as a whole was acquired on the 3rd day of June, 1862, by one Paris Britton who on the same day transported the eastern half thereof "subject to the condition that each of the proprietors of the eastern and western halves of said Plantation shall have the right of grazing cattle over the whole Plantation" to one D. Burns from whom it has been passed through several other proprietors to Bookers Demerara Sugar Estates Limited who received transport therefor in the form aforementioned.

8. On the 16th day of September, 1876, the said Paris Britton passed transport to one Thomas Howard, his heirs and assigns, of the eastern half of the western half of Plantation Susannah "with right of free pasturage to Thomas Howard over the whole of the said Plantation and subject to a right of pasturage over the said eastern part of the western half of the said Plantation to the said Paris Britton his heirs, executors, administrators and assigns." 20

9. On the 8th day of July 1887, Letters of Decree in respect of the western half of the western half of the said Plantation "with right of free pasturage to Thomas Howard over the whole of the said Plantation and subject to right of pasturage over the eastern half of the western half of said Plantation to Paris Britton his heirs, executors, administrators and assigns" were granted pursuant to a judgment obtained against Amelia Britton the widow of the said Paris Britton, to Charles Edwin Hooton whose assignee in Insolvency transported it in the same form to the plaintiff. 30

10. The rights of pasturage conferred by the Transport on the said Thomas Howard were personal to him and could not in law and were not in fact transported, conveyed or vested after his death to or in the plaintiff or to or in any proprietors of the western half of the said Plantation, and the defendant will contend that all references to the rights of Thomas Howard in any transport were after his death, and are, surplusage and ineffective.

11. All that portion of the eastern half of the said Plantation which lies to the south of the public road has been under cultivation for twenty years and more and no person has exercised or attempted to exercise any rights of grazing cattle thereon 40

during its period of cultivation until the plaintiff and other persons acting in concert with him attempted to exercise such a right after the defendant had acquired the said land in June 1947.

In the
Supreme
Court of
British
Guiana.

12. The defendant admits that he impounded the number of cattle mentioned in paragraph 3 of the Statement of Claim but denies that he did so unlawfully. The said cattle were on each occasion wrongfully trespassing on the land referred to in paragraph 11 of the Defence and doing damage and were strays.

No. 4.
Defence and
Counter-
Claim.
15th July,
1948.
continued

13. The acts complained of were acts done by the defendant under and by virtue of and in pursuance of the powers conferred upon him by section 4 of the Pounds
10 Ordinance, Chapter 93.

14. Save for any admissions hereinabove expressly made the defendant denies each and every allegation and/or implication of fact in the Statement of Claim contained as if the same were herein specifically set forth and traversed seriatim.

15. The defendant pleads and will rely upon Sections 6 and 14 of the Limitation Ordinance, Chapter 184, and upon Section 4 (2) of the Civil Law of British Guiana Ordinance, Chapter 7.

16. In the aforesaid circumstances, the defendant will contend that the plaintiff's claims are debarred by laches and acquiescence.

17. The defendant pleads and will rely upon Section 3, Proviso (d) and Section 20
20 of the Civil Law of British Guiana Ordinance, Chapter 7.

18. The defendant pleads and will rely upon all relevant provisions of the Deeds Registry Ordinance, Chapter 177, in answer to the plaintiff's claims.

19. By reason of the circumstances aforesaid, the defendant was induced to purchase the aforesaid property and to alter his position in the belief that there were no rights of pasturage as alleged by the plaintiff herein, and the plaintiff is estopped from alleging any such rights.

COUNTER-CLAIM

20. The defendant repeats and relies on paragraphs 3, 4, 6, 7, 8, 9, 10, 11 and
15 of the Defence.

30 21. The plaintiff was not and is not entitled to any right of grazing or pasturage over the eastern half of the said Plantation, alternatively, over that portion of the said eastern half which lies to the south of the public road.

22. If the plaintiff ever enjoyed such right (which is denied) such right has been abandoned and lost over the whole of the said eastern half, alternatively over the said portion thereof.

23. The plaintiff, by his servants and agents on the occasions hereinafter mentioned, has wrongfully broken and entered the said portion of land lying to the south

In the
Supreme
Court of
British
Guiana.

of the public road and has wrongfully depastured the same with cattle, alternatively, has wrongfully allowed his cattle to stray and trespass thereon.

Particulars

No. 4.
Defence and
Counter-
Claim.
15th July,
1948.
continued.

1947 — Aug: 31 2 head of cattle
Sep: 21 2 head of cattle
Sep: 29 4 head of cattle

24. The cattle which the plaintiff has so depastured on the said eastern half belong to Plantation Bohemia and are not used on nor do they belong to the said western half.

25. The plaintiff at the times of the aforesaid trespasses wrongfully claimed that he had a right of grazing or pasturage over the eastern half of Plantation Susannah including the said land and threatened to repeat the acts hereinbefore complained of. 10

26. The defendant counterclaims for —

(1) A declaration that Transport No. 73 of the 15th day of March, 1937, and/or the plaintiff's transports did not and do not in law or otherwise confer on the plaintiff or other the proprietor or proprietors for the time being of the western half of Plantation Susannah or any part thereof any right of grazing cattle over the eastern half of Plantation Susannah or part thereof nor impose on the proprietor or proprietors of the said eastern half any legal or other obligation to allow the plaintiff or other the proprietor or proprietors as aforesaid to graze cattle thereon; in the alternative a like declaration in relation to the portion of the said eastern half lying to the south of the public road; and in the further alternative that any such right of grazing is restricted in the manner set out in paragraph 6 hereof; 20

(2) \$500 :— damages for the said trespasses;

(3) An injunction to restrain the plaintiff his servants and agents from continuing or repeating any of the acts complained of;

(4) Such further or other relief as to the Court may seem just; and

(5) Costs.

Dated the 15th day of July, 1948.

30

H. C. Humphrys.
Of Counsel.

S. L. van Batenburg Stafford.
Of Counsel.

L. M. F. Cabral.
Of Counsel.

H C. B. Humphrys
Solicitor.

REPLY AND DEFENCE TO COUNTER-CLAIM.**REPLY.**

In the
Supreme
Court of
British
Guiana.

No. 5.
Reply and
Defence to
Counter-
Claim.
27th
April, 1951.

1. Subject to the production of sufficient documentary proof at the trial, the plaintiff admits paragraphs 7, 8 and 9 of the defence.

2. The plaintiff denies each and every statement and allegation made and contained in paragraphs 6(a), (b), (c) and (d), 10, 11 and 19 of the Defence as fully as if the same were herein set forth at length and traversed seriatim et verbatim.

3. The plaintiff joins issue with the defendant upon his defence as regards paragraphs 2, 3, 5, 12, 13, 14, 15, 16, 17 and 18.

4. The plaintiff specifically denies that either at the time of the passing of the transports in his favour in relation to his land at Plantation Susannah, East Coast of the County of Berbice, or at the time of the passing of Transport No. 73 of the 15th day of March, 1937, in favour of Bookers Demerara Sugar Estates Limited, in relation to the eastern half of the aforesaid Plantation Susannah the right to graze cattle over the whole of Plantation Susannah that belonged to each of the proprietors of the east and west halves of the said Plantation had expired or had been surrendered or had been abandoned or had been lost or had otherwise ceased to exist or that the words in his transports applicable to the grazing right were therefore surplusage and ineffective, as alleged in paragraph 6 (a) of the Defence filed in this action.

5. The plaintiff will contend at the trial that, under the provisions of Section 21 of the Deeds Registry Ordinance, Chapter 177, the transports so passed to him for the lands in Plantation Susannah aforesaid vest in him full and absolute title to the immovable property and to the rights and interest therein described and that it is not competent for the defendant to allege that such right had expired or had been surrendered, or had been abandoned, or had been lost, or had otherwise ceased to exist, or that the words contained in his transport giving and effecting such right were surplusage and ineffective, as alleged in paragraph 6 of the Defence.

6. As regards paragraph 10 of the Defence, the plaintiff expressly denies the allegation therein contained that the rights of pasturage conferred by the transports were personal to Thomas Howard, the person mentioned and referred to therein, and could not be conveyed or vested after his death to or in the plaintiff, or to or in any proprietors of the western half of the said plantation. As to the said paragraph 10 of the Defence, the plaintiff states that he and his predecessors in title have, as of right, exercised and enjoyed the right of grazing cattle over the said Plantation for upwards of 30 years last past, without disturbance, and he will contend at the trial that he has thereby acquired a prescriptive title thereto in conformity with the requirements of the provisions of Section 4 of the Civil Law of British Guiana Ordinance, Chapter 7. The plaintiff states that the other proprietors of the said plantation and their predecessors in title have also as of right exercised and enjoyed similar rights of pasturage

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No. 5.
Reply and
Defence to
Counter-
Claim.
27th
April, 1951,
continued.

over the said Plantation for a long number of years and further that it was within the knowledge of the defendant before he purchased that the said Plantation was being used by the proprietors for depasturing cattle and other stock from time immemorial and up to the present time, and that such right of pasturage is still preserved in relation thereto.

7. As regards that portion of the eastern half of the said Plantation that lies to the south of the public road and particularly referred to in paragraph 11 of the Defence, the plaintiff states that if any proprietor or proprietors, in the past carried on any cultivation thereon at any time (which allegation is however denied) such cultivation was of a secret or precarious nature each proprietor cultivating his portion, and after reaping cattle belonging to any proprietor or proprietors were depastured over the whole area. The obligation rested at all material times upon such proprietor or proprietors to fence out cattle from such cultivation. The user for cultivation purposes of the lands in the said Plantation was not common to the proprietors and was not enjoyed by them generally, nor was it continuous and for any long duration, if at all. Plaintiff says that Bookers Demerara Sugar Estates Limited having obtained the permission of the Plaintiff and other proprietors of Plantation Susannah cultivated the east half of Plantation Susannah but immediately after the crop was harvested, the said area so put under cultivation was thrown open and cattle and other stock entered therein and grazed freely without any interruption or hindrance whatever by the said Company or by any other person or proprietor. The said Plantation never lost its character, reputation and usage as a cattle farm.

8. The plaintiff will further contend at the hearing that the provisions of Section 21 of the Deeds Registry Ordinance, Chapter, 177, will equally apply to the title held by Bookers Demerara Sugar Estates Limited, to the lands that they own in the said Plantation Susannah and that the defendant is legally bound thereby to afford the proprietors in general of the said Plantation a common and mutual right to graze cattle over the whole of the said Plantation Susannah including his own area, and that this obligation has for many years been mutually and in common discharged by all the other proprietors.

9. The plaintiff states that, on the occasions referred to in paragraph 3 of the Statement of Claim, his cattle were lawfully grazing over lands in Plantation Susannah aforesaid, in which he was entitled to a common and mutual right of pasturage under and by virtue of his tranports which are good, valid and indefeasible titles in full and in all respects to the lands in the said Plantation, when the defendant himself, his servants and agents wrongfully and illegally caught and impounded the cattle as more specifically stated and mentioned in the Statement of Claim.

10. The said Plantation Susannah consists of low, flat and marshy lands, which are rich in the growth of grass and herbs suitable as fodder for cattle and other stock and in view of this fact the whole Plantation is amply suitable for pasturage purposes. The seasonal cultivation of the eastern portion thereof by the said Bookers Demerara

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Sugar Estates Limited, did not interfere with the grazing of the proprietors' cattle as they resorted to other areas in the said Plantation to graze and as soon as the crop was reaped the area was again thrown open to the cattle to graze.

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Guiana.

11. The plaintiff further states that the said Bookers Demerara Sugar Estates Limited, never impounded any of the proprietors' cattle that were found grazing upon lands owned by the Company and that the aforesaid Company never enclosed nor fenced round any portion of the lands in the said Plantation without the consent and agreement of the other proprietors,

No. 5.
Reply and
Defence to
Counter-
Claim.
27th.
April, 1951.
continued.

10 12. The plaintiff will contend at the trial that the defendant is estopped from raising the issues contained and set out in paragraph 6 (a), (b), (c), and (d) and (f) of the Defence inasmuch as the defendant, is, in law, bound by the obligation contained in the Transport to and in favour of said Bookers Demerara Sugar Estates Limited, (the Company from which he purchased) in which the right of grazing cattle over the whole of the said Plantation is expressly given to the proprietors of the said Plantation.

DEFENCE TO COUNTER-CLAIM.

13. The plaintiff denies each and every statement and averment made and contained in paragraphs 21, 22, 23, 24 and 25 of the Counter-Claim embodied in the Defence as fully as if the same were herein set forth at length and traversed seriatim and repeats and relies on his Statement of Claim and upon paragraphs 1, 2, 3, 4, 5, 6, 20 7, 8, 9, 10, 11 and 12 of the Reply herein contained.

14. The plaintiff says that his cattle did not stray or trespass on any land of the defendant in the said Plantation as alleged.

15. The plaintiff will contend at the trial that the defendant's counter-claim discloses no cause of action and that the defendant is not entitled to any of the Orders asked for or to any damages.

Eustace Woolford
Of Counsel.

B. Oswald Adams
Of Counsel.

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W. D. Dinally,
Solicitor.

Dated the 27th day of April, 1951.

AMENDED STATEMENT OF CLAIMNo. 6.
Amended
Statement
of Claim.
11th May,
1951.

1. On the 22nd day of March, 1878, the plaintiff became the owner by Transport of :—*FIRSTLY*, “The western half of the western half of all that Plantation or lot of land called Susannah, being lot number 15 (fifteen) situate on the east sea coast of the County of Berbice, containing 500 (five hundred) acres of land more or less, no buildings thereon, with right of free pasturage to Thomas Howard over the whole of the said Plantation, and subject to right of pasturage over the eastern half of the western half of the said Plantation to Paris Britton, his heirs, executors, administrators and assigns”; and *SECONDLY*, “The owner by Transport No. 122 of 1924 dated the 21st day of June, 1924, of a piece of land part of the east half of the west half of lot number 15 (fifteen) also called Susannah as shown on a plan by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar of British Guiana at New Amsterdam, Berbice, on the 3rd March, 1880, the said piece of land being three roods wide by the whole depth of the said estate and bounded on the east by the property of Seecharan, on the west by the property of A. Rose, on the north by the Atlantic Ocean and on the south by the Grand Canal Dam, no building thereon”; and has since doing so depastured his cattle on the said premises and generally on the whole of Plantation Susannah as he is entitled to do. 10

2. The defendant is and was at all material times the beneficial owner and occupier and in possession as such owner and occupier of the eastern half of Plantation Susannah *otherwise known as lot number 15 (fifteen) situate in the East Coast Berbice Country District in the County of Berbice as shown on a diagram by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar at New Amsterdam, Berbice, on 3rd March, 1880, with a building thereon*, having on the 25th day of June, 1947, bought the said premises from the former proprietors of the said premises who were under the obligation *imposed* by their Transport No. 73 of 1937 and dated the 15th day of March, 1937, *compelled to* afford the right to graze their cattle over the whole of Plantation Susannah to each of the proprietors of the east and west halves of the said Plantation of which the plaintiff is one and which said obligation was *accepted by the defendant as such* beneficial owner and occupier. 20 30

3. Between the 31st day of August, and the 1st day of November, 1947, the defendant by himself or by his agents and servants wrongfully and unlawfully seized and/or took possession of 8 head of cattle the property of the plaintiff which were at the time grazing on the western half of the western half of Plantation Susannah aforesaid or on some other portion of the said Plantation Susannah as they had a right to do and thereafter caused them to be impounded at the Albion Pound situate on the Courantyne Coast in the County of Berbice in this Colony. The defendant has also since action brought wrongfully and unlawfully impounded certain other cattle belonging to the plaintiff grazing on the said premises or some other portion of Plantation Susannah. The particulars are as follows :— 40

On the 31st August, 1947 — 2 heads
 On the 21st September, 1947 — 2 heads
 On the 29th September, 1947 — 4 heads.

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 Guiana.

No. 6.
 Amended
 Statement
 of Claim.
 11th May,
 1951,
 continued

4. The plaintiff as the result of the said action and conduct of the defendant as stated in the preceding paragraph was compelled to release the said cattle by paying the necessary pound fees for doing so as required by law and was otherwise put to the expenses of having same conveyed back to his premises and to the loss of the use and benefit derived by him from his ownership of the said cattle.

5. The plaintiff claims :—

10 (a) An injunction restraining *the defendant* from impounding any cattle or other animal the property of the plaintiff while grazing on any part or portion of land at Plantation Susannah, situate on the Corentyne Coast, in the County of Berbice, and Colony of British Guiana.

(b) *A declaration that the plaintiff has acquired a prescriptive right to depasture his cattle on the eastern part or any part or portion of land on Plantation aforesaid.*

(c) Payment by the defendant of the sum of \$1,500.00 as damages for his said wrongful and illegal acts.

(d) Costs.

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W. D. Dinally,
 Solicitor for plaintiff.

Georgetown, Demerara.

11th day of May, 1951.

Eustace G. Woolford.
 Of Counsel.

B. O. Adams.
 Of Counsel.



AMENDED STATEMENT OF CLAIM.

No. 7
Amended
Statement
of Claim.
18th May,
1951.

1. On the 22nd day of March, 1878, the plaintiff became the owner by Transport of :— *FIRSTLY*, “The western half of the western half of all that Plantation or lot of land called Susannah, being lot number 15 (fifteen), situate on the east sea coast of the County of Berbice, containing 500 (five hundred) acres of land, more or less, no buildings thereon, with right of free pasturage to Thomas Howard over the whole of the said Plantation, and subject to right of pasturage over the eastern half of the western half of the said Plantation to Paris Britton, his heirs, executors, administrators and assigns”; and *SECONDLY*, “The owner by Transport No. 122 of 1924 dated the 21st day of June, 1924, of a piece of land part of the east half of the west half of lot number 15 (fifteen) also called Susannah as shown on a plan by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar of British Guiana at New Amsterdam, Berbice, on the 3rd March, 1880, the said piece of land being three roods wide by the whole depth of the said estate and bounded on the east by the property of Seecharan, on the west by the property of A. Rose, on the north by the Atlantic Ocean and on the south by the Grand Canal Dam, no building thereon;” and has since doing so depastured his cattle on the said premises and generally on the whole of Plantation Susannah as he is entitled to do *without let hindrance or interruption by or on the part of any person in doing so.* 10 20

2. The defendant is and was at all material times the beneficial owner and occupier and in possession as such owner and occupier of the eastern half of Plantation Susannah *otherwise known as lot number 15 (fifteen) situate in the East Coast Berbice Country District in the County of Berbice as shown on a diagram by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the Office of the Registrar at New Amsterdam, Berbice, on 3rd March, 1880, with a building thereon, having on the 25th day of June, 1947, bought the said premises from the former proprietors of the said premises who were under the obligation imposed by their Transport No. 73 of 1937 and dated the 15th day of March, 1937, compelled to afford the right to graze their cattle over the whole of Plantation Susannah to each of the proprietors of the east and west halves of the said Plantation of which the plaintiff is one and which said obligation was accepted by the defendant as such beneficial owner and occupier and of which he had express notice at the time of his purchase of the said property.* 30

3. Between the 31st day of August and the 1st day of November, 1947, the defendant by himself or by his agents and servants wrongfully and unlawfully seized and/or took possession of 8 head of cattle the property of the plaintiff which were at the time grazing on the western half of the western half of Plantation Susannah aforesaid or on some other portion of the said Plantation Susannah as they had a right to do and thereafter caused them to be impounded at the Albion Pound situate on the Courantyne Coast in the County of Berbice in this Colony. The defendant has also 40

since action brought wrongfully and unlawfully impounded certain other cattle belonging to the plaintiff grazing on the said premises or some other portion of Plantation Susannah. The particulars are as follows :—

In the
Supreme
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Guiana

On the 31st August, 1947 — 2 heads
On the 21st September, 1947 — 2 heads
On the 29th September, 1947 — 4 heads.

No. 7
Amended
Statement
of Claim
18th May,
1951.
continued.

At Reliance Pound Station.

	On the 13th January,	1948 — 1 he-ass	...	...	...	.32c.
	On the 18th January,	1948 — 2 he-asses	..	...	...	.64
10	On the 10th April,	1948 — 3 cows	...	...	...	1.44
	On the 19th July,	1948 — 1 steer and...	...	...	...
		1 cow	...	...	...	.96
	On the 13th September,	1948 — 1 he-ass and...	...	...	...
		5 she-asses	...	...	...	1.92
	On the 18th September,	1948 — 2 cows	...	...	...	.96
	On the 5th October,	1948 — 3 cows	...	...	...	1.44
	On the 7th November,	1948 — 2 cows	...	...	...	.96
	On the 16th November,	1948 — 1 cow	...	...	...	.48
20	On the 4th January,	1949 — 1 cow	...	...	...
		1 heifer	...	...	...	.96
						<hr/> \$10.18 <hr/>

AT ALBION POUND STATION

	On the 29th September,	1947—1 cow, one brown steer	...	...	...
		1 brown heifer	...	...	...	1.44
	On the 28th October,	1947—1 cow, 2 steer	...	...	...
		2 heifers	...	...	...	2.40
	On the 26th December,	1947—2 she-asses	...	...	...	.64
	On the 4th June,	1949—55 head sheep	...	...	...	13.20
	On the 14th May,	1950—26 head cattle...	...	...	...	12.48
30						<hr/> \$30.16 <hr/>

4. The plaintiff as the result of the said action and conduct of the defendant as stated in the preceding paragraph was compelled to release the said cattle by paying the necessary pound fees for doing so as required by law and was otherwise put to the expense of having same conveyed back to his premises and to the loss of the use and benefit derived by him from his ownership of the said cattle.

5. The plaintiff claims :—

(a) An injunction restraining *the defendant* from *impounding any cattle or other animal the property of the plaintiff* while grazing on the eastern half or any part

In the
Supreme
Court of
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Guiana

No. 7
Amended
Statement
of Claim
18th May,
1951,
continued.

or portion of land at Plantation Susannah, situate on the Corentyne Coast, in the County of Berbice and Colony of British Guiana.

(b) *A declaration that the plaintiff has acquired a prescriptive right to depasture his cattle on the eastern half or any part or portion of land on Plantation Susannah aforesaid.*

(c) Payment by the defendant of the sum of \$1,500 : — as damages for his said wrongful and illegal acts.

(d) Costs.

Eustace G. Woolford

Of Counsel.

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W. D. Dinally,
Solicitor.

B. O. Adams
Of Counsel.

Georgetown, Demerara.
18th May, 1951.

No. 8

AMENDMENTS TO DEFENCE.

No. 8.
Amend-
ments to
Defence.
4th June,
1951.

Paragraph 5. Add at the end of the paragraph the following words— “The defendant denies that at the time of the defendant’s purchase the defendant had any notice or knowledge of any right or alleged right of grazing cattle over the East half of Sussannah being vested in the plaintiff or any third party.”

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Paragraph 10. In line three, insert “be” between the words “law” and “and”. In line eight, delete the comma and the words “and are”.

Paragraph 12. *The defendant will contend that it is not competent for the plaintiff to claim against the defendant in this action upon any acts of the defendant done or committed after the date of the filing of the writ herein. Subject to the above contention, the defendant admits that he impounded the number of cattle mentioned in paragraph 3 of the Statement of Claim but denies that he did so unlawfully. The said cattle were on each occasion wrongfully trespassing on the land referred to in paragraph 11 of the Defence and doing damage and were strays.*

Paragraph 15. In the second line read “Section 4” instead of “Section 4 (2)”.

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Paragraph 17. In line two, for “Proviso (d)” read “D”, provisos (b) and (d)”.

H. C. Humphrys

S. L. van Batenburg Stafford
Of Counsel.

4th June, 1951.

PLAINTIFF'S EVIDENCE.

Plaintiff's
Evidence. *Evidence of the 1st Witness — Percy C. Moe.*

No. 10. *Percy C. Moe sworn states :*

Evidence of
1st Witness—
Percy C.
Moe.
8th May,
1951.
Examination

Was keeper of the pound. Went there on 6/4/46. I keep records of animals and particulars. I know defendant Hanoman seized animals. I only recorded when the animals came in—sent by Hanoman and brought by Durant from cultivation Susannah —brought also one jack donkey.

Refers to entries in pound book —

19/ 4/48 — 19/ 7/48 — 13/ 9/48 --

18/ 9/48 — 5/10/48 — 7/11/48

16/10/48 — 14/ 1/49 — 30/10/49.

10

All these animals were released by Patrick Rose or David Rose, not Rose, plaintiff. Except that on 19/7/48, King released the animals.

Pound Keeper's Book for 1948—1949 and 1950— admitted and marked A1 to A2, respectively.

By Humphrys:

Cross-
examination,

When a person brings an animal to the pound, he brings an authorization from the person who had a right to impound it —sometimes we keep it. But we note the authorization. I produce none.

20

No. 11

No. 11.
Evidence of
2nd Witness
—Clifton
Lewis.
8th May,
1951.
Examination

Evidence of 2nd Witness — Clifton Lewis.

Clifton Lewis sworn states : —

Sergeant of Police now at Albion. We have a pound and register there. I brought records for Action from 29/4/47.

On 29/9/47—3 head of cattle were impounded brought by S. Edwards sent by Hanoman branded AR on right front. AR is brand of the plaintiff. Trespassing on Susannah rice field. On 28/10/47 — 1cow, 2 steers and 2 heifers branded on right hip AR brought to the pound by Seecharan sent by Hanoman for trespassing on Susannah rice fields. Signed for and taken out by Rose.

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On 26/12/47 — 2 she asses were brought to Albion Pound — brought by Seecharan — branded AR on the right shoulder — for trespassing on Susannah farm sent by Hanoman—returned to L. Rose.

On 4/6/47, 65 head of sheep brought to Albion by Seecharan having been sent by Hanoman and released on signing by L. Rose — trespassing on Susannah farm.

In the Supreme Court of British Guiana.

On 14/5/50 — 26 head of cattle, cows, bulls and steers sent to Albion by George Hanoman, brought there by George Hanoman himself, signed for and taken out by Rose — seized on Susannah estate. Pound books tendered, admitted B1 and B2 and B3.

Plaintiff's Evidence.

No. 11. Evidence of 2nd Witness — Clifton Lewis. 8th May, 1951. Examination continued. Cross-examination

By Stafford :

I did not check for impounding by other owners of Susannah.

Not re-examined

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No. 12.

Further Evidence of Percy C. Moe.

Percy C. Moe recalled :—

All the animals except one were branded AR.

To Mr. Stafford :

I can check and see how many animals were sent out by Rose.

There were other animals besides Rose's impounded by Hanoman.

No. 12 Further Evidence of 1st Witness — Percy C. Moe. 8th May, 1951. Examination.

Cross-examination.

No. 13

EVIDENCE OF 3rd WITNESS — JOHN CAMPBELL FAULKNER.

20 Wednesday, 9th May, 1951, at 9.30 a.m.

John Campbell Faulkner sworn states:—

Manager of Plantation Park, Mahaicony. Immediately before that I was at Wales, W.B., Dem. and before that at Rose Hall, Canje. I was Deputy Manager there from January 1931 to June 1944 and I was Deputy Manager before of Plantation Adelphi, part of Rose Hall from 1917 1930.—owned by Booker Bros. McConnell & Co. I know Plantation Susannah—Bookers bought the eastern half of Susannah in 1936 I think. Bookers rented out the southern part from Public Road to the Grand Canal. That southern part was given over for rice — the tenants there cultivated rice. The water necessary was obtained from Plantation Rose Hall. Rice has two crops a year.

No. 13. Evidence of 3rd Witness — John Campbell Faulkner, 9th May, 1951. Examination.

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 13.
Evidence
of 3rd
Witness —
John
Campbell
Faulkner,
9th May,
1951.
Examina-
tion
continued.

Cross-
examination.

Rice is a 6 months crop. They reap as a rule in October and November. For 6 months the lands are rice lands — the land is thrown open for grazing of any kind of animal. In Susannah the animals grazing there would be open to the animals of the proprietors. I mean the proprietors of the whole of Susannah, not only Bookers' animals. Plaintiff Rose was one of these proprietors. Sahadeo was another proprietor — also Mr. de Silva. I know the man called into Court, but I don't know he was Bhoopsingh. Bookers never stopped these animals by impounding or otherwise.

I knew the western half of Susannah; there was no fence between the 2 parts and cattle roamed about the place. I don't know that Goberdarsingh was one of the proprietors. Bookers would not allow cattle to roam about on their lands unless they had a right or paid agistment fees. Bookers collected no agistment fees. I know Mr. McTurk. He was an overseer at Rose Hall. McTurk's duty as an overseer was since 1940 to be in charge of No. 19 Gang and being in charge of No. 19 Gang, he would be in charge of Susannah. When I left Rose Hall, McTurk was in charge of No. 19 carrying with it the duties of overlooking Susannah.

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By Stafford K.C. :

When I was at Rose Hall, on several occasions I went over Susannah — commencing about one month after Bookers bought — but I never rode over the northern part.

I can't remember selling a house on the northern part of Susannah — selling to Jugmohan. Bookers bought from Sam — There was another house occupied by de Silva — but I can't say whether it was on the eastern half or the western half of the northern portion.

20

There were the remains of a trench dividing the eastern half from the western half running to the best of my recollection from the Public Road south to the Grand Canal. I was not positive of a trench dividing the eastern half from the western half or the northern portion running from the Public Road to the Sea. If there was such a division, it would be a middle walk between the two plantations — a middle walk was formerly a large punt trench.

In Susannah as far as I know, there was only one crop of rice planted — until in 1940 — there were 2 as a result of the "Grow more Food Campaign." The tenants were labourers on Rose Hall — the rentals were for a year — rented for each crop. I can't remember plaintiff ever coming to me to rent lands to him — he paid for water for part of the western portion — he was planting rice there.

30

When I said lands are thrown open to grazing of animals of proprietors, I do not mean the tenants. During the open time for grazing, the animals graze on the stubble of the rice.

No grass was planted for grazing. The rice lands were not fenced, but to the best of my recollection when Bookers bought Susannah, there was no fence on the eastern side separating Susannah from Bohemia — from the public road to the Grand Canal.

40

There was no fence between the eastern half and western half (southern portion) — on each side they cultivated rice. I can't remember Blackeye Peas cultivation in Susannah; Blackeye Peas mature in 3 months; you would cultivate that 3 times a year.

It was not the policy of Bookers to impound cattle before the owner is given a chance to take the cattle out. I don't know if de Silva who came into Court for identification was the son of the predecessor in title of Bookers. Iris de Silva is the only de Silva I know there.

10 If cattle are allowed to graze, it might manure the land — but we never cultivated canes on any part of Susannah.

To the Court :

Bookers had mules grazing on Susannah — not restricted to their eastern half as far as I know. No complaint or impounding by other proprietors.

To Sir Eustace Woolford :

There was no cane nor coconuts cultivated by Bookers on Susannah.

To Mr. Stafford :

Bookers' mules grazed there between crops.

I can't remember a fence dividing the western half into two halves.

In the
Supreme
Court of
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Guiana.

Plaintiff's
Evidence.

No. 13.
Evidence
of 3rd
Witness —
John
Campbell
Faulkner,
9th May,
1951.
Cross-
examination,
continued.

Re-exami-
nation.

No. 14

20 **EVIDENCE OF 4th WITNESS — JOHN McTURK.**

John McTurk sworn states :—

Employed now at Lusignan, E.C., Demerara — owned by Bookers Enmore Estates — Been with Bookers since 1931.

30 Before Lusignan I was at Pln. Rose Hall. I was under Mr. Faulkner who was Deputy Manager. I was at Rose Hall from 1931 1948. I was head overseer. I know Plantation Susannah. I know plaintiff Rose. I know the Public Road divides Susannah. Bookers owned the eastern half of Susannah. I know the area quite well. While I was at Bookers, a number of people owned the western half of Susannah including Rose (plaintiff). Bookers sublet to tenants to plant rice—on the western half, there was also rice cultivation; they got their water for — planting rice from Rose Hall. There was one crop of rice yearly. When the land was not occupied for rice cultivation, people's cattle grazed all over it. By people, I mean everybody. I know plaintiff's cattle used to be there as well. I understand there was a right of grazing

No. 14
Evidence
of 4th
Witness —
John
McTurk.
9th May,
1951.
Examina-
tion

In the
Supreme
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Guiana.

—there was no payment for grázing; I was t h e r e in Mr. Baxter's time who succeeded Mr. Rose. Shortly after Baxter came, Faulkner was transferred to Wales. Occasionally there was a dry year.

Plaintiff's
Evidence.

One year we put up a fence — when we had 2 crops — in 1940-1941 — during the "Grow more Food Campaign" — we fenced the portion between the eastern half and western half — only for that particular crop — at that time there was no cultivation on the western part. Cattle grazed on the northern part -- north of the public road. We never prevented cattle grazing there.

No. 14
Evidence
of 4th
Witness —
John
McTurk,
9th May,
1951.
Examina-
tion
continued.

I remember going to Mr. Rose in connection with supplying water during a very dry season. He said if he did not get water, he would not allow us to plant rice at Susannah. I understood him to mean that he would remove the fence separating his lands at Bohemia from our lands — which would mean that the cattle would stray into our lands. 10

Bookers sold Susannah after that in 1947. I remained at Bloomfield afterwards.

Cross-
examination

By Humphrys K.C. :

Going east along the East Coast Road, you find Bloomfield, No. 9, Lewis Manor, then Susannah, then Bohemia.

Cows did not go into the rice fields of tenants when tenants had rice there — cows could not get in; there was a fence from the Grand Canal to the road at Bohemia. The fence at Bohemia was there all the time when I was there. 20

There was a punt trench between the eastern half and western half — 15 or 18 ft. wide — from the Grand Canal to the Public Road. There might have been an old trench from the Public Road to the sea. I never impounded any cattle. I was never told to.

The trench between eastern and western half was an old trench when Bookers bought Susannah, and it was dry in my time. Cows could come in from the road into the rice fields; we would put up small fences temporarily for the crop to prevent cattle coming from the road. On one or two occasions we did repair the Bohemia fence. Ross was the Manager of Rose Hall. He retired—in about 1942—de Silva had a house on the northern side of the eastern portion—also Mahadeo, but I am not sure whether he was on the eastern part. I think so — but on the southern side of the road. There were a few houses on the northern side of the road. Jagdeo was on the north. 30

I used to ride along Susannah but not on the western half. Rose had notices on most of his portions but I can't say if he had one there.

I know nothing at all about Bookers' Transport.

Re-exami-
nation.

If there had been a wire fence between the two portions of the western half, I would have seen.

Cattle go across the trench.

No. 15

EVIDENCE OF 5th WITNESS—GEORGE KLOSS.In the
Supreme
Court of
British
Guiana.*George Kloss sworn states :—*Plaintiff's
Evidence.No. 15.
Evidence
of 5th
Witness —
George
Kloss,
9th May,
1951.
Examina-
tion.

Live at Sheet Anchor, Berbice. I know plaintiff. I know Plantation Susannah. I used to live at Plantation Susannah. I lived there for about 7 years — 52 years ago. I am 66 years old. I lived there with my parents. I lived at Bohemia now owned by the plaintiff. Then a man named Andrew owned it. I lived 7 years at Bohemia. I was 18 years old. I used to burn clay for the P.W.D. with my parents. I have never burnt earth as contractor. I am on good terms with Hanoman. I know Mr. Douglas living at Bohemia. Bohemia was a cattle rearing estate. The people at Susannah raised cattle too. Rose and many people who had cattle had them grazing there. I used to see cattle on both sides of the Public Road. I do not know to whom the cattle belonged. None of my people owned cattle. There was no wire preventing cattle from roaming about there. I know No. 19.

*By Humphrys K.C. :*Cross-
examination

I have never yet given evidence in cases between Hanoman and Rose. I did not give evidence for Rose in case he had against Hanoman in 1924.

I did not give evidence in the Magistrate's Court in 1948 in case of Rose against Hanoman, but I did give evidence for Balgobin in a case of fighting between Balgobin and Hanoman. I remember when A. B. Rohlehr was the owner of No. 7. He used to impound cattle trespassing on No. 7 — employed by Rohlehr.

I came here to say that while I lived I saw cattle grazing all about.

I know the wire on Rose's land on Susannah. It goes right to the sea dam. He used to have trespass boards forbidding trespassing up to 2 or 3 years ago. I saw on the notice board all cattle would be impounded, sheep will be impounded, etc., (the usual thing).

*To Court :*Re-exam-
ined.

Mr. Rose had up notice boards and the land wires. The wire was at Rose's place at Susannah.

EVIDENCE OF 6th WITNESS — GOBERDARSINGH.— —
Plaintiff's
Evidence

Thursday, 10th May, 1951, at 9.35 a.m.

*Goberdarsingh sworn states :—*No. 16.
Evidence
of 6th
Witness —
Goberdar-
singh.
10th May,
1951.
Examina-
tion.

Live at Susannah, Berbice, on the western half. Living there for over 33 years but went away and came back 4 years ago. I had interest there; know the place for 33 years. I owned 10 lots but now I sold part to Bhoopsingh and part to Robert Secharan. I have donkeys and sheep — not cows now — but I used to have cows. I had 10 head of cattle before. I kept them at Susannah — they used to graze on both Susannah's, leeward and windward — that is on the eastern half and western half all the time. The first man I knew owning the eastern half was Mr. de Silva (Simeon de Silva called into Court and identified). I paid nothing to him for grazing cows. I did not ask him to allow my cattle to graze there. Other people grazed their cattle on the eastern half; Bhoopsingh's cattle from the eastern side; also Mr. Rose's cattle. Nobody stopped the cattle from grazing there. I know George Hanoman (the defendant). I remember when Bookers owned the lands there. Cattle used to go there in the same way in Bookers' time. The cattle would be grazing there all the time.

10

Rice used to be planted on the southern side. I used to plant rice. De Silva and also Bookers used to plant rice there—I mean Bookers' people. Cows did not go to graze there at rice crop time. I know cattle going to graze there for about 33 years. Before owning lands at Susannah I lived at Kendal. I used to see the cattle grazing at Susannah. When at Kendal I was about 28 - 30 years old. When living at Kendal I worked in the back dam for Rose Hall, Canje, for about 10 years. Bohemia lies between Kendal and Susannah — 150 rods from Susannah. I know Robert and Simon Secharan. I know Mootoo. My son once went on George Hanoman's land to take back our donkey, and Hanoman went before the Magistrate who dismissed the case. I planted rice for 6-7 years. Cattle, pigs, donkeys, all animals grazed on the northern side — nobody grew rice on the northern side. There was no wire fence between western half and eastern half of Susannah. Hanoman is the first person who put up wire there. Hanoman put up wire from the road to the Grand Canal and from road to the north. On the northern side he put wire in such a way — that is wavy or V shape so that any cattle grazing there, they got it. He caught many cattle like that — mine too — I had to pay him to release my cattle. Hanoman has many cattle himself. He charged 1/- per head; at the pound we pay 2/-.

20

30

Cross-
examination.*By Stafford K.C. :*

I first went to live at Susannah for over 33 years. Nobody told me to say this. I bought land from Mr. Luckhoo before I went there. I got transport after some years. I had 3 transports — one from Mr. Luckhoo — one from Miss Madoo, the third from Jonas Ram — That last one I passed to Robert Secharan. I have one transport at Kitty at my boy's house. The other I bailed someone and I have the transport at New

40

Amsterdam Court. I can bring the one that is at Kitty. I sold to Seecharan only 4 shares — keeping one share of it. Bhoopsingh is my brother. I sold him only one share, one half of ten shares. Seecharan I gave 4/5 of 1/2 of 10 shares. These portions I sold were on the southern side of Susannah. The transport to me gave me right of grazing on the east half of west half. Transports 66 of 1945 dated 1st March, 1946, from — Goberdarsingh to Robert Seecharan 485 of 1947 dated 1st March, 1946, from Goberdarsingh to Robert Seecharan 379 of 1939 dated 1st March, 1946, from Goberdarsingh to Bhoopsingh,

tendered and marked "C1," "C2" and "C3", respectively. I can't read English but
10 I find I am called a catechist.

Rose read Bookers' transport to me at his house about 3 years ago.

I did sue Robert Seecharan for allowing cattle to trespass on my land. His cow came into a part of my private yard — not on Susannah. It was for damage done by more than one pig. I sued him for \$7.50. I got judgment for \$6.46 including my damages and cost. The judgment was paid. This was on the northern side of the road. It was not a provision farm — but just behind the kitchen in my house lot — a garden. The order was filed in 1948. Proceedings of action admitted as "D1" and receipt for payment "D2." The facade is 10 rods — but not the garden.

I know E. G. de Silva — Simeon transacted business although E. G. de Silva
20 was owner of the eastern half of western half.

When I went there I met Mr. Rose as the owner of the west half of the west half. Next to Rose on the eastern half of western half, I don't know who owned that; but Rose has it now. I did not see a fence dividing Rose's western half from the eastern half. There is no fence today, there — not even parts of an old fence; I never saw any fence running there from the road to the Canal — I never saw any wire. I don't know that Rose kept impounding cattle until Hanoman bought. I don't know that Rose shot pigs on Susannah. I saw rice cultivated on that western half of the western half — not regularly every year rice was planted there. I have never seen a notice board on Rose's western half — on the southern side. I would be surprised to hear there
30 is one.

Rose did impound sheep of mine for trespassing not on Susannah but Bohemia. I did not make a report at Albion Police Station but the sheep was impounded from Bohemia.

My sheep went across to Bohemia.

Rose keeps cows and sheep on Hermitage and at Bohemia. The whole of the south side of Bohemia is cultivated — all Susannah is cultivated in rice — on the northern side are houses with gardens of greens and vegetables — no rice besides the garden except Ramsingh used to plant rice on the northern side — I can't remember how long ago, but he was at Kendal not Susannah.

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 16
Evidence
of 6th
Witness —
Goberdar-
singh.
10th May,
1951.
Cross-
examination
continued

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 16.
Evidence
of 6th
Witness —
Goberdar-
singh.
10th May,
1951.
Cross-
examination
continued.

I stopped keeping cattle myself when George Hanoman came. Seecharan never looked after my cattle — never got him to watch to see that they did not go into Rose's land to see that they were not impounded. My boy Sonny, used to have to watch that the cattle did not go to Rose's land Bohemia. There was a wire fence separating Bohemia from the eastern half of Susannah — from the Grand Canal to the road, from the road to the water side. Sometimes cattle got on to the road but rarely.

There is a big punt trench between the east and west half of Susannah.

Hanoman would impound the cattle going on his half of Susannah on the north and south. I used to pay 1/- to him for his impounding the animal before he takes them to the pound. Sometimes he impounds de Silva's — de Silva would pay 1/-. I 10
hear that Bhoopsingh paid 1/- for his animals.

Re-exami-
nation.

I had a garden near the kitchen of provisions for myself — Bora for my own use and a few Peppers.

No. 17

EVIDENCE OF 7th WITNESS — CECIL BAKER.

No. 17.
Evidence
of 7th
Witness—
Cecil Baker.
10th May,
1951.
Exami-
nation.

Cecil Baker sworn states :

Driver at Plantation Rose Hall for about 12 years, labourer superintendent. I know Mr. McTurk, he was at Rose Hall in my time. I was there during the whole of Mr. McTurk's time. I know Susannah — the part that Bookers owned. Bookers had persons there planting rice. The east half of the west half of Susannah — more or less was all cultivated on the portion south of the road — the other side of the road — the northern side — was not cultivated. When the rice was cut, cows and pigs generally grazed there. I saw Mr. Rose's cattle grazing there sometimes together with other cows. Sometimes I walked there 3 times per week. I went on instructions of Mr. McTurk, to have a wire fence repaired between the east half of Susannah and Bohemia. I was prevented. Alfred Baker, my brother employed by Rose prevented me and I spoke to Mr. McTurk. I have seen also Rose's cattle grazing on parts that did not belong to Bookers. I am 47 years. I have never known Rose Hall estate impounding anybody's cattle for grazing on the east half of Susannah or anywhere in Susannah. 20

Cross-
examination

By Humphrys, K.C. :

—I would see cattle grazing there generally about October or May, after the rice was reaped. They would start rice cultivation. Next year. They would set seeds in May, they then plough and plant in July. Cattle would have to be kept out after planting seed. 30

Apart from Rose's cows, I would see cows which I did not know.

I know Rose from the time I was a child. Rose generally shoots pigs — sometimes on his own property. I never saw him personally shooting a pig, but I have heard that he often shoots pigs. The wire between Bohemia and Susannah used to be kept up by the estate. When I told Mr. McTurk about my being prevented to repair wire, he told me that he would see Rose — then after McTurk told me not to worry that Bookers' part of Susannah had already been sold. My brother is still with Mr. Rose; has been employed by Rose for 15-16 years. I know Plantation Warren — 3 sections from Susannah going east, beyond Kendal, the neighbouring village to Kendal.

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 17.
Evidence
of 7th
Witness—
Cecil Baker.
10th May,
1951.
Cross-
examination
continued.

10 Other people besides Rose occupy the west half of Susannah — these people plant rice on the southern portion. I have been on the northern portion of Susannah right to the sea—I can't remember seeing the parts of an old fence that separated the east and west halves of Susannah on the sea portion. I have not been there for a couple of years. I have seen Rose's notice boards on Susannah—forbidding trespass. The notice boards of Mr. Rose read like that on this photo. Photo admitted and marked "E" by (consent). This was on the south of the Public Road—on the western half of the western part. I can't say about the western portion of that half. I know the punt trench that goes south from the Public Road right up to the Grand Canal between the eastern half and western half. I have never been to see the continuity of the Canal on the other side of the road north to the sea.

20 Mr. Rose has a fence with gates. If the gates are open (Witness here at request of Sir Eustace draws a rough sketch of roads). (At request of Mr. Humphrys, K.C., witness puts in red the fence with dotted lines showing a fence that was there for about 15 years ago, but it is not there now, between Rose's lands and the small proprietors—the western half is divided into 2 parts by that fence). Rough sketch drawn by witness Cecil Baker, admitted and marked "F."

Continuing to Sir Eustace Woolford :

I don't know why the fence (dotted by me) was put up — or the reason for its erection. Fifteen years ago that fence could not prevent anything from going through — you would see a post with wire for some yards and no wire after some yards.

30 *By Humphrys, K.C.*

The fence where I have placed the dotted line was there up to about 15 years ago. It was put up when I was at Bookers. But fence was removed.



EVIDENCE OF 8th WITNESS — RAMADUN.

Plaintiff's
Evidence.

Friday, 11th May, 1951, at 9.30 a.m.

Ramadun sworn states :—

No. 18.
Evidence
of 8th
Witness—
Ramadun,
11th May,
1951.

Exami-
nation.

Employed by Bookers Estates at Canje, Rose Hall; shovelman — working there for 17 years. First manager when I went there was Mr. Ross. I know Plantation Susannah; there was a new cultivation already there when I went there. In know the part belonging to Bookers — the eastern half, the other half belonged to Bhoopsingh, de Silva, Goberdarsingh, Assabad, Robert Seecharan and Mr. Rose (the plaintiff). These also planted rice. After the rice crop, everybody's cows used to graze there — only the proprietors' cows — cows would graze over the whole estate. Nobody from Rose Hall ever prevented the cattle from grazing there. I had a pair of steer and heifer. I planted rice on Bookers' part. I grazed my steer all over Susannah, did not pay anything for that.

10

I know Hanoman is there on Bookers' eastern half now. I used to pay Bookers for my rice bed — \$2.40 per bed. I planted only for one year with Hanoman. I paid him \$4.00 per bed. I have been across the road to the seaside — that is savannah land. I never planted rice on that seaside—that is salt lands. My cattle had brands

Cross-
examination

By Humphrys, K.C.

I know where Rose's lands are at Susannah. Seecharan's house is about 6 rods from Rose's wire fence — wire fence from the road to the waterside. They have a paddock there where they keep his animals that he wishes to dispose of. I know where Bill Seecharan lives on the south. I can't say that his house is 3 rods from where Rose's wire fence used to be. I never saw any wire fence there. I once caught cattle for Rose. I impounded 112 cattle belonging to Hanoman — only one day. Did not impound any on the following day. That was about 3-4 years ago. That was after Hanoman had bought the east half of Susannah — just after he bought: Hanoman had impounded my cows. I had no land there; but my wife's mother has land in children's name. I rented lands at Susannah to grow rice — from one of the small proprietors, David Rose — only from Hanoman, David Rose and de Silva. I had only 2 steers and one heifer. I have 2 kitchen gardens on the south side — the same children's property. I can't say in whose name transport of that land is — my wife is one of the children of Assabad. I don't know if my wife's share is divided or undivided. David Rose has a house on the northern side — about 6 rods from the Public Road — a big garden fenced round.

20

30

In 1945 I was digging a canal for plaintiff (Rose) — 70 - 80 rods on the seaside about 70 rods from the Public Road going towards the sea — it was on old trench — I can't say how wide. There were many of us digging. Trench is still there, carries water.

On the southern side the whole place is planted in rice — rice planting has been going on there for many years. I am not living with my married wife — I am living with Nassiband's daughter.

By consent — Transport of Assabad dated 19/2/1895 admitted and marked "G."

The paddock is where he puts his own cattle to send them away.

No. 19

EVIDENCE OF 9th WITNESS — BHOOPSINGH.

Bhoopsingh sworn states:—

10 Brother of Rambaran. I live at Susannah, Berbice. I have 2 pieces of land — 5 rods and 3 rods—on the west half. Simeon de Silva is on the same half. I have got title for both places — bought the pieces from different people. The first piece I bought in 1939 — 5 rods. The second piece — 3 rods, I bought in 1943. Transport 291 of 1943, the first 5 rods, 5th October, 1939. The 5 rods I bought from Goberdarsingh, I bought to graze cattle and to live there. I had about 20 head of cattle when I bought more land because I had more cattle to graze.

20 I grazed on both sides —both eastern and western halves — nobody ever prevented me from grazing my cattle all over the place. George Hanoman was the first to trouble me. He caught cattle and took them to the pound and I had to take them out. Seecharan and Mootoo caught them for him. I saw some of my cows on Hanoman's land and they were chasing the cows — there was no rice growing there — some cows were on the dam and some on the trench and the cows were being chased. I sent my boy. They impounded my cattle and sheep several times. I used to plant rice on my lands and when I had rice I used to keep the cattle at the waterside, and when rice finished I brought them back. Now Hanoman put up wire fence. I am about 61 years old. Before I went to Susannah I lived at Kendal. I was born at Albion Estate and when living at Kendal I worked at Rose Hall Estate. When I worked at Rose Hall I was a man — at that time de Silva owned that part of Susannah subsequently owned by Bookers. He had rice there.

By Stafford, K.C.

30 When I bought Susannah I moved my cattle from Kendal. I bought from Goberdarsingh. I didn't know that transport from Goberdarsingh read that he gave me the right to graze only on the eastern half of the western half. I used to graze my cows on Rose's lands — the western half of the western half from 1939 — the

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 18.
Evidence
of 8th
Witness—
Ramadan.
11th May,
1951.
Cross-
examination
continued.

Re-exami-
nation.

No. 19.
Evidence
of 9th
Witness—
Bhoopsingh.
11th May,
1951.

Exami-
nation.

Cross-
examination

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 19.
Evidence
of 9th
Witness—
Bhoopsingh.
11th May,
1951.
Cross-
examination.
continued.

time I bought. Rose had no notice board there. I can't say how long it has been there. I have a house on the 5 rods (10 rods divided up)—a garage, a garden fenced round — on the south side. I plant rice on the backdam side. When I bought the 8 rods I had 28 cows and 22 sheep — no pigs.

No. 20

EVIDENCE OF 10th WITNESS — BHOOPSINGH.

No. 20.
Evidence
of 10th
Witness—
Bhoopsingh.
11th May,
1951.

Examina-
tion.

Bhoopsingh sworn states :—

Brother of Goberdarsingh. I have 50 cows — I have about 96 sheep. Rose never told me that I had more sheep there than I should have and that I should not graze them on Susannah. I bought more lands because I wanted to graze on the sea side. My son is a teacher. 10

Transport No. 291 of 1943— Hanoman to Bhoopsingh, admitted and marked "H."

I did not understand that no right of grazing at all was given to me on this.

Two sons are watching the cows all the time since Hanoman is there. They did not watch before. Rose impounded my animals twice for straying at Bohemia and Hermitage — not Susannah. Hermitage has wire, but plenty times the wire cut and cows went through — also Bohemia.

When Hanoman seized my cows, they were going into Hanoman's land — and they were being caught. I brought an action against Hanoman — that action is pending — similar to this action — impounding in July, September, October, November. That is rice time for big crop. For that same matter, Hanoman's tenants summoned him in Magistrate's Courts for damage — I don't know that they had the damage appraised. The cases in the Magistrate's Court are put down pending the hearing of these cases in the Supreme Court. I did not say that I had a right to graze on the estate — no rice was growing there when my animals went in, they had prepared the lands but rice was not growing. 20

I do not know that Robert Seecharan had to pay damages for his animals going into my land. I did rent some of the east half from Bookers to plant rice.

Bhoopsingh (continuing)

Rose's cattle used to come to my land.

Not re-examined

30

No. 21

**EVIDENCE OF 11th WITNESS — SIMEON THEOBALD
de SILVA.**

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

Simeon Theobald de Silva sworn states:—

I live at Plantation Susannah. Farmer (cattle). I live on the north side of the Public Road. I am 64 years old — been at Susannah for 44 years. I had 2 brothers — both dead. At one time I owned the whole of the eastern half of Susannah. In 1902 my mother owned that half and she lived on it and had a good stock of cattle there. I lived there with her. We cultivated rice — hiring out part to tenants also to cultivate rice. This east half was sold at execution during my mother's lifetime. Mother was Mary. Anna de Silva. Father — Manoel de Silva.

No. 21.
Evidence
of 11th
Witness —
Simeon
Theobald
de Silva
11th and
16th May,
1951.

Examina-
tion.

Transport was 167 of 1902 dated 6th December, 1902, by Robeiro to Mary Anna de Silva — admitted and marked "J."

I managed the farm for my mother. Cattle grazed over the eastern and western halves of Plantation Susannah. Cattle went on the northern side as well where there was no cultivation. When I first went there, Mr. Rose was on the western half.

My mother's cattle and Mr. Rose's cattle were all branded. My mother's half was separated from the western half by a middle walk dam — cattle would go over the trenches and go across from one place to another. The other proprietors when my mother bought were Rose, Assabad, Robert Seecharan.

Transport — Parate Execution — dated 21st August, 1936, from Marshal to H. G. de Silva and ors. admitted and marked "K."

After sale to Sam, I nor any member of my family lived on the eastern half of Susannah. We had, however, shares on the western half. I had personally 6 rods of land on the western half. I acquired that after we sold the eastern half. My mother owned 12 1/2 rods on the western half — that was settled on me and my brother by sale at execution as was done on the eastern half. My mother got this land on western half from Mathilda Harris and Joseph de Silva.

(Sir Eustace pointed out that record shows sale from Mathilda Harris and from Harris to Howard).

It was the same position on the properties owned on the western half. Animals grazed there freely — animals of all the proprietors of Susannah. Before my mother died we did plant rice on the eastern side. At that time the only proprietors there were Rose, Seecharan and de Silva.

To Court :

I got permission to plant rice on the eastern half — between 1909 and 1911. Three years after Rose and Seecharan started to plant rice — first coming and get-

In the Supreme Court of British Guiana.

Plaintiff's Evidence.

ting my permission as they said as I was planting all of us should plant rice throughout Susannah on the southern side. During the rice cultivation, the cattle were kept on the water side — north of the public road. Just as I started to plant I put up fences (none on the eastern half of Susannah). They suggested that. I planted rice for 2 years, but we did not get enough water for rice in the 2nd year. We resumed planting 3 years after.

No. 21. Evidence of 11th Witness — Simon Theobald de Silva 11th and 16th May, 1951.

Later in 1928 we got water from the estate as a result of Rose who himself was planting got water and we continued planting until 1931 — we paid for that water to Rose Hall and got that until 1946 from the western half until Bookers sold. We told the estate Rose Hall people, if they would not give the water any longer, we would not permit them to plant rice on the eastern half.

10

Examination. continued.

Bookers sent a man to wire the Bohemia boundary and Rose sent and stopped him.

To Court :

We don't plant rice now — not since 1946 — Hanoman has planted for 2 years. I don't think he gets water.

Transport 124 of 1895 from Douglas to Robeiro dated 10/12/95 admitted and marked "L".

Transport 106 of 1884 by Welchman to William H. Douglas dated 25th June, 1884, admitted and marked "M."

20

Transport 22 of 1883 by J. C. de Cunha and Louis de Mendonca to James Mavor dated 21st February, 1883, admitted and marked "N."

Transport 5153 of 1862 Paris Britton to Dennis Burns admitted and marked "O."

Wednesday, 16th May, 1951, at 9.30 a.m.

Simeon de Silva (continuing).

Cross-examination. 16th May, 1951.

By Humphrys, K.C. :

Vegetable gardens are owned by some people on the south side of the Public Road on the western portion, the side of Rose. One is owned by Robert Seecharan and Bhoopsingh had a small garden there. Ramadun, the witness has a small garden. I had one but I gave it up long ago. Seecharan's garden is 2 1/2 rods by 8 rods more or less. Bhoopsingh's is 3 x 3 rods. Ramadun's is about 2 x 3. I saw some vegetable cultivations on the east side only since Hanoman acquired the land there — not before. There are coconuts planted on Hanoman's land on the southern side — only since Hanoman came there. The vegetable gardens are wired around. These gardens are around the houses which border the road — rice is planted aback. The backlands are too low for vegetable gardens — the rice cultivation start about 10 rods

30

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 21.
Evidence
of 11th
Witness —
Simeon
Theobald
de Silva
11th and
16th May.
1951.

Cross-
examination.
continued.

south of the Public Road. Many houses are on the south portion — on the western half — about 7 houses, dwelling houses — some of the houses are enclosed and occupy an average area of 3 x 2 rods. I know Manoo's house which is about 10 rods from the Public Road (south); North of the Public Road on the west half there are about 5 houses — occupying also an average area of 3 x 3 rods. Goberdarsingh's house there is on a piece of land about 5 x 8 and is enclosed. Rose's house occupies a spot 5 x 10 rods on the northern side of the western half. Rose's house is not 75 rods from the Public Road but about 25 rods. I don't know that he has a garden. He has no fence there — but he has a paddock in part of the house — a paddock where
10 he rounds off cattle.

On Rose's western half there are three fences — the fencing of the paddock already mentioned running from the Public Road going north for about 15 rods with a facade fence for about 30 rods going east about a rod from the parapet. This goes right round as a paddock. The wires are broken now because Rose does not use this as a paddock now. The wire was put there about 10—12 years ago — a fence with 5 strands of wire.

North of the paddock is where Rose's house is fenced in by a fence 12 rods by 7 rods. I don't remember seeing a garden there. I very seldom go in there. There is no more wire as you go north from Rose's house — no more fences behind
20 the house. But behind the house is a sheep pen where he keeps his sheep in. There are 2 ponds but there is no wire before you get to the ponds. I know that I am always about there, though I don't go into Rose's yard. But I know that there were wires there before — those wires were running north, east of Rose's western portion — going right up to the reef. There were wires there up to 15—18 years ago — in Rose's time. That wire used to separate the two quarters of the western half up to the reef. I have seen no remnants of that fence—either wire or posts—perhaps the holes of the posts are still there. Hermitage also has wire between Hermitage and Susannah running right down to the sea dam.

To Court: The wire fence that used to separate the 2 quarters of the western half
30 —had 3 strands.

(Continuing)

That wire was there for about 2 years—put there by Rose about 20 years ago. It broke down. At the time Rose put the wire, there were people living on the other portion of the western half. I was one of those who had a house there on the east half of the west half. I saw Rose putting up that wire. There were then 4 owners on the east half of the west half besides myself. At that time I had cattle. At that time I was the owner of the eastern half — and had cattle on the eastern half of the west half. Cattle could go round by the reef 150 rods. Rose put that fence there to get his wild cattle from Hermitage. The Hermitage wire went down to the sea dam,
40 but not the wire separating the eastern half from the western half of the western half.

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Supreme
Court of
British
Guiana.

'Till 1930 there was no wire running between the road and the reef separating the two halves of the western half. Mr. Rose told me to put that wire to round off cattle.

Plaintiff's
Evidence.

My cattle were never impounded by Edwin Clarence on behalf of Rose. All the impounding was done by Baker for Rose on behalf of Bohemia. My cattle was never impounded for being on any part of Susannah.

No. 21.
Evidence
of 11th
Witness —
Simeon
Theobald
de Silva
11th and
16th May,
1951.

De Silva (continuing) :

I don't think that we could prevent any land owner at Susannah from bringing any number of cattle there and let it pasture all over Susannah—as long as they were his cattle he could do so—bring them there and drive them back at night, irrespective of number or the quantity of land owned. 10

Cross-
examination.
continued.

I never checked to see whose cattle was on the land. But I knew the brands of the proprietors. I understood as a land owner at Susannah that I could bring my own cattle from anywhere and put them to pasture in Susannah. I put the estate with 60 head of cattle. In 1945 we and others begged Baxter of Rose Hall to continue to give us water. He had stopped it saying that he could not carry on his irrigation and give us water. We did not get water after that.

The wire between Bohemia and Susannah was new wire between Bohemia and Susannah.

Sketch of northern portion showing fence in red admitted and marked "P". 20

George Hanoman's father, I knew, had lands on the western half in 1901. I met him there on the east half of the western half.

To Court : Hanoman's father had cattle.

Re-exami-
nation.

Tendered and admitted :

Transport 441 of 1936 dated 26th September, 1936—de Silva to Francis Sam, the whole of eastern half—Exhibit "Q".

Transport No. 73 of 1937 dated 15/3/37 from Sam to Bookers admitted as Exhibit "R".

Transport No. 5154 of 1862 tendered, admitted and marked "S".

Letters Decree dated 8/7/1887 tendered, admitted and marked "T". 30

Will of Paris Britton tendered, admitted and marked "U".

Official Gazette 19/9/1885 tendered, admitted and marked "V".

Official Gazette dated 24/4/1885 tendered, admitted and marked "W".

No. 22.

EVIDENCE OF 12th WITNESS—MANOEL JOHN RODRIGUES.*Thursday, 17th May, 1951, at 9.30 a.m.**Manoel John Rodrigues sworn states :*

I have a liquor shop at Plantation Kendal; I know Plantation Susannah; I acquired the rum shop 25 years ago and have been living there for the last 7 years but before that I was there every day managing my establishment. I used to go to Susannah shooting and fishing on the section north of the Public Road — where there is no savannah. I know the other side of the road. I have also been there. I was familiar with the people occupying that section. I know Mr. Rose very well — also Bhoopsingh. I know all the Hanomans. I worked with Mr. Ferreira for 25 years from 1912—1937. The people on Susannah carried on cattle rearing and rice planting. Rose and all of them had cattle. Cattle grazed on lands on both sides of the road. There was no rice planting on the north side. The cattle on the northern side go over to the southern side to sleep at night.

Susannah was not fenced. Mr. Rose had a little fence enclosure on his own section for the purpose of getting his cows together when they were to be sold — that was on the northern side. There is not fence and never was any fence on the southern side of the road. I am living in Georgetown for the past 5 months. There is a fence separating Bohemia from Susannah — and also a fence separating Hermitage from Susannah — and also a fence separating one section of Susannah from another section.

To Court : In the period of time — I went there over 200 times.

(Continuing) : Rose when he had his house on the north side of the road, had a little fencing around. Seecharan also had a house. There were other people with houses, but they were not enclosed.

By Stafford, K.C.

I lived at New Amsterdam before I lived at Kendal. I went to shoot and fish with Rose's permission for going on his lands. No other proprietors gave me permission. I shot in all the places of Rose — Bohemia, Hermitage and Lewis Manor. Rose and I were friendly.

I have no difficulty of getting along. I suffer from varicose veins — but only for about 3 years now. I used to fish in a trench — separating the west half of the west half (belonging to Rose) from the east half of the west half — a trench dug by Rose 6 feet deep and about 5½ feet wide. On the southern side there is a trench also separating the west half from the east half. These trenches are a deterrent to cattle wandering. Fence on the Hermitage side went right to the sea dam. I always saw rice on the south side of the road. It was when the rice was finished cutting.

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Guiana.

Plaintiff's
Evidence

No. 22.
Evidence
of 12th
Witness —
Manoel John
Rodrigues.
17th May
1951.

Examina-
tion.

Cross-
examination.

In the
Supreme
Court of
British
Guiana.

Plaintiff's
Evidence.

No. 22.
Evidence
of 12th
Witness —
Manoel John
Rodrigues.
17th May,
1951.

Cross-
examination
continued.

The animals that I saw on Rose's land were as far as I understood, Rose's animals. I took no particular notice of the animals that I saw.

I know that Rose bought Bohemia in 1928 from Ferreira — he went over to Bohemia a couple of months after his purchase. When Rose went to Bohemia, he took the majority of his animals to Bohemia. He has about 1,000 head in Bohemia. He has wild animals on Susannah. Bohemia has 150 rods facade.

Rose planted coconuts on the north of Bohemia and he had a garden — south Bohemia has a rice bed. No rice is planted since 1947 on south Bohemia since then he has cattle on both north and south Bohemia.

Hanoman continued to plant rice in spite of the cutting off of the water by Bookers from the other proprietors. I was mortgaged to Rose but paid off about 7 years ago. Hanoman carries on a small business of a runshop at Kendal. I opposed the grant of a licence to them. It was granted to him and I appealed. He sued me in a dispute about goods sold to me and I settled it without going to Court. I keep sheep at Kendal. Sheep damaged Hanoman's provisions and I had to pay compensation. It happens now and again. 10

Not re-examined.

No. 23.
Evidence
of 13th
Witness —
Archibald
Rose.
17th, 18th
and 22nd
May, 1951.
Examina-
tion.

No. 23

EVIDENCE OF 13th WITNESS — ARCHIBALD ROSE.

Archibald Rose sworn states :—

20

Plaintiff. I am now 87 years old. I was born on East Coast, Berbice, Corentyne. I live now on Plantation Bohemia — the adjoining estate of Susannah. My house in Bohemia is on the northern section of the Public Road — about 20 rods from the road. Bohemia contains about 500 acres. My house is on west Bohemia and another house is to the east — on the northern side of the road. The school is on the north side. No building is on the southern side of Bohemia. Kendal is east of Bohemia — and on the west of Plantation Susannah — the property in dispute in this case. Further west is Hermitage — also my property.

I bought Bohemia. When I bought a portion of Susannah there were no buildings — it was a cattle farm — cattle used to go over the whole place. I had cattle at the time at No. 11 and I brought them over to Susannah about 1 month after. My cattle used to roam from 11 across Hermitage to Susannah. The eastern half of Hermitage belonged then to Mrs. Houston and the western half to Paris Britton. I knew Paris Britton well; he got blind before he died — I bought my portion of Susannah from Mr. Hooten. I knew Hooten personally. I knew Paris Britton's wife. What I bought from Hooten was the west of the western half of Susannah. At the time I bought also from Seecharan who owned the eastern half of the western half of Susan- 30

nah — also Antonio de Silva and Willie Douglas. Antonio de Silva was no relative of the witness Simeon de Silva. William Douglas owned the whole of the east half of Susannah. Susannah was used entirely for cattle rearing and grazing — There was then no rice. I knew Thomas Howard well. He owned a portion of the eastern half of the western half.

To Court : Before I bought Heritage my cattle on No. 11 would stray across Hermitage and go to Susannah — nobody stopped them, but they could have been stopped by the owner of Hermitage.

Archibald Rose (continuing)

10 *To Sir Eustace Woolford (continuing)*

I acquired Hermitage from Hicking. When I bought it, Hermitage was not fenced — it was open not fenced. I fenced it. I already had Susannah. I fenced it for my own convenience. I wanted to prevent my cattle from going from Hermitage to No. 11, then owned by Hanoman, the father of George Hanoman (the present defendant). Hanoman used to impound my cows. He had the western half of No. 11 I fenced between East Hermitage and West Hermitage from the Public Road to the sea dam. I also fenced the east side of Hermitage to the reef. I did that for a purpose. I had a Kraal on the road — near to my house in Susannah — 30 rods x 25 rods — could hold about 200 cattle to be branded or to be shipped to Georgetown.

20 Bohemia is wired on both sides — not the western side from the road to the reef — but the eastern side from the road to the sea dam. I also owned 3 rods on the eastern half of the western half. Since this action I sold that to my son. Before I bought this piece of land, cattle from there and other proprietors grazed all over the place. Britton had sold to Burns. I knew Burns and his wife. There was never impounding of my cattle by anybody owning any part of Susannah.

Simeon de Silva planted rice— years before I planted. Seecharan and Assabad, the other proprietors and de Silva and myself agreed to plant Susannah for 6 months in rice on that southern side — and during that time to keep cattle on the northern side. De Silva made the suggestion and he planted on his eastern half — but not on

30 his share of the eastern half of the western half, and I put up a fence.

I stopped Bookers and other proprietors planting rice when Plantation Rose Hall (Bookers) declared that they would not give us water — and they threatened to put up a fence to prevent cattle coming on rice cultivation. They did not put up the fence, but they sold and their purchaser, Hanoman, put up the fence. After that George Hanoman came to me in 1947 — and after that George Hanoman, Harry Hanoman and Drepaal and Bookers came to me. Hanoman came and told me that he bought eastern half of Susannah. I said I was aware of that and he told me that he wanted me to join with him to press the small proprietors — that is to join with him in impounding their cattle when coming on our land,

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Plaintiff's
Evidence.

No. 23.
Evidence
of 13th
Witness —
Archibald
Rose.
17th, 18th
and 22nd
May, 1951.

Examina-
tion
continued.

In the
Supreme
Court of
British
Guiana.

I showed him a copy of his title to the eastern half — that from Sam to Bookers. He said to me if he could get out the word “and.” It was a copy of the transport which I got from the Registry at New Amsterdam for the purpose of my case at Albion.

Plaintiff's
Evidence.

(Mr. Humphrys objects to the reference to the conversation relation to the document unless the document is produced — or secondary evidence given on proof of its destruction.)

No. 23.
Evidence
of 13th
Witness —
Archibald
Rose.
17th, 18th
and 22nd
May, 1951.

(Sir Eustace Woolford agrees that the averment is not admissible itself, but the statement would be.)

Objection upheld — conversation relating to the evidence is not admitted. 10

Examina-
tion
continued.

Witness continuing :

On leaving, he said, you shall bear the fate.

Friday, 18th May, 1951, at 9.30 a.m.

Archibald Rose (continuing) :

Examination
continued

To Sir Eustace Woolford :

18th May
1951.

I always had notice boards on my lands. Defendant had notice boards and his father also had trespass notice boards. The exhibit “E” is a photo of a notice board I had up. I never impounded defendant’s cattle or other proprietors’ cattle — or the cattle of anybody at all on Susannah. But I have impounded cattle of proprietors on Susannah that was straying in Bohemia. I personally have never shot pigs of anybody. But Joseph Hanoman shot 47 pigs belonging to me in one day. My notice boards referred to strays. When I put up the fence going to the west in order to get my cattle into the paddock, the wire was very cheap — \$4.80; a pack of 100 rods cost me \$18.00 a pack now. 20

Now I do it with horses. I used 3 1/2 rods on the fence. My son’s name is David Rose.

I transported the 3 rods on east half of western half to my son D. Rose. This is a certified copy of Transport. I transported that to my son because he had there some cattle of his own and I transported that portion of land to him to give him the right of grazing his cattle on Susannah. This son managed my estate at Susannah. Bookers themselves had no cattle on the land and they never agisted cattle. I tender judgment in *Welchman v. Archibald Rose*; Proceeding 14 of 1887. Admitted and marked “Y.” 30

Britton’s farm when I bought had cattle of his own, and his wife also owns cattle. I used to see her cattle grazing over Susannah. Bookers had a man called Ferreira who used to keep off the cattle from the rice lands on the eastern half.

To Court : The rice cultivations were not reaped all at the same time.

(Continuing) :

The defendants caught my cattle on the southern side when they were just preparing the land for planting rice. But I saw them also catch cattle on the northern side, and lassoed and take them over to the southern side to a paddock they had there. I had to release these animals from the pound. Seecharan and about 6 of them lassoed these cows.

To Court : The cattle had my brand. (Court on the objection of Mr. Humphrys K.C. directs Sir Eustace to limit evidence of impounding to the particulars given on the amended Statement of Claim.)

In the
Supreme
Court of
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Guiana.

Plaintiff's
Evidence.

No. 23.
Evidence
of 13th
Witness —
Archibald
Rose.
17th, 18th
and 22nd
May, 1951.

Examination
continued.
18th May
1951.

Cross-
examination.
18th May
1951.

10 I release cattle from the pounds — Reliance and Albion pounds.

To Court : I am not saying that at any time the defendant and/or his agents came on my land — the western half of the western half of Susannah — and took my cattle. What I complain about is he seized my cattle on the eastern half either on the north of the road or south of the road.

By Humphrys, K.C. :

20 I knew Paris Britton and Burns. I knew Britton but not before he got any part of Susannah. I don't know when he bought Susannah. I knew when he had Susannah. I did not know Britton when he transported a part of Susannah to Burns. I first knew Burns when he had a house in the centre of Susannah. I can't say how long Britton had been in Susannah before I knew Britton. I can't say how long Burns was at Susannah before I knew Burns. I can't give the year when I first got to know Burns or Britton. I knew Britton about 18 years before I bought my part of Susannah — and Burns' wife bought Chiswick after he died. I don't know if Burns and Britton were friends. I did not know Susannah Plantation before Burns bought. I knew Burns had a house on the centre of Susannah. I knew Burns and his wife — but I was not their personal friend. I don't know when Burns sold to Lacmie. I never went into Burns' house, but I used to pass the place. I was a school boy then. I don't know Burns sold Susannah in 1877. I was then 9—10 years old (really 12 years old).

30 Sir Eustace Woolford tenders a further amended Statement of Claim, a copy of which he has furnished to the Defence.

Mr. Stafford opposes the amendment. Vol. 1 Annual Practice p. 489. These new particulars are new cases : *Eshelly v. Federated European Banks Ltd.* L.R. 1932 I K.B.D. 154.

Further Amendment to Statement of Claim allowed : notice having been given to Defence.

Rose (continuing) :

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Guiana.

By *Humphrys, K.C.*

Plaintiff's
Evidence.

I had Lewis Manor, the western half. Lewis Manor is west of No. 11. I had an action with Dilchand in 1935 in respect of rice at Lewis Manor. My defence was that he had no fence. That case was then in the Magistrate's Court. Judgment was given against me by the Magistrate. I went to appeal and lost the appeal and had to pay damages.

No. 23.
Evidence
of 13th
Witness —
Archibald
Rose.
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Record of Proceedings (Appeal) No. 100 of 1916 Dilchand v. Rose, admitted and marked "Z." In the Corentyne at Lewis Manor, people were planting on both sides of the road.

Cross-
examination,
continued
18th May,
1951.

Proceedings in Action No. 4 of 1924 (Supreme Court, Berbice) Rose v. Hanoman for destruction of pigs of plaintiff at Lewis Manor tendered, admitted and marked "AA."

10

Tuesday, 22nd May, 1951, at 9.30 a.m.

Archibald Rose (continuing) :

Cross-
examination,
continued
22nd May,
1951.

By Humphrys, K.C. (continuing) :

The distance between the western boundary of the eastern half to the western boundary of the western half of the western half is $37\frac{1}{2}$ rods. There was no trench between my western half of the western half and the eastern half. I used to drive the cattle to get into a pen — over a corridor of 37 rods.

From the reef to the paddock was 100 rods — wild cattle about 100 — 150 cattle. I had 4 or 5 men driving them — the cattle were accustomed to go to the pound.

20

I did not remove the wire after Hanoman had bought — the wire was there for 3 or 4 years, until I got horses. I removed the first part towards the road after the front wire.

I removed that wire before Bookers bought, before Sam bought. I did not take some of that wire to repair the Hermitage wire. I also renewed some of the posts and put them in the Hermitage fence. I had that wire before at Lewis Manor — I said in my evidence in chief that the wire had then about 200 head of wild cattle — my cattle had become wild by negligent handling.

30

There was never a trench separating the western half of the western half from the eastern half of the western half. Rodrigues must have made a mistake. There is a trench between the eastern half and the western half — not a punt trench — a continuation of the trench that runs south. That trench lies $37\frac{1}{2}$ rods from my wire fence.

I know Whitney. He never used to impound cattle. He was a shovel man — he had a bad foot. I knew Gobin — Whitney never on my instructions impounded Gobin's cattle in the savannah. Gobin is a proprietor of Susannah. I have never

impounded any cattle in Susannah. Clarence is not my brother-in-law. My reputed wife and Clarence's wife are sisters. I employed Clarence as a shovel man and now and again, never employed Clarence to impound cattle at Susannah. A pig was shot at Hermitage but not by me. My son shot a hog years ago. My son is David Rose. He works for me. He was not prosecuted for twisting a cow's tail. I have known of no incident of twisting a cow's tail.

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Plaintiff's
Evidence.

Archibald Rose (continuing) :

By Humphrys, K.C., (continuing):

10 Most of my cattle were all breeding cows when I bought. By about 1920 I had about 50 — 60 head of cattle. I did not live at Bohemia at that time. I have about 450 with this year's cattle. My son has about 100 head. It is not true that I have 800 — 1,000 head of cattle.

No. 23.
Evidence
of 13th
Witness —
Archibald
Rose.
17th, 18th
and 22nd
May, 1951.

Cross-
examination.
continued.
22nd May,
1951.

It was about 1932 I put up the wire running north to south to the reef. Then I bought the lands in 1888 but I had only tame cows before 1932.

Distance from Grand Canal to Sea Dam is 1,000 rods, and from Grand Canal to road is 280 rods — 720 rods from road to the Sea Dam—road to reef is 175 rods (that is 25 rods from road to my house) and 500 rods from my house to the reef.

Transport No. 312 of 1948 from Archibald Rose to David Rose dated 7th April, 1948, admitted and marked "BB".

20 I do not keep duplicates of authorisations to impound cattle. I may have authorised Clarence to impound cattle in Bohemia—but not in Susannah. He lived in Bohemia and when I had anything to do I would give him a job. He is not living with me now. I had to put him out for his bad behaviour. He used to go behind my orders. I put him out last year. I did have a place called Rosabeth—10 years after I bought in 1888 — and kept it for 3 years. de Silva was the first rice planter there — not Robeiro. Some people planted and some years without profit — and some years bearing no profit they did not plant rice. I never planted rice myself but rented out lands for rice planting.

By — Sir Eustace Woolford:

30 *To Mr. Humphrys :*

I dug a canal on the northern side 5 feet deep — 20 feet in width — from my house going north 75 rods. It has no outlet at either end.

Re-examina-
tion

EVIDENCE OF 14th WITNESS—DAVID ROSE.*David Rose sworn states :—*Plaintiff's
Evidence.No. 24.
Evidence
of 14th
Witness —
David Rose.
22nd and
23rd May,
1951.

Examination

Son of plaintiff. I live at Susannah; my father lives at Bohemia. I am 47 years old. I manage the farm. 23 years ago, I took over Susannah. I have always known Susannah as cattle lands both sides of the road. Other proprietors, de Silva, Bhoop-singh, Goberdarsingh and George Hanoman (the defendant), the Seecharans all had cattle there some time or other. I have never impounded anybody's cattle for grazing on Susannah. The first I knew to impound such cattle was the defendant, George Hanoman, from the time he came there. Rose Hall estate never did so. I know the pound at Albion, which is on the Public Road. Reliance is about 4 miles from Susannah. I know Seecharan living at Susannah—about 4 or 5 brothers. I have gone to release our cattle impounded by the Hanomans — the impounding started about the year 1945.

10

My father put up a fence, part wire part green heart slabs. This was in connection with paddock. There are only the remnants of a paddock there now. We used no horses to round up cattle — men.

Cross-
examination.*By Stafford :*

My cattle have a different brand from my father's. Mine is $\frac{67}{C}$ R; altogether about 25 on Susannah. My father has about 180 —200 head in Susannah; and at Lewis Manor he has about 100. I have about 15 there. At Bohemia he has about 150 head of cattle. Father has a piece at Kendal, but no cattle there. None at No. 7. It is not true that plaintiff Rose has the majority of animals in Bohemia where he lives.

20

To Court :

I release animals impounded by Hanoman — but none belonged to Bohemia.

(Continuing) :

In the pound book (Albion, Exhibit A1), I see my father's signature as the person releasing the animals from pound on the 31st August, (Exhibit B1) tender date 21st September. I see my son's signature.

Animals cross from Bohemia to Susannah, but seldom. There are no wires between Susannah and Bohemia on the southern side. Rose kept the wire in repair. South side on Bohemia used to be rice lands but now since Rose Hall has left, that is purely pashuma lands. The Hanomans plant rice.

30

The animal branded E.L./A. described in the entry of 29th September, 1947, was not any of the animals in my charge at Susannah (Vide p.140 of Exhibit "B").

Wednesday, 23rd May, 1951, at 9.35 a.m.

David Rose (continuing) :

By Stafford, K.C. (continuing) :

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Plaintiff's
Evidence.

No. 24.
Evidence
of 14th
Witness —
David Rose.
22nd and
23rd May,
1951.

Cross-
examination
continued
23rd May,
1951.

My father went to live at Bohemia after he left Susannah about 23 years ago. I used to live with him at Susannah, and when he went to live at Bohemia, I took over the management of Susannah. About 10 years before my father left Susannah, rice was planted at south side Susannah. I was 23 years old when I took over Susannah — rice began to be planted on both eastern and western halves of Susannah — all was being planted. There was never a wire at any time at Hermitage except a wire separating the eastern half of Hermitage from the western half on the northern portion. At Hermitage there was no cross wire — the Government sea defence keeps a wire there. There was never at any time a wire separating Susannah from Hermitage. There was only a wire at the paddock. The Government wire at the Sea Dam (sea defence), passed on the south of the sea dam to keep cattle off the sea dam. The wire ran right away along Hermitage, Susannah, Bohemia, etc. There is no wire going north and south to the Government wire save the wire separating east and west Hermitage. Cattle because of this wire could not go out. There was no wire on the eastern boundary of my father's.

I know there was a wire on the eastern boundary of my father's half of the western half, but it did not go to the sea dam. It went on to the reef and it was put there to put the round-up cattle in. It is not there now. All the wire was mashed up. None of that wire was removed.

To the Court : The wire came from Lewis Manor.

Continuing : The fence posts were wallaba posts. No posts are there now.

On the western part of Bohemia separating Bohemia, there was a fence running north from the Public Road to a spot a little north of the reef. That fence is there now. The Bohemia animals are supposed to be kept in by the fence inside of Bohemia. The small proprietors of the eastern half have never put wire fences.

There is a middle walk dam separating the eastern half of Susannah from the western half.

Counsel refers to p. 120 of the Pound Book, Exhibit B, also p. 127, also p. 130. Counsel for plaintiff have applied to amend Reply and Defence to Counterclaim embodied in a formulated draft which is marked by the Court "DD".

Re-
examination

Mr. Humphrys, K.C. for defence opposes the grant of the amendment on the ground that this is third application for amendment of defence, pleading made in the course of the hearing after much evidence has been taken. Mr. Humphrys at any rate claims an adjournment for some time to consider the proposed amendment and asks for all costs of hearing from first date of hearing.

Court refuses to grant the application—it is embarrassing to the Court to have the issues not fixed and definite but changing from time to time in the course of hear-

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Plaintiff's
Evidence.

No. 24.
Evidence
of 14th
Witness —
David Rose.
22nd and
23rd May,
1951.

Re-
examination
continued.

Defendant's
Evidence.

No. 25.
Evidence
of 1st
Witness
George
Hanoman,
23rd, 26th
and 29th
May,
1951.

Examination

ing. If plaintiff's counsel is of opinion that the amendment is necessary for plaintiff's case, then the Court takes the view that plaintiff has come to trial without proper and definite pleadings—and if the amendment is pressed on the ground of necessity for plaintiff's case, the Court will strike out the case without giving the plaintiff the opportunity to come again when he has definitely made up his mind what is the issue he intends to submit to the Court for adjudication.

Case for the plaintiff is closed.

DEFENDANT'S EVIDENCE.

No. 25.

EVIDENCE OF 1st WITNESS—GEORGE HANOMAN.

10

George Hanoman sworn states :—

I am defendant in this action. On 26/6/47 I bought from Bookers Ltd., the east half of Susannah plantation. It is bounded on the north by the sea, east by Bohemia, south by Grand Canal and west by west half of west half of said Plantation.

The east half had a facade 75 rods and from north to south 1,000 rods. It is divided into 2 parts by the Public Road. The portion south of Public Road is 300 rods in depth.

As regards the north portion, that is cattle pasture land. There are 2 houses on the northern side. The south portion are rice lands. No rice was on the southern portion when I bought it, but after rice was planted there. I immediately started to plant rice there. I rent out these south lands for rice in beds 3 rods by 75 rods—that is 3 rods north to south and 75 rods east to west.

20

I knew these lands before. I know the lands to the south as rice lands. I know there is rice lands at the time I was leaving school. I am now 40 years old. I knew them cultivated in rice when owned by previous owners—each bed has a dividing line between the others. Before I bought there was a fence from south to north from the canal to the Public Road. That fence divided Bohemia from the eastern part of Susannah. That wire there was all the time for about 20 years to my own knowledge. I also knew that before I bought there was a wire fence of 2 strands separating my eastern half from the western half—on the other side of the fence on the southern side rice was planted on the eastern half of the western half. There were several proprietors there.

30

When I took possession that wire separating the eastern half from Susannah was there; but days after I took possession it was removed. I met Mr. Rose on the Public Road and I asked him why he was taking away the wire. He said it was his property; that he would loose all the cows into my lands to eat up the rice. I sent to Georgetown and spoke to my lawyer, Mr. de Freitas, and as a result of his advice, I impounded animals that I found on the rice field. I myself saw them on the rice field, a policeman was with me. Some animals escaped and went into Bohemia. All the animals impounded were on the south of the Public Road. I impounded no cattle north of the Public Road. At the time Rose had wire separating Bohemia from
 10 Susannah—the northern portion—that was during the time I was impounding. But after a time Rose took out that part of that wire fence that went beyond the reef to the sea dam—about 3 weeks after—Road to reef is very little less than 530 rods.

After Rose had removed the wire between sea dam and reef, I checked up the number of cattle belonging to Rose on my eastern half north of the reef between the reef and sea dam. There were 700 head of cattle. I identified these as Rose's by the brand. I checked up this with Rural Constable Mahadeo. There is not much grazing between the reef and the sea dam. I impounded no animals there because they were very wild animals. Going east in my eastern half, one comes to the punt trench on my western boundary — that is on the southern portion. Punt trench runs north
 20 to south to the Grand Canal. Then a dam—then a wire runs from the Grand Canal to the Public Road. When I bought that fence had 2 strands of wire, it has four now. I put the other 2 strands—going west along the southern portion you come to the lands owned by proprietors on the eastern half of the west half of Susannah. These are rice lands. That is along a facade of $37\frac{1}{2}$ rods then you get a wire fence separating Rose's lands on the west half of the west half of the western half. That fence from the Public Road to the Grand Canal is a wire fence of four strands—there are rice lands owned by Rose. Going west, you get to a dam separating Hermitage from Susannah—dam running north to south —after that you get to a trench and then Hermitage rice lands. At that time there was no fence, but now there is a fence.

30 My eastern half is fenced along the Public Road. I put the fence a week after I bought.

On the north of the Public Road, leaving the fence separating Bohemia from Susannah, going east, you come to the punt trench right on to my western boundary, punt trench is about 14 ft. in width. After the punt trench going east, there was no wire there at the time I bought, but Rose had a wire there west of the Punt Trench going from the road to the sea dam—50 rods beyond the sea dam. As we went west to beyond the boundary of Hermitage and Susannah to the boundary between East and West Hermitage.

Friday, 26th May, 1951, at 9.35 a.m.

40 *George Hanoman (continuing) :*

To Humphrys, K.C. (continuing) :

In the
Supreme
Court of
British
Guiana.

Defendant's
Evidence.

No. 25.
Evidence
of 1st
Witness —
George
Hanoman.
23rd, 26th
and 29th
May,
1951.

Examination
continued.

Examination
continued
26th May.
1951.

In the
Supreme
Court of
British
Guiana.

Defendant's
Evidence.

No. 25.
Evidence
of 1st
Witness —
George
Hanoman,
23rd, 26th
and 29th
May,
1951.

Examination
continued.
26th May,
1951.

There is a canal 24 x 24 x 5 ft. deep which Mr. Rose says he dug for animals on the west half of the west half of Susannah adjoining Hermitage on the northern side. At the time he dug in 1945, the cost of digging was 7 cents per square foot. At the time when he dug that canal there was the wire between the east half and the west half of the western part. At that time only his cattle would get the benefit of the water in the canal boundary.

I know Rose always had a notice board on this northern side—on the west half of the west half. He had also on the north side of the west half of the west half nailed on a tree. He had near the road, about 25 rods from the boundary of Hermitage. The one on the northern side is not there now, but the one on the southern side is changed—date is changed and the position is changed. The date is now 14-7-48. as shown in photo "E". I can't say the exact date, but about 6 years before.

10

To Court :

It is the custom when a notice board becomes illegible because of exposure to the weather for a person to put up a new notice board with a new date.

(Continuing) :

I have seen Mr. Rose seize my animals on the northern side of his west half of the west half. That was a little before Xmas in 1947. It was a donkey that I used to take the cart with milk to the Public Hospital. Rose himself was there at the time. I saw him take his belt off. He led it to David Rose's house about 3.30 p.m. About one hour after I saw Edwin Clarence take the donkey over to Bohemia—took it along the Public Road. The donkey was kept there and next morning Edwin Clarence took it to the pound at Albion. I released the animal by paying, I think, 32 cents.

20

Economically 3 acres would be the proper grazing ground for one cow in Susannah lands. I have about 60 to 80 cattle north of the Public Road on my eastern half of Susannah I have about 180 acres. The small proprietors on the east half of the west half have about 200 head of cattle.

Rose had about 1,000 head of sheep scattered over the west half of the west half and the east half with sheep. He lost about 400 in the flood.

30

To Court : When Rose bought Bohemia, he transferred to Bohemia a lot of animals from Lewis Manor, not from Susannah.

By Sir Eustace Woolford :

Cross-
examination

I have counted Rose's cattle on more than one occasion. I did the first counting after I bought Susannah. I first counted in 1948 and during 1949 twice. I did so on instructions to check the animals grazing on my lands from the reef to the sea dam. My solicitors—Cameron & Shepherd instructed me to do it. That was when I saw Rose taking out wire posts between Susannah and Bohemia and when I asked him why, he said he was going to drive his milking cows into my rice fields and I went

to Cameron & Shepherd. I think the cows came over — not because he actually drove them. When I saw the cattle there, I did not go to Rose and tell him that his cattle were on my lands. I understood my solicitors contemplated taking legal steps, and Rose brought these proceedings before. Mr. de Freitas, my solicitor, never told me that whilst the case was going on, I should not go on impounding cattle. Mr. de Freitas did not tell me that he had received a letter from Sir Eustace. I know Rose owned Bohemia before I bought Susannah. I did not go and inspect Susannah before I bought it. I knew it before. Besides passing on the Public Road, I used to go shooting and also going there to catch cows — all over Susannah when cows stray.

10 In Susannah I went looking for stray cows — our cows — one of my father's cows which my father kept at Lewis Manor. I found none at Susannah.

I can't say how many visits for that purpose I made on Susannah. I used to go to the sea dam to shoot. There is a wire practically on the sea dam—throughout the entire width maintained by the Sea Defence Department of the Government. I don't know that that wire is put up by Government to prevent cattle roaming there and damaging the Sea Defence of the sea dam. I can't say the reason for that wire. I never enquired. I did know the physical conditions of the land before I bought it. I never went to Mr. Faulkner before I bought the lands. I made up my mind to buy just 2 weeks before I actually bought. I went to Mr. Dury. I heard about it on 18th June,

20 and I paid \$5,500. I did not go and inspect then. My application was an offer Bookers said if I gave them \$1,000 more I could have the place and on 25th June I sent them a cheque for \$1,000. Mr. Dury told me that on that additional \$1,000 I could get the place. The next day, the 26th June, I went and visited the place. I just went on the front lands, there was no need to walk over the place as I knew it. I knew that Rose's cattle from Bohemia used to graze on the southern side of the eastern half owned by Bookers, when the crop of rice was not on. I did not know that the cattle from the west half of the west half also did so. I know those cattle never did so. It was not possible, because on the southern side there was a fence.

To Court : There were no gates on the fence.

30 *(Continuing) :*

Rose's Bohemia cattle were the only cattle I used to see on the eastern half of Susannah. Rose has only one cattle brand. I know the cattle were from Bohemia and not from Susannah because I could see them come across into east half from Bohemia. Rose after crop would drop his wire so as to allow the cattle to pass.

George Hanoman (continuing) :

To Sir Eustace Woolford (continuing) :

When I saw Rose's cattle coming across from Bohemia every morning coming and every afternoon going back to Bohemia, I used to see that in Booker's time before I bought. I saw that very often every day from 1937. I did not take particu-

40 lar notice but we were interested in cattle.

In the
Supreme
Court of
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Defendant's
Evidence.

No. 25.
Evidence
of 1st
Witness —
George
Hanoman.
23rd, 26th
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May,
1951.

Cross-
examination
continued.
26th May,
1951.

In the
Supreme
Court of
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Guiana.

Defendant's
Evidence.

No. 25.
Evidence
of 1st
Witness —
George
Hanoman.
23rd, 26th
and 29th
May,
1951.

Cross-
examination
continued.
26th May,
1951.

I never saw anybody else's cattle grazing in Booker's half except Rose's and that was after the rice crop. I know de Silva also owned cattle at that time—most of that cattle grazed at Darobin. The proprietors of the western half grazed on the western half—the proprietors part—after the crop and during the crop. I heard Simeon de Silva's evidence and Faulkner's evidence and also McTurk and Cecil Baker. I saw Booker's transport at Cameron & Shepherd's office. I read there the reference the right of the proprietors of the eastern and western halves of Susannah to graze over the whole of Susannah. I did not know who the proprietors referred to were. Bhoopsingh, de Silva, etc., who are still proprietors. I did not ask Bookers what is that in the transport. I read that transport for the first time after I had bought and went with my complaint to Cameron and Shepherd about Rose's threats to let the Bohemia cattle in. I have not yet taken transport because Mr. de Freitas said that he intended to make application to the Court to have certain phrases on the transport removed from the transport, but before that could be done, plaintiff filed this action. He did not tell me what the words were. Up to now I don't know what those words are which it was intended to remove.

10

To Court : There was a wire fence and punt trench on the southern side which prevented the cattle of the proprietors — that fence was always there; it contains 4 strands instead of two; I put 2 more.

(Continuing)

20

I don't agree with McTurk when he says there was only a fence for a short period. I know McTurk was in charge for Bookers. I did not know, nor ever asked why Bookers sold. I had not heard that Rose said that if he was not given water by Bookers, Bookers would not be able themselves to cultivate rice. When water was needed, Bookers supplied the water.

As to notice boards. I know the meaning of the word strays.

The occasion of the impounding of the donkey did not take place at Bohemia when the he-donkey was chasing the she-donkey—and Clarence had to impound it. All the cattle we impounded came from Bohemia, but if they came from Susannah, we would also have impounded them.

30

By Sir Eustace Woolford (continuing) :

George Hanoman (continuing) :

Tuesday 29th May, 1951, at 9.40 a.m.

Cross-
examination
continued.
29th May,
1951.

Before I bought I knew the proprietors on the the west half—de Silva, Rose, Goberdarsingh. I had never seen other proprietors' cattle on the east half. I am positive that there were none on the north of the east half. As to the south, I cannot say if any grazed there after the rice crop in Bookers' time, but I had never seen any. I know that de Silva, Bhoopsingh and the other proprietors' had cattle, but their cattle grazed on the proprietors' own land. De Silva I know had some of his own

cattle at Darobin and some at Susannah on the east half of the west half—that is on the lands of the proprietors of the east half of the west half.

In the
Supreme
Court of
British
Guiana.

Defendant's
Evidence.

No. 25.
Evidence
of 1st
Witness —
George
Hanoman,
23rd, 26th
and 29th
May,
1951.

Cross-
examination
continued.
29th May,
1951.

Since I bought no cattle from Susannah came on my place, but presently some of the proprietors paid me agistment fees. None of de Silva's Susannah cattle have grazed on my east half — either on the northern or southern half. But some of his cattle which he had taken from Susannah to Darobin have come back and then strayed into my half on the southern side. Since I have bought Bhoopsingh's cattle have come and grazed on my southern side — but they were cattle which Bhoopsingh had in agistment at Bohemia. Bhoopsingh had sent to Bohemia for agistment
10 all his cattle at Susannah save and except about 4. Now about 6 weeks ago, he has taken back the cattle he had at Bohemia. As soon as Rose had removed his wire from Bohemia — that is about 2 or 3 weeks after I bought, Bhoopsingh sent his Susannah cattle to Bohemia. I have impounded both de Silva's cattle and Bhoopsingh's cattle—the first time was on the 8th July, 1947, when I impounded both de Silva's and Bhoopsingh's cattle. I impounded them on my rice fields on the eastern half of Susannah. The first date of impounding Rose's cattle was on 21st August. When I impounded de Silva's and Bhoopsingh's cattle, I did so because I felt I had a right to impound. I had bought the place and I was advised by my lawyer to im-
20 pound them. Rose brought an action against me at Albion for illegal impounding claiming damages. Mr. H. C. B. Humphrys appeared in Court on my behalf. Case was in about October 1947. I can't remember if Rose gave evidence in that case, but my lawyer informed me that he withdrew the case. The case is not pending. Mr. Fitzpatrick was the Magistrate. I knew since Rose let his cattle in that Rose was claiming that I could not impound his cattle. I did not bring an action before against Rose or any proprietor in this Court. I was acting throughout under legal advice. I admit I have continued to impound all the cattle.

To Court :

I have been continuing to impound cattle coming over from Bohemia. No cattle can come from Susannah.

30 All the cattle I have impounded have come over from Bohemia. I have impounded none on the northern side—none can get in.

Re-
examination

To Court :

Darobin is about a mile away east of Susannah. You get going East from Susannah first Bohemia, then Kendal, Warren and then Darobin. My lands on the south are tenanted by rice farmers. They brought action for damages in Albion Court—those actions are still pending.

I bought in June, and on the following Sunday, I started giving out tenancies. The rice tenants started to plant that very month. The whole of my southern side is not planted in rice. I have there 476 coconut trees and there is a provision farm
40 belonging to a tenant; I have about 50 rice tenants, but last year I gave out to 5 persons and they sublet to smaller rice farmers.

In the
Supreme
Court of
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To Court :

The water for the rice is got from rainfall. I think I got water from Rose Hall for the season.

Defendant's
Evidence.

(Continuing) :

No. 25.
Evidence
of 1st
Witness —
George
Hanoman.
23rd, 26th
and 29th
May,
1951.

Rose has 4 notice boards on the west half of the west half. He has one on the reef and one on the Grand Canal. The one on the reef is on the same wire fence that separates him from the proprietors; then one on the Grand Canal. He took out the wire and the posts after I bought—and there are none there now. There is only one notice board now—the one in the photograph near the road on the southern side.

To Mr. Stafford with leave of Court :

10

Re-
examination
continued.
29th May,
1951.

I produce :

Transport No. 64 of 16th September, 1876 (certified copy) Paris Britton to Thomas Howard, east half of west half of Susannah — admitted and marked "EE".

Transport 271 of 25th October, 1939 — Registrar (Marshal) to Hygino Vasco de Silva—6½ rods of west half of west half—tendered and marked "FF".

Transport No. 272 of 25th October, 1939—Registrar to Simeon Theobald de Silva—6 rods east half of west half of Susannah admitted and marked "GG".

Not further cross-examined by Sir Eustace.

20

No. 26
Evidence
of 2nd
Witness —
Archibald
Barrington
Rohlehr.
29th May,
1951.

No. 26.

**EVIDENCE OF 2nd WITNESS — ARCHIBALD.
BARRINGTON ROHLEHR.**

Archibald Barrington Rohlehr sworn states :—

Examination

Berbician. 67 years old. Lived on Corentyne Coast — No. 7 — going east you get to No. 7; the western half was owned by me from 1920-1943. The eastern half was owned by several proprietors. I was at some time the Chairman, East Coast Country District—extends from No. 1 known as Sheet Anchor to No. 5 known as Industry.

I know Plantation Susannah well. Going east from No. 7 you get ½ of Lewis Manor owned by Rose, and then the other manor owned by Hanoman (now deceased) father of the defendant—then you get west ½ of No. 11 owned by Hanoman (deceased) then the other half of No. 11 now owned by Rose Hall.

30

When I owned my portion of No. 7, Rose brought to Lewis Manor from time to time cattle that he had on other lands. Lewis Manor had very good pasturage. At that time rice was planted on both sides of the road of east Manor. During the years 1920-1943 there was rice at Susannah on the southern side—but none on the northern.

In the
Supreme
Court of
British
Guiana.

Defendant's
Evidence.

No. 26
Evidence.
of 2nd
Witness —
Archibald
Barrington
Rohlehr.
29th May,
1951.

Examination
continued.

I knew Susannah before I went to live at No. 7 in 1920. I know Susannah for over 20 years before that. I knew when de Silva had Susannah. I know rice planted on south side of Susannah 10 years before I went to live at No. 7, but I would not like to say that I am accurate. When I lived at No. 7 Rose had the west half of the west half of Susannah—east half of the west half of Susannah was owned by several proprietors. Whilst I lived at No. 7 on the northern portion of the west half of the west half, there was a wire between Rose's west half of the west half, and the eastern half of the west half. That wire fence ran from the road going north right across the sea dam extending about 10-12 rods beyond the sea dam. No wire fence turned west to Rose's estate, east half of Hermitage. There was a wire fence on Hermitage dividing Rose's eastern half of Hermitage from the west half of Hermitage owned by proprietors. Over the road on the south, on the west half of the west half of Susannah, there was a wire on the boundary of the east half of the east half running from the road over the Grand Canal to the south—this was in line with the wire on the north running to the sea dam. There was only the intervening gap of the road. I could see from the road this wire there up to 1943 when I left the Corentyne.

I can't say if the wire running north to the sea dam was there up to 1943 when I left. But it was there up to 1941. The sea dam came under the control of the Local Authority of which I was Chairman in 1924-1927. As Chairman I had to visit the sea dam often. When I became a member of the Board, the sea dam was under the control of the Authority. When I visited the sea dam I used to have to get the wire pressed down to allow me to pass through. After Government took over control of sea dam, I ceased inspecting the place.

Archibald Barrington Rohlehr (continuing) :

30 *To Mr. Humphrys, K.C. (continuing) :*

I went with Rose, de Silva and others as the Chairman of the District in 1945 to Mr. Baxter, Manager of Rose Hall, to beg for water for the district. He said his first interest was sugar, and he could not give much water. Rose was present at the interview.

By Sir Eustace Woolford :

Cross-
examination

I don't remember H. E. Bullock who looked after Lewis Manor. I got to know Simeon de Silva about 50 years ago. I knew rice being planted on the de Silva lands at Susannah when I went to No. 7 in 1920. At certain periods, the proprietors used to apply to Rose Hall for water and would pay for it. Water was a problem often for rice growers and cattle owners.

In the
Supreme
Court of
British
Guiana.

Defendant's
Evidence.

No. 26
Evidence.
of 2nd
Witness —
Archibald
Barrington
Rohlehr.
29th May,
1951.

Re-
examination.

I would pass on the road and see cattle on the southern side grazing after the rice crop is over — sometimes 100 or 200. I always knew Rose as a cattle dealer. There was nothing to prevent cattle on the eastern half of the western half going over to the eastern half of Susannah; I know that Rose would depasture in one estate for a time and then send them on to another estate—that is called resting the land and providing food for the cattle as well. Other farmers do that too. I know Hermitage. I can't say when Rose bought Hermitage. The sea defence maintains a wire skirting the sea dam to prevent cattle from breaking up the dam.

When the Local Authority had control of the sea dam, a proprietor could take his side line wires over the sea dam right down to the sea. Rose had his wire running from east to west right up to his half of Susannah; he had enclosed the sea dam. 10

At present the Government has control of sea dam.

I know that up to 4 or 5 years ago Rose's side-line went—down to the sea defence wire which is south of the sea dam. On the southern side there was a wire separating the small proprietors from the east half of Susannah. I saw it there up to recently. A trench is on the eastern side of the wire—near the dam

To the Court :

I can't say if there were gates on the wire fence between eastern half and eastern half of western half. I used to see cattle on eastern half being driven across the road from the north; about 200 cattle; I can't say whose. 20

No. 27
Evidence.
of 3rd
Witness —
Edwin
Clarence.
30th and
31st May,
1951.

Examination

No. 27.

EVIDENCE OF 3rd WITNESS — EDWIN CLARENCE.

Tuesday, 30th May, 1951, at 9.30 a.m.

Edwin Clarence sworn states :

Brother-in-law of plaintiff. I worked for plaintiff for 18 years—left his work in 1950. Worked on Bohemia, Hermitage, Susannah and Lewis Manor. My work was to dig trenches, prepare wire fences, milk the cows and impound cattle on his instructions.

To Court : My wife (married) is the sister of the woman whom Mr. Rose lives with. 30

(Continuing) :

Mr. Rose on Susannah had Hermitage on one side and many proprietors of Susannah on the other side. Rose had a small piece amidst the proprietors. Between Rose and proprietors there was a wire fence on the northern side. Fence was from the Public Road to the sea dam and beyond this sea dam — at the sea end, this wire goes across and connects with Hermitage. When the Government took over the

sea defences, the wire was moved from above the sea dam to inside the sea dam. That was a Government wire. That wire between the proprietors was already up when I went to work for Rose. That wire is not up now. Myself, Baker, Saul and David Rose took it up by directions of Mr. Rose. We took up all and repaired the wires on Hermitage with the removed wire that was between the proprietors and Mr. Rose. We did not use all these wires, but the balance of the wire not needed for the repairs were put under David Rose's house, which is on Susannah near the Hermitage dam on the water side of the road—about 40 rods from the road. That wire was up for 18 years as I know, from the time I went there to 1948. On the southern side there was a wire between Rose and the proprietors and there was a trench too—

10 running from the Grand Canal to the Public Road. There was a wire between Mr. Rose's Hermitage wire and the other proprietors of Hermitage. There was no wire between Hermitage and Rose's Susannah. Presently there is a wire between Rose's Susannah and Rose's Hermitage. One on the water side portion has been there since I went on to work. But on the backdam side one was put up about 2 years ago. There were 4 notice boards on Rose's Susannah. One near the Public Road on a briar tree on the water-side portion. The second was up on the reef—not on the sea dam. The third was on back dam portion near the road. The fourth was by the Grand Canal.

In the
Supreme
Court of
British
Guiana.

Defendant's
Evidence.

No. 27
Evidence,
of 3rd
Witness —
Edwin
Clarence,
30th and
31st May,
1951.

Examination
continued.

20 On the waterside portion between the proprietors and Bookers there was a large punt trench—a middle walk. It was not easy for cattle to go across that. The place had too much mud—the trench had salt water. That trench does not keep water—it is tidal—but there is plenty of weed. On the back dam portion between the proprietors, there was a wire on the dam. The trench was inside the dam on Bookers' side—this trench had sweet water—water from the Grand Canal—there is no connection under the road between the trench on the backdam portion and the trench on the sea dam portion.

30 There was a wire fence on the backdam portion between Bookers and Bohemia. That fence belonged to Rose—owner of Bohemia. That fence was taken down about 2 days after Bookers sold. Rose told me that Hanoman had bought. I got some men — Alfred Baker, Willie Baker and one Baboo Chatur — Rose directed me to get the men and to take down the wire, and we did so. At that time Rose had most of his animals at Bohemia — always had most of his animals at Bohemia — — — He had some on Susannah and some at Hermitage. Over on the water-side portion. Rose had wire fence separating Bohemia from Susannah. It was always there. After Hanoman bought, Hanoman put up a fence on that waterside alongside of Rose's fence. Rose's fence there went to the sea dam and beyond the sea dam. Since Hanoman bought Rose removed that portion of the fence between the reef and the Government wire (the piece beyond the sea dam had already been removed).

40 *To Court:* Hanoman ran his fence alongside of Rose's only as far as the reef.

(Continuing):

Between the reef and the sea dam, the vegetation is not good for cattle.

In the
Supreme
Court of
British
Guiana.

Defendant's
Evidence.

No. 27
Evidence.
of 3rd
Witness —
Edwin
Clarence.
30th and
31st May,
1951.

Examination
continued.

I impounded animals belonging to Robert Seecharan — impounded them for Rose — found the steers on waterside, Rose's Susannah — they got in from Public Road — that was in 1937 — also 2 heads belonging to Bhoopsingh on the waterside of Rose's Susannah about 1937.

To Court : I know that Robert Seecharan was one of the proprietors of Susannah at that time.

(Continuing) :

I have also impounded animals belonging to Goberdarsingh and Simeon de Silva — I got those animals on Rose's Susannah on the waterside. I also impounded on the backdam side — animals belonging to Bhoopsingh, Goberdarsingh, Simeon de Silva and Seecharan. 10

I also impounded donkeys — Hanoman's donkey in 1948. Donkey called Rob Roy. Rob Roy was grazing on the road and it walked on to waterside of Rose's Susannah. I saw Rose hold it — I was under David Rose at the time. Rose tied the donkey under David's house and told me to take it to Bohemia and from Bohemia I took Rob Roy to Albion Police Station. I can't say if Rose and Hanoman were friendly at that time.

I was once with Rose when Rose himself shot a pig belonging to Simon Seecharan — shot at Susannah waterside on Rose's land. After the pig was shot, Rose gave me the carcass. 20

When I worked with Rose I lived at Bohemia. At Susannah there are houses on both sides of the road. Robert Seecharan, Goberdarsingh, Simeon de Silva and Balla, (Seecharan's brother) have houses. They have garden attached to the houses. Gardens about 4 rods x 7 rods (the average size) — enclosed gardens. On the backdam side of the road, Bhoopsingh has a house and garden. Peter Assabad has a house and garden — and Samuel. On Hanoman's Susannah there is a house belonging to Hanoman — on backdam side and by the waterside and Sahadeo has a house and garden. These gardens are provision gardens.

Goberdarsingh once called me to appraise damage on his garden on the waterside — damage done by animals (pigs) belonging to Seecharan — Goberdarsingh got judgment (Exhibit "D1"). 30

I have been a Rural Constable for about 12 years. I don't know why the wire was taken down between Bohemia and Susannah.

Hanoman impounded animals that came from Bohemia — some of the animals belonged to Rose—some belonged to Bhoopsingh. Rose had taken in Bhoopsingh's animals for agistment. Some of the animals belonging to Simeon de Silva came from Darobin and crossed through Bohemia into Susannah. An animal of mine was impounded. I had it at Bohemia. My animal did some damage to the rice of one of the tenants of Hanoman — Edward Seecharan; I was summoned.

To Court : There was no actual driving of the animals

I saw the animals from Darobin passing through. I can't remember how many heads. I could not impound them for being on Rose's Bohemia. I went to get instructions from Rose and before I could get instructions, they went over to Hanoman, and Hanoman impounded them.

By Sir Eustace Woolford :

I am no longer at Bohemia. I have been in Georgetown since Monday. This is the first time I have come about this case. I got the Summons last week. I would not have come unless I was summoned. Nobody had asked me to give evidence but

10 I met Seecharan in New Amsterdam, and he said that I was the man who impounded the cattle and they were going to make Hanoman summon me. I believe that the Seecharans caused the Summons to be issued to me. I knew that the case the Seecharans referred to was a case between Rose and Hanoman. I can't remember how long ago Seecharan spoke to me. Nobody else spoke to me. Hanoman never spoke to me. I live now at Cromarty, Corentyne. I went to live there on leaving Rose's place. I left Bohemia when my wife died and I decided to go and live with my relatives. My wife died when I was living at Bohemia. It is not true that Rose made me leave Bohemia. Rose and I had no disagreement. It is not true that I behaved badly when I drank liquor. It was quite comfortable at Rose's. I did not take away a girl child.

20 I know Esther Rose. She is at Rose's house now. I know Jessie. I did not take her away. I don't know where she is. I was not badly treated at Rose's. I am farming provisions and planting rice now. I have 2 acres in rice at Cromarty. I grow Boulangers and Potatoes. I make a good living. I have no land of my own. I have my own house. I am by far better off than when I was at Rose's. I have my children living with me and I support them.

Edwin Clarence (continuing) :

By Sir Eustace Woolford (continuing) :

Rose made a report in 1950 that Jessie had been taken away by one Baker. I was employed at Plantation Rose Hall as an acting driver of a shovel gang and weeding gang. Mr. Baxter was the manager at that time. I can't remember when I first

30 went to work at Rose Hall. I worked there for 9 weeks. I know Mr. Baxter. When Mr. Rose did not have work I used to work forking for Rose Hall during a couple of years—all that time I lived at Rose's. I was on the forking gang before I was a driver for 9 weeks.

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Edwin
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30th and
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Examination
continued.

Cross-
examination

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To Court :

I did not start to work for Rose Hall until I had been at work with Rose for 7 years and I continued to work off and on for 11 remaining years. I was staying with Rose.

Defendant's
Evidence.

(Continuing) :

No. 27
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I worked by the opening. It is not true that Rose gave me a little work in between. He paid me for any work I did for him.

I knew that the persons whose animals Rose impounded had land at Susannah. Bhoopsingh kept his cattle on the seaside and sea dam side when they had rice on backdam side; he kept all his cattle on the seaside; but when there was no rice crop they would bring their cattle across the road to the rice beds on the backdam portion on the proprietors' side. When Bookers rice crop was over cattle would go there—cattle belonging to Rose. He would release the wire separating the Bohemia and the Bookers' Susannah and let the cattle in. 10

Cross-
examination.
continued.

To Court :

Rose had cattle at Susannah—did not come over—because of the fence between Rose and the proprietor and the owner on the trench.

(Continuing) :

The tenants on Bookers' rice fields had their own cattle on the rice beds after the crop. I remember that I impounded Bhoopsingh's cattle in 1937. I impounded 2 head of cattle. I did not take them to any pound. Bhoopsingh released them at Bohemia. I am sure Bhoopsingh was there in 1937. I also seized Goberdarsingh's cattle in Rose's Susannah waterside. I took 2 head of cattle some time in 1937 or 1947. Bookers was still owners of the east half. I say now that was in 1937; de Silva and Rose are good friends, but were not always good friends; not good friends in 1937. I never heard that Rose's cattle at Susannah could graze everywhere in Susannah. Bhoopsingh and de Silva had about 60 head of cattle. I saw de Silva grow rice. I know Ramadan—did not know if he had cattle. 20

I saw Mr. Rose shoot a pig.

Re-
examination.

There is a fence between Rose's half of Hermitage and Rose's Susannah on the backdam side fence. 30

Bookers' piece had a fence around the rice field. Goberdarsingh is the brother of Bhoopsingh. I never would see Goberdarsingh at Susannah; he worked at Port Mourant. Bhoopsingh used to look after his cattle.

I have no spite against Rose.

Re-
examination.
continued.
31st May,
1951.

Thursday, 31st May, 1951.

Edwin Clarence (continuing) :

Two plans are here put in by consent :

- (1) Plan of Plantations on the Corentyne from No. 5 on the west to Darobin on the east (produced by the plaintiff, admitted and marked HH.) 40
- (2) Plan of John Peter Prass, Surveyor, dated 29/1/80, showing Pln. Susannah, east and west half—admitted and marked "JJ".

To Sir Eustace Woolford (with leave of Court).

I knew Bhoopsingh personally. He used to look after his brother's cattle. (Goberdarsingh is his brother). I know Bhoopsingh used to live at No. 19 (Kendal which is 2 plantations away from Susannah). I knew Bhoopsingh used to work on Rose Hall estate and he lived at Kendal. I can't say how long he lived at Kendal. When Bhoopsingh was living there, the Hanomans was owner. I don't know that he was living there before Hanoman bought.

To Court

10 Nobody was living on Goberdarsingh's piece. But Bhoopsingh sometimes would look after the cattle and sometimes Goberdarsingh. I looked on the land as belonging to the brother.

Continuing to Sir Eustace :

Bhoopsingh told me he bought before I seized the last set of cows after Bhoopsingh bought the lands from Goberdarsingh. Bhoopsingh's son told me that his father expected to buy the land. Myself and son were friends. I never had sheep of mine impounded by Hanoman. I did own sheep—more than 30 head.

20 Sheep belonging to Mr. Rose were impounded at Reliance Estate and I went on Mr. Rose's instructions and redeemed them. Mr. Hanoman had impounded them. Case against me and Rose with regard to this is now pending at Albion Court. On the reef there is "samphire" bush grass that is no good for cattle. I deny that there is good grass for cattle there.

Darobin is about $\frac{1}{2}$ mile from Susannah. I can't remember if de Silva's cattle from Darobin that went into Susannah came along the road. I say now that they came along the road from Darobin, crossed over the bridge at Bohemia and got into Bohemia and then went into Susannah (south). de Silva's cattle were driven from Susannah to Darobin along the Public Road sometimes by de Silva and sometimes by his son. I saw them on their way back to Darobin; only once came into Bohemia and then go into Susannah (south) where they were seized. I know of no other occasions when de Silva's cattle were seized.

30 I don't know which estate Rose owned first, Hermitage or Susannah. At one time Rose had wire between Hermitage and Susannah, which would prevent him going from his own property to his Susannah property. He took down that wire after Hanoman bought the east half of Susannah. I say he did that to the wire. I saw Rose's cattle at Bohemia go into Susannah (south)—Hanoman's east half. I was at the house at the time. The cattle came from Bohemia waterside. They did that several times and they then went home.

To Court : Rose told me that he took down the fence to impound Hanoman's cattle when they would stray over to Bohemia.

(Continuing) :

40 I saw de Silva's cattle coming along the road. I did not know de Silva's brand. I never saw Bhoopsingh's cattle grazing on the rice bed of Susannah. They grazed

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Further
Re-
examination.

on the waterside of Susannah. They would be driven from the waterside by the owners. I have seen de Silva and Bhoopsingh driving their cattle going across the road from the waterside to his own backdam side—taking trouble that they should not go into the eastern half. Sometimes Bhoopsingh, sometimes his son would be driving.

Rose's Susannah cattle never went into Bohemia, because of the wire fences — before Bookers owned.

To Mr. Stafford :

Mr. Rose's eldest son, Harry Rose, was the manager of Bookers' Adelphi Plantation. At the pound you pay to release cattle 96 cents but if you get release from proprietors you pay 48 cents per head. I caught from Hanoman one day 150 head. 10

No. 28.

No. 28.
Evidence
of 4th
Witness —
Rupert Van
Gronigen.
31st May
1951.

Examina-
tion.

EVIDENCE OF 4th WITNESS — RUPERT VAN GRONIGEN.

Rupert Van Gronigen sworn states :

Detective Corporal stationed at N/A., C.I.D. so stationed since December 2, 1946. I know George Hanoman; I know Rose (Plaintiff). In September 1947 — 29th—Monday, Hanoman came to Station and I and Constable Jackman went with Hanoman and our Militia Bandsmen went in Hanoman's car around 2 a.m., 29th September, to Susannah. At Susannah Hanoman parked his car. After a time I saw Rose or agent chasing cows across a bridge at Bohemia near to Rose's house from south to north. It looked like 120 animals. Before Rose came back, I saw Sahadeo and 3 men bringing out 4 animals—came from south to north. I told the men to carry the animals to Albion pound. 20

(Sir Eustace points out that none of this evidence was put to Rose and objects to the witness).

Court allows the question, but will call back Mr. Rose to comment on or contradict this.

I then returned to New Amsterdam. I had been there in the day on the 8th July.

11 heads of cattle were caught on the said rice field and were sent to Albion pound. I don't know whose cattle were caught. 30

By Sir Eustace Woolford :

I saw about 120 cows. I did not see the brand. Hanoman was with me throughout the whole time. Hanoman did not call out to Rose, and I too said nothing; but Hanoman drove his car about 10 rods to where the cattle were passing and kept on his lights.

Not re-examined.

Cross-
examination.

No. 29.

EVIDENCE OF 5th WITNESS — JOHN FRANCIS TODD*John Francis Todd sworn states :—*

Sub-Registry Officer in charge of the Sub-Registry, New Amsterdam. I see certified copy of Transport, Exhibit "R." Transfer to Bookers by Sam. I searched from July 1946 to July 1948 — there was no application.

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Evidence
of 5th
Witness —
John Francis
Todd.

31st May,
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Examination.

No. 30.

EVIDENCE OF 6th WITNESS — JAMES GOBIN.*James Gobin sworn states :*

10 Live in Berbice. I am 60 years. I live at Kendal, Corentyne. I carry on business of a provision grocery at Kendal. I am in charge of postal agency of that district and Registrar of Births and Deaths — retired member of the Local Authority of that district. I was born just where I am living.

No. 30.
Evidence
of 6th
Witness —
James
Gobin.
31st May,
and 4th
June,
1951.

Examina-
tion.

My mother was cattle farmer at Kendal. Bohemia adjoins Kendal on west; then Susannah; then Hermitage; I am well acquainted with Susannah. I remember when de Silvas owned it. de Silvas and I were very good friends. I knew Rose from my childhood days. I know his west half of the west half of Susannah. I am one of the proprietors of the east half of the west half. I know Hanoman's east half formerly owned by PIn. Rose Hall (Bookers). My mother bought a portion of the east half
20 of the west half about 33 years ago, and she took her cattle there. I assisted her. I had a few of my cattle among the lot. On the northern portion of the west half of the west half, Rose had a trench dug extending to the sea dam, and dividing his portion of the west half, of the west half from the proprietors of the east half of the west half Trench was 10 ft. wide and 3 feet deep The dam was built from the dirt of the trench —extending from the Public road to the sea dam. A wire was erected on that dam extending to the sea dam and over to the other side of the sea dam. Then a wire across was run going west and connecting with Hermitage wire — that is a wire going from north to south separating the 2 halves of Hermitage. West half of Susannah and east half of Hermitage were all embraced in one block enclosed by barbed wire
30 —4 strands of wire nailed on posts about 10 — 12 feet apart — Hermitage wire went right to Public Road.

On the south portion, I heard Rose had been planting rice on the west half of the west half. A trench was dug — dam built going from Road to Grand Canal and

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across dam to Rose Hall wire. Going east on the proprietors' portion, you get to a punt trench. It ran from the public road trench and went right through to sea dam. This dam varied in width 10—14 feet.

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Evidence.

As a boy I have been employed by a woodcutter to drive his donkey along the trench with his wood in the punt. That was before my mother bought the land at Susannah. I was about 12 years when I was employed by the woodcutter. That punt trench is still there. The salt water from over the sea dam filled the trench. In those days the proprietors maintained the sea dam. The trench was always muddy. Cattle could not cross the trench — not even now — sticky with salt water mud.

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Gobin.
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Going east, you cross the east half of Susannah, and you then come to Bohemia. 10
There you get to a wire fence. It ran from the Public Road on to the sea dam. That fence was put up by John Downer. I worked on it as a boy. I don't think my mother had bought Susannah yet. There is a middle trench in the middle of Bohemia; then going on further east, you get another wire fence — and thus whole of Bohemia is enclosed. We have no fence at Kendal. The wire is between Bohemia and Susannah (north). Wire was continued there after Rose had bought Bohemia. That wire was continued on the south side of the road right across the Grand Canal to the Plantation Rose Hall wire. Length from road is about 300 rods. From Public Road to reef about 500 rods. From reef to sea dam about 200 rods. When I went to Susannah 30 years ago, I found rice lands on the south side of the road at Susannah. 20

Examina-
tion.
continued.

Examination
continued.
4th June,
1951.

Monday, 4th June, 1951, at 9.30 a.m.

James Gobin (continuing) :

When I went to Susannah there was no wire separating Hermitage eastern half from the western half of Susannah. He put up such a wire in 1947. That wire was taken from boundary of western half of western half separating the multiple proprietors. (I am speaking of the northern half). The distance between the eastern boundary of the west half of Hermitage and the boundary between western half of the western half of Susannah and the property of the multiple proprietors was $112\frac{1}{2}$ ($75 \times 37\frac{1}{2}$).

I could not drive wild cattle down a corridor of $112\frac{1}{2}$ rods to get them into a kraal—except with the lead of a horse. I produce : 30

Transport 475 of 24th October, 1932, in favour of Parbatie to James Mohamed (myself) admitted as "KK."

My father was Gobin and I took his name.

I was living at Kendal when my mother bought the land. Rose impounded cattle of mine and my mother trespassing on the west half of the western half of Susannah.

On two occasions — both my mother's cattle. On the first occasion I myself saw the cattle grazing on the west half of his half (northern portion) 4 head of cattle. The cattle were put in a pen in Rose's yard at Susannah. I approached Rose and asked him to allow me to release the cattle. He told me to pay the men — two men the usual fee of 2/- per head. 40

Another occasion 2 were impounded, I did not see them from there where they were taken. I saw the names of the men who did the impounding, but I went and paid the men and got the cattle released from the pen. (Sir Eustace Woolford here points out that no question was put to Mr. Rose about these specific witnesses of "impounding" — he does not agree that the alleged acts amounted to impounding). (Court again declares its intention to recall Mr. Rose so as to give him an opportunity to comment on the evidence given).

10 I always kept my cattle on the eastern half of the western half. I made no claim that my cattle should graze on the west half of the west half. I knew I had no right to that. Before he had seized the animals, I asked him to allow me to drive out the cattle. He said that if I allowed them to come back there again he would impound them. The two occasions on which he seized the cattle was about 27 years ago. In order to be free from the risk of having my cattle impounded. I bought a piece of land from Mr. Bailey and put a part — most of my cattle there — leaving those that I felt was not straying. Then he seized my mother's cattle. She owned the lands.

I know the seizure took place 27 years ago — in 1924 — because shortly after I bought the lands from Bailey in the next year 1925; my mother bought in 1918; I and my brother inherited her share by Will — she died soon after the impounding in 1924.

20 Receipt for lands from Bailey on a/c of purchase price and agreement with Bailey and Gobin admitted "LL1" and "LL2", respectively.

I sold these lands and cattle a few years ago.

When my mother bought, the eastern half of Susannah was owned by the de Silva family. I made no claim to depasture cattle on the east half. De Silva and myself were friends and he would not impound my cattle that got on his land — nor did I impound any of theirs that got on mine. My mother sold de Silvas milk for many years. I can't say who planted rice first at Susannah.

30 I know that Robeiro who was before de Silva, owner of the east half, planted rice. My elder brother used to work with Robeiro. When I went with my mother to Susannah in 1918, rice was being planted on the eastern half of Susannah on the southern part. It was owned then by the de Silvas. I know rice was planted there before by Robeiro. In 1918, Bohemia was owned either by Mr. Downer or Mr. Ferreira.

40 On the southern side at that time there was a wire fence separating Bohemia from the eastern half of Susannah running from the Grand Canal to the Public Road, attached at Grand Canal to the Rose Hall wire — going west on the southern portion you get to a rice field canal (some people call this a punt trench) and the dam and a wire extending from the Grand Canal to the Public Road — dividing de Sliva's eastern half from the western half of Susannah. Going further west, you would get on the wire fence separating the eastern half of the west half owned by multiple proprietors from the west half of the west half owned by Rose. Then you get into Rose's rice fields and crossing Rose's rice fields, you come into Hermitage without any wire fence. But there is one there now. That is eastern boundary of Rose's Hermitage half.

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By Sir Eustace Woolford :

I own a provision grocery at Kendal and I am also a postal agent. Registrar of Births and Deaths. Live at Kendal. I own a few cattle now; I keep them at Kendal — good grazing there — I have about 10 head of cattle. I graze my cattle at Kendal and Warren, where I also own lands. My cattle do not graze on the area between the reef and the sea dam, there is nothing there on which to graze; I would disagree with any opinion that the area between the reef and sea dam furnishes excellent grazing. I was born at Kendal and have always lived there. Kendal is between Warren and Bohemia. There used to be a wire fence between Kendal and Warren some years ago, but not now — the owner of the eastern half of Kendal planted rice on the western side and there was then a fence, but since rice cultivation has been abandoned — the fence has not been maintained. There is sufficient grazing for my cattle at Kendal. My cattle do graze on the southern side. They have never grazed at Susannah. My Susannah cattle used to stray on de Silva's eastern half. 10

When Francis Sam owned the east half, I had no cattle at Susannah. The last time any cattle grazed at Susannah was 27 years ago.

James Gobin (continuing) :

By Sir Eustace Woolford (continuing) :

I was about 8 or 10 years old when Robeiro was planting rice. I did see rice being planted on his Robeiro's lands. I did not take legal advice as to my rights of pasturage as contained in my transport. I was alone when I saw the seizure of my mother's animals. 20

Baboolal my neighbour at Kendal impounded my cattle and I asked de Silva to allow me to keep cattle with his. That was after we bought lands but had no pen. The cattle did not remain at de Silva's for a few years but a few months. Until I put a pen on our lands at Susannah; I mean it was Baboolal impounding my cattle at Kendal caused me to buy lands at Susannah. Rose has a mortgage on my brother's property. My brother was charged with Arson. I don't know if Rose gave evidence in that case. I myself and brother were then not on terms. My brother was not living at Kendal. The house was an unoccupied house on my brother's lands at Kendal. 30

I often saw cattle on the Bookers' half after crop — I have seen Rose drive his Bohemia cattle across the road into Bookers' Susannah — over and over again. Before these cattle were there, I could see other cattle there grazing there.

I had no cattle in Bookers time.

I had an action against my brother and he and I were not on any terms. (Mr. Humphrys K.C. here applied to amend his statement of defence as appearing in a draft submitted. This is to meet the amended statement of claim.)

Re-
examination

(*Sir Eustace does not object*). Court grants the application.

Sir Eustace tenders letter of 10th December from Sir Eustace Woolford to Cameron & Shepherd and copy of reply from Cameron & Shepherd to Sir Eustace Woolford dated 10th December, 1947.

Letter and copy of reply admitted by Court and marked "MM1" and "MM2" respectively.

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PLAINTIFF'S FURTHER EVIDENCE.

No. 31

FURTHER EVIDENCE OF ARCHIBALD ROSE

10 *Tuesday, 5th June, 1951, at 9.30 a.m.*

Archibald Rose (recalled) :

To Sir Eustace Woolford :

I have been in Court whilst evidence was being given. On the Sunday morning shortly after he bought, George Hanoman came to me and suggested that we should join together against the small proprietors. I went and took out a paper from my room—it was the Transport from Sam to Bookers—this is the paper; it is a copy of the Transport. I showed it to Hanoman at the time. When I gave my evidence I did not have it. I said then that my lawyers had it. When I had the case with Hanoman at Albion, I had that paper with me. With respect to my own Transport with respect to the western half of the western half, I had already produced a certified copy marked "E". The copy of Bookers' Transport that I had at the time of the conversation with Hanoman, I now produce, admitted and marked "NN". I don't know what he exactly meant by joining together against the multiple proprietors — but I understood that it was about their right of grazing cattle over the whole of Susannah. I asked Hanoman what about de Silva. He made no reply. That was the only time that Hanoman spoke to me after he bought.

To Court :

30 In showing him the document, I pointed to him the words in it "the right of grazing cattle over the whole of Plantation Susannah to each of the proprietors of the east and west half of the said Plantation." Hanoman said if only we can get the word "and" out. He did not say for what purpose nor as to show the word "and" could be got out. I did not understand him to be proposing anything.

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tion.
continued

(Continuing) :

I told him that I would not join him in depriving the small proprietors of their rights. It is not true what Hanoman says in his evidence that I saw him after he purchased and told him that I was taking down wire between Bohemia and Susannah and that I said to him that I would loose my cattle to eat up the rice there. There was no rice then in Susannah; the people had not yet put out seedlings. It is not true that I was moving wire between Susannah and Bohemia. The wire there was all rotten in Bookers' time. There was nothing to remove. The wire remained there until it rotted. I never did anything to the wire.

To Court :

In 1949 Hanoman put up wire on the northern side, side by side with mine. He put up wire on the southern side in 1948. There was no wire there—the wire that used to be there rotted and fell down. In 1949 he moved the wire that he put up on the southern side to the northern side. Now there is no wire between Bohemia and Susannah on the southern portion. He put up also in 1948 a wire on the western boundary of his east half near the punt trench. That is still there now.

(Continuing) :

From the sea dam to the reef is the finest spot for grazing. We impede the water—then it is the finest portion. It is not true what Van Gronigen said that 2 o'clock in the morning I was driving cattle from Bohemia on the road. I have never driven cattle at that time of the morning. It is not true that I seized. I never seized cattle and received money—2/- per head for the release—either I or my men.

A donkey—I learnt it was Hanoman's came on to my land at Bohemia, and chased my she-donkey. I had it seized and sent to the pound. It is not true that I seized it at Susannah and sent it on to David Rose's place, and that it was taken on to Bohemia, kept over night and then sent to the pound.

Hanoman had cattle roaming over the northern side in 1948 before he had fence. I did not impound them because I had no right to do so.

My cattle at Bohemia keep on the eastern side—I also had a man called Christie to prevent—he is also called Hectoriah, or Hector—to prevent cattle from grazing there after he planted his own rice.

To Court :

I never had in my mind that my Bohemia cattle could graze on Susannah by reason of my being a proprietor of Susannah.

(Continuing) :

There was no wire between east half of Susannah and my west half for years. I had a wire there during the crop.

To Mr. Humphrys, K.C.

It is not true that I myself caught the donkey.

Cross-
examination.

10

20

30

Policemen could not have seen me and my daughter driving cattle at 2 a.m. in the moonlight.

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Q. You have said all your cattle on Susannah had a right to graze over Susannah ?

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A. Yes.

Q. You have also said that every person who owns land now on Susannah had a right to graze all over Susannah ?

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A. Yes.

Sir Eustace objects to the question as the answer involves a question of law.

10 Court over-rules objection as explaining his acts and allows the question.

Cross-
examination.
continued.

(Continuing) :

Q. Did you believe that every proprietor had a right to his animals grazing over the whole of Susannah by reason of the Transport ?

A. I did not consider the position of the other proprietors as I considered only my own rights.

Sir Eustace again objects; Court reserves ruling until the reason for the question becomes more apparent.

(Continuing) :

20 I never impounded cattle on Susannah because of the rights of the proprietors to graze on my land at Susannah.

I did run a wire on the northern portion separating my east half of west half from west half of west half. It did not run right through—there was a gate by my house. Wire was 150 rods—gate 8 ft. wide. I ran that wire as I said for the reason I gave. Proprietors' cattle could go through my gate.

To Court :

I did not ask permission of any of the proprietors to put up the wire.

When I bought Bohemia in 1928, I took some cattle from Susannah to Bohemia—about 60 head. My Bohemia cattle have the same brands as the Susannah cattle. Those I took to Bohemia and their offspring remained at Bohemia.

30 Bookers never used to repair the fence between Bohemia and Susannah on the southern portion. They never repaired the fence to my knowledge before. Downer put the wire there; I found it there when I bought. I stopped Bookers' men from repairing the wire, because Bookers had given me notice to terminate their supply of water to Bohemia, Susannah and Hermitage. I appreciated that they wanted to prevent cattle from straying on the rice cultivation. The object of the wire was not to keep cattle off the rice cultivation.

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Archibald Rose (continuing) :

To Mr. Humphrys (continuing) :

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Further
Evidence.

I had no reason for not allowing Bookers to repair the wires between Susannah and Bohemia on the southern side. I had a wire on the north side between Bohemia and Susannah. I kept that wire in repair for my special cattle. I did that to keep my special cattle in an enclosure formed by that wire and the middle dam in Bohemia. That enclosure had a width of 75 rods and its depth from the road to the reef.

No. 31
Further
Evidence of
Archibald
Rose.
5th June,
1951.

Sometimes the cattle from proprietors in Susannah would pass behind the reef and get into Bohemia. People who own cattle now in Susannah graze on Bohemia and also on Hermitage. I am speaking of the northern portion of the road. I had a wire on the eastern boundary of Hermitage to the reef. I put that there for my milking cows. There was no wire when I bought Susannah. I put up wire before Susannah and proprietors of Susannah, and I also put up a wire between Hermitage and Susannah. That was before I bought Hermitage. I put the wires to enable me to drive my cattle into the enclosure. That was long before I bought Hermitage in 1925 — about 4 to 5 years. When I bought Hermitage I removed the wire between my Susannah and the proprietors and put up across from the reef to the wire fence at Hermitage. Also when I bought Hermitage I put up the wire between my Hermitage and Jones' Hermitage. I had put up before on the south side to prevent de Silva's cattle coming over to my Susannah.

Cross-
examination.
continued.

When de Silva started to plant rice on the eastern half and removed his cattle to his share of the eastern half of the western half and as I was planting rice, I put up the fence to prevent his cattle from coming into my rice cultivation.

There were then only two proprietors on the eastern half of the western half. I am sure that de Silva had lands at that time on the east half of the west half of Susannah.

That wire continued to be there for about 3 years. After that the proprietors then agreed to plant the whole of it in rice. That Sunday when Hanoman came to me at my house, he came with two men. That was the only talk he had with me. I had no talk about Bohemia wire.

No. 32.

FURTHER EVIDENCE OF SIMEON DE SILVA.In the
Supreme
Court of
British
Guiana.*Simeon de Silva (recalled) :*

I heard a part of James Gobin's evidence. I say that I am the first person that planted rice at Susannah. Robeiro did not plant rice. I would have seen signs on the ground. I knew Robeiro before I went there. I knew him living at New Amsterdam. My father was the person who dug the trench which divided the trench that bounded the eastern and western halves of Susannah.

Plaintiff's
Further
Evidence.

The dimensions were 3 ft. deep by 8 ft. wide — it went from the Public Road
10 going north to sea dam. It was used for transportation of cord wood for burning earth. He also dug a trench corresponding on the southern side — running from Public Road to Grand Canal. I supervised the digging of that—dimensions were 3 ft. x 8 ft. —never 14 ft. in width — not in my time. Cattle go across without sticking — go across trench on the northern portion, but not on the southern portion where Bookers had widened the trench to 12 ft.—and it is muddy and cows would stick. I have a life interest in Darobin. Bishop Weld has the transport because of the Church's reversion. I have cattle there which I inherited. Some with Gomes' brand from whom I inherited—about 7—the rest with my own brand. I never brought cattle there from Susannah.

No. 32
Further
Evidence of
Simeon
de Silva.
5th June,
1951.Examina-
tion.20 *By Humphrys :*

I dug the trenches, one on northern portion and one on southern portion in 1912—these trenches run along the western boundary of eastern half of Susannah. There was a trench there before but it was silted up. What I did on both trenches was to clean the old trench and redry it. In the north in these days, proprietors used to take off the sea defence—and salt water used to come right in—no water used to come in trench after Government took over the sea defence. There is not more mud in consequence—water drains off.

Cross-
Examination

(Humphrys K.C. points to Plan JJ on which is shown a trench on both sides of the road. Plan date 1880).

30 de Silvas bought in 1902. The R. C. Authorities never claimed that I had no right to remove cattle to Susannah. They required me to sell cattle to meet expenses, and I was advised that they were wrong. — — — — I had paid them the money. Hitler is a bull that was taken to Darobin to plough and did go back to Susannah across Kendal.

In 1906 or 1908 my mother got a share in the proprietors' portion of the east half of the west half. Rose put wire on east half about 25 years or 28 years ago on east half of west half. I had wire on eastern half in 1902 when I started to plant on east half and Rose made me take it down. I never put one again, but I planted again. We did not put the wire up again because they started to watch the cattle
40 on the dam.

In the
Supreme
Court of
British
Guiana.

DEFENDANT'S FURTHER EVIDENCE.

No. 33.

Defendant's
Further
Evidence.

FURTHER EVIDENCE OF GEORGE HANOMAN.

Wednesday, 6th June, 1951, at 9.45 a.m.

George Hanoman recalled :

No. 33
Further
Evidence of
George
Hanoman
6th June,
1951.

To Mr. Humphrys, K.C.

The conversation with Rose shortly after I bought took place on the road near Susannah. It is not true that I went to Rose one Sunday at his house. It is not true that Rose showed me the copy "NN" of Bookers' Transport. This is the first time I have seen the document. He has never showed me any document. On the reef and sea dam nothing grown but stump bush or crud bush. That grows on the Corentyne Coast where the salt water is. There is no grass there. I have never seen cows grazing there. The talk we had on the Public Road was the only conversation I had with Rose.

10

To Sir Eustace Woolford :

I do not know if stump bush grown on the East Coast, Demerara, at such places as Clonbrook. I agree that description in "M1" and "M2" corresponds with the description of the Susannah I bought. I had read Bookers' Transport. It may be at my solicitors, Cameron & Shepherd. Only Rose and I were on the road when we had the conversation.

20

Case is closed.

Mr. Humphrys K.C. says that Mr. Stafford K.C. will address on the law, and he himself will address on the facts.

No. 34
Defendant's
Counsel's
Address to
Court.
6th, 11th
12th, 13th
& 14th June,
1951.

No. 34.

DEFENDANT'S COUNSEL'S ADDRESS TO COURT.

Stafford K.C. addresses on the Law.

As to servitudes —

Section 3 of Chapter 7 (Civil Law of British Guiana) — provides that the law and practice relating to easements, profits a prendre or real servitudes shall remain the law and practice then administered in those matters of the Supreme Court in spite of the introduction of the Common Law in England. The date of coming into force of Chapter 7 was 1st January, 1917.

30

Real servitude is to be distinguished from personal servitude. If any servitude arose with respect to any place, it must be investigated whether that servitude was per-

sonal or real. "Personal servitude" is a servitude constituted as pertaining to a particular person apart from his interest in any land. "Real servitude" is one in favour of a dominant property and not in a particular person, but exercisable by a person by virtue of his ownership of the dominant property over a servient property.

In the
Supreme
Court of
British
Guiana.

A personal servitude may be held by a person who owns a piece of land, but the right is vested in him not by virtue of the ownership of that property; it is exercisable by him in his own personal right irrespective of his ownership of land.

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Defendant's
Counsel's
Address to
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continued,
6th, 11th
12th, 13th
& 14th June,
1951.

10 Refers to Exhibits "S" and "O". "S" is Transport from Alves to Paris Britton—dated 3/6/1862 of the whole of Susannah. "O" is Transport from Paris Britton to Denis Burns of the east half of Susannah *subject to the condition that each of the proprietors of the east and western halves of said plantation should have the right of grazing cattle over the whole plantation.*

Question is—whether those words in the condition constituted a personal servitude or real servitude.

That Transport to Burns by Britton is a Transport of the eastern half, and if there is a servitude, it is a transport to Burns of a servitude over the west half, and it is a substratum of the full rights of ownership over the east half by a servitude in favour of the proprietors of the west half of Susannah.

20 Assuming but not admitting that it was a real servitude, the language would mean that each proprietor of a half would have the right to graze his cattle on the other half.

If it was intended by Britton that it should be a real servitude and not personal, he would have caused his right of grazing over the east half to be annotated upon his own transport so that it would be shown that there was property on the east half still attached to the land.

A "real servitude" in Roman Dutch Law was regarded as property: immovable property—not merely a right over property, but as property—Maasdorp's translation of the Introduction to Roman Dutch Law, Book 2, chapter 36, p.152 and vide p.570.

30 On 16th September, 1876, Britton transported the eastern half of his remaining west half to Thomas Howard—Transport No. 64 of 1876—condition subject to a right of pasturage over the eastern half of the west half of the said plantation to the said Paris Britton his heirs, executors and assigns.

Note that he gives *Howard* a *personal* servitude and therefore any reference to Howard or a servitude pertaining to Howard after the death of Howard, or on any transport by Howard himself with respect to the east half or west half or any portion of it—p. 420—opinions of Grotius.

Mr. Stafford K.C. continues his address for the Defence on the Law.

In the
Supreme
Court of
British
Guiana.

Cites *Dryer v. Ireland, Buchanan's Good Hope Representation* Vol. 3, 4 & 5, p. 193 at p 201. Personal servitude is only for individual's life and cannot be transferred.

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continued.
6th, 11th
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1951.

By modifying the real servitude (if it was a real servitude) into a personal servitude in favour of Howard, Britton must be taken to have abandoned any real servitude to be enjoyed by the east half of the west half.

It is submitted that this creation of personal servitude to Howard must be construed that he intended to abandon the servitude also enjoyed by the west half of the west half. In no transport after that does one find any attempt to convey together with the land (west half of west half) a servitude on the east half as appurtenant to that west half of the west half. 10

Nathan's Common Law of South Africa, Vol. 1, p. 491, para. 723, also p. 488 para. 721.

What is the nature and extent of the servitude constituted by the term "right of grazing" ?

That is a term of art and had a wide extent of meaning in Roman Dutch Law mere words — right of grazing — wo extension by appropriate words. But the which was capable of no duplication oruld not give foundation of the plaintiff's case for the declaration asked for.

Counsel cites in support of above : Voet Book 8, Title 3, para. 10 — "right to feeding cattle is the right to give anyone to turn his cattle into a meadow of another — that is cattle on the dominant tenement — not for breeding purposes. Nathan's Common Law. Vol. 1, p.488. para. 721 — p.454 — para 697. 20

The right of grazing is a right to graze on the servient tenements such animals used in cultivation for ploughing, etc.

How can a real servitude be legally transferred? By what method prior to 1st January, 1917 :

- (1) Transfer by inheritance;
- (2) By Transport specifically transferring the servitude from transporter to transportee of the dominant tenement — Peer Bacchus v. Hookumchand—vide Sir John Verity — Judgement (1943) B.G.L.R. p.245 at p.248. 30

Referring to *D'Aguiar v. Phillips*—L.J. 11.1.04; C.J. 29.3.04 — vide *Steele v. Thompson* 1860 — 1869 8 W.R. 374 13 Eng. Rep. p.105.

Monday, 11th June, 1951, at 9.35 a.m.

Mr. Stafford continues his submission on the Law.

Referring to the case of *Peer Bacchus v. Hookumchand*, Counsel points out that the words of the servitude purported to be given by Butts record "the right of grazing cattle and other stock" — a modification.

Counsel enlarges the dicta of Verity C.J. when he says that a servitude is created not on the transport of the dominant tenement, but the reservation on that of the servient tenement.

In the
Supreme
Court of
British
Guiana.

D'Aguiar v. Phillips cited by the Judge (Verity C.J.) reported on 20th June, 1904, Official Gazette at p.117. That went to appeal, reported in the Official Gazette 2nd April, 1904, at p.775.

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& 14th June,
1951.

It is submitted that a transfer of real servitude must be by Transport — Voet Book 8, Title VI, para. 14 at p.80.

This applies to servitude created in a Transport by prescription.

10 Hawkins v. Minnik (1830) 1 Menzies p.465 (South African Report).

A transferee of the servient tenement on whose transport there is no record of a servitude — was not affected by the servitude — unless there was actual notice.

Heidelberg Munice v. Uys, 15 S.C. (Juta) 161 — vide head note.

In that case there was actual notice.

Parkin v. Titterton, 2 Menzies 296—

Here no notice and nothing on the transport of the servient tenement.

Steele v. Thompson.

2nd Edn. Roman Dutch Law (Mount) p.14 (Creation of Servitude).

Steele v. Thompson (1860) 13 Moore's Privy Council Cases p:280.

20 Mr. Stafford continues his submission on the Law :

In his transport, plaintiff's servitude as a dominant tenement is only to the servitude over the east half of the west half — a servitude over the east half is not specified.

Steele v. Thompson (supra).

Besides "inclusio unius exclusio alterius".

Even in South Africa, this is the law of transfer of easements.

Judd v. Fourie (1861) 2 Eastern District Court Reports 41 (South Africa) —

Buchanan J. at p.50, 54; Shippart J. at 66, 72.

Tuesday, 12th June, 1951, at 9-30 a.m.

30 Mr. Stafford continues his address on the Law :

Judd v. Fourie turned on the point of notice to the owner of the servient tenement. Judd also was asking for rectification — to which he was entitled.

In the
Supreme
Court of
British
Guiana.

At p.50 Judgment of Mr. Justice McKinnon — refers to Shippard J.

Anyone of these three factors — present on the instant case in sufficient to effect complete extinction of the servitude alleged.

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6th, 11th
12th, 13th
& 14th June,
1951.

- (1) Non transport of the servitude contended for to the plaintiff. (Already submitted).
- (2) There has been a breach of a permanent sale as to this particular kind of servitude, as to proximity of tenement (that is contiguity between the dominant tenement and servient tenement (vide Voet page 74, para. 19).

If not contiguous, the intervening land must also hold the same servitude and subject to servitude of the piece of land not contiguous vide Transport of 3 rods in each half of west half at execution sale. 10

(But Court points out that there is no need to record servitude against his own land).

But vide — Transport of Hanoman to Bhoopsingh — Exhibit H — no servitude at all. Also Exhibit FF, and GG.

Both of these Transports are in respect of east half of the west half, yet there are no servitudes.

Also Transport C1 (Bhoopsingh) and Transport C3 (Seecharan).

In these two Transports there is no servitude on the other portions of east half of west half, but nothing reserved over their lands in favour of Rose. 20

Mr. Stafford continues :

Factors on which plaintiff's case rests —

- (3) The evidence in the case discloses a new circumstance by the servient tenement of his property, and by the alleged dominant tenement of that property for a purpose repugnant to the servitude, and rendering the servitude impossible of breaking exercised.

Vide Grotius (Introduction) Book 2 Ch. 37 para. 4 at p. 154.

Lost "by something being *allowed*" which conflicts with the servitude *i.e.* something being permitted by the dominant tenement which conflicts with the servitude.

Permission of repugnancy completely extinguished if it is for a reasonable time. 30
Vide Voet Book VIII Ch. 6 para. 5 p. 72.

Abandoned "when something is conceded to the owner of the servient tenement which obstructs the arc of the servitude". It does not matter — it is by express agreement.

The planting of rice on the southern portion even with permission of the owner of the dominant tenement was something repugnant "not a mere temporary concession".

Maasdorp's Institute of Cape Law Vol. 2 Cap 4 at p. 21.

Edmeades v. Scheepers, 1 S.C. (Juta) 334 — also the erection of fences by Rose on the north is repugnant to the servitude and shows an abandonment .

Nathan on the Common Law of South Africa, Vol. 1, p. 490, para 723.

Myburg v. Jameson, 4 Searle, p. 8.

Loxton v. Staples, 1 Buchanan App. Cases p. 81.

As regards the dictum of Verity C.J. in Peer Bacchus v. Hookumchand —

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Supreme
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There could have been no growth of the Roman Dutch Law since Steele v. Thompson — see Section 12 of Ch. 177, the civil law of transferring also Dalton's
10 Civil Law of British Guiana at page 95 (Notes).

Willoughby County Court Ltd. v. Hotspur Stores Ltd. (1918) South Africa Law Reports.

Appellate Div. p. 1 at p. 16.

Wednesday, 13th June, 1951, at 9.40 a.m.

Mr. Stafford continues his address on the Law.

As regards the amendment to the Statement of Claim alleging acts of impounding after writ —

Tottenham Local Bd. v. Lea Conservancy Board (1885) 2 T.L.R. 410.

Eshelby v. Federated European Bank (1932) 1 K.B. 254.

20 Mr. Humphrys for the defendant on facts :

Plaintiff cannot come to this Court for a declaration of title to graze cattle by prescription under section 4 (Rules of Court No. 210). He may put up that as a defence not as a claim.

Reece's Transport to Neilson 18th August, 1917 — 1917 B.G.L.R. 136.

If the alleged prescriptive period is less than $33\frac{1}{3}$ years before the 1st January 1917.

If the plaintiff claims the illegality of impounding of cattle by virtue of a right of prescription in the plaintiff — he is not competent to put forward a claim until he has got a declaration of title by the procedure by petition.

30 Lalbahadur Singh v. McPherson 1939 B.G.L.R. at p. 80 per Camacho C.J.

Adams & anor. v. Raghbir Misir (15th April, 1951) per Worley C.J. at p. 11.

Does the plaintiff claim $33\frac{1}{3}$ years enjoyment of servitude before 1917 or 30 years prior to filing of writ ?

In the
Supreme
Court of
British
Guiana.

Statement of Claim (para. 3) alleges his depasturing cattle since he acquired — that is 1888 — that is less than 30 years. No allegation in the pleadings of his predecessors exercising that right.

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1951.

Burns and Britton had servitude by actual grants—not prescription. But the fact that there were intervening transports would wipe out all prescriptive rights — vide Ch. 177, section 21.

Mr. Humphrys K.C. continuing :

The Ordinance having provided that the procedure by petition of the establishment of prescriptive title to immovables including servitudes, no claim can be made in an action against anyone based on a prescriptive title.

10

Abdul Rohoman Khan v. Boodhan Maraj 1930 B.G.L.R. p-9.

Mr. Humphrys refers to the history of the title.

Whether or not the right to graze cattle depends upon the evidence of the position of fences. Fence between plaintiff's west half of west half and proprietors' east half of west half. Plaintiff says that it was put up to drive his cattle in the paddock and unwired when he bought Hermitage.

Thursday, 14th June, 1951, at 9.30 a.m.

Mr. Humphrys continues his address on the facts for the Defence.

Re fences Gobin & Rohlehr the only two independent witnesses speak of the wire separating the west half from west half on the north side up to 1940 when the Government took over the control of the sea defences.

20

Counsel calls attention to plaintiff's evidence as to the Bohemia wire just before Bookers sold.

Refers to Execution Sale in Transport, Ex. K from Marshal to de Silva — 31/4/36 — the actual sale in 1935. de Silva thus acquired the property free from any sort of possessory right — his rights limited to what is described on the transport. As it was in an execution sale, all possessory rights — prescription, etc., were extinguished.

It may be argued that the plaintiff is claiming only a declaration for a prescriptive right — not title. There is no distinction between the two — he must adopt the procedure by petition to get a Declaration of Title.

30

Mr. Humphrys K.C. — submits a written recapitulation of defence submission (copy given to plaintiff's counsel).

No. 35

PLAINTIFF'S COUNSEL'S REPLY TO COURT.In the
Supreme
Court of
British
Guiana.*Sir Eustace Woolford* replies for plaintiff :

Plaintiff is not asking for declaration for prescriptive title but for declaration that plaintiff has acquired a prescriptive right — vide — In para. 3 of Statement of Claim,

 No. 35.
 Plaintiff's
 Counsel's
 Reply to
 Court.
 14th, 18th,
 19th, 20th,
 21st, 25th,
 & 26th June,
 1951.

The right of servitude was unlimited and unrestricted. No limitation as to number of cattle that could be depastured on the servient tenement. No restriction as to time. No restriction as to whence the cattle came as long as they were those of a proprietor of Susannah.

It is sufficient that the title to the servitude should be annotated on the transport of the servient tenement — per Buchanan J. in *Judd v. Fourie* (1881) 2 E.D.C. 41 at pp. 50 and 54.

Monday, 18th June, 1951.

Sir Eustace Woolford continues his address for the plaintiff:

Refers to Letters of Decree dated 8/7/87 in favour of Hooton, Exhibit P.

Although the Letters of Decree do not contain a reference to the right of servitude over the eastern half of the Plantation, nevertheless Hooton's purchase even at execution sale would give him such right if it had been a right enjoyed previously by his predecessors in title, Britton.

Hooton acquired the right Mrs. Britton had when the property — the western half of the western half of Susannah — devolved on her as the widow of Mr. Britton.

The reservation on the Burns' transport was not extinguished. It was constituted. There is a mistake.

As to necessity for contiguity, counsel cites against that, Nathan's Common Law of South Africa Vol. (1), page 456.

Sir Eustace Woolford continues :

It is contended that a servitude by prescription is not extinguished by a judicial extinguishment if in fact there is notice to the owner of the servient tenement of a servitude taking the form of an annotation on his transport in relation to a servitude on his land by express grant.

Refers to Appeal before West Indian Court of Appeal.

Period of limitation under Roman Dutch Law before 1st January, 1917, was not $33\frac{1}{4}$ years.

In the
Supreme
Court of
British
Guiana.

Nathan's Common Law of South Africa, Book 1, para. 579, p. 373.

The period of limitation under Roman Dutch Law before 1917 was not $33\frac{1}{3}$ years as stated by Humphrys K.C., but 30 years.

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14th, 18th,
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Nathan at page 491—as to prescription, there is no necessity for an owner to exercise the right for the full period of the prescriptive period.....

Tuesday, 19th June, 1951, at 9.30 a.m.

Sir Eustace Woolford (continuing his address for plaintiff):

As to right created by express grant, plaintiff as the owner of the western half of west half is entitled to this servitude which was held by his predecessor in title, Britton, who created the servitude over the eastern half—as that servitude was seen to be endorsed on the servient tenement at the time of Burns and continued to be endorsed on the transport of every servient tenement right down to the defendant. 10

As to the claim to the servitude by prescription — first prescription period in Roman Dutch Law was 30 years — not $33\frac{1}{3}$ years ($\frac{1}{3}$ of century in Roman Dutch Law meant 30 years).

Plaintiff in establishing a prescriptive right is entitled to say that apart from evidence of actual grazing of his cattle there, of his own cattle or of his predecessors in title on the eastern half that the servitude being endorsed on each transport of the servient tenement — that fact can be taken to imply that the grazing was carried on the servient tenement continuing from the period. Also the Court must look at the exercise of the servitude by each owner of the eastern half over the western half. 20

Court adds that it is immaterial in this case whether the prescriptive period is $33\frac{1}{3}$ years or 30 years under Roman Dutch Law.

Execution does not extinguish a servitude either by express grant or acquired by prescription before 1st, January, 1917 — the reason being that in those days the owner of the servient tenement did not have to enter opposition to the sale — it does not matter if a person has in fact exercised a servitude for the prescriptive period — with no endorsement on the transport of the servient tenement, he still has his prescriptive rights in spite of the sale at execution of the servient tenement. 30

Re the extinguishment of a servitude by an execution sale:

Lalbahadursingh v. McPherson (1939)
L.R.B.G. 80

Sir Eustace Woolford resumes his address:

Cites McGray v. Sealey (1940) B.G.
L.R. 124,

- (1) What is acquired at an execution sale by a purchaser? Does not acquire more than what the judgment debtor — does not deprive an owner of his right.
- (2) Prescriptive rights acquired prior to 1st January, 1917, are preserved by the Civil Law of British Guiana Ordinance, Ch. 7, notwithstanding Sec. 4(1) of that Ordinance.
- (3) A declaration by the Court to that effect: Vol.2, Institutes of Common Law of the Cape, Chap. XXV. Lee: Introduction to Roman Dutch Law, Chap. VI, p.148.

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Supreme
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Guiana.

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Plaintiff's
Counsel's
Reply to
Court.
continued.
14th, 18th,
19th, 20th,
21st, 25th,
& 26th June,
1951.

10 *Wednesday, 20th June, 1951, at 9.40 a.m.*

Sir Eustace Woolford (continuing) :

Says that Mr. Adams, Junior Counsel, will now address.

In answer to the Court, *Sir Eustace Woolford* says that Mr. Adams will address on facts and law.

Sir Eustace proceeds to address the Court on the facts.

Refers to allegations in para. 5 of the Statement of Defence. That allegation is against the weight of evidence.

As to another portion, evidence of *McTurk* independent witness says that there was no wire between the eastern half and western half.

20 *Sir Eustace* continues his address dealing with the facts of the case.

Mr. Adams follows on addressing: Counterclaim is based on a wrong conception counterclaim is not well founded — not disclosing a cause of action. Bookers were the proprietors of eastern half.

Mr. Humphrys points out that in correspondence between the parties it was agreed that no point that Hanoman did not have his transport in implementation of this contract of purchase from Bookers — was not to be taken — no insistence upon. Bookers was to be found as a party.

Sir Eustace agrees.

Mr. Adams withdraws his submission, and submits re cattle from Bohemia —

30 Pathansingh v. Richard Bentley —

Official Gazette, 30th November, 1904

Thursday, 21st June, 1951.

Mr. B. O. Adams continues his address :

In the
Supreme
Court of
Guyana,
British

Inference from evidence that Rose did enjoy that servitude of depasturing for more than $33\frac{1}{3}$ years before 1st January, 1917.

8th Edition Phipson's Evidence, p. 97 — Vide possession — *Governors of Magdalen Hospital v. Knotts* (1876) 8 Ch. Division 709.

If exercise of servitude for prescriptive period of $33\frac{1}{3}$ years before the 1st January, 1917, no subsequent transport could defeat the right of the dominant tenant to the servitude in pursuance of section 2 of subsection 3 of Chapter 7.

Cites :

Adams v. Raghubir Misir — Judgment dated 16.4.51 of Sir Newnham Worley.

Nathan's Common Law of South Africa, p. 449 —

10

“A servitude may be acquired by prescription without the knowledge of the servient tenement”.

Submits that could mean without the knowledge of the transferee of the servient tenement or his predecessor in title.

Mr. B. O. Adams continues his reply for plaintiff :

If a man purchases property over which some person other than the owner is exercising a right, this exercise of the right must put the purchaser on his guard and compels him to enquire by what authorised —

Vol. 6 *Nathan* p. 450.

The onus would be on Hanoman to show that at the time of the passing of the servient tenement Rose had knowledge that transport was being passed and that no transfer was being made on that transport. 20

Cites *West Indian Court of Appeal Judgment* —

Peer Bacchus v. Hookumchand (1944) B.G.L.R. 235 at 239.

Monday, 25th June, 1951, at 10.00 a.m.

Mr. Adams continuing :

Explains Sir John Verity's dictum in *Peer Bacchus v. Hookumchand*. Authority of *D'Aguiar v. Phillips* in support. Distinguishes *Steele v. Thompson*. *Judd v. Fourie* cited.

Mr. Adams continues :

30

D'Aguiar v. Phillips went to Court of Appeal—Official Gazette of 2/4/1904. *Judd v. Fourie* (1881) 2 E.D.C. 41.

As regards abandonment by agreement not to exercise the right of servitude during a certain period — not extinguishment of servitude.

Order of the Court directing declaration of the servitude to be endorsed on the servient tenement — no order directing Registrar to endorse right of servitude on the transport of the servient tenement.

See page 60 of the report Vol. 2 East District Court Cases at p. 60.

Tuesday, 26th June, 1951, at 9.45 a.m.

Sir Eustace Woolford with permission of Court draws attention of the Court to two points on question of fact.

- 10 *Mr. Humphrys K.C.* on new cases cited by leave of Court says that Britton transported this servitude over the eastern half when he gave Howard a servitude over the whole of Susannah.

Judd v. Fourie (supra).

Steele v. Thompson (supra).

Page 15 of Dalton's Civil Law.

Mr. Humphrys continues to refer to cases cited for the first time.

C. A. V.

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No. 35.
Plaintiff's
Counsel's
Reply to
Court.
continued.
14th, 18th,
19th, 20th,
21st, 25th,
& 26th June,
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JUDGMENT DELIVERED BY BOLAND J.

No. 36.
Judgment
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This action has arisen out of the seizing and impounding by the defendant and his agents of cattle belonging to the plaintiff, which, it is alleged, took place on certain dates at the end of August and during the month of September, 1947. In justification, defendant claims that the cattle were found illegally trespassing on his lands. The plaintiff and the defendant are each proprietors of a separate portion of what is described as Plantation Susannah, otherwise known as Lot Number 15 which is situate on the east sea coast of the County of Berbice.

Plantation Susannah, as will be seen when a description later is given of the manner in which portions of it were sold from the entire plantation, was from an early date divided into an eastern half and a western half. While the whole of the eastern half was from time to time transferred from owner to owner without any sub-division and is still so held the remaining western half was itself first sub-divided into two halves, that is, into a west half of the western half and an east half of the western half. Subsequently, this east half of the western half was from time to time sub-divided into many small sub-divisions, each of which was held separately by purchasers. Accordingly it will be found convenient in this judgment to refer to Plantation Susannah as comprising three portions, namely, the eastern half, the west half of the western half, and the "multiple proprietors'" portion of the western half. Also, there is the Public Road running from east to west which intersects the entire plantation Susannah and thus divides it into a northern area whose northern limit is the Atlantic Ocean and a southern area whose southern limit is the Grand Canal. Whether or not in its very early history there was some sort of cultivation carried on at Susannah which caused it to be called a plantation, no trace of which however remains, it is a fact that Plantation Susannah like all the lands on the Berbice east sea coast, commencing from a period going right back almost to the middle of the last century and continuing right up to the present day, has mainly been occupied as lands for rearing cattle. True, a few dwelling houses came to be built alongside the Public Road but these were occupied by persons engaged in the cattle industry in Susannah. Later, in the area south of the Public Road, there arose rice cultivations which year after year endeavoured to struggle through the vicissitudes attendant upon scarcity of water which is so essential for rice growing.

On the 25th June, 1947, the defendant acquired from Messrs. Bookers Sugar Estates Limited the eastern half of Plantation Susannah. He has not yet obtained formal transport, but by letters which passed between plaintiff's counsel and defendant's counsel, it was agreed that no objection would be taken in this action against the assertion of any right in the defendant solely on the ground that he is not yet

the owner by transport, and accordingly, for the purposes of this case the defendant is regarded as if transport of these lands had already been duly passed to him at the date of the impounding of the cattle.

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Plaintiff on the dates of the impounding of his cattle, was the owner by transport of two other portions of Plantation Susannah, one piece being the west half of the western half of the said plantation—and the other a piece falling within the “multiple proprietors’ ” east half of the western half. This latter piece which adjoins plaintiff’s west half of the western half is three roods wide from east to west and has the same depth as that of the entire plantation — that is to say — it is bounded
10 on the north by the Atlantic Ocean and on the south by the Grand Canal Dam; and it is intersected by the Public Road referred to above.

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As regards the west half of the western half, the plaintiff acquired this in the year 1888 and holds a transport for same from the assignee of the creditors of Charles Edwin Hooton an insolvent. The plaintiff’s three roods wide piece in the “multiple proprietors’ ” part of the western half he acquired by transport in 1924 from one of the “multiple proprietors”. It may be also mentioned here that while these proceedings were pending plaintiff has transfer this smaller piece of land to his son David Rose. This was done, not with any fraudulent design to avoid execution in the event of judgment against him, but to give David Rose who owns cattle
20 on this piece of land, the right of the servitude to graze his cattle every where in Susannah which his father claims in this action to be the right of every proprietor of the Plantation.

The defendant as stated above, does not deny that the plaintiff’s cattle were impounded by him. He claims that these animals were illegally trespassing on his eastern half. What this Court is called upon to decide is whether, as plaintiff claims, those particular cattle which were seized and impounded were entitled to free pasturage on the eastern half of Susannah by virtue of being cattle belonging to plaintiff who is a proprietor of Susannah; for it is clear that if plaintiff as a proprietor of the plantation did at the time possess in law a right to the pasturage of these cattle on
30 the eastern half, then the seizing and impounding by defendant would indeed be a trespass against the plaintiff and defendant would be liable to him in damages. Further, in such a case, plaintiff would also, as he claims, be entitled to an order for an injunction in restraint of any threatened or further intended violation by defendant of this right of pasturage belonging to the plaintiff. On the other hand if plaintiff fails to establish his right to have these particular cattle go on to defendant’s land the defendant, as he has claimed in his counterclaim, would be entitled to damages against the plaintiff for the trespass by his cattle and also to the remedy by injunction, if plaintiff is likely to let his cattle continue to trespass on the defendant’s eastern half. As both sides are at issue on the question whether plaintiff has
40 a right of depasturing his cattle on the defendant’s east half of Susannah, and as the plaintiff has specifically in his pleadings asked the Court by way of Judgment, to issue a declaration as to his rights in this regard, the Court has given consideration to the question whether it is within the Court’s power in this case to make the declaration and also whether it is expedient in the circumstances for the Court to do so,

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To summarise what is submitted for the Court's adjudication by each party, the plaintiff's case is that he holds a servitude to depasture his cattle on defendant's eastern half and that his right is established by :—

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- (1) Evidence of the registration of this servitude on every transport relating to the eastern half commencing from the time when the first transport in respect of the eastern half was passed — that is to say from the time when first the owner of the whole of Susannah sold out the eastern half right down to the transport held by Bookers who is the last holder by transport before the sale to the defendant; and/or
- (2) Evidence of prescriptive user. As against this, the defendant's case is that the plaintiff possesses no servitude as claimed because :
 - (1) The plaintiff himself holds no transport which purports to pass the right of any such servitude to him — and it is accordingly contended that plaintiff not being as admitted an original party to the creation of the servitude, he can acquire no right to a servitude, as such right to servitude was not legally constituted and transferred to him by transport in the same manner as he acquired ownership of his lands. As a corollary to this the Defence further contends that the annotations relating to the burden of servitude on the transports in respect of the east half, the servient tenement, are by themselves, insufficient to give to plaintiff the right of a servitude as holder of a dominant tenement.
 - (2) The servitude if indeed legally created originally, was extinguished by the original owner of the dominant tenement who transferred the dominant tenement without including a transfer of this right of servitude; the servitude was also extinguished when there was specifically a grant by transport of, not the full servitude, but only a limited servitude.
 - (3) The right to servitude, if existing at the time of plaintiff's acquisition of his land, was extinguished by abandonment because of certain acts of plaintiff himself or by his permitting conditions to exist inconsistent with the exercise of the right to servitude.

And as to the claim by prescriptive user :

- (4) The plaintiff did not in fact have user uninterruptedly and as of right for the period prescribed by law; but assuming that plaintiff from the time of his purchase was enjoying continuously this servitude right up to the time of the defendant's purchase he cannot, though the time may be a sufficient prescriptive period, assert his claim to a prescriptive title without proceeding by Petition for a declaration of title in the manner provided by Ordinance.
- (5) Assuming but not admitting that there was an uninterrupted prescriptive period of user of the servitude by defendant and his predecessors in title,

such right of prescriptive user was extinguished by sales at execution of the eastern half — the servient tenement — prior to defendant's purchase.

- (6) Defendant is protected by Ordinance against any defeasance of his title except such as was registered on Bookers' transport at the time of his purchase, and no servitude by prescription is registered on Bookers' transport from whom defendant purchased.

I shall proceed to consider first plaintiff's claim to the servitude as based by him on what is recorded on instruments of transport. It will be necessary to go right back to the time when the servitude came into existence. The evidence shows that the right to
 10 graze cattle on a part of Susannah not owned by the grantee was first granted to a part owner of Susannah by a man called Britton who on 3rd June, 1862, acquired Plantation Susannah by Transport No. 5154 of 1862. On the day of his purchase he transported the eastern half thereof to one D. Burns. It is very probable that Susannah was purchased by Britton in pursuance of an agreement between him and Burns whereby Britton immediately on purchase was to transport the eastern half to Burns. Be that as it may, on Burns' transport of the eastern half, No. 5153 of 1862, there is annotated the words :

20 "subject to the condition that each of the proprietors of the eastern and western halves of said plantation shall have the right of grazing cattle over the whole plantation."

In determining what rights and obligations flowed from the use of the above words thus incorporated in the transport to Burns of the eastern half, one has to view the position in the light of the rules of Roman Dutch Law which was the legal system that at that date defined and governed all rights and obligations whatever relating to immovable property in British Guiana.

It is clear that this annotation on Burns' transport evidenced an agreement between Burns and his vendor Britton that Burns' land, the eastern half, was to have the burden of depasturing cattle belonging to other proprietors of Susannah. I shall leave aside for the moment the consideration of the question as to how far this annotation on Burns' transport affected Britton's western half in respect of the burden of
 30 depasturing there cattle belonging to other proprietors of Susannah, that is to say, whether this annotation was sufficient to give Burns the right to the servitude over Britton's western half. It is proposed now to confine attention to the subject relating to the burden purported to be imposed on Burns' eastern half by the agreement. Here was effected something in derogation of the full right of ownership by Burns in his eastern half. Is the agreement to be construed as intending to reserve to Britton personally this right of pasturage over Burns' eastern half, or was it a right intended to be exercisable not only by Britton but also by every subsequent proprietor of the western half? To me it seems clear from the words used that the agreement meant to confer
 40 mutual rights and obligations in respect of pasturage not on Britton and Burns alone, but on the respective proprietors of those two newly divided halves of Susannah. In those days when conveyancers were more meticulous and precise in language than is

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the practice nowadays, it would seem by the words used to have been intended that the enjoyments and burdens under the agreement were not to be restricted to Burns and Britton but were to be applicable to such persons as might have ownership of the lands; otherwise the names of Britton and Burns would have been mentioned specifically instead of the mere reference to "proprietors". Besides Britton who created the servitude must have contemplated at the time the possibility of either party selling his portion of land either in whole or in part, which he did do later as the record of the devolution of his western half as described later will show.

In my view there was created and then came into existence, properly constituted by this agreement as evinced by the annotation on Burns' transport, what is known in Roman Dutch Law as a real or praedial servitude capable to belong and available to be transferred to all persons who might happen to be a proprietor of the western half entitling such proprietors to depasture their cattle on the eastern half. A real or praedial servitude is to be distinguished from a personal servitude by the fact that the essence of the former is that it is a right attached to immovable property while the latter is attached to a person irrespective of his ownership of land. The holder of a personal servitude has a right over the property, movable, or immovable of another — a *jus in re aliena* — which however cannot extend beyond his own life. A mere agreement evidenced by formal registration on the title of the servient tenement was in Roman Dutch Law sufficient to create a servitude between the parties to the agreement provided the land encumbered with the burden, the servient tenement, was, as it is in this instance, contiguous with the land to enjoy the privilege — the dominant tenement. In other words, to create the servitude there was in Roman Dutch Law no necessity for an annotation of the agreement to be made on the transport then held by the dominant tenement. An annotation on the servient tenement evidenced that there was symbolic or quasi delivery of the servitude by the owner of the servient tenement. Professor Lee in his treatise "An Introduction to Roman Dutch Law" — 3rd Edition at p. 175, in enumerating the ways in which praedial servitudes are acquired gives as his first instance "Agreement followed by acquiescence by the owner of the servient land." Nevertheless, annotation or registration against the title of the servient tenement or praedium serviens is not a useless formality. It is in Roman Dutch Law not without its usefulness because although a bare agreement without registration is sufficient to bind the immediate parties to the agreement, registration against the title of the praedium serviens gives notice to an intending transferee of the praedium serviens that there is this burden of servitude on the land. Unless such transferee has actual notice he would not without such registration be affected by the servitude, a rule which after all is but fair and just and which is in accord with one of the basic principles of English equity jurisprudence. But more with respect to this later.

Having determined that the servitude which under the agreement between Burns and Britton was a real or praedial servitude and not a personal servitude, I now propose to consider the question as to what cattle belonging to a proprietor was by the agreement entitled to be depastured on the servient tenement. The case for the de-

fence is that the impounding in respect of which the plaintiff brings his action —that is the impounding in August and September 1947 as specified in his Statement of Claim was of cattle not from plaintiff's Susannah lands but from Plantation Bohemia which is a plantation also belonging to plaintiff adjoining Susannah on the east — that is immediately to the east of defendant's eastern half of Susannah.

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10 Plaintiff denies that the cattle impounded on those dates belonged to his Bohemia Plantation insisting that they came from his Susannah lands, but it would seem from plaintiff's evidence under cross-examination and from the submissions of his counsel that although denying that the cattle came from Bohemia, it is nevertheless
10 claimed that the plaintiff as a proprietor of Susannah is entitled to enjoy this right of servitude in respect of any cattle he may own no matter that they were not kept by him at Susannah. He claimed the right to bring his cattle to graze on defendant's eastern half from any place however remote from Susannah.

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Later in this judgment, the Court has given its findings on the above issue of fact.

20 The Court has found for the reasons given below that the cattle came from Bohemia; it is nonetheless necessary for the purpose of declaring the rights of the parties in relation to depasturage of their cattle in each other's portions of Susannah to construe this agreement of servitude between Britton and Burns so as to determine if it included the right of pasturage for each other's cattle whether such cattle belonged to Susannah or not.

30 There is no evidence as to whether either Burns or Britton had at that time cattle anywhere else or that either contemplated having cattle at any place other than at Susannah so as to wish to include grazing rights for any cattle likely to be brought to Susannah for the benefits of the servitude. To the Court, it would seem preposterous to have such an agreement without any provision for some limitation of the area from which such cattle could come and the number which might be so brought. But quite apart from this, the very essence of a praedial servitude is its attachment to contiguous land and not to a person. It would therefore be repugnant to the essential nature of a real servitude if there were introduced an element of user of the servient tenement by the owner of the dominant tenement which did not flow directly from his occupation of the dominant tenement. I have not the slightest hesitation in construing the agreement of servitude to mean that the cattle, which the owner of the dominant tenement would be entitled to graze on the servient tenement would be only those cattle that would be usually kept on the dominant tenement by its owner and not other cattle from elsewhere, albeit his own, brought ad hoc, or allowed by him to enter on the servient tenement.

40 In his submissions on the law during the course of his address for the Defence, Mr. Stafford sought to contend that the phrase "right of grazing" without any modifying words has in Roman Dutch Law a special signification when used in reference to a real servitude. He submitted that the phrase gives to the owner of

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the dominant tenement the right to graze on the servient tenement only such *cattle as he may have in use for the purposes of the dominant tenement* and no other cattle. Any pasturage on the servient tenement beyond what is sufficient for the needs of the cattle kept for the use of the dominant tenement is, Mr. Stafford contended, unaffected by the servitude. It would include cattle kept for ploughing agricultural lands or for draft purposes in connection with the occupation of the dominant tenement. But, he submitted, cattle kept for breeding purposes or as the stock-in-trade of a cattle dealer owning the dominant tenement would not come within the right to be depastured on the servient tenement by virtue of the phrase "right to grazing" without modifying words importing that such cattle are to be included. Counsel cited Nathan's Common Law of South Africa, a treatise based on Voet's Commentaries on the Pandects, which in Vol. 1, page 488 para. 721 (1904 edition) states in reference to rural servitudes "Under the *jus pascendi*, the right to pasture cattle on another man's land, *only cattle used for the purpose of the dominant tenement are included*". I cannot agree with this contention. Perhaps if Britton and Burns at the time of the agreement for mutual servitudes were each occupying cultivated lands or contemplated carrying on thereon some industry which might require the use of cattle it could be said that the right of pasturage on the servient tenement was intended to be limited to such cattle. But whatever may have been the nature of the occupation of Susannah before Britton and Burns became owners, the evidence of witnesses who testified on this point is that Susannah has been known within the memory of living persons as land always used exclusively for cattle rearing, and that apart from the rice cultivations which commenced to be pursued in the southern portion only until many years after both Burns and Britton had gone out of occupation, Susannah had remained in the main cattle rearing lands. In view of the circumstances in which Britton and Burns entered into the agreement of servitude, I hold that as between Burns and Britton, the cattle which could have been depastured under the servitude created by the agreement were all cattle maintained on the dominant tenement.

So far I have been dealing with the real servitude over the eastern half created by the agreement between Britton and Burns and have defined the rights and obligations of these two parties to the agreement in their respective capacities of owner of the dominant tenement and the owner of the servient tenement. As a result of the agreement Burns, it was pointed out, had his full ownership of the eastern half curtailed by his real servitude of pasturage reserved by Britton in favour of the western half.

I shall pass on now to consider how far this right of servitude over the eastern half can be held by transferees of the western half, and also the burdens and obligations of the eastern half, when held by transferees of that half. In course of time, the ownership of both the western half and the eastern half passed from Britton and Burns respectively to other persons, and it is necessary to consider if and by what means the real servitudes also passed to the transferees.

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Britton in the year 1876 transferred by transport the east half of his western half to a man called Thomas Howard, retaining for himself the west half of the western half which in course of time after intermediate ownerships got transferred to the plaintiff. I shall trace the devolution of the west half of the western half from owner to owner down to the acquisition by the plaintiff, which was in the year 1888, and shall consider whether the real servitude over Burns' eastern half which Britton as a proprietor of Susannah — that is a proprietor of the western half — enjoyed by virtue of this agreement, did descend to each transferee of that western half including the plaintiff in whom became vested a portion only of the western half, namely, the west half of the western half.

The following gives an abstract of the title of the plaintiff to his west half of the western half —

- (1) *3rd June, 1862.* Transport No. 5154 of 1862, Britton becomes owner of entire Plantation Susannah.
- (2) *3rd June, 1862* — Britton remains owner of western half only having transported on this day by Transport 5153 of 1862 the eastern half of Susannah to Burns — contemporaneous agreement between Britton and Burns as to mutual real servitudes in respect of grazing cattle evidenced by writing incorporated on Burns' transport of eastern half in the following terms — "*subject to the condition that each of the proprietors of the eastern and western halves of said plantation shall have the right of grazing cattle over the whole plantation*".
- (3) *16th September, 1876* — Britton remains owner only of west half of the western half of Susannah having on this day transferred to Thomas Howard the east half of the western half (Transport No. 64 of 1876). "*with the right of free pasturage to Thomas Howard over the whole of the said Plantation, and subject to a right of pasturage over the said eastern half of the western half of the said plantation to the said Paris Britton, his heirs, executors, administrators and assigns*".
- (4) *27th December, 1878* — Death of Britton.
- (5) *6th January, 1879* — Deposit of Will of Britton with due proof of execution. Will directs sale of Susannah lands and after payment of legacies and debts to hold residue to Britton's wife.
- (6) *8th July, 1878*—Letters of Decree in favour of Charles Edwin Hooton in pursuance of sale at execution on 27th April, 1886. Property is described as "*western half of the western half of Plantation called Susannah with right of free pasturage to Thomas Howard over the whole of the said Plantation and subject to the right of pasturage over the said eastern half of the western half of the said plantation to Britton, his heirs, executors, administrators and assigns.*"

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- (7) *22nd March, 1888* — Transport No. 26 of 1888 from Thomas Dagleish assignee of the creditors of Charles Edwin Hooton, an insolvent, to Archibald Rose (the plaintiff) — Property — the western half of the western half of Plantation Susannah “with right of free pasturage to Thomas Howard over the whole of the said plantation and subject to the right of pasturage over the eastern half of the western half of the said plantation to Paris Britton, his heirs, executors, administrators and assigns.”

Now, as regards the plaintiff's parcel of land, three roods wide in the east half of the western half — “the multiple proprietors'” portion — this came down to plaintiff through intermediate transfers and finally by Transport No. 122 of 1924 dated 21st June, 1924, made in pursuance of a sale in execution proceedings dated 14th February, 1924, and granted to the plaintiff Archibald Rose by James Henry Nathoo, Marshal of the Supreme Court, the property therein described being a piece of land three roods wide as shown on a certain plan. It is described as bounded on the west by the property of A. Rose — that is the west half of the western half. It is to be noted that no right of servitude nor any burden or servitude is mentioned in this particular transport. 10

In considering whether the real or praedial servitude to graze cattle on the eastern half of Susannah created by Britton for the enjoyment of the proprietors of Susannah passed to the transferees of the western half, it is necessary to see whether there is any form for a transfer of a praedial or real servitude prescribed by Roman Dutch Law, which as already stated governed at this time all rights and obligations pertaining to immovable property in British Guiana. Roman Dutch Law, it seems clear, regarded as servitude over another person's land as a part of the latter's immovable property actually extracted from his full right over same. This extracted part is itself immovable property and therefore was considered subject to all the rules relating to the transfer of immovable property. Though a mere agreement for a praedial servitude is enforceable by either party to the agreement as was stated before, once it does exist and is fully constituted in law and registered on a transport, it can be transferred only in the manner prescribed for the transfer of immovable property. A right to a praedial or real servitude is, as stated, one which is vested in a person by reason of his ownership of land in contiguity with the land bearing the burden. It would seem that by the doctrine of Roman Dutch Law the owner of the right to the real or praedial servitude has two distinct pieces of immovable property. He has; 20 30

- (a) the immovable property — the land which enjoys the servitude, that is the dominant tenement; and
- (b) the immovable property which is the praedial or real servitude over the contiguous land — an extraction, which is itself immovable property, from the full right of ownership on the contiguous servient tenement. 40

In the year 1858, this Court constituted by Arrindel C.J. and Beete and Alexander J.J. in its judgment in *Steele v. Thompson*, which on appeal was con-

firmed by the Privy Counsel (vide *Steele v. Thompson* (1860) 13 Moore Privy Council Cases p. 280 at p. 287) stated :

“A servitude on land (*bona immobilia*) partakes of the nature of the property, and is classed or considered as immovable property”,

and pronouncing the judgment of the Privy Council, Lord Kingsdown said :

“It is admitted that the servitude in question is of the character of immovable property and like other immovable property can only be passed according to the Roman Dutch Law, which prevails in the colony, by a proceeding in the presence of some judge of the place in which the property is situate.”

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- 10 In British Guiana the method of transfer of immovables takes the form of the procedure by transport which receives authentication in a court proceeding, formerly before a Judge, but now before the Registrar of the Supreme Court. Of course, there is the exception which applies to all immovables that it may pass on death of the owner through his proved will or by inheritance under an intestacy without requiring the bringing of any special proceeding before a judge to obtain judicial recognition of the transfer, but devolution of the property of a deceased person is controlled by the Court in its grant of probate of a will, or a grant of letters of administration on intestacy. Therefore, the passing of transport of the dominant tenement by the owner does not pass to a transferee any real or praedial servitude to which the transferor may be
- 20 entitled by reason of his ownership of the dominant tenement unless contemporaneously with the transport of the dominant tenement he also expressly transports the rights of real servitude enjoyed by the land. He may effect the transfer of the servitude by incorporating such transfer of the right to servitude in the transport of the land itself as is the more usual manner, but he may none the less effectively transfer the right of servitude by a collateral document of transport made contemporaneously with that relating to the land. This was decided by the Privy Council in *Steele v. Thompson* (*supra*), a decision on appeal coming from the colony of British Guiana. In that case the servitude was in respect of the use of a canal, the bed of which belonged to the owner of land through which the canal flowed. In agreeing to sell
- 30 the adjoining land which he also owned, the vendor in his articles of agreement which was duly recorded in the Colonial Secretary's Office, agreed with the purchaser that the canal shall be for the joint use and benefit of the proprietors of both pieces of land with liberty to each proprietor to modify the course of the canal at his own expense provided the run of water therein was not thereby impeded. In pursuance of the agreement of sale, transport in favour of the purchaser was subsequently duly passed transferring the land to him “agreeably to contract of sale and purchase recorded in the Colonial Secretary's Office.” At a later date the purchaser had his land transferred by execution sale and letters of decree to a person who subsequently sold it to the appellant and duly passed transport in favour of the appellant; and also
- 40 the original owner of the two adjoining lands subsequently transferred to the respondent the piece of land which he had retained. Neither in the transport of the dominant tenement nor in that of the servient tenement was there any reference to the servitude. An obstruction of the canal by the respondent led to an action by the appellant in

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which was raised the question whether the right to the servitude in respect of using this canal was vested in the appellant. The Supreme Court of British Guiana before which this action was brought, held that it was not so vested. In its judgment confirming the decision of the Supreme Court of British Guiana, the Privy Council discusses the question whether the servitude though the subject of the agreement was fully constituted despite not being expressly incorporated in the transport — first, whether the words in the transport “agreeably to contract of sale and purchase recorded in the Colonial Secretary’s Office” was sufficient evidence of the intention of the parties to have the servitude agreement included as part of the transport. If those words were not sufficient to import such an intention, then as a servitude which is immovable property had to be constituted by transport duly approved in a judicial proceeding, there was no such servitude created. It was held that no such intention of servitude could be imported in the transport of the land which had been duly approved in judicial proceedings. The judgment next went on to pronounce that even if the Court were to hold that the parties intended that the transport should be considered as impliedly containing this servitude stipulated for, the servitude was none the less not properly constituted because of its not being in compliance with the law of the colony which provides that a transport of immovable property shall only be made before a judicial authority. The Court accepted that a servitude over a piece of land is in Roman Dutch Law a piece of immovable property belonging to the owner of the servient tenement and granted by him to the owner of the dominant tenement. Hence the necessity for transport expressly transferring the servitude.

The case of *Steele v. Thompson* came before the Court as a matter in dispute not between persons who originally had entered into the agreement for servitude, but between their respective assignees of the lands. The appellant was a transferee of the land which he claimed to be a dominant tenement in relation to a servient tenement of which respondent was the transferee. If the decision is to be construed as holding that parties to a contract for servitude between themselves would not be bound by the contract because the servitude was not effectuated by transport, the decision would seem to be inconsistent with the opinions of the text book writers on Roman Dutch Law, who have declared that in Roman Dutch Law, there can be such an enforceable binding agreement between owners of contiguous lands. By virtue of the contract, the original owner of the dominant tenement would certainly have a jus in personam as against the original owner of the servient tenement, which would be enforceable in a court of law. But it is submitted that a transferee of the dominant tenement would have no right of servitude unless that immovable property — the servitude — was constituted by transport and duly passed to him in a document of transport which received authentication in a judicial proceeding in the prescribed manner. It seems to me that the decision of the Privy Council would have been different had the parties to the suit been the original parties to the agreement. In my opinion the decision is an authority only as it relates to a claim to the right of servitude put forward by a transferee of an alleged dominant tenement. Such a claimant has to establish that the right to servitude was properly constituted and passed on to him by transport in formal judicial proceedings. Without this pre-requisite, he would have no right to servitude.

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As shown in the foregoing abstract of plaintiff's title to his west half of the western half, his Transport No. 236 of 1888 gives him expressly only "the right of free pasturage to Thomas Howard over the whole of the said plantation" and makes the conveyance "subject to the right of pasturage over the eastern half of the western half of the said plantation to Paris Britton his heirs, executors, administrators and assigns." What right do the above words give to the plaintiff? The words "with right of free pasturage to Thomas Howard over the whole of the said Plantation" must be construed as purporting to give plaintiff not a *right* but to make the purchased land *subject* to a right alleged to be in Thomas Howard, for it is obvious that no right to a servitude in Howard who was at no time an owner of the west half of the western half could be assigned to plaintiff by virtue of his ownership of the west half of the western half. At this stage, the question which is being solved is not one which relates to the burdens on plaintiff's lands, but the right which he would have by virtue of his transport, but it may be here observed that this right which was given to Howard in his transport of the east half of the western half (No. 64 of 1876) was a right only of *personal* servitude which was exercisable by Howard so long as he was the owner of the east half of the western half, and which was extinguished by Howard's death, presumably very many years ago. The words "subject to a right of pasturage over the said east half of the western half of the said plantation to the said Paris Britton, his heirs, executors, administrators and assigns" purport to give plaintiff a servitude not on the eastern half of the plantation, but that which was enjoyed by Britton only over the east half of the western half. It is clear therefore that plaintiff had not had transferred to him by transport the right of servitude which he claims over the eastern half of Plantation Susannah now in the ownership of the defendant.

As against this, both counsel for plaintiff in their submissions pointed to the annotation of the burden of a servitude of grazing cattle which admittedly appears on every transport of the eastern half from Burns' transport right down to the last transport which is that in favour of Bookers. It was contended that this annotation of the servitude on the transport of Bookers and Bookers' predecessors is sufficient to give to plaintiff the right to the servitude over the eastern half despite the fact that no such right of servitude is included in his own transport. It was difficult to appreciate the construction which plaintiff's counsel sought to give to the decision of *Steele v. Thompson*, or the effort made to distinguish the ratio decidendi in that case from the principle which would be applicable to the instant case. But plaintiff's counsel cited the judgment of Verity C.J. in *Peer Bacchus v. Narine Hookumchand and Christmas Hookumchand* (1943) L.R.B.G. 245.

"Under the system of conveyancing practised in this colony," Verity C.J. says at p. 248, — "the person entitled to the benefit of a servitude does not rest his claim upon any right secured to him by his own transport or document of title, which is as a rule, silent on this point. His right rests on the reservation contained in the title of the person over whose property it is to be exercised. It is possible, therefore, for such a servitude to be extinguished by omission from the transport by which the property over which

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“it is exercised is transferred to some third party. This was held to be so
“in D’Aguiar v. Phillips (L.J. 11th January, 1904; G. J. 29th March,
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There is no reference in the judgment in *Peer Bacchus v. Narine Hookumchand and Christmas Hookumchand* to any evidence having been put before the Court in support of the finding that there was such a practice in conveyancing in this colony which certainly would have been at variance with the principles enunciated by the Privy Council in *Steele v. Thompson* (supra). But it can readily be appreciated that in investigating the title of a claim to the right of servitude exercisable by the owner of one piece of land over neighbouring lands, a conveyancer would specially direct scrutiny of the transport of the alleged servient tenement to see whether there is registered thereon the burden of the servitude, because there is an abundance of authority in Roman Dutch Law that an owner of land is not affected by a claim of servitude over his land unless that servitude is registered on his transport or it can be shown otherwise that he had actual notice of such a servitude at the time of his acquisition of the servient tenement. In South Africa so much importance was attached to the registration on the transport of the servient tenement that in the Transvaal a statute was passed (No. 3 of 1886) which declared that no servitude should hold good against third parties if not properly indicated in the deed of transfer. The learned Chief Justice would seem, I say this with every respect, to have misconstrued the decision in *D’Aguiar v. Phillips*. The judgment in that case did in effect declare, as Verity C.J., stated, that :

“The owner of the servitude can only secure his rights by vigilance and
“by opposition to any transport when he may observe that from the adver-
“tisement thereof his servitude is in danger of being omitted.”

but that case cannot be an authority that an annotation of the servitude on the servient tenement, which may perhaps not have been at the instance of the transferor of a dominant tenement but at that of some predecessor of title of his, dispenses with the need for the transferor taking care, if he wishes to give the transferee the transferor’s full rights, to make a proper transport not only of the land itself but of the other immovable property associated with ownership of the land—namely the right of servitude over the servient tenement. His transfer of each immovable — that of the servitude as well as that of the land itself must, as prescribed by Roman Dutch Law, be effected by transport. A right of praedial servitude over another’s land, is it is true, dependent for its existence on its being linked with the land which enjoys the servitude — the dominant tenement. But the right of ownership of the land itself can exist without concurrent existence of the right of servitude over the neighbouring land and therefore the owner of the servitude can, if he chooses, extinguish this right of servitude while still retaining the land, or he can pass on ownership of the land without passing therewith the right to servitude on his neighbour’s land. If he omits to pass the servitude to the transferee of the land in the manner which the law prescribed — that is by formal transport, then the right to servitude becomes extinguished because that right cannot exist dissociated from ownership of the land. To

hold that an annotation of the servitude on the transport of the servient tenement would be sufficient to give title to the servitude to the transferee of the dominant tenement would be to make it possible for a servitude to exist and to pass from owner to owner of the dominant tenement irrespective of the intention of the owner of the dominant tenement. It would mean that the owner of land would hold the right of servitude associated with the land in trust for every subsequent owner of the land and be incapable of abandoning or destroying this right, a thing he could do with a house on the land or any other property belonging to him. D'Aguiar v. Phillips was a case where the alleged servient tenement was the subject of a sale at execution for non-
 10 payment of taxes which was duly confirmed subsequently by letters of decree in which no reference was made to the alleged servitude. It was held that the purchaser had taken the lands unencumbered by the servitude. Lucie-Smith J. found that neither the purchaser at the execution sale nor the plaintiff who took transfer from him was guilty of fraud. It would seem that the question of actual notice was deemed not to arise as this was a purchase at what is called parate execution. The purchaser's title at such a sale would only be effected by encumbrances declared on the advertised conditions of sale. The owner of the alleged dominant tenement should have seen that his claim to servitude was recognised in the advertised conditions of sale. His failure to have this done gave the purchaser a title unencumbered by the servitude and this
 20 was so whether the owner of the dominant tenement was claiming that he acquired his right to servitude by legal transport or by prescription. In D'Aguiar v. Phillips, the claim to servitude was one based on prescriptive user.

Reference must now be made to the case of Judd v. Fourie, to which both sides alluded in support of their respective submissions. Judd v. Fourie was a case decided in the year 1882 in the Eastern District's Court of the Cape of Good Hope and the case is reported by Buchanan J. one of the Judges of the Court in 2 Eastern District's Court Cases at p. 41.

The facts as disclosed in the evidence in that case were that H. and J. owners respectively of adjoining farms entered into a mutual agreement in writing in con-
 30 sideration of which J sold a portion of his farm to H and granted to H and the proprietors of the said portion of land the servitude of grazing cattle over the portion which J retained for himself — and H sold to J a portion of his own farm and granted in favour of the land so sold, the servitude of water leading over his retained lands. The transaction was partly an exchange and partly a purchase. Mutual transports of the lands so sold were duly passed, but no reference was made in either transport to the servitudes through an omission by the common agent who had brought about the transaction. The defendant subsequently bought H's retained property. Before he purchased, he got full information from the agent that there was this servitude of water-leading imposed upon the lands he wished to purchase. The agent actually read
 40 to the defendant from the written agreement the exact terms of the servitude of water-leading which at that time was being openly enjoyed by the dominant tenement. Defendant purchased from H after written conditions of sale were signed which contained these words :

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“The above property is sold subject to all such regulations and servitudes
“as may be found attached thereto, especially the right at all times to graze
“upon the farm (mentioning the farm which H had sold to J).”

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In these conditions of sale, there was no special reference to the right of servitude of water-leading over the lands sold to defendant. In the transport passed in favour of the defendant there was no mention of either the right of servitude to grazing cattle on the adjoining land, or the burden imposed on his land with respect to water-leading. Some time after this, the plaintiff with full knowledge of the agreements purchased J's property. The defendant had misled the plaintiff into believing that the water-leading servitude was in fact registered on the defendant's transport and, believing him, plaintiff had the servitude for grazing cattle on plaintiff's land duly registered on plaintiff's transport. Disputes between the plaintiff and the defendant arose afterwards. The plaintiff claimed damages from the defendant for preventing him from using the water, while the defendant counter-claimed against the plaintiff alleging that plaintiff had by putting up a fence obstructed him in the enjoyment of his right of servitude to grazing his cattle on plaintiff's land. In the Eastern District's Court to which the case was removed for argument and decision, the Court comprising Sir J. D. Parry, Judge, President, with Shippard and Buchanan, JJ. gave judgment in favour of the plaintiff declaring that he was entitled to a servitude on the defendant's land in terms of the original conditions of sale and directed that the said servitude be duly registered at his own costs. The counter-claim was dismissed. 10 20

Though the learned Judges agreed on what the result of the case should be as embodied in the joint order, they were not in agreement as to the consequences in law of the omission to have the servitude on the transports in reference to which each Judge in his separate judgment expressed his view very fully. They differed as to the rights possessed by parties to an agreement relating to a servitude which was not registered on the transport but on the special facts of the case they took the unanimous view that as the defendant had had actual notice of the servitude and as his conduct had amounted to a fraud on the plaintiff, or at least the registration of the servitude on the servient tenement had been omitted by a mistake induced by the defendant, the plaintiff was entitled to the relief which was granted. The Court would seem also to have agreed as to the correctness of the Privy Council's decision in *Steele v. Thompson*. Because of the divergence of the views held by the Judges relating to servitudes which were not registered on transports, counsel on each side in the instant case was enabled to cite judicial dicta in *Judd v. Fourie* in support of his submission. It may be said at once that there is no element of fraud in the instant case, nor can it be contended that the defendant had actual notice of the servitude as was established against the defendant in *Judd v. Fourie*. Buchanan J. as appears from his judgment, realised that *the plaintiff had not established that he had acquired the right to the servitude of water-leading as he omitted to show that he had this right given to him on his transport*. But Buchanan J. said “This defence was not relied upon in argument, nor is it specifically raised in the pleadings.” The learned Judge was at pains to show that the plaintiff considered that he did buy this right, which he was aware was in the conditions of sale between H and J, and that he was 30 40

using the water furrow from the time of purchase up to the time of obstruction. It seems clear that plaintiff's transferor intended that the right of servitude was to pass to the plaintiff. The learned Judge says further in his judgment :

"If my view be sound, the plaintiff as owner of the land, could have enforced the agreement against H had H remained the owner of the servient tenement, equally as well as his predecessor J could have done."

From the foregoing it would appear to me that Buchanan J. appreciated the necessity in Roman Dutch Law that a transfer by transport of the right to servitude shall accompany the transfer by transport of the dominant tenement, but that if the point had been taken by the defendant in the case before him, the Court would, because of the special facts, have nevertheless, been justified in awarding to the plaintiff the right to servitude just as if he had had it formally transferred to him by transport. In other words Roman Dutch Law would have given effect to a principle analogous to that in English equity jurisprudence namely that "that is regarded as done which ought to have been done." Had the plaintiff proceeded against J for the rectification of his transport to include this right of servitude J could not have resisted rectification. Shippard J declaring that Roman Dutch Law made a formal transport necessary for the constitution of a servitude said at p. 61 :

"It is in my opinion sufficiently established that, apart from prescription, registration is by the law of this colony an ingredient absolutely essential to the validity of a real incorporeal right or praedial servitude, in order to bind a singular or particular successor, such as a purchaser for value like the defendant."

and referring to the purchase by the plaintiff of the dominant tenement Shippard J. said at p. 73 :

"It seems to me to have been practically admitted, or at least not denied, by the defendant that the plaintiff bought a right to the servitude claimed, as far as such right could be bought."

The President of the Court Sir J. D. Parry, while agreeing that the defendant could not be heard to assert his want of good faith, which would be the case if, after the express notice proved, he could reprove the plaintiff of a right of servitude previously bought from his vendor, observed at p. 77 in reference to the point whether the plaintiff had effectively bought this right of servitude :

"The difficulty I had, arose from the fact that the plaintiff neither alleged nor proved distinctly that he bought this right of servitude of which it was alleged the defendant had notice. The summons merely alleged that the plaintiff obtained transfer which is perfectly consistent with the purchase of the farm minus the right of servitude. A servitude is a jus in re, and would be bought with the land to which it is attached, but the right to a servitude does not necessarily attach to the land. It is true that the defendant did not rely upon this defect, and during argument it was assumed that J had sold to the plaintiff this right he now claims, and the difficulty might have been surmounted by the fact that the defendant in his evidence admitted that plaintiff had acquired a right, and that he had promised to bring in his title to show that it had been

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“registered. That was an admission which plaintiff might perhaps have availed himself of, even without the amendment made in the pleadings. The Court, however, has made that amendment to remove any possible difficulty that might exist. The allegation now added to the summons had been proved by the defendant himself.”

It is noteworthy that the Court in its judgment abstained from awarding damages to the plaintiff, holding that plaintiff was not entitled to a remedy in law but to the remedy of rectification in accordance with the doctrines of equity administered by English Courts which is concerned merely to effect a re-adjustment of the relations of the parties in keeping with what is fair and conscionable. Accordingly, though the Court refrained from making an award of damages, it directed that the defendant should have his transport rectified so as to include the burden of the servitude. Plaintiff was no doubt left to take the proper steps to have his own transport adjusted so as to include the right to servitude over the servient tenement — presumably the Court could not make that order as affecting the plaintiff's transport without having as a party before it plaintiffs vendors or his heirs.

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Therefore, it seems to me on a careful analysis of the judgments in the case of *Judd v. Fourie* the decision is an authority that where a plaintiff claims by reason of his ownership of land that he has a right of servitude over an adjoining piece of land if the plaintiff is not the person in whose favour such a real or praedial servitude was originally given, it is essential for him to prove apart from prescriptive user :

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- (1) That there was an agreement for the servitude between the owner of the servient tenement and some predecessor in title of his own land—the dominant tenement :
- (2) That that agreement was duly registered in a formal transport—otherwise only the parties thereto can be affected by servitude;
- (3) That he has acquired not only the dominant tenement, but the right to servitude over the servient tenement by virtue of a formal transport transferring to him the servitude also unless he acquired the land and servitude by inheritance. (In *Judd v. Fourie*, it was not contended that he had not purchased the servitude from the transferor and the defendant at any rate because of his admissions was estopped from contesting it) : and
- (4) That the servitude is duly registered on the servient tenement, or, if not so registered, that the owner of the servient tenement had full notice of the servitude at the time he acquired the servient tenement and had purchased the servient tenement with full appreciation that the land was burdened with the servitude so as to render it unjust to the owner of the dominant tenement not to have the servitude registered on the transport of the servient tenement.

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In the instant case, it is clear from the evidence that though there is the registration in Bookers' transport of the servitude imposed on the eastern half of Susannah in favour of the Proprietors of Susannah, plaintiff who has no mention on his own transport of this right of servitude is not in a position to claim as *Judd* was able to do

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against the defendant Fourie that he had expressly arranged to purchase from his vendor not only the land but the right to the servitude of grazing his cattle over the whole of Plantation Susannah entitling him to get rectification of his transport so as to include this right of servitude which had been omitted per incuriam or fraud. Besides, assuming that he were able to establish that it was intended by him and his vendor that he was to have this right of servitude as Judd in his case was able to show, nevertheless, plaintiff would not be granted the remedy of rectification because of having slept on his rights, since 1888 in respect of his west half of the western half and since 1924 in respect of his land in the "multiple proprietors' " east half of the western half; and his transfer to his son of this latter piece of land would more-
 10 over disentitle him absolutely to the rectification of his transport with respect to that piece of land. But apart from the bar because of his laches, plaintiff in order to get rectification would have to show that the transferor at the time of the transfer to plaintiff had himself the right to this servitude over the eastern half which he could transfer. For obviously *nemo dat quod non habet*. This leads me to a consideration of the question whether the right to servitude, if indeed originally constituted in law, had not been extinguished before the acquisition of the land by the plaintiff as contended in the summary of the defence submissions set out earlier in this judgment.

How did Britton dispose of this right of servitude which as owner of the west-
 20 ern half he had over the eastern half? Britton in 1876 passed transport of the east half of that western half to Thomas Howard. In my view, on this division of his western half Britton could also divide the right of servitude associated with it so as to give to each divided portion the right to depasture its cattle in the eastern half of Susannah provided it was contiguous with it. In transferring to Thomas Howard the east half of the western half, Britton was fully competent expressly to transfer to Thomas Howard, but limited to the east half of the western half the real or praedial servitude which he was enjoying by virtue of his ownership of the entire western half of Susannah. But he gave Howard in Howard's transport, not the right to a praedial or real servitude, but something less than it — he gave to Thomas Howard
 30 only a personal servitude of pasturage for his cattle over the whole of Susannah to be enjoyed by Howard personally so long as Howard was the owner of the east half of the western half. By this grant to Howard of a personal servitude only there was in respect of the east half of the western half a right of personal servitude in substitution for the full real or praedial servitude over the eastern half of Susannah which Britton had had. I may here state that the personal servitude given to Howard terminating at his death or transfer of the land completely disposes of the claim that plaintiff has made in this action in regard to the right of servitude over defendant's eastern half by virtue of plaintiff's ownership of his three roods piece in the "multiple proprietors' " eastern half of the western half of which Howard was a predeces-
 40 sor in title. Mr. Humphrys indeed went beyond this in his submissions and sought to convince the Court that the whole of the right of praedial servitude held by Britton — not only that in relation to its enjoyment by the east half of the western half — was completely extinguished. I cannot agree with this submission: certainly the right of servitude was extinguished in relation to its enjoyment by the ownership of the

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east half of the western half but not in relation to the ownership of the west half of the western half. That right of servitude Britton still retained when he retained the west half of the western half. "A servitude may be abandoned as to one portion of a farm, and retained as to the remainder. Where a dominant tenement is divided among several owners, one of them may abandon his right so far as his share is concerned, and the servitude will still continue for the benefit of the remaining divided shares in the property held by the other joint owners (see *Myburgh v. Van de Byl* 1 S.C. 360), for as many servitudes are regarded as existing as there are divided portions of the dominant tenement." (Nathan's *Common Law of South Africa* Vol. 1, p.49). True, the west half of the western half is not contiguous with the servient tenement the eastern half and as contiguity with the servient tenement is an essential element for the enjoyment of a rural praedial servitude by a dominant tenement, Britton in relation to his ownership of the west half of the western half would have lost this right of servitude over the eastern half if in the transport to Howard he did not take care to reserve to the west half of the western half a right of grazing its cattle on the east half of the western half. That servitude was registered on Howard's transport in the words :

"Subject to the right of pasturage over the said eastern half of the western half of the said plantation to the said Paris Britton his heirs executors and assigns".

That servitude over the east half of the western half gave to the west half of the western half the contiguity with the eastern half — the servient tenement — which is necessary for the enjoyment of the right of praedial servitude; for Britton's cattle on his west of the western half could while depasturing over Howard's east of the western half in exercise of the right of pasturage expressly given by transport go over to the eastern half without committing trespass on the east half of the western half. Nor can I agree with Mr. Humphrys' contention, as I understood it, that because Britton chose specially in express terms in Howard's transport to give himself, his heirs, executors, administrators and assigns, the right of servitude of grazing cattle on Howard's west half of the western half, Britton had thereby abandoned or caused to be extinguished the more comprehensive right of grazing his cattle on other parts of Susannah. This registration on Howard's transport could not affect Britton's rights over the east half, which, as I have stated, was duly constituted and registered on Burns' transport.

Continuing to trace the devolution of Britton's right to pasturage over Susannah, it is seen that on Britton's death, Britton's wife inherited by his Will the west half of the western half with its rights to servitude. The devolution of the rights to servitude on the death of the owner of the dominant tenement need not, it is admitted, be effected by transport. But Britton's wife suffered the loss of the west half of the western half by a sale at execution, and the letters of decree issued by the Court in favour of Hooton makes specific reference only to the right of servitude over the east half of the west half and to no other right of servitude. It was also made subject to the burden imposed on the land by virtue of the personal right of servitude held by Howard. In my opinion, because of the absence of any mention of this servitude, the right which Britton had to pasturage over the whole of Susannah was thereby extinguished and did not pass to Hooton, nor did the subsequent transfer to plaintiff

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by the assignee of Hooton's creditors in 1888 mention this right to servitude for depasturing cattle over Susannah generally which would, it seems, confirm that there had already been an extinguishment of Britton's old right to the servitude of pasturage over the eastern half of Susannah.

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I propose now to turn attention to plaintiff's alternative claim to the servitude for depasturing cattle on the eastern half which is based on prescriptive user, and while reviewing the evidence in support of prescription, I shall also direct attention to the evidence of acts or omissions by plaintiff which counsel for defence has claimed point to the extinguishment of the right to servitude in plaintiff
10 whether such servitude was held by him by virtue of transport or by virtue of prescriptive user.

In Roman Dutch Law as in English Law, to found a title by prescription, there must be user as of right *nec vi nec clam nec precario*. What is the length of the period of user of a servitude upon which a claim to a title by prescription can be based? The Civil Law of British Guiana Ordinance, (Chapter 7 of the Laws of British Guiana 1930), which became operative as from the 1st January, 1917, was enacted to introduce into this colony the Common Law of England as the Common Law of the colony, but care was taken by a proviso to section 3 to exclude the English Common Law of real property, thus leaving Roman Dutch Law still
20 governing all rights in respect of realty in the absence of statutory enactment. By section 2 (3), existing rights established under Roman Dutch Law, whether in respect of movable or immovable property, are expressly preserved. But section 4 (1) which makes provision for a title to immovable property by prescription enacts:

“Title to immovable property including immovable property of the Crown
“or Colony, or to any easement, profit a prendre, servitude or any other
“right connected therewith, may be acquired by sole and undisturbed
“possession for thirty years, of which not less than three years shall be
“after the date aforesaid (that is the 1st January, 1917), if that possession is
30 “ established to the satisfaction of the Supreme Court which may issue a
“declaration of title in regard to the property or right upon application in the
“manner by any Ordinance or Rules of Court.”

The manner in which an application must be made is by petition as prescribed by Rules of the Supreme Court (Declaration of Title) 1923, which also makes provision for the publication of a notice of the petition and service on interested parties.

As stated above, the Ordinance in section 2 (3) preserved existing rights to property already established under Roman Dutch Law. Therefore if plaintiff is able to show that on the 1st January, 1917, under Roman Dutch Law he had
40 already acquired and had established a title by prescription to a servitude of grazing his cattle on the eastern half of Susannah, this Court would be bound to give recog-

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dition to his right of prescription and his right to the servitude would from the date of its establishment have been a *right in rem* against everybody including the defendant. But if on the other hand the plaintiff fails to show that he had on the 1st January, 1917, already acquired an established prescriptive title under Roman Dutch Law, then his right to the servitude by prescription would be subject to his complying with the requirements for a prescriptive title ordained by section 4 (2) of Chapter 7.

I wish to make it clear that a person who has had user as of right for the prescriptive period but has failed to get his title thereto established in keeping with the Ordinance is not debarred by the Civil Law of British Guiana, Ch. 7, from setting up his prescriptive right in defence to a claim because he has not had his title declared in the manner provided by Rules of Court. (*Lalbahadursingh v. Daniel McPherson* (1939) *B.G.L.R.* 80). But though thus unrestricted in his defence to a claim, he cannot himself put forward a claim founded on a title to prescription which has not been the subject of a decree by the Court in pursuance of a petition presented to the Court *vide* judgment by Worley C.J. in *Adams and Christmas v. Raghubir* — No. 441 of 1946 *Demerara* — delivered on April 16, 1951. The position is analogous with the bar to action provided by the Statute of Limitation. A defendant is able to resist a claim to possession of land although he may be barred by the statute from getting an order for possession.

In this case, plaintiff alternatively is putting forward his claim to damages and/or an injunction against the defendant founded upon a title by prescription to a servitude of grazing his cattle on defendant's lands. To be able to avail himself of this title to servitude in support of his claim he must show first that he had got a declaration of title from the Court, not in these proceedings but in proceedings commenced by a petition as prescribed by Rules of Court. True, there is the counter-claim, but I am of the opinion that the issues in the claim and counter-claim are so linked together that, as the proceedings were initiated by plaintiff, the defence is entitled to submit that when the plaintiff fails in his claim, the plaintiff is liable for the trespass which he has been unable to justify in law.

As regards his claim to a prescriptive title under Roman Dutch Law, it is obvious that plaintiff cannot, in support of prescription, advance user by him personally for a period beginning from the date of his acquisition of the west half of the western half of Susannah, for he bought in 1888 and from that date to 1st January, 1917, it would not be more than 29 years. The prescriptive period under Roman Dutch Law is one third of a hundred years (*vide* Lee's Introduction to Roman Dutch Law 3rd Edition 176); apparently it does not matter whether the user of such servitude has been continuous or intermittent. (Nathan's Common Law of South Africa, Vol. 1, p. 452, para. 692 citing Voet's Commentaries Book VIII, Title 4, section 6). Therefore, to found a title to the servitude by prescription it would be necessary for plaintiff to include user by predecessors in title so as to show user of the servitude for an aggregate period of thirty-three and one third years. Assuming that the evidence does show such a user of servitude by plain-

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tiff and his predecessors in title, nevertheless, the question then would arise whether the servitude was so established as to bind the defendant. I am of opinion that by virtue of section 21 of the Deeds Registry Ordinance, Ch. 177, anyone since 1st January, 1921, who wishes to affect an alleged servient tenement with the burden of a servitude by prescription under Roman Dutch Law, must take steps to register the servitude by prescription on the transport of the servient tenement before the owner of the servient tenement acquired the land or he must show that the owner of the servient tenement acquired the servient tenement with actual notice of the servitude having already been established by prescription.

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Section 21 of Ch. 177 provides: "From and after the first day of January, one thousand nine hundred and twenty-one, every transport of immovable property, other than a judicial sale transport, shall vest in the transferee the full and absolute title to the immovable property as to the right and interest therein described on that transport subject to:

"(a) statutory claims;

"(b) registered encumbrances;

"(c) registered interests, registered

"before the date of the last advertisement of the transport in the Gazette;

20 "(d) registered leases before the date of the last advertisement of the transport in the Gazette;

"provided that any transport, whether passed before or after the first day of January, nineteen hundred and twenty-one, obtained by fraud shall be liable in the hands of all parties or privies to the fraud to be declared void by the Court in any action brought within twelve months after discovery of the fraud, or from the first day of October nineteen hundred and twenty-five, whichever is the more recent."

I cannot agree with the contention of Mr. Adams, one of the counsel for the plaintiff, that this section was never intended to over-ride the provisions of the Civil Law of British Guiana Ordinance, Ch. 7, which he points out, was at pains expressly to preserve existing rights acquired under Roman Dutch Law. What the section did do was not to deprive a person of his right of servitude acquired by prescription under Roman Dutch Law, but it directed that he must have such servitude registered on the transport of the servient tenement if he wishes to affect a purchaser of the servient tenement with the burden of the servitude. This protection afforded by the Ordinance to the owner of an alleged servient tenement is in keeping with Roman Dutch Law itself, as enunciated in many decided cases including *Judd v. Fourie*, although in that case the Court decided in favour of a servitude which had not been registered on the servient tenement because of a mistake by the owner of the dominant tenement induced by the owner of the servient tenement himself and which amounted practically to a fraud on the dominant tenement.

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On Bookers' transport, there is in fact noted the servitude in favour of the proprietors of Susannah. Admittedly, that annotation referred to the servitude that came into existence on the agreement between Britton and Burns, and has no reference to a servitude acquired by prescription. That servitude though recorded on all the transports relating to the eastern half of Susannah, had already been extinguished at the time of Bookers' purchase for the reasons already given above.

It is said that the recognition of a right by prescription is based on the fiction of a lost grant, but it is indisputable law that when the enjoyment of a right is by virtue of an express grant, the grantee is limited by the grant and does not acquire a prescriptive right by exercising it for the period of prescription. "The common law doctrine is that all prescription presupposes a grant. But if the grant is proved and its terms are known, prescription has no place" per Lord Lindley in *Gardner v. Hodgson's Kingston Brewery Co.* (1903) A.C. 229. I hold therefore that the annotation on Bookers' transport is not to be taken as a registration of the servitude claimed to be acquired by prescription under Roman Dutch Law and accordingly I hold that even if plaintiff can establish prescriptive user for thirty-three and one third years through the combined user of the servitude by his predecessors in title and himself, in the absence of actual notice it would not affect Messrs. Bookers, on whose transport there was no registration of a servitude by prescription. Under Roman Dutch Law the manner of getting recognition of an easement by prescription as against lands about to be transferred was by lodging an opposition, when on proof of facts by affidavit in support of prescriptive user, the easement would be directed to be registered on the transport of the transferee of the land. This was never done as affecting the eastern half of Susannah by plaintiff or any of his predecessors in title of the western half of Susannah, and therefore no transferee of the eastern half was affected by any servitude by prescription.

As regards actual notice, I cannot agree with Mr. Adams' contention that the existing annotation on Bookers' transport, if not capable of being regarded as registration of the servitude by prescription, yet would nevertheless affect Bookers with actual notice of the servitude by prescription. As has already been pointed out, the right to servitude by prescription is entirely different from and independent of the servitude arising from the grant of servitude in pursuance of the agreement between Britton and Burns. Moreover, an unregistered right of servitude by prescription is completely wiped out if the servient tenement is sold at an execution sale. I have earlier in this judgment referred to the sale at execution of the dominant tenement, pointing out that the right to servitude over a servient tenement is extinguished unless it is embodied on the letters of decree or on the transport passed by the Marshall of the Court in pursuance of the advertised sale which mentions the right to servitude as being included. But in the case of a servient tenement a judicial sale by transport vests in the transferee a full and absolute title subject only to certain registered interests.

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Section 2 of the Deeds Registry (Sales in Execution) Ordinance, 1936, which Ordinance (No. 4 of 1936) was passed to amend the Deeds Registry Ordinance, Ch. 177, provides :

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- (c) Where the sale of the property is for the purpose of enforcing the payment of a judgment debt of a judgment creditor other than the holder of a statutory claim or a registered encumbrance, the property shall be sold subject to all statutory claims, registered encumbrances, registered interests and registered leases.

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And section (3) :

- 10 A judicial sale transport passed after the commencement of this Ordinance (which was on the 27th May, 1936) shall vest in the transferee the full and absolute title to the immovable property or the rights and interests therein *subject only* to such statutory claims registered interest and registered leases as have not been extinguished by the sale in execution.

The evidence of the title to defendant's eastern half giving the successive transfers by transport reveals that in the year 1902, Mary Ann da Silva became owner of the eastern half of Susannah by virtue of a Transport No. 167 of 1902, dated the 6th September, 1902. On that transport there was registered the right given to each of the proprietors of eastern and western halves of Susannah of grazing cattle over the whole plantation, which, as I stated, was a feature of every transport of the eastern half from the time of Burns downwards. In 1936, in pursuance of an order of the Supreme Court, there was an execution and a judicial sale of this eastern half followed by transport by the Marshal (No. 336 of 1936 dated 21st August, 1936) in favour of the purchasers, Hugini Vasco da Silva, Mary Agnes Soares, Valerie Lourdes da Silva and Simeon Theobald da Silva, their heirs, executors, administrators and assigns. On this transport, the only registered interest to which the transfer is made subject is that same right given to the proprietors of the east and west halves of grazing cattle over the whole of Plantation Susannah. It is clear that by virtue of Ordinance No 4 of 1936, the purchasers at the execution sale took the eastern half free from any unregistered servitude based on user for the prescriptive period. If plaintiff did have such a claim to servitude by prescription, either in Roman Dutch law by user for a quarter of a century before 1st January, 1917, or by user for 30 years in accordance with section 4 of Ch. 7, he lost it in 1936 when the servient tenement was sold at execution, and from 1936 to the present date he will not have had user for the statutory prescriptive period of thirty years even assuming that all the time cattle from the western half was grazing on the eastern half as of right, *nec vi, nec clam, nec precario*.

Quite apart from the indefeasibility by statute of the defendant's title in respect of any claim to an unregistered servitude by prescription over the eastern half of Susannah, I am not satisfied on the evidence that there was as of right for the period of prescription, the grazing of cattle belonging to plaintiff and his predecessors in title. Plaintiff, who is 87 years, testified that he knew Susannah and its proprietors

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from his earliest boyhood days long before he became a purchaser in 1888. He used to see cattle belonging to all owners grazing undisturbed on every part of Susannah. He himself before purchasing Susannah was the owner of a portion of lot 11 Corentyne which is immediately to the west of Hermitage, the plantation that adjoins Susannah on the west; and his cattle from No. 11 used to go across Hermitage into Susannah. He subsequently bought and now owns the eastern half of Hermitage which bounds with his own west of the western half of Susannah. From the evidence given in this case, it would appear that generally the owners of lands along the Corentyne Coast had no objection to the cattle of neighbouring lands coming on their lands for grazing purposes, but no inference is to be drawn from the fact that there was no objection raised that the right of grazing on each other's lands was exercised as of right which is an essential element of acquisition by prescription. This is illustrated by the fact, as admitted by plaintiff in his evidence, that Hanoman, the father of the defendant, who had owned part of No. 11 was often impounding plaintiff's cattle which strayed from Hermitage into No. 11, and this caused plaintiff to fence off Hermitage from No. 11 soon after he bought Hermitage. Also plaintiff in his evidence, while denying that he had impounded any Susannah cattle grazing on his portion of Susannah declared that he was impounding cattle straying on his adjoining plantations Bohemia and Hermitage.

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No doubt, it was to give to each other something more than a mere licence but a precise and definite right to graze cattle on each other's portion of Susannah that Britton and Burns agreed upon the real servitude that was registered on Burns' transport. This, as I have stressed, gave to each and their successors only, such right as would be in keeping with the rules of Roman Dutch Law pertaining to the constitution and transference of a praedial servitude; the exercise of this right by grant, I repeat, could not furnish any foundation for a title by prescription to the servitude. Mr. Faulkner, Deputy Manager of Plantation Rose Hall, belonging to Messrs Bookers, and Mr. McTurk of the same firm, the latter of whom had immediate and direct control over the eastern half of Susannah during the ownership of Bookers, both testified that Bookers did not impound, while grazing over their lands, any cattle of the proprietors, and these cattle were allowed to graze freely all over the place outside of the period of the rice crop. McTurk stated that he understood that there was a right of grazing in the proprietors. No doubt, it was because of the registration on Bookers' transport that it came to be understood that there was that right existing. But as I have pointed out, that right though continuing to be noted on the transports of the servient tenement, had in fact and in law, long been extinguished. George Klass who is 66 years old and who knew Susannah for seven years from the age of 18, said that he used to see cattle grazing all over Susannah; whose cattle and whether they were there in circumstances justifying an inference that they were not there by special permission, he was unable to say. The evidence of Goberdarsingh and Bhoopsingh each of whom at some time was interested in the proprietors' portion of the east half of the western half, does not in my view carry the case for the plaintiff any further, because even assuming that their cattle did roam undisturbed over the eastern half, it does not establish that it was being done as of right, such as could

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crystalize after long user into a prescriptive title. The same must be said of the evidence of Simeon da Silva, when he spoke of cattle grazing on the eastern half. Da Silva's mother acquired the eastern half of Susannah and also subsequently owned part of the proprietors' portion of the east half of the western half. If cattle were grazing over her eastern half, any claim by the owner of the cattle based upon user for the prescriptive period was wiped out when her lands were sold at execution.

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I now pass on to consider whether apart from extinguishment by operation of law prior to plaintiff's acquisition of his lands at Susannah, plaintiff's own acts and conduct effected an extinguishment of any right of servitude which plaintiff may have
10 possessed over the eastern half of Susannah. The authorities are clear that while mere non-user of a servitude will not extinguish the right to servitude, any acts of the owner of the servient tenement which are inconsistent with the existence of the servitude over his lands would, if not disallowed by the owner of the dominant tenement, serve to extinguish the servitude, and there would thereby be extinguishment of the servitude none the less though the owner of the dominant tenement with no intention to abandon his right to servitude gave his consent to the condition making the exercise of the right to servitude impossible. The southern portion of Susannah, though grazing lands like the rest of the plantation, came to be used in course of time for rice cultivation. The evidence is not clear when rice was first planted there.
20 Robeiro, the immediate predecessor in title to the eastern half before the da Silvas, it was stated, was the first to commence rice planting on the southern portion of the eastern half. If that were so, rice planting on the south portion of the eastern half seems afterwards to have been given up altogether until da Silva and plaintiff later on entered into an agreement whereby da Silva was allowed to plant rice and a temporary fence was set up to keep cattle out during crop time. Some years after this, the other proprietors, including plaintiff himself, planted rice on their southern portions under similar mutual agreements, but because of lack of water, no rice was sowed by some proprietors in some years. According to the evidence for plaintiff, it was
30 agreed that all cattle would be kept on the northern portion of Susannah each year during the rice crop, and would be set free to graze again on the southern portion after the crop. It is plaintiff's case that it was only in keeping with this old arrangement between the proprietors of Susannah that Bookers, although not planting rice themselves, were enabled to rent as rice lands their southern portion of Susannah to some of their labourers employed at Rose Hall : Bookers supplied water to their tenants as well as to plaintiff and other proprietors and the withdrawal of this water supply by Bookers, which Bookers said was required for their own Rose Hall purposes, led to a dispute between plaintiff and Bookers when plaintiff uttered a threat that he would prevent Bookers from planting rice. Whether that threat signified an intention to cancel the agreement under which it was claimed rice was permitted to be
40 planted to the exclusion of cattle, or whether plaintiff intended by his threat that he would remove his fence separating his cattle grazing lands at Bohemia from Bookers' eastern half of Susannah and thus permit his cattle there to enter upon the rice fields on Bookers' southern area is not clear, but Bookers sold the lands soon after to defendant who proceeded at once to impound cattle coming into his rice lands. The

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contention of the Defence is that this agreement by plaintiff to keep his cattle off the eastern half every year during the rice crop amounted to an abandonment of the right of servitude for grazing cattle over the southern portion of the east half, if any right existed. It is admitted by the Defence that that curtailment of the servitude over a certain portion of the servient tenement would not extinguish the servitude over the whole of the eastern half, but it is contended that the agreement would in effect extinguish the servitude over the southern portion.

As stated before, a right to servitude though not divisible can be abandoned so far as a distant portion of the servient tenement is concerned. But I cannot agree with the submissions of the Defence on this point. Mere non-user, it is agreed, does not extinguish a servitude unless it is non-user lasting for a prescriptive period. And I hold that in this case the agreement for non-user of the servitude for a certain period each year is not to be deemed to have effected an extinction of the right to servitude on the southern area of the eastern half assuming of course, that the right to servitude did exist in law at the time of the agreement.

Much time was taken up in this case with the hearing of evidence relating to fences which were alleged to have been put up by plaintiff to separate his lands from the rest of Susannah. Whether these fences were put up by plaintiff or not does not seem to merit the importance given by both sides to the subject. Plaintiff's main object of putting up fences which separated his lands from other lands was, it is reasonable to conclude, to prevent other proprietors' cattle from coming on his own lands. Plaintiff insisted that a fence erected on the northern area was to enable him to drive his wild cattle into a kraal or paddock for the purpose of branding them or for assemblage prior to despatching them to Georgetown for sale. Be that as it may, the fact that plaintiff might have been preventing others from exercising a right of grazing cattle on his lands, does not mean that he himself thereby was abandoning the right to allow his own cattle to go on a servient tenement. Besides, I am not satisfied that any fence put up by plaintiff completely shut out plaintiff's cattle from going on the eastern half. No doubt their freedom to go and graze there was to some extent restricted, but there was the road also along which they could stray or be driven into the eastern half for grazing purposes. However, the setting up of fences by plaintiff, it is conceded, is a matter not to be altogether ignored on the question of abandonment. In this case plaintiff sets up in support of his own right that there were reciprocal rights to servitude possessed by all proprietors of Susannah and therefore the fact that he himself was fencing in his own lands may also be an indication that he entertained no belief in the existence of such a right. Still for the reason given above, I would not be inclined to hold that assuming the servitude existed, it must be deemed to have been abandoned by plaintiff simply because of his acts of erecting fences, putting up trespass notices against straying cattle and even actually impounding cattle of other proprietors coming on his portion of Susannah.

For the reasons given above, I find that plaintiff at the time of the admitted seizing and impounding of the cattle possessed no right of servitude for grazing cattle on the defendant's eastern half of Susannah. Neither by virtue of a grant to his

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predecessors in ownership of the land nor by virtue of prescription was plaintiff entitled to any such right. I have already stated that I hold the servitude which Britton enjoyed by grant was in respect of the cattle he maintained at Susannah and not any cattle which he might own but maintained elsewhere. If I am wrong in the view I have taken that Britton's rights of servitude were extinguished before plaintiff acquired his Susannah lands and if that servitude did pass down to plaintiff — if plaintiff did in law acquire Britton's rights, then it would be necessary to determine whether the cattle impounded by the defendant in August and September 1947, belonged to Susannah as alleged by plaintiff or came from Bohemia as alleged by the

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If those cattle were from Bohemia then I hold that plaintiff is not entitled to any right of servitude with respect to these, and his claim for damages and the injunction must fail. The defendant in these circumstances would be entitled to judgment on his counterclaim for the trespass of these cattle. All plaintiff's cattle, whether from Susannah, Bohemia or elsewhere carried, it is admitted, the same brand. Accordingly the records on the Police Pound Books giving the brand of the animals brought to the pound furnish no help on the question whether the animals came from Bohemia or Susannah. But in determining what cattle were then impounded, the Court is entitled to take note of the circumstances existing at the time of defendant's purchase

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and particularly the relations between Bookers and plaintiff immediately preceding defendant's purchase. In Bookers' time it is admitted, the fence separating Bohemia from the eastern half belonged to plaintiff. That fence it would appear was not in the best state of repair, and the relations between plaintiff and the management of Rose Hall were so friendly and cordial that outside of the rice crop, Bookers did not object to plaintiff lowering the wire of his fence to allow cattle from Bohemia to go and graze on the rice fields. When Bookers withdrew their supply of water, plaintiff threatened to prevent Bookers from planting rice, and the management of Bookers would appear to have appreciated that plaintiff would allow his Bohemia cattle to get through this fence, and they immediately sent a man to repair the fence to which

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plaintiff refused to consent. Bookers, it would seem, had no fear of cattle coming from other parts of Susannah in view of the punt trench on their western boundary and the other fences to the west that would to a very great extent prevent the cattle of plaintiff and other proprietors from entering on their eastern half. But Bookers without placating plaintiff as to the supply of water sold to defendant their eastern half. Whether defendant knew the trouble between Bookers and plaintiff is not clear but in my opinion that is immaterial. This was a threat to prevent the planting of rice on Bookers' eastern half and by the threat it was understood that the Bohemia cattle would be allowed to go through the fence. No notice of this dispute could effect defendant so as to impose a burden on him to allow Bohemia cattle to graze on his land. As I have

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already held, plaintiff's Bohemia cattle could never have had the right to graze there by virtue of the registration on Bookers' transport, and as regards the claim by prescription, no evidence has been advanced by plaintiff in support of a right to the servitude by prescription in relation to *his Bohemia cattle*. Evidence was given by both plaintiff and defendant as to a conversation between them on an occasion soon after

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defendant's purchase. Each has denied what the other alleges. The plaintiff said that on a Sunday the defendant came to him and made certain suggestions to him by which they should agree to deprive the multiple small proprietors of the servitude of grazing, whereupon plaintiff showed defendant a copy of a transport with the servitude endorsed on it. Defendant denies this.

In my view, even accepting plaintiff's evidence on this, it is not conclusive as affecting defendant with notice of a subsisting servitude good and valid in law. On the other hand defendant testifies that he met plaintiff on the road and plaintiff issued a threat to take down his fence between Bohemia and Susannah and drive his cattle into defendant's rice lands. Having regard to what had transpired between plaintiff and Bookers, the utterance of this threat by plaintiff does not seem very improbable, and seeing the plaintiff in the box, I am satisfied from his demeanour that he is quite capable of saying what defendant alleged. Whether or not the cattle were deliberately driven into the eastern half of Susannah as threatened, the defendant is unable to say but he saw them coming from the direction of Bohemia. I am satisfied that the cattle seized and impounded on the dates in August and September 1947, alleged in the Statement of Claim came from Bohemia. It is true that the fence separating the southern area of Bohemia from the eastern half was not pulled down right away, but plaintiff very soon removed the wire separating the northern portion of Bohemia from the northern portion of the eastern half of Susannah. His reason for doing this is not clear.

I may mention that I prefer not to attach too much weight to the testimony given by Edwin Clarence who at one time lived at plaintiff's house because of his paramour being the sister of the woman with whom Rose was living. He is no longer living at plaintiff's house nor is he now working with him following disagreements which would seem to have left Edwin Clarence so embittered that he might be induced to say anything to the prejudice of plaintiff's case. Clarence spoke of plaintiff's cattle going from Bohemia to the defendant's rice lands. But on one night defendant said he saw cattle on his lands and immediately sent for the police. Corporal Gronigen arrived about 2.00 a.m., in time to see plaintiff, the Corporal states, chasing cattle across the bridge at Bohemia into his lands on the northern side. Plaintiff denied that he was out there at midnight. If that evidence is true, then the evidence of the Corporal is significant. Plaintiff may have heard that the police were being sent for, and, on the Corporal's arrival, was striving to get his animals away before the Police came up. Why should the Police Corporal have conspired with defendant to invent this story, it is difficult to see. On the evidence I am satisfied that the animals referred to as impounded in August and September, 1947 came from Bohemia.

The plaintiff by his several amendments to the Statement of Claim made during the course of the trial alleged in addition, the seizing and impounding of his cattle in 1948 and 1949 subsequent to the date of his writ which was in December 1947. In allowing the amendments I made it clear that plaintiff was not entitled to advance any additional claim based on fresh causes of action arising since writ, but these

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alleged seizures of cattle were only relevant on the question whether defendant was persisting in further violation of the rights of servitude.

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Assuming that the impounding in August and September, 1947 was in violation of plaintiff's right of servitude, the evidence of these alleged subsequent acts of seizing of plaintiff's cattle was material in determining whether the plaintiff should be granted the injunction he claimed. But apart from that, both plaintiff and defendant in their pleadings asked the Court for a declaration relating to the rights of servitude for grazing cattle over the eastern half, and although the Court has found the acts of seizing cattle in August and September 1947, which is the cause of action in these proceedings, were in respect of Bohemia cattle which as I hold were never at any time in law included in the right of servitude, yet for the purpose of the declaration asked for by both sides, it became necessary to admit evidence of those subsequent acts, some of which admittedly were the seizing of animals that came from plaintiff's Susannah lands.

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For the reasons I have stated in this judgment, plaintiff has no right of servitude for grazing cattle on the eastern half of Susannah and accordingly he is not entitled to the declaration he asks the Court to make. In the result I give judgment for the defendant on the claim. On the other hand, the defendant is entitled to judgment on the counter-claim. For the acts of trespass by plaintiff's cattle, the defendant is entitled to damages, which, because no special damage is proved, I fix at \$200.00; and by way of further judgment in favour of the defendant on the counter-claim, the Court makes the declaration that neither by virtue of transport, nor by virtue of prescription, is the plaintiff entitled to the servitude of grazing his cattle on the eastern half of Susannah, and an injunction is issued against the plaintiff, his servants and agents to restrain them from causing or permitting cattle to graze on the eastern half of Susannah. There will be costs in favour of the defendant both on the claim and counter-claim.

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I certify fit for two counsel.

FRED M. BOLAND,
Chief Justice (Ag.)

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18th September, 1951.

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**FORMAL JUDGMENT OF THE SUPREME COURT OF
BRITISH GUIANA.**

No. 37
Formal
Judgment
of the
Supreme
Court of
British
Guiana.
18th Septem-
ber, 1951.

BEFORE THE HONOURABLE THE CHIEF JUSTICE (ACTING)

Tuesday the 18th day of September, 1951.

Entered the 27th day of October, 1951.

THIS ACTION coming on for hearing on the 8th, 9th, 10th, 11th, 16th, 17th, 18th, 22nd, 23rd, 25th, 29th, 30th and 31st days of May, 1951, and on the 4th, 5th, 6th, 11th, 12th, 13th, 14th, 18th, 19th, 20th, 21st, 25th and 26th days of June, 1951, and on the 18th day of September, 1951, AND UPON HEARING Counsel for the plaintiff and Counsel for the defendant AND the evidence adduced IT IS THIS DAY ADJUDGED that the plaintiff's claim do s t a n d dismissed AND IT IS ORDERED THAT judgment be entered for the defendant on the defendant's counter-claim and that the plaintiff do pay to the defendant the sum of \$200.00 damages for trespass by the cattle of the plaintiff on the said eastern half of Plantation Susannah AND IT IS FURTHER ORDERED AND DECLARED that neither by virtue of transport nor by virtue of prescription is the plaintiff entitled to the servitude of grazing his cattle on the eastern half of Plantation Susannah situate on the East Coast of the County of Berbice AND IT IS FURTHER ORDERED t h a t the plaintiff, his servants or agents be and they are hereby restrained from causing or permitting cattle to graze on the said eastern half of Plantation Susannah AND IT IS FURTHER ORDERED that the plaintiff do pay to the defendant the defendant's taxed costs of action on the plaintiff's claim and the defendant's counter-claim.

Certified fit for two Counsel.

BY THE COURT

(L.S.)

H. Bacchus

Sworn Clerk & Notary Public
for Registrar.

No. 38

NOTICE OF APPEAL MOTION.In the West
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1951 No. 5. BRITISH GUIANA. IN THE WEST INDIAN COURT OF
APPEAL. ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA.

No. 38
Notice of
Appeal
Motion.

Between :—

ARCHIBALD ROSE,
Appellant (Plaintiff)

6th Decem-
ber, 1951.

And :—

GEORGE HANOMAN,
Respondent (Defendant)
(1947 No. 634—Demerara)

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NOTICE OF APPEAL MOTION.

TAKE NOTICE that this Court will be moved at the expiration of 28 days after this appeal has been set down for hearing and on a day and at an hour of which you shall be informed by the Registrar by Mr. B. O. Adams of Counsel on the part of the appellant (plaintiff) that the judgment given in this action by His Lordship Frederick Malcolm Boland, Chief Justice of British Guiana (acting) dated the 18th day of September, 1951, and entered on the 27th day of October, 1951, may be reversed.

AND THAT it may be ordered and declared that —

20

- (a) That the appellant (plaintiff) is entitled by virtue of transports, or alternatively, by prescriptive user to a right to depasture his Susannah cattle on the eastern half of Plantation Susannah;
- (b) That the respondent (defendant) be restrained from impounding any cattle or other animals belonging to the appellant (plaintiff) on the west half of the west half of Plantation Susannah, situate on the Corentyne Coast, in the County of Berbice and Colony of British Guiana;
- (c) That the respondent's (defendant) counter-claim be dismissed; and
- (d) That the costs of this appeal be paid by the respondent (defendant) to the appellant (plaintiff):

30

AND FURTHER TAKE NOTICE THAT the following are the grounds of appeal :—

1. The learned trial judge was wrong in law and misdirected himself because :
 - (a) The appellant (plaintiff) was entitled by virtue of transports relating to Plantation Susannah to a servitude of grazing his Susannah cattle over the whole of Plantation Susannah including the eastern half thereof.
 - (b) Alternatively, at the time of the alleged purchase of the eastern half of Susannah by the respondent (defendant) from Bookers Sugar Estates

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No. 38
Notice of
Appeal
Motion.

6th Decem-
ber, 1951.
continued

Limited, the appellant (plaintiff) had acquired a prescriptive right to depas-
ture his Susannah cattle on the eastern half or any part or portion of land
on Plantation Susannah.

- (c) The respondent (defendant) was estopped from denying that the appellant
(plaintiff) was entitled as proprietor of the western half of the western half
of Susannah to a servitude of grazing his cattle over the eastern half or any
part or portion of land on Plantation Susannah because the respondent (de-
fendant) was bound in law by the obligation contained in Transport No. 73
of 1937 to and in favour of Bookers Sugar Estates Limited (the Company
from which he agreed to purchase) in which the right of grazing cattle over
the whole of Plantation Susannah was expressly given to the proprietors of
Susannah including the appellant (plaintiff); 10
- (d) The learned trial judge misconstrued the ratio decidendi of "Steele vs.
Thompson";
- (e) The learned trial judge wrongly held that a transferee of the dominant tene-
ment would have no right of servitude unless the servitude was constitu-
ted by transport and duly annotated on the transport of the dominant tene-
ment.
- (f) The learned trial judge wrongly ignored the system of conveyancing prac-
tised in this colony whereby a person's right to a servitude rests on the reser-
vation contained in the transport of the owner of the servient tenement,
irrespective of the presence or absence of any annotation of the servitude
on his own transport. 20
- (g) The right of servitude granted to the appellant (plaintiff) and contained in
Bookers Sugar Estates Limited Transport constitutes constructive notice to
the respondent (defendant) of such right.
- (h) The learned Judge misinterpreted the ratio decidendi of "Judd v. Fourie"
and as a result wrongly stated the prerequisites for establishing the right to
a servitude belonging to the transferee of a dominant tenement, apart from
a claim by prescriptive user. 30
- (i) The learned Judge erred in holding that the appellant's (plaintiff) claim
founded on the counter-claim could be barred by laches.
- (j) The appellant (plaintiff) had on the 1st day of January 1917 already acquired
under Roman Dutch Law a title by prescription nec vi nec clam nec pre-
cario to a servitude of grazing his cattle on the eastern half of Susannah,
which title was a right in rem against the whole world. Further the respon-
dent (defendant) and/or his predecessors in title had actual notice of the
servitude having already been established by prescription.
- (k) The respondent (defendant) who has contracted to purchase the eastern half
of Plantation Susannah could have no greater rights in law or in equity than 40

the proprietors by transport, namely, Bookers Sugar Estates Limited who always recognised the appellant's (plaintiff) right of servitude of grazing over the whole of Plantation Susannah.

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ber, 1951.
continued

- (l) The learned trial judge erred in holding that even if the appellant's (plaintiff) evidence concerning a conversation between the appellant (plaintiff) and the respondent (defendant) that took place soon after the respondent's purchase be accepted, it is not conclusive as affecting the respondent (defendant) with notice of a subsisting servitude good and valid in law.
- (m) The learned trial judge erred in holding that he was not satisfied on the evidence that the appellant (plaintiff) and his predecessors in title had not as of right for the period of prescription grazed their cattle over the whole of Plantation Susannah including the eastern half thereof.
- (n) The learned trial judge failed to give due weight to the non-production of the contract of sale between Bookers Sugar Estates Limited and the respondent (defendant) in considering the question of notice to the respondent (defendant) of a servitude contained in Bookers Transport or of the user by prescription of such grazing rights in the appellant (plaintiff).
- (o) The learned judge erred in finding that the animals referred to as impounded in August and September 1947 came from Bohemia.
- (p) The judgment was one which the learned judge could not properly have given having regard to the documentary and other evidence.
2. The judgment was wrong.

W. D. Dinally

Solicitor for Appellant (Plaintiff)

Dated the 6th day of December, 1951.

TO :— George Hanoman, Respondent,

and

TO :— Joseph Edward de Freitas, Solicitor for the Respondent, of lot 2 High St.,
Newtown, Georgetown.

JUDGMENT.

No. 39
Judgment
14th November,
1952.

On the 19th of December, 1947, the plaintiff filed a Writ against the defendant in the Supreme Court of British Guiana claiming — (a) an injunction to restrain the defendant from impounding any cattle or other animal the property of the plaintiff while grazing on any part or portion of land at Plantation Susannah; and (b) for damages for having at Susannah aforesaid wrongfully and unlawfully seized or taken possession of cattle the property of the plaintiff and thereafter caused them to be impounded.

Appearance was entered to this Writ on the 29th of December, 1947, and on the 4th of February, 1948, the plaintiff delivered his Statement of Claim wherein he alleged that he became the owner by transport of the western half of the western half of Plantation Susannah and also the owner by transport of a portion of land forming part of the east half of the west half of Susannah with the right of free pasturage as therein described and that the defendant is and was at all material times the beneficial owner and occupier and in possession as such owner and occupier of the eastern half of the said Plantation having bought the said premises from the former proprietors who were under obligation by transport compelled to afford the right to graze their cattle to each of the proprietors of the east and west halves of the said Plantation as therein set out.

On the 17th of February, 1948, the plaintiff delivered an amended Statement of Claim and on the 15th of July, 1948, the defendant delivered his Statement of Defence wherein he admitted that he was in possession and had purchased the property from Bookers Demerara Sugar Estates Ltd., but denied that the said Company was under the obligation hereinabove referred to; he counter-claimed asking for — (a) a declaration that the plaintiff's transport did not and do not in law or otherwise confer on the plaintiff or other the proprietor or proprietors for the time being of the western half of Plantation Susannah or any part thereof any right of grazing cattle over the eastern half of Plantation Susannah, or part thereof nor impose on the proprietor or proprietors of the said eastern half any legal or other obligation to allow the plaintiff or other the proprietor or proprietors as aforesaid to graze cattle thereon or in the alternative a like declaration in relation to the portion of the said eastern half lying to the south of the Public Road; and in the further alternative, that any such right of grazing is restricted as set out in the Statement of Defence; (b) damages for the said trespass and (c) an injunction restraining the plaintiff from continuing or repeating any of the acts complained of.

On the 27th of April, 1951, a Reply and Defence to the Counterclaim was delivered and on the 11th of May, 1951, a further amended Statement of Claim was delivered, that is more than three years after the delivery of the first Statement of Claim, and in this new amended Claim the plaintiff asks in addition for a declara-

tion that he had acquired a prescriptive right, as distinct from a right by transport, to depasture his cattle on the eastern part or any portion of land at the Susannah Plantation.

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of Appeal

In each of the Statements of Claim the defendant is described as the beneficial owner and occupier and in possession as such owner and occupier and it is nowhere alleged that he was the proprietor or legal owner of the land in question.

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Judgment
14th November,
1952.
continued

The trial, which lasted several days, was conducted as if the question of servitude or no servitude was the only point for decision and in fact, from the pleadings and the arguments of counsel on both sides, it is clear that the question of servitude was the main if not the only point to which attention was paid. It is difficult to see where the Judge's mind was otherwise directed; indeed, the addresses of counsel seem to us, from the record, to have been confined to the question of servitude. At no time was the question of trespass simpliciter as divorced from servitude, discussed. It is therefore, not difficult to understand how the Judge was misled and how in his judgment the main consideration was given to that ever recurring question, servitude. To borrow a phrase from the world of music the leitmotiv of the trial was servitude or, to use another illustration, the question of servitude ran like a golden thread throughout the arguments of counsel to the exclusion of the lesser one of trespass.

We are fortified in the above by the fact that when in his judgment the learned trial Judge to use his words — "To summarise what is submitted for the Court's adjudication by each party, the plaintiff's case is that he holds a servitude to depasture his cattle on defendant's eastern half.....As against this, the defendant's case is that the plaintiff possesses no servitude as claimed" and which summary will be found between pages 245—249 of the record he nowhere mentions the question of trespass.

On the 15th of September, 1951, the learned trial judge delivered judgment. the concluding paragraph of which is as follows:—

"For the reasons I have stated in this judgment, plaintiff has no right of servitude for grazing cattle on the eastern half of Susannah and accordingly he is not entitled to the declaration he asks the Court to make. In the result I give judgment for the defendant on the Claim. On the other hand the defendant is entitled to judgment on the Counter-claim. For the acts of trespass by plaintiff's cattle, the defendant is entitled to damages, which, because no special damage is proved I fix at \$200 :- and by way of further judgment in favour of the defendant on the Counter-claim, the Court makes the declaration that neither by virtue of transport, nor by virtue of prescription, is the plaintiff entitled to the servitude of grazing his cattle on the eastern half of Susannah, and an injunction is issued against the plaintiff, his servants and agents to restrain them from causing or permitting cattle to graze on the western half of Susannah. There will be costs in favour of the defendant both on the Claim and Counter-Claim."

It is clear, and is in fact conceded that what the plaintiff was claiming is a real or praedial servitude, which presupposes the existence of both a dominant and a ser-

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No. 39
Judgment
14th Novem-
ber, 1952.
continued

vient tenement. It is settled law that a praedial servitude is something which derogates from the full rights of ownership of a tenement in favour of another tenement and is in law immovable property.

At the time of the filing of the Writ, at the time of the delivery of the Statement of Claim and the various amendments thereto, at the time of trial and at the date of judgment the defendant was not and is not now in possession of a transport in regard to the land in question, the transport being held by Bookers Demerara Sugar Estates Ltd. This fact was known to counsel in the case before trial and during the course of the trial when counsel for the appellant attempted to base an argument on that point he was stopped by counsel for the respondent who intimated that it had previously been agreed by and between the parties that no point should be made of that fact and the trial proceeded along those lines.

10

According to the law of this Colony, the term proprietor connotes legal owner and does not include beneficial owner. A transport of immovable property vests in the transferee full and absolute title therein and it is not lawful for any person in whom title of such property vests to transfer it except by passing and executing a transport. See PARIKAN RAI AND LA PENITENCE ESTATES CO : LTD — vs — DOUGLAS, 1926 L.R.B.G. 142, where reference is made to the earlier case of GANGADIA — vs — BARRACOT, 1919, L-R-B.G. 216, where it was held that it is still necessary to complete a sale by transport.

20

The action in this case proceeded by the consent of counsel on both sides on the basis that the transfer from Bookers Demerara Sugar Estates Ltd., to the defendant had been implemented by transport and as if the defendant was, in fact and in law, the proprietor. The action was based upon a complete misconception of the legal position of the defendant. The proceedings were started and were continued upon that basis from which the trial judge was led by both parties to arrive at an erroneous conclusion as to their position.

It is manifest therefore that if judgment had been given on the claim for the plaintiff it would have been of no value as the owner, i.e. the proprietor of the alleged servient tenement was not before the Court and the judgment given in favour of the defendant on the counter-claim in so far as it relates to the declaration and injunction is of no value as the defendant was not at the time and is not now the owner of the servient tenement.

30

This Court is bound to take notice of the fact that the proper party was not before the Court. As was stated in FAUSETT —vs— MARK, 1943 L.R. B.G. at p. 360 — “Although the principal ground upon which we are of the opinion that this appeal must be decided was not raised either in the Court below or in the notice of appeal motion, it is a case in which it would not be proper for the Appeal Court to base its decision upon mistaken conceptions of law held by the parties in relation to facts either admitted or proved beyond controversy. The facts upon which this particular question of law arises are those which are admitted, and as was said by Lord Watson in the CONNECTICUT FIRE INS.

40

CO.—vs—KAVANAGH (1892) A.C. p. 480 'it is not only competent but expedient in the interests of justice' that the Court of Appeal should give effect to the law, whether the point has been raised at the time or not".

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Indian Court
of Appeal

SUTCH —vs— BURNS, 60 T.L.R. 316 was an action on an Insurance Policy and the defendant there agreed for the purposes of the action that the Policy should be treated as if it gave the full cover required by the Road Traffic Acts although, in fact, it did not. The learned trial judge heard the action and gave judgment for the plaintiff, but on appeal it was held on the authority of the SUN LIFE ASS. Co. of Canada —vs— JERVIS, 60 T.L.R. 315, and the GLASGOW NAVIGATION
10 CO : —vs— IRON ORE CO : (1910) A.C., 293 that there was no other course open to the Court but to dismiss the appeal and adjudge that the action be dismissed on the ground that the case before the House was a hypothetical case. In the instant case let it be borne in mind that the parties agreed that the point that the defendant was not the owner would not be taken and the action proceeded on that agreement.

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Judgment
14th Novem-
ber, 1952.
continued

We are not unmindful of the fact that the original cause of the action was the alleged trespass of the plaintiff's cattle on the tenement of the defendant; that question was never pursued at the trial. Whether the entry of the cattle was or was not a trespass is so inextricably interwoven in the case as presented with the
20 existence or non-existence of the servitude claimed that we are of the opinion that until the question of servitude be considered with the proper parties before the Court the judge should have declined to decide the question of trespass or no trespass.

The proper parties were not before the Court, and, therefore, there is nothing for us to do but to follow the cases already mentioned and to dismiss the appeal and adjudge the action in the Court below to be dismissed and that the judgment on the counter-claim be set aside and that no costs be allowed to either side here or in the Court below.

Taking the view that we have done, we think it unnecessary and in fact
30 inexpedient to deal with the other points raised in the case and we refrain from expressing any opinion thereon.

Sgd. J. MATHIEU PEREZ
Chief Justice,
Trinidad and Tobago.

Sgd. D. E. JACKSON
Chief Justice
Windward Islands and Leeward Islands.

Sgd. PETER BELL
Chief Justice
British Guiana

40 Dated the 14th November, 1952.

In the West
Indian Court
of Appeal

No. 40

ORDER.

No. 40
Order.
14th Novem-
ber, 1952.

BEFORE THE HONOURABLE :—**JOSEPH LEON MATHIEU PEREZ, CHIEF JUSTICE OF TRINIDAD,****DONALD EDWARD JACKSON, CHIEF JUSTICE OF THE WINDWARD AND
LEEWARD ISLANDS,****EDWARD PETER STUBBS BELL, CHIEF JUSTICE OF BRITISH GUIANA.***Friday the 14th day of November 1952.**Entered the 18th day of November 1952.*

UPON READING the Notice of Motion on behalf of the abovenamed 10
Appellant (plaintiff) dated the 6th day of December 1951 and the Judgment
hereinafter mentioned AND UPON HEARING Counsel for the Appellant (Plain-
tiff) and Counsel for the Respondent (Defendant) on the preliminary point raised
by this Court IT IS ORDERED THAT this appeal be dismissed AND THAT
Action No. 634 of 1947 Demerara which came on for hearing before the
Supreme Court of British Guiana on the 8th day of May, 1951 be adjudged
dismissed AND THAT the judgment of the Honourable Frederick Malcolm Boland,
then Chief Justice of British Guiana (Acting) on the counter-claim in the said
Action No. 634 of 1947 Demerara, be set aside, AND IT IS FURTHER ORDERED 20
that no costs be allowed to the Appellant (Plaintiff) or to the Respondent (Defen-
dant) either in the said Supreme Court of British Guiana or in this Court.

BY THE COURT

(L.S.)

R. S. PERSAUD

Acting Registrar.

No. 41
(Not
printed)

No. 41

NOTICE OF INTENTION TO MAKE APPLICATION TO ADMIT APPEAL.

(Not printed)

No. 42.
(Not
printed)

No. 42

PETITION TO ADMIT APPEAL.

(Not printed)

30

No. 43

AFFIDAVIT IN SUPPORT.

(Not printed)

**In the West
Indian Court
of Appeal**

No. 43.
(Not
printed)

No. 44

AFFIDAVIT OF SERVICE.

(Not printed)

No. 44.
(Not
printed)

No. 45

AFFIDAVITS OF VALUATION.

(Not printed)

No. 45.
(Not
printed)

In the West
Indian Court
of Appeal

NO. 46

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL.

No. 46
Order
granting
Conditional
Leave to
Appeal
23rd Febru-
ary, 1953.

THE CHIEF JUSTICE OF BRITISH GUIANA IN CHAMBERS

Monday the 23rd day of February 1953.

Entered the 24th day of February 1953.

UPON THE PETITION of George Hanoman preferred unto this Court on the 27th day of November 1952 AND UPON READING the said petition the affidavit by Joseph Edward de Freitas sworn to the 27th day of November 1952 and the affidavits of the petitioner and Charles Victor Annamanthadoo sworn to the 29th day of January 1953 and filed herein AND UPON HEARING Counsel for the petitioner and Counsel for the respondent herein Archibald Rose IT IS ORDERED THAT the appeal herein to Her Majesty in Her Majesty's Privy Council be admitted on condition firstly that the petitioner George Hanoman do give proper and sufficient security by bond with one or more sureties to the satisfaction of the Registrar in the sum of three hundred pounds sterling within three months from the 23rd day of February 1953 for the due prosecution of the appeal and for the payment of any costs that may be awarded to the respondent in any appeal that may be made by the petitioner to Her Majesty in Her Majesty's Privy Council; secondly, that the petitioner do within one month from the date of this order make an appointment with the Registrar for the settlement of the record and give notice of the date of such appointment to the said respondent herein; and thirdly, that the petitioner shall within three months from the 23rd day of February 1953 complete the preparation of typed copies of the record.

BY THE COURT

(L.S.)

R. S. PERSAUD
Acting Registrar.

No. 47.

BOND FOR COSTS OF APPEAL.

(Not printed)

In the West
Indian Court
of Appeal

No. 47.
(Not
printed)

No. 48.

PETITION FOR FINAL LEAVE TO APPEAL.

(Not printed)

No. 48.
(Not
printed)

No. 49.

AFFIDAVIT IN SUPPORT.

(Not printed)

No. 49.
(Not
printed)

In the West
Indian Court
of Appeal

No. 50

ORDER GRANTING FINAL LEAVE TO APPEAL.

No. 50
Order
granting
Final Leave
to Appeal
11th May,
1953.

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH GUIANA.

Monday the 11th day of May 1953.

Entered the 19th day of May 1953.

UPON the Petition of George Hanoman preferred unto this Court the 5th day of May 1953 praying for an order finally admitting his appeal to Her Majesty in Council *AND UPON READING* the said petition and the affidavit of the said George Hanoman sworn to and filed the 5th day of May 1953 *AND UPON HEARING* Counsel for the petitioner and Counsel for the respondent *IT IS ORDERED* that 10 the said appeal to Her Majesty in Council be and the same is hereby finally admitted.

LIBERTY TO ALL PARTIES TO APPLY.

BY THE COURT

(L. S.)

R. S. Persaud
Acting REGISTRAR.

EXHIBITS.

Plaintiff's Exhibit.

"S"

Transport No. 5154 of 1862 by Susan Barclay Alves to Paris Britton.

No. 5154 of 1862 (Berbice).

“S”
Transport
No.
5154 of 1862
by Susan
Barclay
Alves to
Paris
Britton.
3rd June
1862.

TRANSPORT.

Before His Honour Adam Murray Alexander, Second Puisne Judge of British Guiana, personally appeared Alexander Winter in quality as the Special Attorney of SUSAN BARCLAY ALVES, widow, in her own right and as Executrix to the Last Will and Testament of her deceased husband John Alves :

10 Which Appearer declared by these presents to cede, transport and in full and free property to make over to and in behalf of PARIS BRITTON, an inhabitant of said County of Berbice, all that Plantation or lot of land called Susannah, being Lot No. 15 (fifteen) situated on the East Sea Coast of Berbice, containing 500 (five hundred) acres more or less with the buildings thereon and further appurtenances thereto belonging (the said lot of land having been sold by the said John Alves in his lifetime).

Acknowledging to have received the sum of Fifteen hundred dollars being the full consideration or purchase money of the said property and therefore engaging to warrant the same free from all claims whatsoever according to law.

20 The said John Alves deceased having acquired title to the property hereby conveyed by Transport dated 5th December, 1836, No. 2413.....

Also appeared the said Paris Britton who declared to accept the foregoing Transport and to be satisfied therewith.

In Testimony Whereof, I the said Judge and the Appearers together with the Sworn Clerk of the Registrar's Office of this County have signed these presents in New Amsterdam, Berbice, this third day of June one thousand eight hundred and sixty-two.

Alex. Winter
P. Britton.

30 A. M. Alexander

In my presence
J. Bourne.
S. C. & N. P.

"O"

Plaintiff's Exhibit.

Transport No. 5153 of 1862 by Paris Britton to Dennis Burns.

"O"
Transport No. 5153 of 1862 by Paris Britton to Dennis Burns. 3rd June 1862.

Transport No. 5153 of 1862 (Berbice).

Before His Honour Adam Murray Alexander, one of the Justices of the Honourable the Supreme Court of Civil Justice of British Guiana.
Personally appeared PARIS BRITTON, an inhabitant of the said County of Berbice :

Which Appearer declared by these presents to cede, transport and in full and free property to make over to and in favour of DENNIS BURNS also an inhabitant of this County, the Eastern half of that plantation or lot of land called Susannah, being Lot No. 15 (fifteen) situated on the east sea coast of Berbice, containing 500 (five hundred) acres more or less, with the buildings thereon, and further appurtenances thereto belonging, subject to the condition that each of the proprietors of the eastern and western halves of said plantation shall have the right of grazing cattle over the whole plantation.

10

Acknowledging to have received the sum of \$2,700 (two thousand seven hundred dollars) being the full consideration of purchase money of the said property and therefore engaging to warrant the same free from all claims whatsoever according to law.

The said Paris Britton having acquired title to the property hereby conveyed by Transport dated this day.

20

Also appeared the said DENNIS BURNS who declared to accept the foregoing transport and to be satisfied therewith.

In Testimony Whereof I, the said Judge and the Appearers together with the Sworn Clerk of the Registrar's Office of this County have signed these presents in New Amsterdam, Berbice, this third day of June one thousand eight hundred and sixty-two.

A. M. Alexander

P. Britton
Dennis Burns.

In my presence
J. Bourne.
S. C. & N. P.

30

"EE"

Defendant's Exhibit.

Transport No. 64 of 1867 by Paris Britton to Thomas Howard.

Defendant's Exhibit.
"EE"
Transport No. 64 of 1876 by Paris Britton to Thomas Howard. 16th September, 1876

Transport No. 64 of 1876 (Berbice).

Before His Honour Conway Whithorne Lovesy, Puisne Judge of the Supreme Court of Civil Justice of British Guiana aforesaid :

Be it known that on this day the sixteenth day of September, in the year one thousand eight hundred and seventy-six appeared PARIS BRITTON, an inhabitant of the County of Berbice, which Appearer declared by these presents to cede, transport and in full and free property to make over to and in behalf of THOMAS HOWARD, his heirs and assigns the Eastern half of the western half of that plantation or lot of land called Susannah, being lot number 15 (fifteen) situate on the eastern sea coast of Berbice, with right of free pasturage to THOMAS HOWARD over the whole of the said plantation, and subject to a right of pasturage over the said Eastern half of the Western half of the said plantation to the said Paris Britton, his heirs, executors, administrators and assigns : Being the value of nine hundred dollars of the current money of the Colony aforesaid transported on the 3rd June, 1862.

10

The Appearer acknowledging to be fully paid and satisfied for the same, engaging to warrant the said property free from all claims whatever according to law. And appeared at the same time the said Thomas Howard, who declared to accept of the foregoing Transport and to be satisfied herewith.

20

In Testimony Whereof the parties have hereunto set their hands and I, the said Judge together with the Registrar have countersigned the same, the day and year first above written. The Seal of the Court being affixed hereto.

The mark of
x
Paris Britton
Thos. Howard.

Before Me,
C. W. Lovesy,
J.

30

In my presence
(Signature)

Registrar.

(ENDORSEMENT)

Transported in full 20 Mar : 1889

— Manning
A. S. C.

Transported on 20/3/89 to M. Harris.

Plaintiff's Exhibit.

"U"

Will No. 3 of 1879. Paris Britton.

"U"
Will No. 3
of 1879.
Paris
Britton.
18th Jan-
uary,
1877.

Will No. 3 of 1879 — Paris Britton.

This is the Last Will and Testament of me Paris Britton an inhabitant of the County of Berbice revoking all other Wills heretofore made

I nominate constitute and appoint my beloved wife Amelia Britton (born Gill) as Executrix, and my friends George Hicken and Robert Samuel jointly and severally Executors of this my Last Will and Testament with the powers of Assumption, Substitution and Surrogation; and with power to transport immovable property

I institute and appoint my beloved wife Amelia Britton (born Gill) as heiress to this my Last Will..... 10

I desire that my Executrix and Executors should sell and transport jointly or severally any of the undermentioned properties.....

My share in the Cattle Farm "Susannah" on the East Coast

My cattle at "Hermitage".....

My horses in the Stable and at "Bloomfield".....

My donkeys, sheep and pigs.....

I give bequeath and devise to my beloved wife Amelia Britton (born Gill) the residue of all my property of whatsoever nature or kind, movable and immovable, or wheresoever situated for her sole use and benefit, but in the event of my wife predeceasing me then I give bequeath and devise to the children of my wife who may be alive at the time of my death and to my natural daughters Elizabeth Fraser and Maria Benjamin the said residue of my property so bequeathed and devised as aforesaid share and share alike and in such case I authorise my said Executors to sell and dispose of all the residue of my property and to transport immovable property and to close my Estate as soon after my decease as possible 20

In Witness Whereof I have hereunto set my hand in the County of Berbice, Colony of British Guiana, this eighteenth day of January one thousand eight hundred and seventy-seven.

his
Paris x Britton.
mark

30

Signed by the said Paris Britton as and for his Last Will and Testament in the presence of us present at the same time who in his presence and at his request and in the presence of each other have hereunto subscribed our names as witnesses :—

I. C. Shand.
Tho. Howard.

A TRUE COPY of the Original Last Will and Testament of Paris Britton who died on 27th December, 1878, at New Amsterdam, Berbice, which said Last Will and Testament was deposited with proof of due execution in the Registrar's Office, now Supreme Court Registry, New Amsterdam, Berbice, British Guiana, on the 6th January, 1879.

Plaintiff's Exhibit.
"U"
Will No. 3 of 1879. Paris Britton. 18th January, 1877. continued.

Quod Attestor
M. N. Akai.
Assistant Sworn Clerk.

"JJ"

Plan of Plantation Susannah.

(not printed)

Defendant's Exhibit.
"JJ"
Plan of Plantation Susannah 29th January, 1880.

10

"N"

Transport No. 22 of 1883 by Caroline Juliana de Cunha and Louis de Mendonca to James Mavor.

Plaintiff's Exhibit.
"N"
Transport No. 22 of 1883 by Caroline Juliana de Cunha and Louis de Mendonca to James Mavor. 21st February 1883.

No. 22 of 1883 (Berbice).

TRANSPORT.

Be it known that on this day the twenty first day of February, in the Year One Thousand Eight Hundred and Eighty-three appeared Caroline Juliana De Cunha, and Louis de Mendonca or either of them in their quality as the joint and several Executrix and Executor to and of the Last Will and Testament of George de Cunha, deceased, which Appearer declared by these presents to cede, transport and in full and free property to make over and in behalf of James Mavor, an inhabitant of the County of Berbice in the Colony aforesaid, his heirs and assigns
The Eastern half of that plantation or lot of land called Susannah, being Lot No. 15 (fifteen) situate on the East Sea Coast of Berbice, containing 500 (five hundred) acres more or less, with the buildings thereon and further appurtenances thereto belonging subject to the conditions that each of the proprietors of the eastern and western halves of said plantation shall have the right of grazing cattle over the whole plantation,

20

30

Plaintiff's
Exhibit.

"M"

Transport No. 106 of 1884
by Emily Josephine Welchman to William Alfred Douglas.

"M"
Transport
No.
106 of 1884
by Emily
Josephine
Welchman
to William
Alfred
Douglas.
25th June,
1884.

No. 106 of 1884 (Berbice).

TRANSPORT.

Be it known that on this day the twenty fifth day of June in the Year one thousand eight hundred and eighty four appeared EMILY JOSEPHINE WELCHMAN born Alfred assisted as far as need be by her husband George Lowenfield Jeffrey Welchman inhabitants of the County of Berbice which Appearer declared by these presents to cede, transport and in full and free property to make over and in behalf of William Alfred Douglas, an inhabitant of the County of Berbice in the Colony aforesaid his heirs and assigns, The Eastern half of that Plantation or Lot of land called Susannah, being lot number 15 (fifteen) situate on the East Sea Coast of Berbice containing 500 acres more or less with the buildings thereon subject to the condition that each of the proprietors of the Eastern and Western halves of said Plantation shall have the right of grazing cattle over the whole Plantation — — — — —

(ENDORSEMENT)

Transported to Alfred C. Ribeiro on 10/12/1895. No. 124.

J.H.N.
for Regr.
10/1/21.

20

"W"
Official
Gazette
24th April,
1885.

"W"

OFFICIAL GAZETTE dated 24th April, 1885.

(not printed)

"V"
Official
Gazette
19th Sep-
tember 1885.

"V"

OFFICIAL GAZETTE dated 19th September, 1885.

(not printed)

"Y"

Plaint No. 14/1887 — E. J. Welchman v. A. Rose.

Plaintiff's Exhibit.

Cause No. 14 of 1887 (Berbice).

BRITISH GUIANA.

COUNTY OF BERBICE.

"Y"
Plaint No. 14/1887—
E. J. Welchman v. A. Rose
20th May, 1887.

At the request and instance of EMILY JOSEPHINE WELCHMAN assisted as far as need be by her husband George Welchman,

Plaintiff,

I, the undersigned Marshall, do hereby cite ARCHIBALD ROSE,

Defendant.

10

TO appear at the Inferior Court of Civil Justice at its Session to be holden for the County of Berbice, at the Court House, in New Amsterdam, Berbice, on the 14th day of June, 1887, and following days at ten o'clock a.m. in order to be condemned in payment of the sum of fifty dollars, which is founded as follows:—

The Plaintiff was on Friday the 13th day of May, 1887, in possession of certain land called Lewis Manor situate on the East Coast, County of Berbice. 2. The Defendant on the said 13th day of May, 1887, and while the Plaintiff was in possession as aforesaid broke and entered the said land and depastured the same with cattle, with Costs — on Pain as the Law directs.

20

Berbice, this 20th day of May, 1887.

C. B. D. M. Davies.
Marshal.

"T"

Letters of Decree in favour of Charles Edwin Hooton.

"T"
Letters of Decree in favour of Charles Edwin Hooton.
8th July 1887.

Letters of Decree.

By His Honour Sir David Patrick Chalmers, Knight, Chief Justice of British Guiana,

TO ALL TO WHOM THESE PRESENTS SHALL COME OR CONCERN BE IT KNOWN;

30

That CHARLES EDWIN HOOTON, became the Purchaser at Execution Sale on this twenty seventh day of April eighteen hundred and eighty-six of the Western half of all that plantation or lot of land called Susannah being lot number 15 (fifteen) situate on the East Sea Coast of the County of Berbice containing 500 (five hundred) acres of land more or less no building thereon with right of free pasturage to Thomas Howard over the whole of the said Plantation and subject to right of pasturage over the said Eastern half of the Western half of the said Plantation to Paris Britton, his heirs, executors, administrators and assigns, and that he, the

Plaintiff's Exhibit.

“T”
Letters of Decree in favour of Charles Edwin Hooton. 8th July, 1887, continued.

said Charles Edwin Hooton has paid the Purchase Money of the said Property petitioned for LETTERS OF DECREE, and that his Petition has been granted, I the Chief Justice aforesaid, therefore, and in consideration of the payment above stated, do hereby grant Letters of Decree as prayed, and by so granting said Letters of Decree do transfer all Right and Title of, in and to the said Property unto the said Charles Edwin Hooton, Heirs, Representatives and Assigns, annulling and making void by these Presents all Claims, Demands or Mortgages which may have been on the aforesaid Property before the date of the said Execution Sale, of all which annotation is made in the Registrar's Office of British Guiana.

GIVEN under my hand and the Seal of the Registrar's Office of British Guiana, at the Court House in the County of Berbice Colony aforesaid, this eighth day of July, one thousand eight hundred and eighty seven. 10

D. P. Chalmers.
C. J.

BY COMMAND.

Wm. O'Meara.
S.C.

“CC”

Transport No. 26 of 1888 by Thomas Dalgleish as assignee of creditors of Charles E. Hooton, Insolvent, to Archibald Rose.

20

“CC”
Transport No. 26 of 1888 by Thomas Dalgleish as assignee of creditors of Charles E. Hooton, Insolvent, to Archibald Rose. 22nd March, 1888.

26. TRANSPORT.

Be it known that on this day the twenty-second day of March, in the Year one thousand eight hundred and eighty-eight appeared THOMAS DALGLEISH, in his quality as the assignee of the creditors of CHARLES EDWIN HOOTON, an Insolvent — — which Appearer declared by these presents to cede, transport and in full and free property to make over to and in favour of ARCHIBALD ROSE, an inhabitant of the County of Berbice in the Colony aforesaid, his heirs and assigns — — — The western half of the western half of all that Plantation or Lot of land called Susannah, being lot number 15 (fifteen), situate on the east sea coast of the County of Berbice, containing 500 (five hundred) acres of land, more or less, no buildings thereon, with right of free pasturage to Thomas Howard over the whole of the said Plantation, and subject to right of pasturage over the eastern half of the western half of the said plantation to Paris Britton, his heirs, executors, administrators and assigns. — — —

30

"G"

Plaintiff s
Exhibit.

**Transport dated 19/2/1895—by William Alfred Douglas to
Asebud otherwise called Assibaad.**

"G"
Transport
dated
19/2/1895 by
William
Alfred
Douglas to
Asebud
otherwise
called
Assibaad.
19/2/1895.

TRANSPORT.

Before His Honour Nicholas Atkinson, acting Chief Justice of British Guiana aforesaid.

Be it known that on this day the nineteenth of February in the year one thousand eight hundred and ninety five appeared WILLIAM ALFRED DOUGLAS, Bachelor, an inhabitant of the County of Berbice. Which Appearer declared by these presents
10 to cede, transport and in full and free property to make over to and in favour of Asebud otherwise called Assibaad male a native of the Colony of British Guiana—
"A piece of land part of the Eastern half of the western half of that Plantation or Lot of land called Susannah, being lot number 15 (fifteen) situate on the East Sea Coast of Berbice, the said piece of land measuring 6 (six) roods in facade, commencing at a point (fifteen) roods from the western boundary of the Eastern half of the western half of the said Plantation by the entire depth of the said Plantation, with right of pas-
20 torage over the whole of the said Eastern half of the western half of said Plan- tation and subject to the right of pasturage over the said piece of land to Paris Britton and Thomas Howard, their heirs, executors, administrators and assigns, with the building thereon." Being of the value of one hundred dollars of the current money of British Guiana aforesaid transported on the 12th October 1886 the Appearer acknowledging to be fully paid and satisfied for the same, engaging to warrant the said property free from all claims whatever according to law.

And appeared at the same time the said Asebud otherwise called Assibaad who declared to accept of the foregoing transport and to be satisfied therewith.

In Testimony Whereof the parties have hereunto set their hands, and I, the said Judge together with the Assistant Sworn Clerk, have countersigned the same, the day and year first above written.

The original of which this is a true copy is duly signed and stamped.

30

QUOD ATTESTOR

JAMES A. RICHARDSON
S. C. & N. P.

(ENDORSEMENT)

Western half of the western half of the within mentioned property transported to Boyjoo on the 19th day of March, 1901.

JAMES A. RICHARDSON.

Plaintiff's
Exhibit.

"L"

**Transport No. 124 of 1895—by William Alfred Douglas to Alfred
Caesar Ribeiro.**

"L"
Transport
No.
124 of 1895 —
by William
Alfred
Douglas
to Alfred
Caesar
Ribeiro.
10th De-
cember,
1895.

No. 124 of 1895 (Berbice).

TRANSPORT.

Be it known that on this day the tenth day of December, in the year one thousand eight hundred and ninety five appeared WILLIAM ALFRED DOUGLAS, Bachelor, by his duly constituted attorney in this Colony John Downer, agreeably with Power of Attorney executed in the Registrar's Office of British Guiana in Berbice aforesaid on the — — — — — which Appearer declared by these presents to cede, transport and in full and free property to make over and in favour of ALFRED CAESAR RIBEIRO, his heirs and assigns, — — — — —
Firstly :—The Eastern half of that Plantation or Lot of land called Susannah, being lot number 15 (fifteen) situate on the East Sea Coast of Berbice, containing 500 acres more or less, with the buildings thereon, subject to the Condition that each of the proprietors of the Eastern and Western halves of said Plantation shall have the right of grazing cattle over the whole Plantation; and — — — — —
Secondly :—an undivided half of the Western half of Plantation Bohemia, situate on the East Sea Coast of the County of Berbice, being half of one half of lot number 17 with the right of grazing cattle and other stock on the grazing grounds of the Eastern half of said lot number 17, the right of grazing on the grounds of the said Western half being also reserved to the proprietors of the Eastern half thereof with the buildings and erections thereon — — — — —

(ENDORSEMENTS)—

One undivided half of the Western half of Plantation Bohemia transported to Alexander William Fawkes, on the 18th day of June, 1902.

W. de Groot

Property firstly described transported to Mary Anna da Silva on 6/12/1902 No. 167.

J. H. N

10/1/21.

10

20

30

"J"

Transport No. 167 of 1902 by Alfred Caesar Ribeiro to Mary Anna da Silva.

No. 167 of 1902 (Berbice).

TRANSPORT.

Be it known that on this day the sixth day of December, in the Year one thousand nine hundred and two appeared James Alexander Richardson, in his quality as the attorney of Alfred Caesar Ribeiro, Bachelor, of Pitt Street, New Amsterdam, Berbice, agreeably with Power of Attorney executed in the Registrar's Office of British Guiana, New Amsterdam, on the 3rd day of December, 1902, — — — — — which

10 Appearer declared by these presents to cede, transport and in full and free property to make over and in favour of Mary Anna da Silva born Francisco the wife of Manoel da Silva, of Lot 10 Main Street, New Amsterdam, Berbice, — — — — —

The Eastern half of that plantation or lot of land called Susannah, being lot number 15 (fifteen) situate on the East Sea Coast of Berbice, containing 500 acres more or less, with the buildings and erections thereon, subject to the conditions that each of the proprietors of the Eastern and Western halves of said plantation shall have the right of grazing cattle over the whole plantation, — — — — —

(ENDORSEMENT)

20 Sold at Execution on 12/9/35 and purchased by Simon T. de Silva, Mary Agnes Soares et al.

J. H. N.
S. C.

Plaintiff's Exhibit.

"J"
Transport No. 167 of 1902 by Alfred Caesar Ribeiro to Mary Anna da Silva 6th December 1902.

"Z"

Decision—Plaint No. 75 of 1916. Dilchan v. A. Rose.

The Plaintiff claims \$50:- by way of compensation for damage done to his lands called Lewis Manor, by the defendant's cattle.

30 The Defendant pleaded Not Guilty and that the Plaintiff by not fencing out was guilty of contributory negligence and thereby debarred from recovering. Some evidence of an ancient custom to depasture generally on adjacent lands was given. For the Plaintiff it was contended, that a transport, being a judicial act, had the effect of extinguishing an easement unless expressly reserved by the transport itself and that in the transport of Lewis Manor no easement was reserved. I have perused the transport and no servitude is therein mentioned but I think the proposition as to the extinguishment of a servitude is to be taken as qualified and that a transport only extinguishes the easement if passed before 33½ years have expired. I think looking

"Z"
Decision -- Plaintiff No. 75 of 1916 Dilchan v A. Rose.

Plaintiff's Exhibit.

"Z"
Decision —
Plaint No.
75 of 1916.
Dilchan v.
A. Rose
continued.

at the nature of lands in question and the use to which they are put that a custom has grown up and been tacitly recognised of allowing cattle to roam at large. One witness who says he owns property in the neighbourhood deposes that there was a tacit understanding among the owners and occupiers of these grazing lands to allow each other's cattle to depasture. He has known the locality over 40 years and he has never brought any one up for trespassing with cattle on his land nor has he during the whole of this long period ever heard of any one else doing so. I certainly think the custom a reasonable one and if ever the English Common Law rule requiring the owner of cattle to fence them in so that they should not stray on adjacent lands applied to in this locality it has been superseded by the custom to which I have referred. The action therefore does not lie and there must be absolution of the instance but under the circumstances, I shall make no order as to costs.

10

W. A. M. Sheriff
Judge.

"AA"

Plaint No. 4/1924 — Archibald Rose v. Hanoman

"AA"
Plaint No
4/1924
Archibald
Rose
v. Hanoman.
25th Jan-
uary,
1924.

"AA" (Berbice) 1924 No. 4

IN THE SUPREME COURT OF BRITISH GUIANA CIVIL JURSDICTION.

Between :- ARCHIBALD ROSE, of Susannah, Corentyne Coast, Berbice.
Farmer,
Plaintiff.

20

And :- HANOMAN, of No. 11, Corentyne Coast, Berbice, Farmer,
Defendant.

TO :- Hanoman of No. 11, Corentyne Coast, Berbice.

This is command you within ten (10) days of the service upon you of this Writ (inclusive of the day of service) to cause an appearance to be entered for you at the Office of the Registrar of the Supreme Court of British Guiana at New Amsterdam, Berbice, in an Action at the suit of the abovenamed Plaintiff.

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

30

The 25th day of January, 1924.

INDORSEMENT OF CLAIM

The Plaintiff's claim is against the Defendant for :-

(a) An order of the Court compelling the Defendant to remove the wire fence erected by him on the western side of the northern portion of the Eastern half of Plantation Lewis Manor and from continuing and maintaining the same or otherwise disturbing the Plaintiff in his enjoyment of his right of common pasture.

Plaintiff's Exhibit.

“AA”
 Plaint No.
 4/1924
 Archibald
 Rose
 v. Hanoman
 25th Jan-
 uary,
 1924,
 continued.

(b) The sum of \$600 :- (six hundred dollars) as damages and pecuniary compensation for that the Defendant by his servant or agents on the 4th and 9th days of January, 1924, respectively, wrongfully and maliciously killed and destroyed 50 pigs the property of the Plaintiff whilst the said pigs were feeding and pasturing on certain lands over which the Plaintiff enjoyed right of common pasture without interruption for a period of over 40 years. The plaintiff also claims the cost of these proceedings.

10

Jos. Eleazar.
 Solicitor.

This Writ was issued by Joseph Eleazar, Solicitor of and whose place of address for service is his office Lot 8, St. Ann Street, New Amsterdam, Berbice, Solicitor for the Plaintiff who resides at Susannah, Corentyne Coast, Berbice.

“X”

Transport No. 122 of 1924 by Marshal to Archibald Rose.

“X”
 Transport
 No.
 122 of 1924
 by Marshall
 to
 Archibald
 Rose.
 21st June,
 1924.

Transport No. 122 of 1924 (Berbice).

20 Be it known that on this day the twenty-first day of June, 1924, in obedience to an Order of the Honourable Sir Charles Major, Knight, Chief Justice of British Guiana in Chambers dated 21st December, 1923, Before Sir Charles Major, Knight, Chief Justice of British Guiana aforesaid under the provision of the Deeds Registry Ordinance, Chapter 177, appeared James Henry Nathoo, Marshal, an Officer of the Court which Apparer declared by these presents to cede, transport and in full and free property to make over to and in favour of Archibald Rose of Susannah, East Coast, Berbice, Cattle Farmer, his heirs, executors, administrators and assigns, — — — — — A piece of land part of the East half of the West half of lot number 15 (fifteen) also called Susannah as shown on a plan by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the Office of the

Plaintiff's Exhibit.

Registrar of British Guiana at New Amsterdam, Berbice, on the 3rd March, 1880, the said piece of land being three roods wide by the whole depth of the said estate and bounded on the east by the property of Seecharan, on the west by the property of A. Rose, on the north by the Atlantic Ocean and on the south by the Grand Canal Dam, no building thereon, — — — — —

“X”
Transport No. 122 of 1924 by Marshall to Archibald Rose 21st June, 1924 continued.

(ENDORSEMENT)

Transport to D. H. Rose on 7th April, 1948, No. 312.

J. F. T.
S. C.

Defendant's Exhibit.

“LL 1”

10

Receipt dated 8/11/24.

“LL1”
Receipt dated 8th November, 1924.

Provisional Receipt.

BRAMFIELD,

8th November, 1920.

Received from James Gobin of Kendall E.C., B/ce the sum of one hundred dollars being part payment for one undivided share in This Seawell Kintyre & Palmyra No. 4 E.C., Berbice. Subject to terms of agreement.

John H. Haly.

Stamp cancelled .02cts.

“LL2”
Agreement of Sale and Purchase. 23rd May, 1925.

“LL 2”

20

Agreement of Sale and Purchase.

AGREEMENT OF SALE AND PURCHASE.

This contract and agreement of Sale and Purchase made and entered into at the Town of New Amsterdam, in the County of Berbice, and Colony of British Guiana by and between JOHN HUTCHINSON HALY, of Plantation Bramfield, East Sea Coast, Berbice, Party of the one or first part, hereinafter called the VENDOR, and JAMES GOBIN, Creole Male East Indian, of Plantation Kendalls, East Sea Coast, Berbice, Party of the other or second part, hereinafter called the PURCHASER, and whose name appears on the Schedule attached hereto which shall form part of this Agreement.

30

WHEREAS the Vendor the said John Hutchison Haly, is the Owner of Plantations Kintyre, Sea Well and Palmyra, situate on the East Sea Coast of the County of Berbice and are worked together as a Cattle Farm —

Defendant's Exhibit.

AND WHEREAS the Vendor is desirous of selling the said Plantation in undivided Interest or Shares so as to keep and continue their character as a cattle farm and expressly excluding Cultivators therefrom to avoid disputes as are common between Cattle Farmers and Cultivation Farmers —

“LL2”
Agreement of sale and Purchase. 23rd May, 1925, continued

NOW THEREFORE THIS CONTRACT AND AGREEMENT OF SALE AND PURCHASE WITNESSETH :

10 1. That for the valuable consideration of the sum of \$200 :- (two hundred dollars) of the current money of British Guiana the said J. H. Haly, the Vendor, agrees to sell and does sell to the said Purchaser whose name appears on the Schedule and who agrees to purchase and does purchase from the Vendor :-

Firstly :-One undivided seventieth part or share in and to Plantation Kintyre, situate on the East Sea Coast of the County of Berbice, in the Colony of British Guiana.

Secondly :-One undivided seventieth part or share in and to Plantation Sea Well, situate on the East Sea Coast of the County of Berbice in the Colony of British Guiana, and

20 Thirdly :-One undivided seventieth part or share in and to Plantation Palmyra, (No. 3) situate on the East Sea Coast of the County of Berbice, and Colony of British Guiana; save and except a piece of land 90 by 55 roods or rods being part of Plantation Sea Well enclosed within a trench together with the buildings and erections thereon and Cocoa Nut and other fruit trees growing thereon and therein :—” and on the terms and conditions following which shall be included in the Transport.

30 2. That the Purchaser shall not take and agist for reward or otherwise or allow or permit Cattle or any Live Stock, the property of person or persons not being co-owners or co-proprietors to be pastured on the aforesaid Plantations and all such cattle and other live stock other than cattle or live stock bona fide owned by a Co-Purchaser or Co-Proprietor, or Co-Owner shall be impounded and Pigs destroyed by any of the Co-Proprietors, Co-Owners and Co-Purchasers.

3. That the Purchaser shall not sell transfer transport or in any way part or dispose or deal with either of the Properties described as aforesaid under Firstly, Secondly and Thirdly or any part thereof except to a Co-Purchaser, Co-Proprietor or Co-Owner, and save and except as by Law of Inheritance.

40 4. That in the event of the Purchaser dealing with his right title and interest in and to the lands hereinbefore described other than in the manner herein indicated then he shall forfeit his right of grazing cattle and other live stock, and the cattle and other live stock of the party to whom he sells or transfers an interest on the said lands shall be impounded and his pigs destroyed by any of the co-proprietors or co-owners as trespassing on the said lands and such party shall not enjoy any right inclusive of wood cutting on the aforesaid lands.

Defendant's
Exhibit.

"LL2"
Agreement
of sale and
Purchase.
23rd May,
1925,
continued.

5. And it is hereby expressly understood and agreed between the Vendor and the Purchaser that the terms and conditions shall be included in and govern the Transport and all Transports to be passed by and between the Vendor and the Purchaser shall have reference to this Contract and Agreement which shall be recorded in the Deeds Registry of British Guiana at New Amsterdam, Berbice.

6. That the Purchaser shall pay to the Vendor the purchase money for the sale of the said lands in the manner following, that is to say:— On the signing of this agreement of sale and purchase the sum of \$100:-(one hundred dollars) the receipt whereof is hereby acknowledged by the Vendor and the balance of \$100:- (one hundred dollars) shall be paid in two equal yearly instalments of \$50:- (fifty dollars) and the Purchaser hereby binds and obliges himself to pay interest on the said balance of \$100:- and every part thereof remaining unpaid at and after the rate of 8% (eight per cent) per annum from the date of the signing of this Agreement until the said balance shall be fully paid. 10

7. That all costs and expenses of and incidental to this Contract and to the passing of Transport shall be borne equally between the parties. Provided however, that no Transport shall be passed to any Purchaser until the whole or at least (2/3) to the satisfaction of the Vendor in and to the Plantations herein sold is taken up or sold this Contract and Agreement of Sale and Purchase being the document to safeguard the rights of the Purchaser to possession of his interest and to use and occupy the Pasture and water his cattle on the said Plantations. 20

8. For the due and faithful observance, performance and fulfilment of the several terms and conditions herein contained the parties hereto bind and oblige themselves their heirs, executors, administrators, representatives and assigns according to Law.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands in the County and Colony aforesaid this 23rd day of May, in the year one thousand nine hundred and twenty five (1925) before and in the presence of the subscribing witnesses.

Stamp 12 cts. (Sgd) John H. Haly
cancelled (Sgd) James Gobin

30

Witnesses:

1. Jno. O. Abb
2. H. V. Abbensetts.

*SCHEDULE TO AGREEMENT OF SALE AND PURCHASE.
NAMES OF PROPRIETORS.*

- | | |
|----------------------|----------------|
| 1. Rambarran | 7. Sitaram |
| 2. Boodhoo | 8. Sawnauth |
| 3. Harripaul | 9. Rugput |
| 4. James Gobin | 10. Dalipa |
| 5. Nehim | 11. Dookshure. |
| 6. Catherine Douglas | |

40

"KK"

Defendant's Exhibit.

Transport No. 475 of 1932 — by Robert Bhagmat Gobind, as executor Estate of Parbutteah deceased, to Robert Bhagmat Gobind, James Mohabir and Cecil Rambarran.

"KK"
Transport No. 475 of 1932 by Robert Bhagmat Gobind, as executor Estate of Parbutteah deceased, to Robert Bhagmat Gobind, James Mohabir and Cecil Rambarran. 24th October, 1932,

Transport No. 475 of 1932 (Berbice).

Be it known that on this day the twenty-fourth of October in the Year one thousand nine hundred and thirty-two, appeared ROBERT BHAGMAT GOBIND, male East Indian, No. 887 C.R. of Plantation Kendalls, Corentyne, Berbice, in his quality as the executor under the Last Will and Testament of Parbutteah, female East Indian, No. 347 ex Clarence, 1866, deceased, agreeably with the said Will bearing date 30th January, 1914, which was duly proved and deposited in the Registry of the Supreme Court of British Guiana on the 7th day of April, 1924, and probate whereof was granted on the 14th day of April, 1924 which Appearer declared by these presents to cede, transport and in full and free property to make over to and in favour of ROBERT BHAGMAT GOBIND, JAMES MOHABIR and CECIL RAMBARRAN all of Plantation Kendalls, East Sea Coast, Berbice, in their quality as the devisees named in the aforesaid Last Will and Testament of Parbutteah, female, No. 347, ex Clarence 1886 deceased, their and each of their heirs, executors, administrators and assigns

20 *FIRSTLY* : A piece or parcel of land known as lot number 2 (two) part of the western half of Plantation Kendalls, otherwise called lot number 19 (nineteen) situate on the east sea coast of the county of Berbice as marked off and designated on a diagram made by Hugh McTavish, Sworn Land Surveyor, dated 1st October, 1863, and deposited in the office of the Registrar at New Amsterdam, Berbice, save and except the buildings and erections thereon

SECONDLY : Lot number 7 (seven) being part of the western half of Plantation Kendalls, otherwise called Lot number 19 (nineteen) situate on the East Sea Coast of the County of Berbice, the said lot number 7 (seven) being laid down and defined on a diagram made by Eustace P Austin, acting Government Surveyor, dated 20th

30 March, 1891, and deposited in the office of the Registrar of British Guiana, New Amsterdam, on the 13th April, 1891, save and except the buildings thereon; and

THIRDLY : The western half of a piece of land part of the eastern half of the western half of that plantation or lot of land called Susannah being lot number 15 (fifteen) situate on the east sea coast of the County of Berbice the said piece of land measuring 6 (six) roods in facade commencing at a point fifteen roods from the western boundary of the eastern half of the western half of the said plantation by the entire depth of the said plantation with right of pasturage over the whole of the said eastern half of the western half of said plantation and subject to the right of pasturage over the said western half of the said piece of land to Paris Britton and Thomas

40 Howard, their heirs, executors, administrators and assigns

Plaintiff's Exhibit.

"K"

Transport No. 366 of 1936 by Marshal to Mary Agnes Soares, Valerie Lourdes da Silva and Simeon Theobald da Silva.

"K"
Transport No. 366 of 1936 by Marshal to Mary Agnes Soares, Valerie Lourdes da Silva and Simeon Theobald da Silva. 21st August, 1936

Transport No. 366 of 1936 (Berbice).

Be it known that on this day, the twenty-first day of August, 1936, in obedience to an order of the Honourable Bernard Arthur Crean, Chief Justice of British Guiana, in Chambers, dated 26th July, 1935, Before Edgar Mortimer Duke, Registrar of Deeds, of British Guiana aforesaid under the provision of the Deeds Registry Ordinance, Chapter 177, appeared JAMES HENRY NATHOO, Marshal, an officer of the Court, which Appearer declared by these presents to cede, transport and in full and free property to make over to and in favour of HYGINO VASCO da SILVA, farmer, MARY AGNES SOARES, the wife of Raoul Soares, to whom she was married subsequently to the 20th day of August, 1904, VALERIE LOURDES da SILVA, Spinster, and SIMEON THEOBALD da SILVA, all of Susannah, East Coast, Berbice, their and each of their heirs, executors, administrators and assigns 10
The Eastern half of Plantation Susannah otherwise known as lot number 15 (fifteen) situate in the East Coast Country District in the County of Berbice, as shown on a diagram by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the Office of the Registrar at New Amsterdam, Berbice, on 3rd March, 1880, with the buildings thereon, and with the right of grazing cattle over the whole 20
of said Plantation Susannah to each of the proprietors of the East and West halves of said Plantation.

(ENDORSEMENT)

Transported to Francis Sam on 26. 9. 36 — No. 441.

J. H. N.
S. C.

"Q"
Transport No. 441 of 1936 by Hygino Vasco da Silva, Mary Agnes Soares, Valerie Lourdes da Silva and Simeon Theobald da Silva to Francis Sam. 26th September, 1936.

"Q"

Transport No. 441 of 1936 by Hygino Vasco da Silva, Mary Agnes Soares, Valerie Lourdes da Silva and Simeon Theobald da Silva to Francis Sam.

Transport No. 441 of 1936 (Berbice).

Be it known that on this day the 26th day of September, in the year one thousand nine hundred and thirty-six, appeared HYGINO VASCO da SILVA, Farmer, MARY AGNES SOARES, the wife of Raoul Soares, to whom she was married subsequently to the 20th day of August, 1904, VALERIE LOURDES da SILVA, Spinster, and SIMEON THEOBALD da SILVA, Farmer, all residing at Susannah, East Coast, Berbice, which Apparers declared by these presents to cede, transport and in full and free property to make over and in favour of FRANCIS SAM, of Main Street,

New Amsterdam, Berbice, Merchant, his heirs, executors, administrators and assigns,

Plaintiff's Exhibit.

The Eastern half of Plantation Susannah otherwise known as Lot number 15 (fifteen) situate in the East Coast Berbice Country District, in the County of Berbice, as shown on a diagram by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the Office of the Registrar at New Amsterdam, Berbice, on 3rd March, 1880, with a building thereon, save and except one wooden building the property of Mungree, and with the right of grazing cattle over the whole of said Plantation Susannah to each of the proprietors of the East and West halves of said

“Q”
Transport No. 441 of 1936 by Hygino Vasco da Silva, Mary Agnes Soares, Valerie Lourdes da Silva and Simeon Theobald da Silva to Francis Sam. 26th September, 1936, continued

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(ENDORSEMENT)

Transported to Demerara Sugar Estates (Bookers) Ltd., on 18th March, 1937, No. 73.

M. B. J.
A. S. C.

“NN”

Defendant's Exhibit.

“NN”

“R”

Plaintiff's Exhibit.

Transport No. 73 of 1937 by Francis Sam to Bookers Demerara Sugar Estates Limited.

“R”
Transport No. 73 of 1937. by Francis Sam to Bookers Demerara, Sugar Estates Limited. 15th March, 1937.

20 *Transport No. 73 of 1937 (Berbice).*

Be it known that on this day the 15th day of March, in the year one thousand nine hundred and thirty-seven appeared FRANCIS SAM of Main Street, New Amsterdam, Berbice, Merchant, — — — which Appearer declared by these presents to cede, transport and in full and free property to make over in favour of BOOKERS DEMERARA SUGAR ESTATES LIMITED a Company incorporated in England, whose registered office is situate at 21, Mincing Lane, in the City of London, England, and principal place of business in this Colony is at lot 52, Water Street, Georgetown, their representatives and assigns — — — The eastern half of Plantation Susannah, otherwise known as lot number 15 (fifteen) situate in the East Coast, Berbice, Country District, in the County of Berbice, as shown on a diagram by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar at New Amsterdam, Berbice, on 3rd March, 1880, with a building thereon, and with the right of grazing cattle over the whole of Plantation Susannah to each of the proprietors of the east and west halves of said plantation

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Defendant's Exhibit.

"FF"

Transport No. 271 of 1939 by Marshal to Hygino Vasco da Silva.

"FF"
Transport No. 271 of 1939 by Marshal to Hygino Vasco da Silva. 25th October, 1939.

Transport No. 271 of 1939 (Berbice).

Be it known that on this day the 26th day of October, 1939, in obedience to an Order of the Honourable BERNARD ARTHUR CREAM, Chief Justice of British Guiana, in Chambers, dated the 4th day of September, 1937
Before Donald Edward Jackson, acting Registrar of Deeds of British Guiana aforesaid under the provisions of the Deeds Registry Ordinance, Chapter 177, appeared Solomon Eden, Marshal, an Officer of the Court, which Appearer declared by these presents to cede, transport and in full and free property to make over to and in favour of HYGINO VASCO da SILVA of Susannah, East Coast, Berbice, Farmer, his heirs, executors, administrators and assigns
A piece of land forming part of the west half of Plantation Susannah, or lot number 15 (fifteen) in the East Coast Country District, in the county of Berbice, said piece of land having a facade six and a half (6½) rods commencing from the western extremity of the eastern half of Plantation Susannah and extending thence in a westerly direction north and south of the public road by the full depth of the said Plantation Susannah, the said western half of Susannah being laid down and defined on a plan by J. P. Prass, Sworn Land Surveyor, dated 29th January, 1880 and deposited in the office of the Registrar at New Amsterdam on 3rd March, 1880, without the buildings thereon

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"GG"

Transport No. 272 of 1939 by Marshal to Simeon Theobald da Silva.

"GG"
Transport No. 272 of 1939 by Marshal to Simeon Theobald da Silva. 25th October, 1939.

Transport No. 272 of 1939 (Berbice).

Be it known that on this day the 25th day of October, 1939, in obedience to an Order of the Honourable BERNARD ARTHUR CREAM, Chief Justice of British Guiana, in Chambers, dated the 4th day of September, 1937, Before Donald Edward Jackson, Registrar of Deeds of British Guiana aforesaid under the provision of the Deeds Registry Ordinance, Chapter 177, appeared Solomon Eden, Marshal, an Officer of the Court which Appearer declared by these presents to cede, transport and in full and free property to make over to and in favour of SIMEON THEOBALD da SILVA of Susannah, East Coast, Berbice, Farmer, his heirs, executors, administrators and assigns, A piece of land forming the west half of Plantation Susannah or lot number 15 (fifteen) in the East Coast Country District in the County of Berbice, said piece

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of land having a facade of 6 (six) rods commencing at a point 22½ rods from the western extremity of the eastern half of Plantation Susannah, and extending thence north and south of the public road in a westerly direction by the full depth of the said Plantation Susannah, the said western half of Susannah being laid down and defined on a plan by J. P. Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar at New Amsterdam on 3rd March, 1880, without the buildings thereon,

Defendant's Exhibit.

“GG”
Transport No. 272 of 1939 by Marshal to Simeon Theobald da Silva. 25th October, 1939. continued.

“C 1”

Transport No. 379 of 1939 by Goberdhan Singh to Bhupsingh.

Plaintiff's Exhibit.

“C1”
Transport No. 379 of 1939 by Goberdhan to Bhupsingh. 25th October, 1939.

10 *Transport No. 379 of 1939 (Berbice).*

Be it known that on this day the 25th day of October, in the year one thousand nine hundred and thirty-nine appeared GOBARDHAN SINGH, male, B.R. No. 410 of 1886 of Port Mourant, Corentyne, Berbice, Farmer,..... which Appearer declared by these presents to cede, transport and in full and free property to make over and in favour of Bhupsingh, male B.R. No. 283 of 1890, of Kendalls, Corentyne Coast, Berbice, Farmer, his heirs, executors, administrators and assigns,.... One undivided half part or share of and in a piece or parcel of land part of the west half of Plantation Susannah or lot number 15 (fifteen) situate on the East Coast Country District in the County of Berbice, the said piece of land having a facade of 10 (ten) rods situate on the south side of the Public Road and commencing at a point 6½ (six and a half) rods from the western extremity of the East half of said Plantation Susannah and extending thence in a westerly direction and having a depth from the south side of the Public Road running to the Grand Canal, the said western half of said Plantation being shown on a diagram by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the Office of the Registrar at New Amsterdam, on 3rd March, 1880, no building thereon, with the right of grazing cattle on the east half of west half of said Plantation Susannah.....

“H”

Transport No. 291 of 1943 by Jacob Lancelot Hanoman to Bhupsingh.

“H”
Transport No. 291 of 1943 by Jacob Lancelot Hanoman to Bhupsingh. 20th May, 1943.

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Transport No. 291 of 1943 (Berbice).

Be it known that on this day the 20th day of May, in the year one thousand nine hundred and forty-three appeared JACOB LANCELOT HANOMAN, of No. 11 Farm, East Coast, Berbice, Cattle-dealer.....which Appearer declared by these

Plaintiff's Exhibit.

"H"
Transport No. 29 of 1943 by Jacob Lancelot Hanoman to Bhup-singh. 20th May, 1943. continued.

presents to cede, transport and in full and free property to make over and in favour of Bhupsingh, male B.R. No. 283 of 1890, of Susannah, East Sea Coast, Berbice, Farmer, his heirs, executors, administrators and assigns.....
A piece of land measuring 3 (three) roods in facade, being the eastern half of a piece of land part of the western half of Plantation Susannah, situate on the east sea coast of the county of Berbice, in the Colony of British Guiana, measuring 6 (six) roods in facade by the full depth of the said Plantation, the said piece of land being laid down and defined on a diagram made by John Peter Prass, Sworn Land Surveyor, dated, 29th January, 1880, and deposited in the Office of the Registrar at New Amsterdam, Berbice, on the 3rd day of March, 1880, no building thereon,.....

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"C 2"

Transport No. 66 of 1945 by Goberdhan Singh to Robert Seecharan.

"C2"
Transport No. 466 of 1945 by Goberdhan Singh to Robert Seecharan. 1st March, 1946.

Transport No. 66 of 1945 (Berbice).

Be it known that on this day the first of March in the year one thousand nine hundred and forty-six appeared Goberdhan Singh, male creole East Indian, of Plantation Port Mourant, Corentyne, Berbice, Farmer; which Appearer declared by these presents to cede, transport and in full and free property to make over to and in favour of ROBERT SEECHARAN, male East Indian, creole, of Susannah, East Sea Coast, Berbice, Farmer, his heirs, executors, administrators and assigns..... One undivided third part or share (1/3) of and in the western half of a piece of land part of the eastern half of the western half of that plantation or lot of land called Susannah, being lot number 15 (fifteen) situate on the east sea coast of the county of Berbice, the said piece of land measuring 6 roods in facade commencing at a point 15 roods from the western boundary of the eastern half of the western half of the said Plantation by the entire depth of the said Plantation with the right of pasturage over the whole of the said eastern half of the western half of the said Plantation and subject to the right of pasturage over the said western half of the said piece of land, to and in favour of Paris Britton and Thomas Howard, their heirs executors, administrators and assigns, no building thereon,

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"C 3"

Transport No. 485 of 1947 by Goberdhan Singh to Robert Seecharan.

"C3"
Transport No. 485 of 1947 by Goberdhan Singh to Robert Seecharan. 17th September, 1947

Transport No. 485 of 1947 (Berbice).

Be it known that on this day the 17th day of September, in the year one thousand nine hundred and forty-seven, appeared GOBERDHAN SINGH, male, B.R. No. 410

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Plaintiff's Exhibit.

“C3”
Transport No. 485 of 1947 by Goberdhan Singh to Robert Seecharan. 17th September. 1947. continued

of 1886, of Plantation Port Mourant, Corentyne Coast, Berbice, Farmer,..... which Appearer declared by these presents to cede, transport and in full and free property to make over and in favour of ROBERT SEECHARAN, of Susannah, East Coast, Berbice, Farmer, his heirs, executors, administrators and assigns, — Four undivided fifth parts or shares of and in one undivided half part or share, that is to say, two undivided fifth parts or shares of and in a piece or parcel of land part of the west half of Plantation Susannah or lot number 15 (fifteen) situate in the East Coast Country District, in the county of Berbice, the said piece of land having a facade of 10 (ten) roods situate on the south side of the Public Road and commencing at a point 6½ (six and a half) roods from the western extremity of the east half of said Plantation Susannah and extending thence in a westerly direction and having a depth from the south side of said Public Road running to the Grand Canal, the said western half of said Plantation being shown on a diagram by John Peter Prass Sworn Land Surveyor, dated 29th January, 1880, and deposited in the Office of the Registrar at New Amsterdam, on 3rd March, 1880, no building thereon, with the right of grazing cattle on the east half of west half of said Plantation Susannah —

“MM 1”

Letter from Sir E. G. Woolford to Messrs. Cameron and Shepherd.

Defendant's Exhibit.

“MM1”
Letter dated 10th December 1947 from Sir E. G. Woolford to Messrs. Cameron and Shepherd.

20 “MM1”

10th December, 1947.

Messrs. Cameron & Shepherd,
2 High Street, Georgetown.

Dear Sirs,

Referring to my conversation with your Mr. Edward de Freitas as regards the proposed transport by Messrs. Booker Bros. McConnell & Co : Ltd., to Mr. G. Hanoman of the portion of Pln. Susannah Rust, Courantyne, Berbice, sold to him and with respect to which Mr. de Freitas promised to furnish me with the date of the agreement of sale. I shall be glad if I may be informed of this as early as possible : and if, as I also understand, Mr, Hanoman has not only already paid the purchase price of the property in full but has also been put in possession, I shall also be glad if you will now confirm these facts and so avoid any necessity for joining Messrs. Booker Bros. McConnell & Co : Ltd : in an action that Mr. A. Rose and others propose to take against Mr. Hanoman for certain acts of trespass committed by him.

I remain,
Yours faithfully,
Eustace G. Woolford.

Defendant's Exhibit.

"MM 2"

Letter from Messrs. Cameron and Shepherd to Sir Eustace Woolford.

"MM2"
Letter dated 16th December 1947 from Messrs. Cameron and Shepherd to Sir Eustace Woolford.

Cameron & Shepherd,
Solicitors.

"MM2"

Georgetown, Demerara.
British Guiana.

16th December, 1947.

Sir Eustace G. Woolford, K.C., O.B.E., Barrister-at-law,
Chambers, Charlotte Street, Georgetown.

Dear Sir,

10

Re : E.½ Pln : Susannah.

With reference to your letter of the 10th inst., our client, Mr. George Hanoman, has instructed us to inform you that he purchased the E½ of Plantation Susannah from Messrs. Bookers Demerara Sugar Estates, Ltd., on the 25th day of June, 1947, that having paid the full purchase price he was given immediate possession of the same and that he has been in possession since then.

Mr. Hanoman has also instructed us to say that there will be no need to join Messrs. Bookers Demerara Sugar Estates Limited in the action which you say Mr. A. Rose and others propose to take as that Company has no beneficial interest whatsoever in the abovementioned property.

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Yours faithfully,
Cameron & Shepherd.

Plaintiff's Exhibit.

"BB"

Transport No. 312 of 1948 by Archibald Rose to David H. Rose.

"BB"
Transport No. 312 of 1948 by Archibald Rose to David H. Rose. 7th April, 1948.

Transport No. 312 of 1948 (Berbice).

Be it known that on this day the 7th day of April in the year one thousand nine hundred and forty-eight appeared ARCHIBALD ROSE of Bohemia, East Coast, Berbice, Cattle Farmer,which Appearer declared by these presents to cede, transport and in full and free property to make over and in favour of DAVID HARCOURT ROSE of Susannah, East Coast, Berbice, Farmer, his heirs, executors, administrators and assigns, A piece of land part of the east half of the west half of lot number 15 (fifteen) also called Susannah as shown on a

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plan by John Peter Prass, Sworn Land Surveyor, dated 29th January, 1880, and deposited in the office of the Registrar of British Guiana at New Amsterdam, Berbice, on the 3rd March, 1880, the said piece of land being three roods wide by the whole depth of the said estate and bounded on the east by the property of Seecharan, on the west by the property of A. Rose, on the north by the Atlantic Ocean and on the south by the Grand Canal Dam, no building thereon

Plaintiff's Exhibit.
"BB"
Transport No. 312 of 1948 by Archibald Rose to David H. Rose.
7th April, 1948, continued.

"E"
Trespass Notice

"E"
Trespass Notice dated 14th July, 1948

NOTICE

10 ANY PERSON FOUND TRESPASSING ON THE WEST OF THE WESTERN HALF OF PLANTATION SUSANNAH WITHOUT PERMISSION OF THE PROPRIETOR WILL BE PROSECUTED ACCORDING TO LAW. ALL STRAYS WILL BE IMPOUNDED AND PIGS DESTROYED.

BY ORDER OF
THE PROPRIETOR.

14. 7. 48.

"D 1"

Plaint No. 1242 — Magistrate's Court — Goberdhan Singh v. Robert Seecharan.

"D1"
Plaint No. 1242 — Magistrate's Court — Goberdhan Singh v. Robert Seecharan. 1st October, 1948.

BRITISH GUIANA.

20 In the Magistrate's Court of the Courantyne Judicial District holden at Albion.
(Civil Jurisdiction)

Between :-

GOBERDHAN SINGH, of Susannah, East Sea Coast, Berbice,

Plaintiff,

and

ROBERT SEECHARAN, of Susannah, East Sea Coast, Berbice.

Defendant.

The Plaintiff claims from the Defendant the sum of \$7.50 as damages, for that on the 26th day of September, 1948, at Susannah, East Coast, Berbice, within the

Plaintiff's Exhibit.

Courantyne Judicial District, one pig, the property of the Defendant trespassed on the Plaintiff's provision land situate at Susannah, East Coast Berbice aforesaid and damaged the Plaintiff's provision growing on the said land, as per particulars stated.

"D1"
Plaint
No.
1242 —
Magistrate's
Court —
Goberdhan
Singh v.
Seecharan.
1st
October,
1948,
continued.

Demand for payment was made by the Plaintiff of the Defendant, but without effect. The Plaintiff also claims Costs.

Particulars

1948 26th September — To damages done by one pig :

25 roots Cassava @ 24 cts. per root...\$6.00

1 bank potatoes measuring 16 feet
by 7 feet \$1.50

\$7.50

10

Goberdhan Singh
Plaintiff

Berbice,
1st October, 1948.

18th
October,
1948.

Monday, 18th October, 1948.

Goberdhan Singh Damages \$7.50

C.J. 1242/48.

vs.

Robert Seecharan.

GOBERDHAN SINGH sworn :— I had a garden. Defendant's pigs damaged it. I have forgotten the date.

Cross-examination : My garden is on the northern side of the Public Road. I have cultivation. This land is at Susannah. 20

By Court:

Rural Constable Edwin was called next day. Susannah is in this Judicial District. I call Defendant he did not come.

EDWIN CLARENCE sworn: I am a Rural Constable. On 4th October, 1948, a Monday morning Plaintiff showed his garden to me. There was damage.

25 roots Cassava at 24 cts. per root...\$6.00

1 bank potatoes 16 ft. by 7 feet \$1.50

\$7.50

Cross-examination :—The garden at Susannah on the northern side. I saw the cassava that was destroyed by pigs.

Plaintiff's Exhibit.

Case.	
Decision.	
Judgment for Plaintiff	\$7.50
Costs	\$2.96

"D1"
Plaint
No.
1242 —
Magistrate's
Court —
Goberdhan
Singh v.
Robert
Seecharan.
18th
October,
1948,
continued.

E. W. Adams
Magistrate

Courantyne Judicial District
18/10/48.

10

"D 2"
Receipt

"D2"
Receipt
dated
21st Octo-
ber, 1948

Susannah Farm
21. 10. 48.

\$10.46

Received from ROBERT SEECHARAN Ten Dollars and Forty-six cents in full payment for Damages & Cost obtain in Court against him, damage done by his pigs to my provision farm situate at Northern side, otherwise called water side western part Susannah. Damage done on 4. 10. 48. Judgment Monday 18. 10. 48.

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Damages	\$7.50
Cost	2.96
	<hr/>
	\$10.46
	<hr/>

Stamp cancelled
.02c.

Goberdhan Singh.

Plaintiff's Exhibit

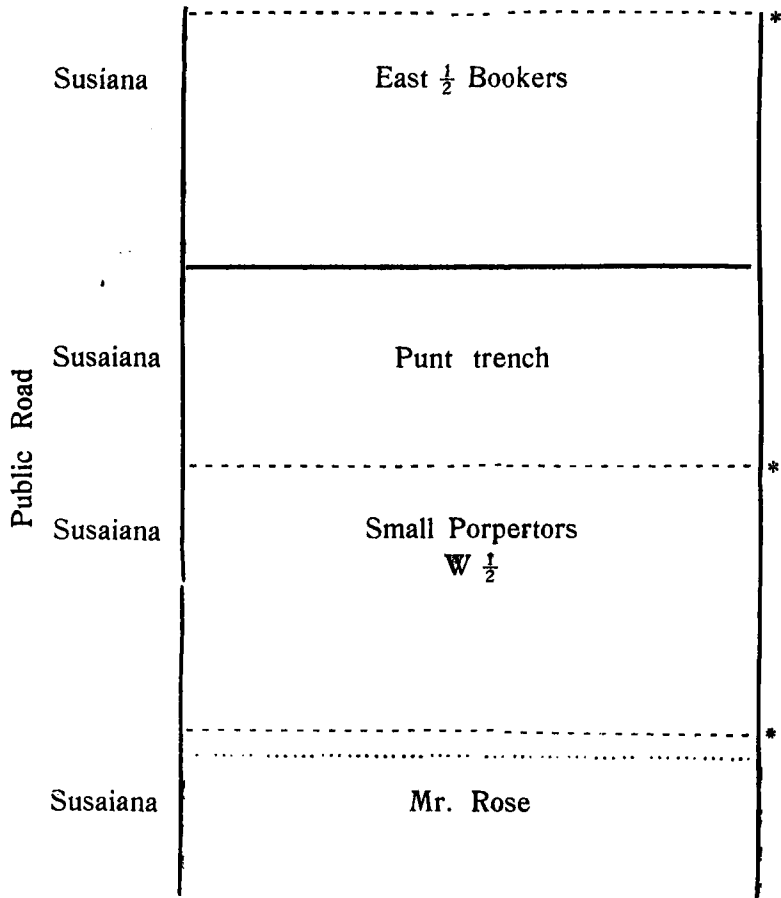
"F"

Diagram of Part of Susannah showing Fences.

Rough sketch by 7th Witness-Cecil Baker, showing Fences. 10th May, 1951.

RED LINES SHOW FENCES

BOHEMIA



Dotted lines show fences witch was wire that remove.

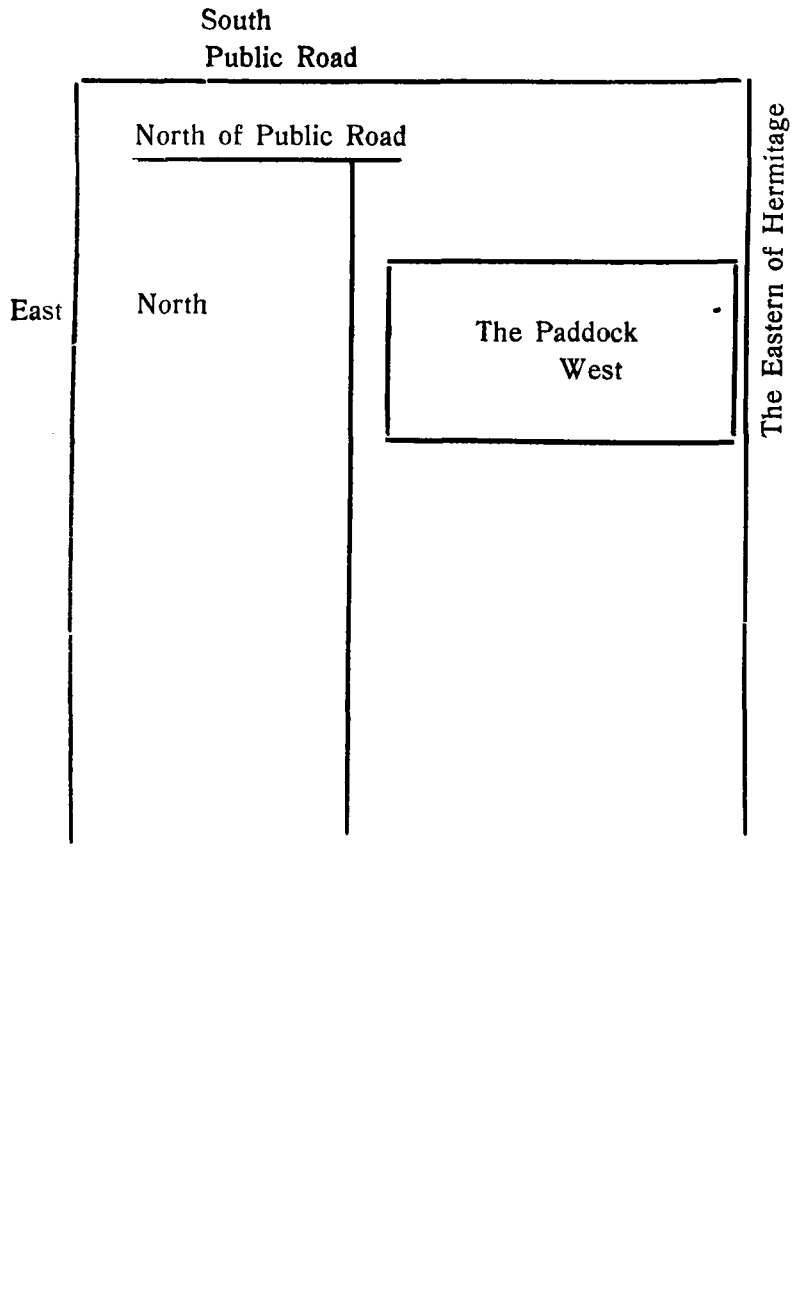
*Red lines.

"p"

Sketch showing Paddock.

Plaintiff's Exhibit.

"p"
Diagram referred to by 11th Witness — Simeon Theobald da Silva, showing Paddock



Plaintiff's
Exhibit.

"DD"

Amended Reply and Defence to Counter-claim dated 18th May, 1951.

"DD"
Amended
Reply and
Defence to
Counter-
Claim
18th May
1951.

REPLY.

1. Subject to the production of sufficient documentary proof at the trial, the plaintiff admits paragraphs 7, 8 and 9 of the Defence.

2. The plaintiff denies each and every statement and allegation made and contained in paragraphs 6(a), (b), (c) and (d), 10, 11 and 19 of the Defence as fully as if the same were herein set forth at length and traversed seriatim et verbatim.

3. The plaintiff joins issue with the defendant upon his Defence as regards paragraphs 2, 3, 5, 12, 13, 14, 15, 16, 17 and 18. 10

4. The plaintiff specifically denies that either at the time of the passing of the transports in his favour in relation to his land at Plantation Susannah, East Coast of the County of Berbice, or at the time of the passing of transport No. 73 of the 15th day of March, 1937, in favour of Bookers Demerara Sugar Estates Limited in relation to the eastern half of the aforesaid Plantation Susannah the right to graze cattle over the whole of Plantation Susannah that belonged to each of the proprietors of the east and west halves of the said Plantation had expired or had been surrendered or had been abandoned or had been lost or had otherwise ceased to exist or that the words in his transports applicable to the grazing right were therefore surplusage and ineffective, as alleged in paragraph 6(a) of the Defence filed in this 20 action.

5. The plaintiff will contend at the trial that, under the provisions of section 21 of the Deeds Registry Ordinance, Chapter 177, the transports so passed to him or the lands in Plantation Susannah aforesaid vest in him full and absolute title to the immovable property and to the rights and interest therein described and that it is not competent for the defendant to allege that such right had expired or had been surrendered, or had been abandoned, or had been lost, or had otherwise ceased to exist, or that the words contained in his transport giving and effecting such right were surplusage and ineffective, as alleged in paragraph 6 of the Defence.

6. As regards paragraph 10 of the Defence, the plaintiff expressly denies 30 the allegation therein contained that the rights of pasturage conferred by the transports were personal to Thomas Howard, the person mentioned and referred to therein, and could not be conveyed or vested after his death to or in the plaintiff, or to or in any proprietors of the western half of the said plantation. As to the said paragraph 10 of the Defence, the plaintiff states that he and his predecessors in title have, as of right, exercised and enjoyed the right of grazing cattle over the said Plantation for upward of 30 years last past, without disturbance, and he will contend at the trial that he has thereby acquired a *prescriptive right to graze his cattle*

thereon by virtue of the requirements of the provisions of section 4 of the Civil Law of British Guiana Ordinance, Chapter 7, and/or the law and practice under the Roman-Dutch of the Colony prior to the introduction of the said Civil Law of British Guiana Ordinance, Chapter 7. The plaintiff states that the other proprietors of the said Plantation and their predecessors in title have also as of right exercised and enjoyed similar rights of pasturage over the said Plantation for a long number of years and further that it was within the knowledge of the defendant before he purchased that the said Plantation was being used by the proprietors for depasturing cattle and other stock from time immemorial and up to the present time, and that such right of pasturage is still preserved in relation thereto.

Plaintiff's Exhibit.

“DD”
Amended Reply and Defence to Counter-Claim.
18th May, 1951.
continued.

7. As regards that portion of the eastern half of the said Plantation that lies to the south of the public road and particularly referred to in paragraph 11 of the Defence, the plaintiff states that *the proprietors of the said area cultivated their portions of land in rice and after reaping same* cattle belonging to any proprietor or proprietors were depastured over the whole area. The obligation rested at all material times upon such proprietor or proprietors to fence out cattle from such cultivation. Plaintiff says that Bookers Demerara Sugar Estates Limited having obtained the permission of the plaintiff and other proprietors of Plantation Susannah cultivated the east half of Plantation Susannah with rice but immediately after the crop was harvested, the said area so put under cultivation was thrown open and cattle and other stock entered therein and grazed freely without any interruption or hindrance whatever by the said Company or by any other person or proprietor. The said Plantation never lost its character, reputation and usage as a cattle farm.

8. The plaintiff will further contend at the hearing that the provisions of section 21 of the Deeds Registry Ordinance, Chapter 177, will equally apply to the title held by Bookers Demerara Sugar Estates Limited, to the lands that they own in the said Plantation Susannah and that the defendant is legally bound thereby to afford the proprietors in general of the said Plantation a common and mutual right to graze cattle over the whole of the said Plantation Susannah including his own area, and that this obligation has for many years been mutually and in common discharged by all the other proprietors.

9. The plaintiff states that, on the occasions referred to in paragraph 3 of the Statement of Claim, his cattle were lawfully grazing over lands in Plantation Susannah aforesaid, in which he was entitled to a common and mutual right of pasturage under and by virtue of his transports which are good, valid and indefeasible titles in full and in all respects to the lands in the said plantation, when the defendant himself, his servants and agents wrongfully and illegally caught and impounded the cattle as more specifically stated and mentioned in the Statement of Claim.

10. The said Plantation Susannah consists of low, flat and marshy lands, which are rich in the growth of grass and herbs suitable as fodder for cattle and other stock and in view of this fact the whole Plantation is amply suitable for pasturage

Plaintiff's
Exhibit.

“DD”
Amended
Reply and
Defence to
Counter-
Claim.
18th May
1951,
continued.

purposes. The seasonal cultivation of the eastern portion thereof by the said Bookers cattle as they resorted to other areas in interfere with the grazing of the proprietors' Demerara Sugar Estates Limited did not the said Plantation to graze and as soon as the crop was reaped the area was again thrown open to the cattle to graze.

11. The plaintiff further states that the said Bookers Demerara Sugar Estates Limited never impounded any of the proprietors' cattle that were found grazing upon lands owned by the Company and that the aforesaid Company never enclosed nor fenced round any portion of the lands in the said Plantation without the consent and agreement of the other proprietors.

12. The plaintiff will contend at the trial that the defendant is estopped from raising the issues contained and set out in paragraph 6 (a), (b), (c), (d) and (f) of the Defence inasmuch as the defendant, is, in law, bound by the obligation contained in the transport to and in favour of said Bookers Demerara Sugar Estates Limited, (the Company from which he purchased) in which the right of grazing cattle over the whole of the said Plantation is expressly given to the proprietors of the said Plantation. 10

DEFENCE TO CONTER-CLAIM.

13. The plaintiff denies each and every statement and avertainment made and contained in paragraphs 21, 22, 23, 24, and 25 of the Counter-Claim embodied in the Defence as fully as if the same were herein set forth at length and traversed seriatim and repeats and relies on his Statement of Claim and upon paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Reply herein contained. 20

14. The plaintiff says that his cattle did not stray or trespass on any land of the defendant in the said plantation as alleged.

15. The plaintiff will contend at the trial that the defendant's counter-claim discloses no cause of action and that the defendant is not entitled to any of the Orders asked for or to any damages.

W. D. Dinally
Solicitor.

Eustace Woolford
Of Counsel
B. Oswald Adams
Of Counsel

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Dated the 18th day of May, 1951.

HH

PLAN OF ESTATES ON COURANTYNE

(not printed)

Defendant's
Exhibit.

HH
Plan of
Estates
on Coren-
tyne.

A 1 & A 2

POUND BOOKS

(not printed)

Plaintiff's
Exhibit.

A1 and A2
POUND
BOOKS
20th May,
1949 to
5th Novem-
ber, 1950
and
2nd. De-
cember,
1947, to
20th De-
cember 1949

B 1, B 2 & B 3

POUND BOOKS

(not printed)

6th July,
1947, to
29th April,
1948,
9th Sep-
tember 1948,
and
29th Jan-
uary,
1951.

In the Privy Council.

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL.

BETWEEN

GEORGE HANOMAN (Defendant) - - - Appellant

AND

ARCHIBALD ROSE (Plaintiff) - - - Respondent

RECORD OF PROCEEDINGS

CAMERON & SHEPHERD.

2 High Street.

Georgetown, British Guiana.

*Solicitors for the (Defendant) Appellant in
British Guiana.*

SIMMONS & SIMMONS.

1 Threadneedle Street.

London, E.C. 2.

Solicitors for the (Defendant) Appellant.