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55520 PRIVY COUNCIL

No. 15 of 1956

ON APPEAL  
FROM THE SUPREME COURT OF JAMAICA  
COURT OF APPEAL

B E T W E E N:

JAMES CLINTON CHISHOLM      Appellant  
(Defendant)

- and -

JAMES HALL (Plaintiff)      Respondent

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CASE FOR THE RESPONDENT.

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IN THE PRIVY COUNCIL

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Record

10 1. This is an appeal by the Appellant, who was the Defendant in the action, from an Order of the Court of Appeal in Jamaica of the 30th July, 1954 allowing the Appeal of the Respondent from the Judgment of the Honourable Mr. Justice Semper (Acting) given on the 25th July 1953 in favour of the Appellant. By their said Order the Court of Appeal set aside the Judgment of the 25th July, 1953 and directed that Judgment be entered for the Respondent (a) for the declaration he sought as to a strip of land in King Street, Kingston, Jamaica; 20 (b) for recovery of possession of the strip of land; and (c) for mesne profits to be assessed by the Registrar; and directed that the Respondent have his costs of the appeal and in the Court below.

p.68.

p.43.  
p.68.

30 2. This is a dispute between adjoining land owners as to the ownership of a piece of land approximately 7 feet wide and 79 feet 8 inches deep separating their two properties (hereinafter called "the disputed strip"). The Respondent is the Registered Proprietor, under the Registration of Title Laws of Jamaica, of Nos. 101 and 103 King Street, Kingston, Jamaica, and claims that the disputed strip is included in and comprises the northern portion of his said property. The Appellant is the Registered Proprietor under the said Laws of No. 105 King Street, aforesaid, and claims that the said strip is included in and comprises the southern portion of that said property.

p.96.

p.92.

3. The questions raised by the Appeal may be

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stated as follows :-

(i) whether a bona fide transferee for value of land in respect of which an unencumbered certificate of title has been issued under the Registration of Titles Law is in any way affected by any rights, definite or inchoate, alleged to have been acquired against the lands comprised in the said Certificate prior to the issue of the same but which are not noted thereon, under the law of Jamaica relating to Limitation of Actions;

(ii) whether at the time of the first registration under the said Registration of Titles Law of the properties Nos. 101 and 103 King Street, on 21st January 1901, the disputed strip was included therein.

- p.1. 4. By his Writ of Summons dated the 31st January 1951 the Respondent claimed (a) a declaration that the disputed strip was comprised in the Certificate of Title for Nos. 101 and 103 King Street, registered at Volume 386 folio 1 of the Register of Titles in the name of the Respondent, and (b) possession of the disputed strip. 20
- p.2. 5. By his Statement of Claim dated the 17th July 1951, the Respondent set out his derivation of title to Nos. 101 and 103 King Street, commencing with a Certificate of Title issued to one Morris Aria Bonitto deceased (hereinafter mentioned) on 21st January 1901 and registered in Volume 21 folio 83 of the Register Book of Titles, and terminating with the issue to the Administrator General of Jamaica of a new Certificate of Title in the same terms, registered at Volume 386 folio 1 on the 16th October 1941; the transfer of the land comprised therein by the said Administrator General to the Respondent on the 24th October 1941; and the registration of the said transfer on the 30th October 1941. The Respondent claimed that the land comprised in the said Certificates included the disputed strip of which the Appellant was wrongfully in possession, and claimed a declaration accordingly, possession of the disputed strip, and mesne profits. 30
- p.96. 40
- p.97.
- p.96.
- p.5. 6. By his Defence and Counterclaim dated the 27th September 1951 the Appellant admitted that he was in possession of the disputed strip and denied the

Respondent's title thereto. He set out his derivation of title to No.105 King Street, culminating in the issue to one Eugenia Blanche Bonitto deceased (hereinafter mentioned) on 12th March 1928 of a Certificate of Title thereto, registered at Volume 208 folio 36 of the Register Book of Title; the transfer of the lands comprised therein to the Appellant on the 12th April 1928, and the registration of the said transfer on the 16th April, 1928. The Appellant contended that at all material times the two properties Nos.101 and 103 and No.105 King Street had bound each other, and that from and prior to 1902 until the date thereof the southern boundary of No.105 King Street as delineated in part by a zinc fence and in part by the wall of an outbuilding had remained undisturbed, and that it coincided with the southern boundary of the disputed strip so that the same had been taken to have formed part of No. 105 King Street aforesaid. In reliance upon s.46 of Chapter 395 of the Revised Laws of Jamaica (the Limitation of Actions Law) the Appellant contended that the existing boundary had been acquiesced in and submitted to by the Appellant's and the Respondent's predecessors in title and/or by the Respondent himself, for a period of over seven years, and should be deemed to be the true boundary. Accordingly the Appellant counterclaimed for a declaration that the existing boundary was the true boundary between 103 and 105 King Street, and for an order that the Respondent's Certificate of Title should be rectified to exclude, and the Appellant's Certificate of Title should be rectified to include, the disputed strip.

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p.92.

p.93.

p.92.

7. By his reply and Defence to Counterclaim dated the 23rd January 1953 the Respondent joined issue with the Appellant on his Defence; denied that the said boundary had been acquiesced in or submitted to as alleged; and contended that in any event, in law, lands comprised in a Certificate of Title pass to a bona fide transferee for value notwithstanding that they are or have been in the possession of a third party at the date of the transfer for any period of time or by reason of any error as to the boundaries, no matter how long standing.

p.8.

8. At the trial the documents of title and other documents showed the chronological history of the three properties Nos. 101, 103 and 105 King Street,

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the measurements thereof, and the material boundary descriptions to be as follows :-

Measurements  
E to W.    N to S.

As to 101 King Street:

|                                   |  |      |       |    |
|-----------------------------------|--|------|-------|----|
| p.73 L.32                         | <u>1849 Elizabeth Steel purchased 101 King Street and went into and remained in possession thereof until the year 1883</u>   |      |       |    |
| p.74.                             | <u>6th July 1883 Elizabeth Steel conveyed to James Ogilvie No. 101 King Street.</u>  | 86'  | 24'   | 10 |
| p.75 L.3.                         | Property stated to be butted and bounded on the West by land in the possession of or belonging to Miss Campbell. This land is later identifiable as No. 8 Chancery Lane.   |      |       |    |
| p.72 Ll.2, 9 and 40.              | (The significance of the position of the Western boundaries appear later, see para. 10).   |      |       | 20 |
| <br><u>As to 103 King Street:</u> |  |      |       |    |
| p.75.                             | <u>13th March 1885 J.R.Gore conveyed to James Ogilvie No. 103 King Street</u>  | 161' | 26'   |    |
| p.75 L.31.                        | At this date this property stretched from King Street on the East to Chancery Lane on the West: it was bounded to the South in part by land belonging to Matilda Campbell (8 Chancery Lane) and in part by land belonging to James Ogilvie (101 King Street) |      |       | 30 |
| p.76; p.77 Ll. 26-32.             | <u>13th June 1885 Miss J.P.Willasey who had claimed an interest therein, conveyed to James Ogilvie the same premises</u>   | 161' | 26'   |    |
| p.77 L.33.                        | Between 13th June 1885 and 13th December 1900 James Ogilvie conveyed the western portion measuring   | 75'  | x 26' | 40 |
|                                   | to George White, retaining the portion measuring   | 86'  | x 26' |    |

|    |   | <u>Measurements</u> |                | <u>Record</u>    |
|----|---|---------------------|----------------|------------------|
|    |   | <u>E to W.</u>      | <u>N to S.</u> |                  |
|    | Subsequently George White sold the western portion to James Guilford Binns.   |                     |                | p.72 L.29.       |
|    | Thereafter the eastern portion alone was known as 103 King Street, and the western portion fronting on Chancery Lane  |                     |                |                  |
| 10 | became known as 10 Chancery Lane  |                     |                | p.71 Ll.28 & 36. |
|    | <u>As to 101 King Street:</u>   |                     |                | p.78 L.4.        |
|    | <u>Between 13th June 1885 and 13th December 1900</u>  |                     |                |                  |
|    | J.Ogilvie reserved a strip along the southern boundary for a pathway for his tenants in No. 99 King Street  | 75'                 | 5'             |                  |
|    | <u>1st October 1889.</u> Registration of Titles Law came into operation.  |                     |                |                  |
| 20 | <u>As to 105 King Street:</u>   |                     |                | p.86.            |
|    | <u>23rd May 1893.</u> B. L. Hodelin conveyed to Ella Louise Bonitto the wife of Morris Aria Bonitto (hereinafter called "the first Mrs. Bonitto") No. 105 King Street to such uses as she should appoint, and in default of appointment to her for life and after her decease to the use of the children of herself and her husband |                     |                |                  |
| 30 |   | 75'                 | 25'            |                  |
|    | <u>As to 101 and 103 King Street.</u>   |                     |                |                  |
|    | <u>13th December 1900.</u> J. Ogilvie applied to have the lands brought under the operation of the Registration of Titles Law, and for a Certificate of Title to be issued to his purchaser, Morris Aria Bonitto, stating dimensions of   |                     |                | p.71.            |
| 40 | No. 103 King Street   | 86'                 | 26'            |                  |
|    | " No. 101 " "   | 86'                 | 24'            | p.72             |
|    | both being subject to claim of the Kingston City Council to a   |                     |                |                  |

| <u>Record</u>  | <u>Measurements</u> |                |
|--|---------------------|----------------|
|  | <u>E to W.</u>      | <u>N to S.</u> |
| strip on the eastern frontage, thereby reducing both of the east to west dimensions to   | 75'                 |                |
| p.71 L.28 & 36<br>p.72 L.2 & 9.<br>p.80.   |                     | 10             |
| The western boundaries of the said properties were stated to be co-extensive with the eastern boundaries respectively of Nos. 10 and 8 Chancery Lane.  |                     |                |
| <u>21st January 1901</u> Certificate of Title issued in favour of Morris Aria Bonitto Registered Vol. 21 fol. 83   |                     |                |
| No. 103 King Street  | 86'                 | 26'            |
| No. 101 " "  | 86'                 | 24'            |
| Both subject to the said claim of the Kingston City Council. Western boundaries described in accordance with the said application.   |                     | 20             |
| <u>As to 105 King Street.</u>  |                     |                |
| p.87 L.28.   |                     |                |
| <u>30th March 1901.</u> The first Mrs. Bonitto died without exercising her power of appointment, there having been three children only of the marriage (hereinafter called "the children of the first marriage") who all survived her. |                     | 30             |
| <u>As to 101 and 103 King Street</u>   |                     |                |
| p.87 L.31.   |                     |                |
| <u>23rd April 1902</u> Morris Aria Bonitto married Eugenia Blanche (hereinafter called "the second Mrs. Bonitto").   |                     |                |
| p.81 L.12.   |                     |                |
| <u>20th November 1918</u> Morris Aria Bonitto died.  |                     |                |
| p.81 L.20.   |                     |                |
| <u>31st January 1919</u> Letters of Administration of the estate of Morris Aria Bonitto, with Will and Codicils annexed granted to the Administrator General for Jamaica.  |                     | 40             |

|   | <u>Measurements</u> |                | <u>Record</u>  |
|---|---------------------|----------------|----------------|
|   | <u>E to W.</u>      | <u>N to S.</u> |                |
| Devise in the Will of Morris Aria Bonitto of Nos. 101 and 103 King Street to his Trustee to pay the rents and profits to the second Mrs. Bonitto for life and after her death to certain grandchildren  |                     |                | p.82 L.6.      |
| 10 <u>7th May 1919</u> Certificate of Title issued to the Administrator General of Jamaica, registered Vol. 129 fol. 85   |                     |                | P.83.          |
| 103 King Street   | 86'                 | 26'            |                |
| 101 King Street   | 86'                 | 24'            |                |
| Both subject to the said claim of the Kingston City Council. Certificate in same terms as that of 21st January 1901.  |                     |                | p.80.          |
| 20 <u>As to 105 King Street:</u>  |                     |                |                |
| 22nd March 1921. The children of the first Mrs. Bonitto conveyed to the second Mrs. Bonitto these premises  | 75'                 | 25'            | p.87.          |
| <u>14th January 1928.</u> The second Mrs. Bonitto applied to have No. 105 King Street brought under the Registration of Titles Law. The western boundary of the said property was stated to be co-extensive with that of No. 12 Chancery Lane owned by Margaret Hill. No mention of No. 10 Chancery Lane. |                     |                | p.84.          |
| 30  |                     |                | p.85 Ll.18,23. |
| <u>26th January 1928.</u> Application ordered to be advertised, with the following description :-   |                     |                | pp.90-91       |
| " All that parcel of land known as No. 105 King Street, measuring from North to South more or less and from East to West more or less and abutting West on land of Margaret Hill.   | 75'                 | 25'            | p.90 Ll.28-33. |
| 40  |                     |                |                |



| <u>Record</u>        |   | <u>Measurements</u> |                |    |
|----------------------|---|---------------------|----------------|----|
|                      |   | <u>E to W.</u>      | <u>N to S.</u> |    |
| p.92.                | <u>12th March 1928.</u> Certificate of Title issued in favour of second Mrs.Bonitto, registered Vol.208 fol.36<br>Western boundary being described by reference to land of Margaret Hill.                                 | 75'                 | 25'            |    |
| p.92 L.15.           |   |                     |                |    |
| p.92.                | <u>12th April 1928.</u> The second Mrs. Bonitto transferred land on sale to James Clinton Chisholm, the Appellant.  | 75'                 | 25'            | 10 |
| p.92 L.21.           | <u>16th April 1928.</u> Transfer registered.  |                     |                |    |
| p.93.                | <u>6th April 1937.</u> Application by Appellant to City Council for permission to alter existing building at 105 King Street with plan of proposed alteration.  |                     |                | 20 |
| Ex.12 (First plan).  | This plan has no figured dimensions but shows a plot extending North to South with a frontage scaling between 31'3" and 32' in place of 25' and includes the disputed strip.  |                     |                |    |
| p.95.                | <u>16th September 1937.</u> Application by Appellant to City Council for permission to add one room at No.105 King Street with plan of proposed addition, which is largely on the disputed area.                          |                     |                | 30 |
| Ex.12 (Second plan). |   |                     |                |    |
| p.96.                | <u>As to 101 and 103 King Street</u><br><u>16th October 1941.</u> Further Certificate of Title issued to the Administrator General of Jamaica. Registered Vol.386 Fol.1. Identical in terms to two previous Certificates. |                     |                | 40 |
| pp. 80,83.           |   |                     |                |    |
| p.97.                | <u>24th October 1941.</u> The Administrator General for Jamaica, transfers to James Hall, the Respondent, for value<br>No.103 King Street<br>No.101 King Street<br>Both subject to the said claim of the City Council     | 86'<br>86'          | 26'<br>24'     |    |
|                      |   | 11'                 |                |    |

|    | <u>Measurements</u>  | <u>Record</u>            |
|----|--|--------------------------|
|    | <u>E to W.</u> <u>N to S.</u>  |                          |
|    | <u>30th October 1941.</u> Transfer registered.   | p.96.                    |
|    | <u>As to 101, 103 and 105 King Street.</u>   | p.99.                    |
| 10 | <u>25th February 1942.</u> Letter before action by Plaintiff's then Solicitors to Defendant requiring him to vacate the disputed area.   |                          |
|    | <u>7th March 1942.</u> Letter from Defendant's Solicitors to Plaintiff's then Solicitors denying any encroachment and alleging Defendant has been in undisturbed possession since 1928.  | p.100.                   |
| 20 | <u>18th November 1942.</u> Writ of Summons issued by Plaintiff against Defendant in Suit C.L. 195 of 1942 claiming the same relief as in the present suit.   | p.102.                   |
|    | <u>21st June 1944.</u> Suit C.L.195 of 1942 discontinued.  | p.116.                   |
|    | <u>31st January 1951.</u> Present suit instituted.   | p.1.                     |
| 30 | 9.   At the trial the existing state of the properties was proved by the evidence of Geffrard Wellesley Bourke, a Commissioned Land Surveyor, who produced a plan prepared by him on the 24th July 1942 (without entry upon 105 King Street) and an explanatory memorandum.   The said plan shows the following :- | p.12.<br>Ex. 2.<br>p.98. |
|    | (a)   Uncoloured and marked "J.C.Chisholm, 105, King Street" - the area admittedly within the Appellant's Certificate of Title and in the Appellant's possession.  | p.92.                    |
|    | (b)   Coloured yellow - the disputed strip.  |                          |

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- p.96. (c) Coloured purple - the area admittedly within the first parcel (103 King Street) referred to in the Respondent's Certificate of Title and in the Respondent's possession.
- p.96. (d) Coloured green - the area admittedly within the second parcel (101 King Street) referred to in the Respondent's Certificate of Title and in the Respondent's possession.
- p.96. (e) Hatched purple and hatched green - those parts of the land referred to in the Respondent's Certificate of Title which were subject to a claim by the Kingston City Council and which are apparently now in their possession. 10
- p.78 L.4. (f) Coloured pink - the area which was formerly part of 101 King Street but which was expressly reserved and excepted therefrom by James Ogilvie prior to 13th December 1900.
- p.66 L.44. (g) The existence of a range of outbuildings at the western extremity of No.105 King Street, the southernmost structure in the range being separately identified, and having been constructed partly upon the disputed strip. After a subsequent inspection, the Court of Appeal held that the said southernmost outbuilding was an addition to and built subsequently to the main range. 20

10. A comparison of the properties as described in the aforesaid documents of title and as shown on Mr. Bourke's plan reveals the following position :- 30

(a) By measurement.

(i) The documents of Title.

pp.72,74,78,79,  
80,97.

101 King Street 24 feet

pp.72,75,76,77,  
79,80,97.

103 King Street  
"more or less" 26 feet 50 feet

pp.84,86,87,90,  
91,92,93.

105 King Street  
"more or less" 25 feet

Total dimensions (originally stated) of Nos. 101, 103 and 105 King Street 75 feet "more or less" 40

Less slip on southern boundary of 101 King Street 5 feet

Total original stated dimensions of Nos. 101, 103 and 105 King Street as included in the respective certificates of Title of the Appellant and Respondent 70 feet "more or less".

10 (ii) Mr. Bourke's plan. Ex. 2.  
 Eastern frontage measurement of premises in possession of Respondent 38 ft. 6 ins. p.63. L.38.  
 instead of 45 ft. more or less

Eastern frontage of premises in possession of the Appellant 32 ft. 6 ins. p.63. L.40.  
 instead of 25 ft. more or less

20 Total length of Eastern frontages 71 feet

Adding the disputed area, which has an eastern frontage of 6 ft. 6 ins. to the premises in the possession of the Respondent and deducting it from the premises in the possession of the Appellant, the frontages would be as follows :-

30 Nos.101 & 103 King Street 45 feet  
 No. 105 King Street 26 feet

(b) By adjacent properties.

(i) The documents of title.

These consistently indicate the western boundaries of the properties as being co-extensive with the eastern boundaries of the corresponding properties in Chancery Lane as follows :-

40 105 King Street with 12 Chancery Lane  
 103 " " " 10 " "  
 101 " " " 8 " "  
 (save for 5 ft. slip on South).

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(ii) Mr. Bourke's plan.

This shows that if the disputed strip is included in 105 King Street, there is no such correspondence of the western boundaries, and that the said property would abut to the West on to both No.12 and No. 10 Chancery Lane; whereas if the disputed strip is included in 103 King Street, precisely the same correspondence is obtained.

p.51. 11. At the trial it was contended by the Respondent who appeared in person :- 10

pp.83,96 & 92. (i) That the measurements contained in the Appellant's and the Respondent's Certificates of Title which were not expressed to be exact but which were given "more or less", when compared with the exact present measurements of Mr. Bourke showed that the disputed strip was part of the land comprised in the Respondent's Certificate of Title to 101 and 103 King Street.

Ex. 2 and p.98.

(ii) That the documents lodged by the Appellant and the Respondent's predecessors in title with their applications for registration, showed that the disputed strip was on 21st January 1901 part of Nos. 101 and 103 King Street. 20

(iii) That the existing fence had been wrongfully re-erected by the Appellant in 1937 not along the line of the true or the then existing southern boundary of No.105 King Street, but in its present position encroaching upon Nos. 101 and 103 King Street. 30

(iv) Alternatively that if the said fence were not wrongfully so re-erected by the Appellant, it was so erected by one of the Appellant's predecessors in title for the benefit of No.105 King Street subsequent to the initial registration of Nos. 101 and 103 King Street on 21st January 1901.

(v) That as the bona fide transferee for value of Nos. 101 and 103 King Street, and as the registered proprietor thereof, the Respondent was entitled to possession of the disputed strip under the Registration of Titles Law. 40

(vi) That this was not a boundary dispute, which was the type of dispute to which Section 46

of the Limitation of Actions Law was directed. The area of the disputed strip was roughly one fifth of the land in the Appellant's possession; and the land was a small city lot and not a large country property.

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(vii) That the Respondent in any event had not acquiesced in the alleged boundary.

10 (viii) That the Respondent's rights under the Registration of Titles Law were paramount to any claim under the Limitation of Actions Law.

12. At the trial it was contended on behalf of the Appellant:-

p.21.

(i) That the line of the existing boundary fence between Nos.103 and 105 King Street had remained unaltered since as far back as 1902, and was the true boundary between the said properties.

20 (ii) That by reason thereof the description of the said properties in the said Certificates of Title by street numbers and boundaries should prevail, and that the description of the same by ad-measurement should be rejected as falsa demonstratio.

(iii) Alternatively that the Appellant was entitled to rely upon the acquiescence of the Respondent and/or his predecessors in title to the said boundary, and upon the provisions of Section 46 of the Limitation of Actions Law.

30 (iv) That the Appellant's and the Respondent's Certificates of Title should be rectified by altering the measurements thereon to accord with those on the ground.

13. In his reserved Judgment the learned Trial Judge preferred the oral evidence of the Appellant and his witnesses to that of the Respondent and his witnesses as to the line of the boundary fence prior to 1937; read the deposition of the late Mrs. Eugenia Blanche Bonitto (the second Mrs. Bonitto) as being more favourable to the Appellant than to the Respondent; and found that the existing boundary fence between 105 and 103 King Street had remained undisturbed for a period going back prior to the year 1902. He rejected the measurements contained in the said Certificates of Title

pp. 35-42.

p.41 L.29.  
p.106  
p.42. L.1.

p.42.

Record

- p.43. as falsa demonstratio, and held that the remaining description of the said lands therein by street numbers and boundaries ought to prevail. He found "on a question of fact, that the disputed strip of land falls within the boundaries of 105 King Street". The learned Judge does not appear specially to have considered the effect of the description by boundaries, but to have based his decision upon the identification by street numbers alone coupled with his findings as to the boundary fence. He accordingly dismissed the Respondent's claim, and on the Counterclaim granted the Appellant the declaration he sought. 10
- pp. 44-47. 14. The Respondent appealed by Notice dated 7th August, 1953, to the Court of Appeal.
- pp. 57-67. 15. In it reserved Judgment dated 30th July, 1954, the Court of Appeal, Carberry C.J., MacGregor and Rennie JJ. unanimously allowed the Appeal. They held that the only question for them was whether the disputed strip was included in the lands comprised in the first Certificate of Title to Nos. 101 and 103 King Street issued to Morris Aria Bonitto on 21st January 1901, because if that were established, a new Certificate of Title having been issued in respect of the said property to the Administrator General of Jamaica on the 16th October 1941, they were bound by the decision of the Court of Appeal in Goodison v. Williams (1931) Clark's Reports 349 to find for the Respondent. 20
- p.62 L.21.
- p.62 L.46. They accordingly compared in detail the measurements contained in the respective Certificates of Title with those existing on the ground, and pointed out that there was a discrepancy of 1 foot in the overall measurements of the three properties and that what was occupied by the parties coincided neither with the individual plots nor with the whole. They concluded that either the said measurements were inaccurate as a whole, or that that of No.105 King Street alone was inaccurate, and that the Appellant was in possession of more land than he was entitled to under his title. The remaining descriptions in the Certificates of Title namely by street numbers and boundaries, standing alone, were valueless, so they held that they were entitled to consider extrinsic evidence to identify the parcels and to test the accuracy of these measurements. 30
- p.63.
- p.64 L.1. 40
- p.64 L.22. 16. The Court considered two sources of evidence,

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the first being the alleged de facto boundary. They observed that the evidence as to the zinc fence went back no further than 1902, whereas the material date for consideration was 21st January 1901. Therefore, as they had to be read with this limitation, the trial Judge's findings did not assist. Nor did they share the trial Judge's view that this was a boundary fence, since after the material date Nos. 103 and 105 King Street had been in what the parties regarded as the common ownership of Morris Aria Bonitto, who was therefore in a position to make any alteration in the siting of the fence that suited his convenience. There was no direct evidence or finding as to the date when the most southerly of the outbuildings on 105 King Street had been erected on the disputed strip, but Mr. Bourke's plan (made without entry on the site) appeared to indicate that it had been erected at a point of time subsequent to that when the main range of outbuildings had been constructed. The Court had before it an application by the Respondent to call further evidence as to this, including a plan of the buildings then apparently forming part of 105 King Street prepared by a Mr. Gladstone Rushworth Priestley on 21st August 1947 for submission apparently to the City Council on behalf of the Appellant, which was to the same effect as Mr. Bourke's plan. It is not clear from the record how the Court dealt with this application, but during the hearing of the Appeal the Court itself visited the premises, and as a result said that the material outbuilding was in fact plainly a subsequent addition. This source was therefore inconclusive.

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17. Secondly the Court considered the documentary evidence relating to the adjacent properties. They emphasised that when No.103 King street had been first acquired by James Ogilvie on 13th March 1885, it had been described as measuring North to South 26 feet and East to West 161 feet, which indicated a straight northern boundary of the latter length. In his application to bring the land under the Registration of Titles Law, James Ogilvie declared that he had previously sold the western portion of 103 King Street measuring North to South 26 feet and East to West 75 feet to George White, who in turn had sold to James Guilford Binns. In his application James Ogilvie was required (section 27 and the First Schedule of the Registration of

p.64 L.24.  
p.65 L.20,  
p.106.

p.66 L.28.

Ex.2.  
p.66 L.44.

pp. 52,53.

pp. 54-56.

p.66 L.48.

p.65 L.30.  
p.75.  
p.75 L.29.

p.71.

p.77 L.33.  
p.72 L.29.



|                                 |  |    |
|---------------------------------|--|----|
| <u>Record</u>                   | Titles Law) to state the name of the occupants and owners of contiguous properties, and in respect of the western boundary of 103 King Street he stated that the contiguous property was No. 10 Chancery Lane owned by the said James Guilford Binns and occupied by one Ernest Wilson. It followed, the Court concluded, that the north eastern corner of No.10 Chancery Lane should coincide with the north western corner of No.103 King Street, the northern boundary of both being in a straight line. This conclusion was supported by the form of application of Eugenia Blanche Bonitto to bring 105 King Street under the Registration of Titles Law, since in the said application the western boundary of No.105 King Street was stated to be contiguous with the eastern boundary of No.12 Chancery Lane, without any reference being made to No.10 Chancery Lane which should have been made if the Appellant's contentions were correct. Tested as aforesaid the measurements of No. 101 and 103 King Street in the said Certificates of Title were shown not to be false. | 10 |
| P.71 L.28 & L.36.<br>p.65 L.39. |  |    |
| p.84.                           |  |    |
| p.85 L.18.                      |  |    |
| p.66 L.24.                      |  | 20 |
| p.67 L.7.                       | 18. The Court summarised the position by finding the following facts :-  |    |
|                                 | "In March 1885, the premises 103 King Street and 10 Chancery Lane were held as one holding, the northern boundary of both being a straight line. At some time thereafter, and before December 1900, the portion now known as 10 Chancery Lane was sold. But the northern boundary of both properties was still a straight line. At the time of the application for registration the northern boundary of No. 103 still remained where it had been at the time of the sale of what now is 10 Chancery Lane. At the date of the wedding of Morris Aria Bonitto to Eugenia Blanche Bonitto the fence had been moved and the room had been extended. That removal and extension could only have taken place after Morris Aria Bonitto entered into possession of No. 103. At the time therefore of the registration, No.103 included the disputed strip."  | 30 |
| p.67 L.20.                      | The Court accordingly allowed the appeal, granted the Respondent the declaration he sought, together with possession of the disputed strip and an order for the assessment of mesne profits.   | 40 |

19. It is submitted that the Court of Appeal's decision on the facts, and its answer to the second question posed is clearly correct. Bearing in mind that the material measurements of Nos. 103 and 105 King Street in the respective Certificates of Title are expressed to be "more or less", the discrepancy of one foot between the total frontage of the three properties of 70 feet as provided in these Certificates, and that of 71 feet which existed on the ground, was wholly insufficient to justify the total rejection of such measurements as falsa demonstratio. It is submitted that these measurements, standing alone, afford strong prima facie evidence that the disputed strip was in fact part of Nos. 101 and 103 King Street on 21st January 1901. Any doubts that might exist are resolved by a consideration of the other documents of title and statutory declarations, which it is submitted point irresistibly to the conclusion that the true boundaries in King Street are co-extensive with those existing in Chancery Lane in relation to these properties.

Record

20. The very strongest evidence would be required to displace the conclusion prima facie to be drawn from these measurements and from the boundary evidence. But the evidence upon which the Appellant relies is not of that quality. In relation to the alleged boundary line the earliest direct oral evidence was of Mr. Russell Elliott Lewars who purported to speak of his recollection as a boy of eight in 1919. With reference to the deposition of the late Mrs. Eugenia Blanche Bonitto, it is submitted in view of the patent contradiction between her answers in cross-examination and her answers in re-examination, no reliance should be placed thereon. Therefore the gap in the history of this alleged boundary line between 1901 and 1919, if it can be filled at all, can only be filled by inference. If any such inferences are to be drawn, it is submitted that those drawn by the Court of Appeal are the most probable and are to be preferred.

p.31 L.6.

21. The Respondent humbly submits that the judgment of the Court of Appeal is right, and ought to be affirmed, for the following among other

p.57.

REASONS

1. BECAUSE the disputed strip is comprised in

Reasons

the Certificates of Title granted to the Respondent's predecessors in title and the transfer to him was duly registered thereon;

2. BECAUSE the said Certificates of title, coupled with the documentary and other evidence relating to measurements, establish the Respondent's title to the disputed strip;
3. BECAUSE nothing in the Limitation of Actions Law operates to destroy the title of the Respondent, who is a bona fide transferee for value;
4. BECAUSE on the whole of the evidence the Respondent's case is made good;
5. BECAUSE the reasoning of the learned judges in the Court of Appeal is to be preferred to that of the learned trial judge.

D. N. PRITT.

DAVID S. HUNTER.

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IN THE PRIVY COUNCIL

No. 15 of 1956

ON APPEAL  
FROM THE SUPREME COURT OF JAMAICA  
COURT OF APPEAL

B E T W E E N:

JAMES CLINTON CHISHOLM      Appellant  
(Defendant)

- and -

JAMES HALL (Plaintiff)      Respondent

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CASE FOR THE RESPONDENT.

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for the Respondent.