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No. 11 of 1971

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
ON APPEAL FROM THE COURT OF APPEAL OF THE  
BAHAMA ISLANDS

B E T W E E N :

CLOTILDA EUGENIE HIGGS                      Appellant

- and -

NASSAUVIAN LIMITED                      Respondents

CASE FOR THE APPELLANT

Record

- 10    1.    This is an Appeal, by leave of the Court of Appeal of the Bahama Islands, from a Judgment of that Court dated the 5th November, 1970, dismissing an appeal by the Appellant from a Judgment of the Supreme Court of the Bahama Islands (the Honourable Mr. Justice H.C. Smith) dated the 29th January, 1970, granting a Certificate of Title to the Respondents and dismissing the Appellant's adverse claim. P.153  
P.106  
P.87
  
- 20    2.    The proceedings were instituted by the Respondents on the 23rd August, 1967, by a Petition seeking the grant of a Certificate of Title under Section 17 (1) (c) of the Quieting Titles Act, 1959, in respect of two defined tracts of land. One tract ("Tract A") was 92.33 acres in area, and the other ("Track B") was 12.33 acres in area. The two tracts are delineated on the plans, and therein coloured pink and blue respectively which plans will be available at the hearing. The Respondents claimed to be the owners in fee simple in possession of an undivided one fourth part or interest in Tract A, and of the entirety of Tract B. P.1
  
- 30    3.    There were two Adverse Claimants, Mr. Roger Charles Adderley and the Appellant, who were brother and sister and the children of Daniel D. Adderley, who died in 1934 and through whom they claimed the land the subject of the Petition. P.14  
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The Adverse Claimants claimed ownership of Tract A under a documentary title, and if and so far as necessary they claimed to have been in adverse possession of both tracts for the requisite period of 20 years.

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4. The Respondents' documentary title was as follows:-

TRACT A

(1) Tract A forms part of the Southern portion of an estate known as "Goodman's". In 1890 the Southern portion, together with the Northern portion, was owned by Joseph Richard Adderley, William Campbell Adderley, Daniel D. Adderley, and Sarah Ann Bain as tenants in common in equal shares. 10

(2) By a Conveyance dated 8th May 1890 the Northern portion was sold to William Clough, and the four Vendors acknowledged the receipt of the purchase price.

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(3) By a sale and Conveyance dated the 25th May 1892 made by the Honourable Frederick Craigie Halkett Provost Marshall of the Bahama Islands under the authority of a writ of venditioni exponas the undivided one fourth part or interest of William Campbell Adderley in Tract A was conveyed to James Austin Thompson. 20

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(4) James Austin Thompson died on the 8th April, 1916, and documentary title to the one fourth part or interest in Tract A remained vested in his Widow or Executors until November 1939. By a Conveyance dated the 2nd November 1939 the one fourth part or interest was conveyed to The Caves Company Limited, from which the Respondents ultimately deduced title. 30

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TRACT B

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(5) The Respondents deduced a documentary title commencing with a Crown Grant to The Caves Company Limited dated the 15th May, 1940.

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5. The Adverse Claimants alleged that on the sale of the Northern portion of "Goodman's" to William Clough in 1890 there was an informal partition, Joseph Richard Adderley and William Campbell Adderley retaining for their own benefit the whole of the purchase price, and releasing their interests in Tract A, which thereafter belonged solely to 40

Daniel D. Adderley and Sarah Ann Bain. They further claimed that, following the sale of Tract A by the Provost Marshal in 1892, Daniel D. Adderley and Sarah Ann Bain satisfied the Purchaser James Austin Thompson that William Campbell Adderley had no interest in Tract A, and repaid the purchase price. At the Trial, uncontradicted evidence was tendered by the Appellant (who was born in March 1890) that after the sale of the Northern portion to William Clough, neither William Campbell Adderley, who never married, nor Joseph Richard Adderley or his children ever returned to Tract A; and that after the sale by the Provost Marshal in 1892 neither the Purchaser James Austin Thompson nor any member of his family ever entered into possession of Tract A. Corroborative evidence was tendered by the Adverse Claimant Roger Charles Adderley (who was born in 1897) and Kenneth Higgs.

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6. At the Trial, evidence was tendered on behalf of the Adverse Claimants from a large number of witnesses who had worked the land the subject-matter of the Petition, either as members of the Adverse Claimants' family, or as their tenants. The land was mostly arable, but some consisted of pine barren. The witnesses testified that, from the late part of the last century, Daniel D. Adderley and his family or their tenants had farmed the land, or carried on lime-burning or coal-burning there, without interruption or interference from James Austin Thompson or any member of his family. Crops grown included corn, yarn, pigeon-peas, pumpkins, tomatoes, mango, peas, pineapples, okra, beets, turnips, potatoes, cassava, beans and watercress. In addition, fruit trees were planted, including lemon, orange and pear. Some crops, particularly tomatoes, were grown on what have been described as a "peripatetic" system of farming, but this was not so in the case of other crops, particularly potatoes, okra and watercress, and the fruit orchards must of course have been permanently sited.

7. The Adverse Claimant Roger Charles Adderley testified to the period 1908-1915. He stated that he was last on the land in 1914-15. He said that his Father Daniel D. Adderley had let the land to tenants who paid one third of the produce to him by way of rent; and he recalled tomato and cassava crops being grown.

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8. The Appellant was born in 1890, and testified that she first went on the land as a schoolgirl. She said that her Father Daniel D. Adderley had been a tailor, and that he originally had 6 tenants, whom she named. From 1920 until his death in 1934 he had lived on the land and farmed it himself with his tenants. After he died, tenants stayed on the land and farmed continuously; and the Appellant's Husband acted as overseer. The Appellant stated that farming was done by keeping moving through the land, and that no spot was continuously farmed; but she also stated that potatoes were always grown on the same spot. Women farmed up to 2 acres, men up to 3 or 4 acres.

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9. Oliver Vanstock Higgs, a Son of the Appellant and the late Leonard Higgs, testified to the period since 1929 or 1930. He said that his parents then had about 5 tenants on Tract B, and that he remembered as many as 12 or more tenants at one time on Tract B. He said that part of Tract B was good farming land, and that there were farms on it in the 1930's. He described part of Tract A as being pine barren, but listed a large number of crops grown on Tract A by tenants of his Father, and said that farming had been carried on over the whole of the land at one time or another. He described the tomato farms as being some 3 to 4 acres in extent, and said that his Father and one of the tenants had fruit trees growing on the land; and that he used to supply customers with soil. He said that his Brothers began to quarry Tract A in 1950.

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10. William Milton Knowles also testified to the period since 1930. He worked for Daniel D. Adderley, and was a tenant on the land between 1930 and 1948. He said that there were a good many tenants there, and that he himself had cut down over 100 acres on different farms. He also planted fruit trees.

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11. Etheline Maycock testified to the period from 1932 to 1941/2. He farmed 1 or 1½ acres as a tenant of Leonard Higgs. He remembered many other tenants, some of whom he named. No one disturbed any of these tenants during this period.

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12. Osborne Higgs, another Son of the Appellant and the late Leonard Higgs, testified to the period since 1934. He remembered several of his Father's tenants at that time, and could remember six farms on the land in the early war years. He recalled seeing the lemon trees. He stated that no member of the Thompson family had ever disturbed him or his family. He said

that his Father grew tomatoes, okras and sugar cane. He had four acres or so at a time for tomatoes, and followed them by other crops on the same piece of land, and then planted fruit trees. He said that he had farmed the land himself since 1950, and planted some 10-15 acres.

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10 13. Kenneth Higgs, the third Son of the Appellant and the late Leonard Higgs, also testified to the period since 1934. He said that no one had ever been on the land except his Father and his family and their authorised tenants. He said his Grandparents had grown pineapple and citrus fruits for export. He said that the land was worked from end to end, being farmed where fertile and other parts for coal- and lime-burning. He said that he and his family used to eject trespassers. He said that rock-crushing had begun in 1946, and on a large scale since 1954.

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20 14. Dudley Johnson testified to the period from 1943 to 1960. He farmed on the land as a tenant of Leonard Higgs. He farmed some 10 acres, one farm being some 2 to 3 acres in extent. He said that there were farms all through the land and that Leonard Higgs farmed the greater part. He described Leonard Higgs as having a pear orchard. He himself grew okras, potatoes, cassava and tomatoes; okras were planted in the same spot. He had watercress planted on one piece of land for 5 years.

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30 15. Aerial photographs of the land taken in 1943 and 1958 were put in evidence on behalf of the Appellant, and interpreted by expert witnesses. Mr. Patrick Bowe stated that the photograph taken in 1943 showed at least 12 or 13 farms on the two tracts to the North West of the old pipeline, and that to the South of the road running East-West the area had been cleared as a whole. Mr. Francis Garroway stated that the earlier of the two photographs showed that approximately 40% of the usable part of the land was being cultivated in 1943. He considered the degree of cultivation to be more intense on Tract A than on Tract B.

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40 16. The evidence led on behalf of the Respondents consisted of testimony by employees of theirs or their predecessors in title The Caves Company Limited, which had acquired a documentary title to Tract A in November 1939 and to Tract B in May 1940. Only one witness (Mr. Ted Knowles) claimed to have

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known the land before the War. He said that he had been on the land "off and on" from 1937 to 1941, but not since 1941. He had overseen the cutting of a road through the land as well as other land of the Caves Company Limited, and had stopped the road once a year up to 1959. The road was cut on the instructions of Sir Henry Oakes, who was wrongly described by the Trial Judge as a predecessor in title of the Respondents, but who in fact never had any interest in the land. Moreover, there was no evidence that Mr. Ted Knowles entered on the land in order to stop the road; and the inference is that he did not. The only other evidence of possession tendered by the Respondents was that of Mr. Clifton Donald Borer, who said that boundary markers had been erected in 1950/1, and Mr. Andrew Gordon Sommervill O'Brien, who said that his firm had carried out a survey of the land for The Caves Company Limited in 1962.

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17. No evidence was tendered on behalf of the Respondents as to any period before 1937. There was thus no evidence before the Court of the purpose for which James Austin Thompson purchased Tract A in 1892, or to which he or his Widow intended to put the same during their respective periods of ownership. Nor was there any evidence contradicting that of the Appellant and her witnesses that neither James Austin Thompson nor his Widow or any member of his family ever entered into possession of Tract A or any part thereof, and that they never exercised any acts of ownership in respect thereof, and never disturbed Daniel D. Adderley, Leonard Higgs or the Appellant, their families and tenants in their possession of Tract A.

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18. The Honourable Mr. Justice H.C. Smith found that the Respondents had established a good documentary title to both tracts. The Appellant does not challenge that ruling. On the question of adverse possession, the learned Judge found that the farming activities relied upon by the Appellant were "sporadic" and insufficient to constitute 20 years' continuous and exclusive possession of the whole land. He held that the cutting of a road, the stopping of that road from time to time, and the cutting of lines by a surveyor, the erection of markers and periodical inspection, constituted sufficient acts of possession by the Respondents and their predecessors in title to negative any discontinuance of possession. He did not expressly refer to Tract B, but granted the Respondents the Certificates of Title prayed for and dismissed the claims of the Adverse Claimants with costs.

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19. The Adverse Claimants appealed to the Court of Appeal of the Bahama Islands. When the matter came before that Court, the Claimant Roger Charles Adderley sought the leave of the Court to withdraw his appeal, and this was allowed.

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10 20. The Court of Appeal reviewed the evidence and dismissed the appeal. The Court held that what was described as a "peripatetic" system of farming was insufficient to constitute that degree of continuous and exclusive possession of the whole land or any particular portion thereof required to oust the persons having a documentary title; and that the cutting of the road, stopping the road, erection of markers, surveying the land, and periodical inspections of the land on the part of The Caves Company Limited were sufficient to maintain their possession of the land.

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20 21. The Appellant respectfully submits that in reaching the first of these conclusions the Court of Appeal adopted the wrong approach. There was no evidence that James Austin Thompson or his Widow ever took possession of any part of the land, and uncontradicted evidence that they did not. The Court of Appeal ought to have considered, not whether the acts of possession relied upon by the Appellant were sufficient to oust an owner in possession, but whether they were sufficient to bar the title of an owner who was never in possession. In the absence of any evidence of the purpose for which James Austin Thompson purchased the land, or that the acts of possession relied upon by the Adverse Claimants was not inconsistent therewith, the Court of Appeal ought to have held that the title of James Austin Thompson and his Widow and Executors to Tract A was extinguished by 1912, or alternatively 1936, or 1940 at the latest.

40 22. Further, the Appellant respectfully submits that the Court of Appeal was unduly impressed by what was described as the "peripatetic" nature of the activities carried on upon the land by the Adverse Claimants and their predecessors, and ignored both the true character of the farming methods employed and the important fact that all these activities were carried on within a well defined area of land. Furthermore, they overlooked the facts that the Adverse Claimants and their predecessors were at all materials times in sole and exclusive receipt of the rents and profits of the whole of the land; and that

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those in possession were not strangers lacking all title to the land, but were lawfully entitled to an undivided one fourth part or interest therein. In favour of such persons, the Appellant respectfully submits that exclusive possession of any part of a defined area, such as Tract A, is referable to the whole, and if inconsistent with the interests of those entitled to the remaining shares, is capable of extinguishing the shares of such persons.

23. In holding that the Respondents had established sufficient acts of possession by them or their predecessors to negative any discontinuance, the Court of Appeal relied upon acts, some of which (the cutting of the road) were not the acts of the Respondents or their predecessors in title, and others of which (the stopping of the road) were not shown to have been done on the land; and all of which took place long after the Respondents' title was barred. All such acts were irrelevant. Alternatively, the Court of Appeal ought not to have found the Appellant's possession to be consistent with the purpose for which the Respondents or their predecessors had purchased the land, as to which there was no or no sufficient evidence; and in any event they failed to consider whether the family activities, which were extensive and could not properly be described as merely "sporadic", coupled with the receipt of rents and profits by the Appellant or her predecessors, were not inconsistent with that purpose. 10 20

24. Finally, the Appellant respectfully submits that the finding of the Court of Appeal was against the weight of the evidence. 30

25. The Appellant accordingly submit that the judgment of the Court of Appeal dated the 5th November, 1970, was wrong and ought to be set aside, and that in lieu thereof a Certificate of Title to the land the subject-matter of the Petition ought to be granted to the Appellant, for the following, among other

R E A S O N S

(1) BECAUSE there was no evidence that the persons having the documentary title or any of them entered into possession of Tract A or any part thereof at any time before 1939 or alternatively 1937. 40



- (2) BECAUSE the evidence of possession of Tract A on the part of the Appellant and her predecessors in title ought to have led to a finding of discontinuance of possession by the persons having the documentary title thereto.
- 10 (3) BECAUSE there was no evidence of the purpose for which James Austin Thompson purchased Tract A, or that the acts of possession relief upon by the Appellant were consistent therewith.
- (4) BECAUSE the Appellant and her predecessors were in exclusive possession of both tracts and sole receipt of the rents and profits thereof for the requisite period of 20 years.
- (5) BECAUSE the title of the Respondents to Tract A was extinguished by 1912 or alternatively 1936, or 1940 at the latest.
- (6) BECAUSE the title of the Crown to Tract B was extinguished by 1933 or 1952 at the latest.
- 20 (7) BECAUSE there was no or no sufficient evidence of any acts of possession by persons having a documentary title during any relevant period.
- (8) BECAUSE the decision of the Court of Appeal was contrary to the weight of the evidence.
- (9) BECAUSE the judgment of the Court of Appeal was wrong and ought to be set aside.

GERALD GODFREY

P.J. MILLETT

No. 11 of 1971

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PRIVY COUNCIL

ON APPEAL FROM THE COURT OF  
APPEAL OF THE BAHAMA ISLANDS

B E T W E E N :

CLOTILDA EUGENIE HIGGS Appellant

- and -

NASSAUVIAN LIMITED Respondent

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CASE FOR THE APPELLANT

WILSON FREEMAN,  
6/8, Westminster Palace Gardens,  
London SW1P 1RL.