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O N A P P E A L

FROM THE COURT OF APPEAL OF THE BAHAMA ISLANDS

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B E T W E E N

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| CLOTILDA EUGENIE HIGGS | Appellant  |
| - and -                |            |
| NASSAUVIAN LIMITED     | Respondent |

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CASE FOR THE RESPONDENT

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1. This is an appeal from the unanimous decision of the Court of Appeal of the Bahama Islands (Bourke P., Archer J.A. and Hogan J.A.) given on the 5th November 1970, dismissing the appeal of the Appellant from the judgment and order of the Supreme Court of the Bahama Islands, Equity Side (Cunningham Smith J.) dated the 29th January 1970 in favour of the Respondents.

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2. The appeal arises from a Petition by the Respondent under the Quieting Titles Act of 1959 (Chapter 133 of the 1965 Revised Statutes). Under that Act, a person claiming an interest in land may apply to the Court for a certificate of title. Such a certificate of title is conclusive proof of the claimant's title, and is binding on all persons including the Crown (subject only to any question of fraud): see section 8. The Act therefore operates in rem. pp.1-3

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3. The Respondent's Petition related to two interests. The first was an undivided one-fourth share in an area of 92.33 acres on the south-west side of Harrold Road, Western District, New Providence Island, shown coloured pink on the plan attached to the Petition, and hereinafter called "the pink land". (In the Bahama Islands, there is no legislation comparable to the

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English Law of Property Act 1925 sections 34-36, and accordingly it remains possible to have a legal tenancy-in-common.) The second interest was the absolute fee simple in an area of 12.52 acres on the south-west side of Harrold Road, adjoining the pink land, shown coloured blue on the plan attached to the Petition, and hereinafter referred to as "the blue land."

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|-------------------------------|---|----|
| pp.29-45<br>pp.45-78          | 4. The Appellant and one Roger Charles Adderley claimed titles adverse to the Respondent. At the trial, 4 witnesses gave evidence on behalf of the Respondent, and 13 witnesses (including the Appellant and Roger Charles Adderley) gave evidence for the Appellant and Roger Charles Adderley. By his Order, Gunningham Smith J. directed that the adverse claims of the Appellant and Roger Charles Adderley be dismissed with costs, and that a Certificate of Title be issued to the Respondent in respect of both interests claimed in the Petition. Although a notice of appeal was entered on behalf of Roger Charles Adderley, he appeared in person before the Court of Appeal and withdrew his appeal, stating that he had never wanted to appeal. | 10 |
| p.93                          |   |    |
| pp.93-96<br>pp.108<br>ll. 1-7 |   | 20 |
| p.5<br>ll.10-33               | 5. It was held by both Gunningham Smith J. and the Court of Appeal (and conceded in the Court of Appeal on behalf of the Appellant, subject to the points mentioned in paragraphs 8 and 9 below) that the Respondent had shown a good documentary title to both interests. The Respondent's title to the one-fourth share in the pink land commenced with a Conveyance dated the 25th May 1892 from the Provost Marshal of the Bahama Islands to James Austin Thompson. In November 1939 this one-fourth share was acquired from successors of James Austin Thompson by The Caves Company Limited, a company connected with the late Sir Harry Oakes.   | 30 |
| p.6                           |   |    |
| p.7                           | The Respondent's title to the blue land commenced with a Crown Grant dated the 15th May 1940 in favour of the The Caves Company Limited. Thereafter both interests devolved first on the Trustees of the Will of Sir Harry Oakes and from them on the Respondent, which is connected with the Trustees.   | 40 |
| pp.8-14                       |   |    |
| pp.18-27                      | 6. The Appellant and Roger Charles Adderley showed no documentary title to the blue land. They did, however, show a documentary title to an interest in the pink land. The pink land  | 50 |

10 forms the southern portion of a tract of land known as "Goodmans", which by 1890 was owned by Joseph Richard Adderley, William Campbell Adderley, Daniel Dewellmair Adderley and Sarah Ann Bain as tenants in common. On the 8th May 1890, the northern portion of the said tract was sold to one William Clough, and by the Conveyance of that date each of the four tenants in common conveyed his or her undivided fourth share in the northern portion in consideration of the sum of \$854 and acknowledged receipt of that sum. Thereafter each of the four tenants in common retained a one-fourth share in the pink land. The share of William Campbell Adderley was sold by the Provost Marshal, by the Conveyance mentioned in paragraph 5 above which forms the root of the Respondent's title.

pp.23-24

20 7. Daniel Dewellmair Adderley was the father of the Appellant and Roger Charles Adderley. He died in 1934, having by his Will made in 1930 devised "one quarter interest in the Goodman tract of land situate in the Western District of the Island of New Providence" to his four children Richard Crowther Adderley, the Appellant, Roger Charles Adderley and Mary Ellen Adderley as tenants in common, subject to a prior life interest in favour of Frederick William Adderley. Cunningham Smith J. held, and it was not disputed, that Mrs. J. devise related to the pink land. Frederick William Adderley died in 1945, and the Appellant and Roger Charles Adderley thereupon each became entitled to a one-sixteenth share of the pink land in possession. The Appellant and Roger Charles Adderley became entitled to a further share in the pink land on the deaths of their brother and sister, Richard Crowther Adderley and Mary Ellen Adderley.

p.26

p.88

11.36-41

p.27

40 8. The Appellant made two preliminary allegations to defeat the Respondent's documentary title. Firstly she alleged that on the sale of the northern part of Goodmans to William Clough, the whole of the purchase price was received by Joseph Richard Adderley and William Campbell Adderley, and that they agreed that the other two vendors, Daniel Dewellmair Adderley and Sarah Ann Bain, should thenceforth be the sole owners of the pink land. Thus in effect she alleged that there had been a partition agreement. No documentary evidence of such a

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p.52 ll.1-17

p.67 ll.13-16

p.89 ll.1-13

p.109 l.37-

p.110 l.6

p.134 l.38-

p.135 l.10

p.146 l.18-

p.147 l.4

p.52 i.36-

p.53 l.5

p.69 ll. 22-28

p. 89 ll. 14-33

p.131 l. 45-

p.132 l. 16

p.147 ll. 2-6

partition was produced, and the sole evidence of it was hearsay evidence given by the Appellant and Roger Charles Adderley. This evidence conflicted with the terms of the Conveyance to William Clough and of Daniel Dewellmair Adderley's Will, and it was rejected by Cunningham Smith J. at first instance, and by all three members of the Court of Appeal.

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9. The second of the Appellant's allegations was that the debt of William Campbell Adderley had been paid to the Provost Marshal by Daniel Dewellmair Adderley prior to the Conveyance of the 25th May 1892 which formed the root of the Respondent's title to the pink land, and consequently that the Conveyance was invalid. The only evidence of this was the hearsay evidence of the Appellant and of her son Kenneth Higgs which was rejected by Cunningham Smith J. at first instance and by Archer J.A. and Hogan J.A. in the Court of Appeal (Bourke P. did not deal expressly with the point.) The Respondent will further contend (if and insofar as may be necessary) that, even if the debt had been repaid as alleged, on the true construction of the Conveyances by Provost Marshal Act (Chapter 116), the purchaser under the Conveyance, James Austin Thompson, would have acquired a good title to the interest thereby conveyed.

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10. The main contention of the Appellant and Roger Charles Adderley at first instance, and of the Appellant before the Court of Appeal, was that the title of the Respondent and its predecessors to both interests had been barred by limitation. The relevant statutes applicable in the Bahama Islands are the Real Property Limitation (No.1) Act (Chapter 148) and the Real Property Limitation Act (1874) (Chapter 150) which reproduce the material parts of the English Real Property Limitation Acts 1833 and 1874. The limitation period remains at 20 years.

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11. The evidence in support of this claim at the trial was largely directed to two issues: (1) whether the Respondent and its predecessors in title had done

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sufficient acts of possession not to have discontinued possession of the lands and (2) whether the Adderley family had been in adverse possession of the lands.

10 12. On the first issue, evidence was given on behalf of the Respondent (i) that the lands were part of a large area of several thousand acres owned by Sir Harry Oakes or his companies and intended for eventual development, (ii) that a track road had been put through the lands by Sir Harry Oakes, (iii) that the track road had been stopped once a year between 1940 and 1959, (iv) that the land had been surveyed and markers with a view to development put on it in 1950 or 1951, and (v) that there had been periodical inspections of the lands. Cunningham Smith J. accepted this evidence, and held that they amounted to sufficient acts of possession.

p.90 11.3-42

20 13. In the Court of Appeal, it was submitted on behalf of the Appellant the above acts were insufficient. Archer J.A. and Hogan J.A., after referring to Leigh v. Jack (1879) 2 Ex.264 and Williams Bros. Direct Supply Ltd. v. Raftery /1958/ 1 Q.B. 159 held that the acts proved were sufficient. Bourke P, agreed, but went further, holding on the authority of Kingston Race Stand v. Mayor of Kingston /1897/ A.C.509. that as the Respondent's title was undisputed, evidence of possession was unnecessary. The Respondent will, if necessary, contend that Bourke P. was correct: see Tecbild Ltd. v. Chamberlain (1969) 20 P. & C.R.633 (C.A.).

p.136 1.14-  
p.137 1.18  
p.147 1. 8-  
p.148 1.42  
p.123 1.31-  
p.125 1.24

30 14. On the second issue, Cunningham Smith J's judgment was summarised by Bourke P. as follows :-

40 "The Judge investigating the title in the Court below referred specifically, though with some brevity in his judgment to the evidence of certain witnesses relating to farming activities on the land the subject matter of the Petition. He found as a fact that any farming done was sporadic. There was never any farming of the whole of the land by the Adverse Claimant's family at any one time over a continuous period of 20 years. The judge clearly felt that he could go no further on the evidence than to accept that there was a peripatetic system of farming,

p.109 ii.2.18

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such as was considered by the Privy Council in Ocean Estates Ltd. v. Norman Pinder /1969/ 2 A.C. 19. His final conclusion was that -'the evidence taken as a whole does not prove 20 years continuous and exclusive possession of the whole land.'

Bourke P. referred to the evidence in considerable detail and concluded as follows :-

p.127  
11.38-46

"It is my view, and I would so hold, that the learned judge cannot be regarded as being wrong in his conclusions that the evidence in its entirety does not prove a 20 years continuous and exclusive possession of the whole land and that it is impossible to say on the view of the evidence taken that the Respondent has been ousted so far as the one-fourth interest it claims in Tract A is concerned

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p.128  
11.38-47

.....  
But in the instant case, in which the Appellant set out to show exclusive possession of the whole land, she did not succeed even in establishing a continuous 20 years exclusive possession of any well-defined part. The evidence revealed no user of the whole land capable of user and the acts of possession that took place ranged around on a sporadic or peripatetic system of cutting and abandoning patches of land for farming activities with coal and kiln burning now on one spot and then on another."

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Archer J.A. concluded as follows :-

p.142  
1.5-28

"The appellant undoubtedly has an undivided interest in the land in the pink area but not a claim to the whole of it and I return to the question of the adverse possession she alleged. The Respondent's acts of user were well within the statutory period and the appellant has not, therefore, shown either discontinuance or dispossession. Her acts of user which, she alleged, showed adverse possession, fell far short of the required proof, even if it be assumed that she has been in possession since the death of Frederick William Adderley, and the repeated arguments of her counsel were in the teeth of the decision in Ocean Estates Ltd. v.Pinder. There was desultory and sporadic activity over a vast area, farmers sometimes themselves choosing their own sites but there

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10 was never any time at which it could be said that a claim to the pink area was being marked out. The blue area was at all times Crown land and no vague references to family tradition can serve to incorporate it into the Adderley estate and transmit it thence to the appellant. The appellants' interest is not in conflict with that of the respondent. These interests co-exist with the interest of the other owners, whoever they may be."

Hogan J.A. reached a similar conclusion.

p.151  
11 11-19

20 15. The conclusions above set out on the claim by the Appellant to have taken possession of either the pink land or the blue land are in accord with the principles of law laid down by the Board in West Bank Estates Limited v. Arthur [1967] 1 A.C.665, which concerned land in British Guiana to which title was claimed by virtue of acts of possession consisting largely of peripatetic farming.

16. The Respondent humbly submits that this appeal should be dismissed and that the Appellant should be ordered to pay the costs thereof for the following among other

REASONS

- 30 (1) BECAUSE there are concurrent findings of fact by Cunningham Smith J. and the Court of Appeal in favour of the Respondent on all the questions of fact arising
- (2) BECAUSE the findings of Cunningham Smith J. and the Court of Appeal that there was no agreement between Joseph Richard Adderley and William Campbell Adderley on the one hand and Daniel Dewellmair Adderley and Sarah Ann Bain on the other to partition "Goodmans" were correct and in accordance with the weight of the evidence.
- 40 (3) BECAUSE the findings of Cunningham Smith J. and the Court of Appeal that the debt of William Campbell Adderley had not been repaid prior to the Conveyance dated the 25th May 1972 by the Provost Marshal in favour of

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James Austin Thompson were correct and in accordance with the weight of the evidence.

- (4) BECAUSE in any event on the true construction of the Conveyances by Provost Marshal Act (Chapter 116) James Austin Thomas obtained a valid title to the one-fourth interest in the pink land thereby conveyed
- (5) BECAUSE the facts found by Cunningham Smith J. and the Court of Appeal as to acts of possession by the Respondent and its predecessors in title were sufficient to show that the Respondent and its predecessors had never abandoned possession of the pink land and the blue land.
- (6) BECAUSE in any event it was unnecessary for the Respondent to prove such facts
- (7) BECAUSE the findings of Cunningham Smith J. and the Court of Appeal that the farming and other activities done on the pink land and the blue land by the Adderley Family and its tenants were sporadic and that there was no continuous occupation for any period of 20 years were correct and in accordance with the weight of the evidence.
- (8) BECAUSE on the facts there was no adverse possession and in this respect this case cannot be distinguished from Ocean Estates Ltd. v. Pinder supra
- (9) BECAUSE the judgments of Cunningham Smith J. and the Court of Appeal on all questions relating to this appeal were correct for the reasons given therein.

JEREMIAH HARMAN, Q.C.

NIGEL HAGUE.



NO.11 of 1971

IN THE PRIVY COUNCIL

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CASE FOR THE RESPONDENT

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