

24

IN THE PRIVY COUNCIL

No. 11 of 1971

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

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 4 JAN 1975
25 BLESSING SQUARE
LONDON, W.C.1.

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Solicitors for the Respondent

(i)

IN THE PRIVY COUNCIL

No. 11 of 1971

ON APPEAL
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B E T W E E N :-

CLOTILDA EUGENIE HIGGS

Appellant

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RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 11 of 1971

O N A P P E A L
FROM THE COURT OF APPEAL OF THE BAHAMA ISLANDS

B E T W E E N :-

CLOTILDA EUGENIE HIGGS

Appellant

- and -

NASSAUVIAN LIMITED

Respondent

R E C O R D O F P R O C E E D I N G S

10

No. 1

In the Supreme
CourtP E T I T I O NNo. 1

IN THE SUPREME COURT OF THE BAHAMA ISLANDS 1967

Petition
23rd August
1967

Equity Side

No.96

IN THE MATTER of those two parcels
or tracts of land comprising 92.33
acres and 12.52 acres respectively
and situate on the Southwest side of
Harrold Road in the Western District
of the Island of New Providence

AND

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IN THE MATTER of The Petition of
Nassauvian Limited under The Quieting
Titles Act 1959.

P E T I T I O N

To the Honourable Judges of the Supreme Court
of the Bahama Islands:

The Petition of Nassauvian Limited a
Company incorporated under the laws of the
Bahama Islands and having its registered office in
the City of Nassau in the Island of New Providence

In the Supreme
Court

No. 1

Petition
23rd August
1967

(continued)

sheweth:

1. That your Petitioner is the owner in fee simple in possession of the following land:

ALL THAT undivided one-fourth part or interest of in and to all that piece parcel or tract of land situate on the Southwestern side of Harrold Road in the Western District of the Island of New Providence comprising Ninety-two and Thirty-three hundredths (92.33) acres more or less and bounded Northwardly by land the property of the Bahamas Government, Northeastwardly by Harrold Road, Eastwardly partly by the land hereinafter described and partly by land the property of Hedley Edwards and partly by land reserved for the Bahamas Geodetic Survey, Southwardly by Crown Land and Westwardly partly by land the property of The Caves Company Limited and partly by land now or formerly the property of G. A. and S. G. Bosfield which said piece parcel or lot of land has such position shape marks and dimensions as are shown on the diagram or plan filed in this matter and is delineated on that part which is coloured Pink on the said diagram or plan

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AND ALSO ALL THAT piece parcel or lot of land situate as aforesaid comprising Twelve and Fifty-two hundredths (12.52) acres more or less and bounded Northwardly by land granted to Michael Grant, Northeastwardly by the new Harrold Road reservation leading to John F. Kennedy Drive, Eastwardly in a curved line by the old Harrold Road reservation leading to Farrington Road, Southwardly by a road reservation Thirty (30) feet wide separating the said piece parcel or tract of land from land the property of Hedley Edwards and Westwardly by the land immediately hereinbefore described which said piece parcel or tract of land has

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In the Supreme
Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

ABSTRACT OF TITLE

OF

NASSAUVIAN LIMITED

TO

ALL THAT undivided one-fourth part or interest of in and to all that piece parcel or tract of land situate on the Southwestern side of Harrold Road in the Western District of the Island of New Providence comprising Ninety-two and Thirty-three hundredths (92.33) acres more or less and bounded Northwardly by land the property of the Bahamas Government, Northeastwardly by Harrold Road, Eastwardly partly by the land hereinafter described and partly by land the property of Hedley Edwards and partly by land reserved for the Bahamas Geodetic Survey, Southwardly by Crown Land and Westwardly partly by land the property of The Caves Company Limited and partly by land now or formerly the property of G. A. and S. G. Bosfield which said piece parcel or lot of land has such position shape marks and dimensions as are shown on the diagram or plan filed in this matter and is delineated on that part which is coloured Pink on the said diagram or plan AND ALSO ALL THAT piece parcel or lot of land situate as aforesaid comprising Twelve and Fifty-two hundredths (12.52) acres more or less and bounded Northwardly by land granted to Michael Grant, Northeastwardly by the new Harrold Road reservation leading to John F. Kennedy Drive, Eastwardly in a curved line by the old Harrold Road reservation leading to Farrington Road, Southwardly by a road reservation Thirty (30) feet wide separating the said piece parcel or tract of land from land the property of Hedley Edwards and Westwardly by the land immediately

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hereinbefore described which said piece parcel or tract of land has such position boundaries shape marks and dimensions as are shown on the said diagram or plan filed in this matter and is delineated on that part of the said diagram or plan which is coloured Blue.

In the Supreme Court

_____ No. 2

Abstract of Title of Nassauvian Ltd. 23rd August 1967

(continued)

Parcel A (The Pink Land)

- 10 1. By an Indenture of Conveyance of this date The Honourable Frederick Craigie Halkett Provost Marshal of the Bahama Islands granted and conveyed (inter alia) unto James Austin Thompson "one undivided fourth part" of the following lot of land which parcel of land being part of the estate known as 'Goodman's' situate in the Western District of the Island of New Providence containing Two hundred and thirty-nine (239) acres more or less comprising a tract originally granted to Thomas Wheevel and another originally granted M. French and part of another tract originally granted to William Moss adjoining lands belonging to William Clough the said land having been sold by the Provost Marshal under the authority of a Writ of Venditione Expones issued out of the General Court at the suit of Anthony Roberts, Thomas Paul Moore, and Joseph Burnside on the 14th day of May 1892 the property of William Campbell Adderley TO HAVE AND TO HOLD the said land with all and singular the appurtenances as far as the said Provost Marshal can by law grant the same unto the said James Austin Thompson his heirs and assigns forever.
- 20
- 30

1892
25th May

Note:

- (1) The above-mentioned tract of 239 acres includes that portion of the land the subject of the Petition herein which is shown coloured Pink on the diagram or plan filed in this matter.
- 40 (2) This document a certified copy of which is produced is recorded in the Registry of Records in the City of Nassau in the Island of New Providenc in Book Z.7 at page 136.

In the Supreme
Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

1916
8th April

2. On this date James Austin Thompson died having made and duly executed his last Will and Testament dated the 23rd day of August A.D. 1901 whereby he gave and devised all his real estate of whatever description and wheresoever situate unto and to the use of his wife Rhoda as long as she might live with power to sell and dispose of any or all of the said real estate during her lifetime should she consider it advisable so to do and from and after the death of his said wife he gave and bequeathed all the rest residue and remainder of the said real estate unto his children Dora Agnes Johnson, Charles Swain Thompson, Edith Elizabeth Anderson and Margaret Alice Langlois their heirs and assigns forever as tenants in common and not as joint tenants.

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1916
22nd May

3. On this date the said Will of the said late James Austin Thompson was duly proved in the Supreme Court of the Bahama Islands on its Probate Side and Probate granted to Rhoda Thompson the Executrix therein named. A certified copy of the above-mentioned Will and Probate in the Estate of James Austin Thompson is produced.

20

1935
19th August

4. On this date Rhoda Thompson the widow of the said late James Austin Thompson died.

A death certificate is produced.

1939
2nd November

5. By an Indenture of Conveyance of this date Dora Agnes Johnson, Charles Swain Thompson, Edith Elizabeth Anderson and Margaret Alice Langlois as Beneficial Owners granted and conveyed unto The Caves Company Limited ALL THAT the undivided one-fourth part of them the Vendors of and in all that piece or parcel of land being a part of the Estate known as 'Goodman's' situate in the Western District of the said Island of New Providence and containing Two hundred and forty-five and one half (245½) acres more or less which said piece or parcel of land has such position boundaries shape and dimensions as are shown on the diagram or plan hereto attached and is delineated on that part which is coloured Pink on the said diagram or plan TO HOLD the same unto and to the use of the Purchasers and its assigns in fee simple.

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Note:

- (1) A plan of the property referred to in this Conveyance is attached thereto.
- (2) This document, a certified copy of which is produced, is recorded in the said Registry of Records in Book Q.14 at pages 177 to 180.

In the Supreme
Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

10 6. By a Renunciation of Dower of this date Dorothy Ethel the wife of Charles Swain Thompson renounced her right to dower in all the hereditaments comprised in the last mentioned Deed unto the Caves Company Limited and its assigns.

1939
4th November

This document, a certified copy of which is produced is recorded in the said Registry of Records in Book L.14 at pages 271 to 272.

Parcel B - (The Blue Land)

20 7. By a Crown Grant of this date the Crown granted (inter alia) unto The Caves Company Limited its successors and assigns ALL THAT tract of land containing One hundred and forty-three (143) acres and situate about Two (2) miles Southwest of the City of Nassau in the Island of New Providence and bounded as follows Northwardly by lands granted Michael Grant and Thomas Wheevel respectively Eastwardly by land about to be granted the Bahamas Airways Limited Southwardly by a new public road Forty (40) feet wide and by Crown Land Westwardly by 30 land granted William Moss and by the said land granted Michael Grant excepting herefrom the Harrold Road Forty (40) feet wide and portions of the said new public road Forty (40) feet wide running through the said tract as shown in the diagram drawn on the back of the said Crown Grant which said land thereby granted or intended so to be has the shape and dimensions set forth and delineated in a diagram thereof drawn on 40 the back of the said Crown Grant by the Surveyor General bearing date the Third day of May 1940 together with all easements and appurtenances thereunto belonging or in anywise appertaining except and always reserving out of this Grant etc. all silver gold or other precious metal and

1940
15th May

In the Supreme
Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

all coal and mineral oil underlying the said land also further reserving for the use of the public any and all such parts of the said land as the Governor for the time being might authorise to be converted into public roads or footpaths or to be used for any other public purpose as he may deem necessary and also reserving the right to the public to take and use for the purpose of making or improving any public road or footpath and stone loose or fixed which may be found on the said land and also reserving unto the Crown or any person authorised by the Governor the right to enter at all times and remain so long as necessary to search for win and remove all precious metal oil coal or stones or for the purpose of surveying or laying out roads or other public works TO HAVE AND TO HOLD the said land and all and singular other the premises thereby granted or intended so to be granted with their and every of their appurtenances unto the said The Caves Company Limited its successors and assigns forever yielding and paying therefor yearly and every year forever unto the Crown the rent of one peppercorn if the same should be lawfully demanded.

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Note:

- (1) That portion of the land the subject of the Petition shown coloured Blue on the plan filed in this matter is included in the above Crown Grant.
- (2) This Crown Grant, a certified copy of which is produced, is recorded in the said Registry of Records in Book G.13 at page 144.

30

Parcels A and B.

1962
6th November

8. By a Conveyance by way of Exchange of this date The Caves Company Limited as Beneficial Owner granted and conveyed (inter alia) unto Eunice Myrtle Lady Oakes, Henry Newell Kelly and Clifton Donald Borer, the Trustees of the Will of the late Sir Harry Oakes, "6. First all that undivided one-quarter part of in and to the piece parcel or tract of land situate in the Western District of the said Island of New

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Providence comprising Ninety-two and Thirty-three hundredths (92.33) acres more or less which said piece parcel or tract of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan attached hereto and marked 'F' and is delineated on that part which is coloured Pink on the said diagram or plan (Parcel A - the Pink land) and secondly all that piece parcel or tract of land situate as aforesaid comprising Twelve and Fifty-two hundredths (12.52) acres more or less which said piece parcel or tract of land has such position boundaries shape marks and dimensions as are shown on the said diagram or plan attached hereto and marked 'F' and is delineated on that part which is coloured Blue of the said diagram or plan" (Parcel B - the Blue Land) together with the appurtenances thereunto belonging to hold the same unto and to the use of the Grantees in fee simple upon the trusts and with and subject to the powers and provisions by and in the said Will of the said late Sir Harry Oakes declared and contained of and concerning the Trust Estate as therein specified for such of the same trusts powers and provisions as are now subsisting or capable of taking effect to the intent that the said hereditaments should be deemed to form a part of the Trust Estate of the said Will of the said Sir Harry Oakes

In the Supreme Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

30 Note:

- (1) This document recites (inter alia)
- (a) that the Grantor The Caves Company Limited was seised in unincumbered fee simple in possession of the hereditaments therein described in the First Schedule thereto and had agreed to exchange the said hereditaments described in the First Schedule thereto for the hereditaments described in the Second Schedule thereto
- (b) that by an Indenture of even date therewith and made between the same parties the hereditaments described in the Second Schedule thereto had been granted and conveyed to the Grantor in fee simple as therein specified in consideration of the Conveyance abstracted above

In the Supreme
Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

1964
January

(2) This document, a certified copy of which is produced, is recorded in the said Registry of Records in Vol. 602 at pages 347 to 380 while the Conveyance of even date from the Trustees of the Will of Sir Harry Oakes to The Caves Company Limited is recorded in Vol. 602 at pages 309 to 333.

9. By an Indenture of Conveyance by way of Exchange of this date made between Eunice Myrtle Lady Oakes the widow of the late Sir Harry Oakes, Bt., Henry Newell Kelly and Clifton Donald Borer all the present Trustees of the Will of the late Sir Harry Oakes (therein and hereinafter called "the Trustees") of the first part the said Eunice Myrtle Lady Oakes (therein and hereinafter where the context permits called "the Widow") of the second part the said Eunice Myrtle Lady Oakes, Nancy Tritton (nee Oakes), Sir Sydney Oakes, Baronet, Shirley Lewis Butler (nee Oakes) and Harry Philip Oakes (therein and hereinafter called "the Beneficiaries") of the third part and Nassauvian Limited (the Petitioner) of the fourth part, the Trustees as trustees and by the direction of the Widow and the Beneficiaries granted and conveyed and each of them the Widow and the Beneficiaries so far as relates to his or her own share estate or interest in the hereditaments thereby conveyed and as Beneficial Owner thereof granted and conveyed and confirmed (inter alia) unto Nassauvian Limited and its assigns ALL the hereditaments the subject of this Abstract TOGETHER WITH the appurtenances thereunto belonging TO HOLD the same unto and to the use of the said Nassauvian Limited and its assigns in fee simple free from the trusts contained in the said Will of the late Sir Harry Oakes.

Note:

(1) In this Conveyance the Widow and the Beneficiaries so far as relates to his or her share estate or interest under the said Will of the said late Sir Harry Oakes released and discharged the Trustees and each of them their and each of their heirs personal representatives administrators and assigns from

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all actions proceedings claims and demands under the said Will of the said late Sir Harry Oakes in relation to the hereditaments thereby conveyed or otherwise in the execution of these presents

In the Supreme Court

—
No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

- (2) This document recites that
- (a) Sir Harry Oakes late of the Western District of the Island of New Providence was at the date of his death therein-
10 after recited seised in unincumbered fee simple in possession (inter alia) of certain hereditaments situate in the Western District of the Island of New Providence
- (b) By his last Will and Testament dated the Fifteenth day of February in the year of Our Lord A.D. 1943 the said Sir Harry Oakes appointed the said
20 Eunice Myrtle Lady Oakes sole Executrix and after making a specific request gave devised and bequaathed all the rest residue and remainder of his Estate real personal and mixed of whatsoever character and wheresoever situate unto the said Eunice Myrtle Lady Oakes, Henry Newell Kelly and Walter K. Foskett upon the trusts therein contained and in particular to pay over transfer assign
30 convey and deliver unto the Widow one-third in value thereof either in cash or property or partly in cash and partly in property and to divide the remaining two-thirds of the said Trust Estate into five separate and distinct parcels and to hold one of the said parcels in trust for the use and benefit of each of his five children namely Nancy Oakes de Marigny, Sydney Oakes, Shirley Oakes, William Pitt Oakes and Harry Philip
40 Oakes and the Testator directed that if and when each surviving child reached the age of Thirty (30) years or when any deceased child leaving lawful issue surviving the Testator would have reached the age of Thirty (30) years the Trustees should pay over transfer assign convey and deliver the parcel held for the said child to such surviving child or the lawful issue of any such deceased child

(continued)

In the Supreme
Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

and it was further provided that any of the Testator's children who survived him might by Will dispose of any part or all the one-fifth part of the said Trust Estate which otherwise would have gone to his or her lawful issue if such child died before reaching the age of Thirty (30) years.

(c) The said Sir Harry Oakes died on the Eighth day of July A.D. 1943 without having revoked his said Last Will and Testament Probate of which was granted by the Supreme Court of the Bahama Islands on its Probate Side on the Eighth day of October A.D. 1943 to the said Eunice Myrtle Lady Oakes the Executrix therein named.

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(d) The said Will of the said late Sir Harry Oakes further stated and provided that persons dealing with the Trustees should not be required to see that the terms of the Trust were complied with.

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(e) By a Deed of Assent dated the Twenty-fourth day of July A.D. 1944 and now of record in the Registry of Records in the City of Nassau in the Island of New Providence in Book R.15 at pages 384 to 394 the said Eunice Myrtle Lady Oakes as Personal Representative assented to the hereinbefore recited devise contained in the said Will.

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(f) By an Indenture dated the Second day of June A.D. 1954 and now of record in the said Registry of Records in Vol. 3 at pages 285 to 290 and made between the said Eunice Myrtle Lady Oakes and the said Henry Newell Kelly of the one part and the said Walter K. Foskett of the other part the said Walter K. Foskett was discharged from the trusts of the said Will and all the property real personal and mixed of whatsoever character and wheresoever situate subject to the trusts of the said Will was vested in the said Eunice Myrtle Lady Oakes and the said Henry Newell Kelly as the continuing Trustees alone.

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(g) By an Indenture dated the Sixth day of January A.D. 1958 and now of record in the said Registry of Records in Vol. 102

at pages 413 to 416 and made between the said Eunice Myrtle Lady Oakes the said Henry Newell Kelly of the one part and the said Clifton Donald Borer of the other part the said Clifton Donald Borer was appointed a Trustee of the Will of the said late Sir Harry Oakes.

(h) The said William Pitt Oakes died on the 27th day of April, A.D. 1958 aged 27 years without leaving issue him surviving having previously made his last Will and Testament dated the Tenth day of October A.D. 1955 whereof he appointed Peter Donald Graham Executor and whereby he gave devised and bequeathed to his mother the said Eunice Myrtle Lady Oakes all his real and personal estate of whatsoever kind the same might be and wheresoever situate probate of which said Will was granted by the Supreme Court of theBahama Islands on its Probate Side to Peter Donald Graham the Executor therein named on the 9th day of July, A.D. 1958.

(i) By a Deed of Assent dated the 5th day of November, A.D. 1962 and now of record in the said Registry of Records in Vol. 552 at pages 281 to 284 the said Peter Donald Graham as Personal Representative assented to the hereinbefore recited devise contained in the said Will.

(j) The said Harry Philip Oakes the youngest child of the said late Sir Harry Oakes attained the age of Thirty (30) years on the 30th day of August, A.D. 1962.

(k) The Widow is now the beneficiary under the said Will of the late Sir Harry Oakes of one-third of the said Trust Estate and the Beneficiaries are now the beneficiaries under the said Will of the remaining two-thirds of the said Trust Estate held upon trust for the said five children

(l) The hereditaments described in the Schedule thereto form part of the said Trust Estate under the said Will of the late Sir Harry Oakes.

(m) The Trustees had agreed with the

In the Supreme Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

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In the Supreme
Court

No. 2

Abstract of
Title of
Nassauvian Ltd.
23rd August
1967

(continued)

Widow and the Beneficiaries to distribute the said hereditaments described in the Schedule thereto in accordance with the terms of the Will of the late Sir Harry Oakes and the Widow and the Beneficiaries being satisfied with the manner of the distribution had requested the Trustees to convey the said hereditaments to the Company of which the Widow and the Beneficiaries or their nominees were the beneficial owners.

10

- (3) This document is recorded in the said Registry of Records in Vol. 792 at pages 593 to 608.

Dated the 23rd day of August 1967.

Paul H. Bethel,

Attorney-at-Law.

No. 3

Adverse
Claim of
Roger C.
Adderley
13th October
1967.

No. 3

ADVERSE CLAIM OF ROGER C. ADDERLEY

20

IN THE SUPREME COURT OF THE BAHAMA ISLANDS 1967

Equity Side

No.96

IN THE MATTER of those two parcels or tracts of land comprising 92.33 acres and 12.52 acres respectively and situate on the Southwest side of Harrold Road in the Western District of the Island of New Providence

AND IN THE MATTER of the Petition of Nassauvian Limited under The Quieting Titles Act, 1959

30

ADVERSE CLAIM

Roger C. Adderley claims to be the owner in fee simple of an undivided interest in the two parcels of tracts of land comprising 92.33 acres

In the Supreme Court

No. 4

Adverse Claim of Clotilde Higgs
16th October 1967

(continued)

one of the Bahama Islands claims to be entitled to an undivided interest in fee simple in the land the subject of the Petition herein by virtue of a devise contained in the Will of Daniel D. Adderley.

Dated the Sixteenth day of October A.D. 1967.

JAMES M. THOMPSON

K.G.L. ISAACS

Attorney for Clotilda Higgs

TO: Messrs. McKinney, Bancroft & Hughes,
Attorney for the Petitioner.

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No. 5

Order
11th April 1968

No. 5

ORDER

IN THE SUPREME COURT OF THE BAHAMA ISLANDS

1967

Equity Side

No.96

IN THE MATTER of those two parcels or tracts of land comprising 92.33 acres and 12.52 acres respectively and situate on the Southwest side of Harrold Road in the Western District of the Island of New Providence

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AND IN THE MATTER of the Petition of Nassauvian Limited under the Quieting Titles Act, 1959.

ORDER

The Honourable Mr. Justice Hedworth
Cunningham Smith in Chambers.

UPON HEARING Mr. Paul Henry Bethel of Counsel for the Petitioner IT IS HEREBY ORDERED as follows :

30

1. That the Adverse Claimant, Clotilda Higgs, give full particulars of her claim to the land the

subject of the Petition within twenty-eight (28) days of the date hereof by filing a plan setting out that part of the land the subject of the Petition in which she claims an undivided interest, and an Abstract of Title thereto.

In the Supreme Court

No. 5

Order
11th April
1968

(continued)

10 2. That the Adverse Claimant, Roger C. Adderley, give full particulars of his claim to the land the subject of the petition within twenty-eight (28) days of the date hereof by filing a plan setting out that part of the land the subject of the Petition in which he claims an undivided interest, and an Abstract of Title thereto.

3. That the costs of this application shall be costs in the cause.

Dated the 11th day of April 1968.

BY ORDER OF THE COURT

(sgd) Illegible

REGISTRAR

20 TO; Clotilda Higgs or her Attorney,
James M. Thompson Esq.,
Chambers,
Frederick Street,
Nassau, Bahamas.

30 TO: Roger C. Adderley or his Attorney,
Alexander P. Maillis Esq.,
Chambers,
International House,
West and Virginia Streets,
Nassau, Bahamas.



In the Supreme Court

No. 6

No. 6

ABSTRACT OF TITLE OF CLOTILDA HIGGS AND ROGER O. ADDERLEY

Abstract of Title of Clotilda Higgs and Roger O. Adderley 19th June 1968

IN THE SUPREME COURT OF THE BAHAMA ISLANDS 1967

Equity Side No.96

IN THE MATTER of those two parcels or tracts of land comprising 92.33 acres and 12.52 acres respectively and situate on the Southwest side of Harold Road in the Western District of the Island of New Providence and ALL THAT piece parcel or lot of land being a portion of the original Grant made to William Moss which said piece parcel or lot of land is a portion of a Thirty-four (34) acre tract situate immediately to the North of the tract firstly hereinbefore described and has such position shape marks and dimensions as are shown on the diagram or plan hereto attached and is thereon coloured Yellow

10

AND

IN THE MATTER of The Petition of Nassauvian Ltd. 20 under the Quieting Titles Act 1959.

ABSTRACT OF TITLE

OF

CLOTILDA HIGGS AND ROGER O. ADDERLEY

TO

1. ALL THAT piece parcel or tract of land situate on the Southwest side of Harold Road in the Western District of the Island of New Providence comprising Ninety-two and Thirty-three hundredths (92.33) acres more or less and bounded Northwardly by land the property of the Bahamas Government, Northeastwardly by Harold Road, Eastwardly partly by and land herein-after described and partly by land the property of Hedley Edwards and partly by land reserved for the Bahamas Geodetic Survey, Southwardly by Crown Land and Westwardly partly by land the property of The Caves Company Limited and partly by land now or formerly the property of G.A. and S.G. Bosfield which

30

said piece parcel or lot of land has such position shape marks and dimensions as are shown on the diagram or plan attached hereto and is delineated on that part which is coloured Pink on the said diagram or plan AND ALSO ALL THAT piece parcel or lot of land situate as aforesaid comprising Twelve and Fifty-two hundredths (12.52) acres more or less and bounded Northwardly by land granted to Michael Grant, Northeastwardly by the new Harold Road reservation leading to John F. Kennedy Drive, Eastwardly in a curved line by the old Harold Road reservation leading to Farrington Road, Southwardly by a road reservation Thirty (30) feet wide separating the said piece parcel or tract of land from land the property of Hedley Edwards and Westwardly by the land immediately hereinbefore described which said piece parcel or tract of land has such position boundaries shape marks and dimensions as are shown on the said diagram or plan attached hereto and is delineated on that part of the said diagram or plan which is coloured Brown.

2. ALL THAT piece parcel or lot of land being a portion of the original Grant made to William Moss which said piece parcel or lot of land is a portion of a Thirty-four (34) acre tract situate immediately to the North of the tract firstly hereinbefore described and has such position shape marks and dimensions as are shown on the diagram or plan hereto attached and is thereon coloured Yellow.

1. By an Indenture of this date Thomas William Dillett, Charlotte Augusta Dillett, Stephen Dillett and Thomas Martin Matthews as trustees of one Lucia Caulkes of Sierra Leone in consideration of the sum of L 150.--. granted unto Alliday Adderley his heirs and assigns forever

ALL THAT tract of land containing about three hundred and twelve acres, situated in the Western District of the Island of New Providence bounded Northwardly by the sea Eastwardly by land formerly the property of the Honourable John Brown, deceased, Southwardly by vacant land at the time of original survey and Westwardly by land formerly the property of Nathaniel Harrison, deceased, - Also ALL THAT

In the Supreme Court

No. 6

Abstract of Title of Clotilda Higgs and Roger C. Adderley 19th June 1968

(continued)

1873
8th October

In the Supreme
Court

No. 6

Abstract of
Title of
Clotilda Higgs
and Roger C.
Adderley
19th June 1968
(continued)

other tract of land situated as aforesaid, and containing about one hundred and fifty acres, bounded Northwardly by the sea, Eastwardly by land formerly the property of William Moss, deceased, Southwardly by vacant land at the time of original survey and Westwardly by land formerly the property of Robert Hunt, deceased, - Also, ALL THAT other tract of land situated as aforesaid, and containing about one hundred and twenty acres, bounded Northwardly by land formerly the property of the Honourable John Brown, deceased and on all other sides by vacant land at the time of original survey - and lastly, ALL THAT tract of land situated as aforesaid containing about one hundred and sixty acres, adjoining the aforesaid hereinbefore described land, formerly the property of one John Cookley Practitioner of Medicine deceased.

10

NOTE: This document does not contain an habendum

This document recites that the said Thomas William Henry Dillett, Charlotte Augusta Dillett, Stephen Dillett and Thomas Martin Matthews released to the said Alliday Adderley all their claims upon the said land.

20

The document is recorded in the Registry of Records in the City of Nassau in Book G.8 at pages 516 to 519.

A certified copy is produced.

1877
20th March

2. By an Indenture of this date, Alliday Adderley released to Augustus John Adderley his heirs executors administrators and assigns by way of mortgage to secure the same of \$500.--. inter alia

30

ALL those freehold hereditaments and premises herein described that is to say ALL that tract of land containing about three hundred and twelve acres, situated in the Western District of the Island of New Providence, bounded Northwardly by the sea, Eastwardly by land the property of the Honourable John Brown, deceased, Southwardly by vacant land at the time of the original survey, and Westwardly by land formerly the property of Nathaniel Harrison, deceased.

40

TO HAVE AND TO HOLD the said hereditaments unto and to the use of the said Augustus John Adderley his heirs and assigns forever, subject to a proviso for redemption therein contained. This document is recorded in Book K.8. at page 572.

In the Supreme Court

No. 6

Abstract of
Title of
Clotilda Higgs
and Roger C.
Adderley
19th June 1968

10

By an Indenture of this date Alliday Adderley granted and conveyed unto Joseph R. Adderley, William Campbell and Daniel Dewellmair Adderley and Sarah Ann Adderley their heirs and assigns (in ter alia)

(continued)

ALL THAT tract of land described in paragraph Number Two (2) hereof TOGETHER WITH the appurtenances thereunto belonging and to all the Estate and Title interest and claim and demand of the said Alliday Adderley as to and upon the said tracts and lots of land and premises and every part thereof.

20

TO HAVE AND TO HOLD the said tracts subject to an Indenture of Mortgage dated the 20th day of March, 1877 made between Alliday Adderley of the one part and Augustus John Adderley of the other part, abstracted in Paragraph Number Two (2) unto and to the use of the said Joseph R. Adderley, William Campbell Adderley, Daniel Dewellmair Adderley and Sarah Ann Adderley, their heirs and assigns forever as tenants in common and not as joint tenants.

30

This document contains the usual covenants of title.

This document is recorded in the said Registry of Records in Book N.9 at pages 253 to 259.

By an Indenture of this date Alliday Adderley granted (inter alia) unto John Thomas Foulkes his heirs and assigns.

1879
11th Feb.

40

ALL THAT tract of land described in paragraph Number Two (2) hereof TOGETHER WITH the appurtenances thereunto belonging and also all the Estate right title interest property claim and demand whatsoever of the said Alliday Adderley in to and upon the said premises and every part thereof

In the Supreme
Court

—
No. 6

Abstract of
Title of
Clotilda Higgs
and Roger C.
Adderley
19th June 1968
(continued)

1890
7th May

TO HAVE AND TO HOLD the hereditaments and premises hereby granted or expressed so to be unto and to the use of the said John Thomas Foulkes his heirs and assigns forever subject to an Indenture of Mortgage dated the 20th March, A.D. 1877 made between Alliday Adderley of the one part and John Augustus Adderley of the other part and subject also to the proviso for redemption therein contained

This document is recorded in the said Registry of Records in Book T.8 at pages 194 to 198. 10

5. By an Indenture of this date Sir Augustus John Adderley granted (inter alia) unto Joseph Richmond Adderley, William Campbell Adderley, Daniel Dewellmair Adderley and Sarah Ann Bain their heirs and assigns

ALL THAT tract of land described in paragraph Two (2) hereof TOGETHER WITH the appurtenances thereunto belonging and also the Estate right Title interest claim and demand whatsoever of the said Augustus John Adderley unto and upon the said tracts and every part thereof 20

TO HAVE AND TO HOLD the hereditaments and premises hereby granted or expressed so to be unto and to the use of the said Joseph Richmond Adderley, William Campbell Adderley, Daniel Dewellmair Adderley and Sarah Ann Bain their heirs and assigns forever as tenants in common and not as joint tenants, free and absolutely discharged from all principle monies and interest secured or intended to be secured by the Indenture of Mortgage dated the 20th March, 1887 made between Alliday Adderley of the one part and Sir Augustus John Adderley of the other part. 30

This document is recorded in the said Registry of Records in Book N.9 at pages 339 to 345.

1890
8th May

6. By an Indenture of this date John Thomas Foulkes granted (inter alia) unto Joseph Richmond Adderley, William Campbell Adderley, Daniel Dewellmair Adderley and Sarah Ann Bain their heirs and assigns 40

ALL THAT tract of land described in paragraph Number Two (2) hereof TOGETHER

WITH the appurtenances thereunto belonging and all the Estate right title interest claim and demand whatsoever of the said John Thomas Foulkes unto and upon the said contracts and lots of land and premises and every part thereof.

In the Supreme Court

No. 6

Abstract of
Title of
Clotilda Higgs
and Roger C.
Adderley
19th June 1968

(continued)

10 TO HAVE AND TO HOLD the hereditaments and premises unto and to the use of the said Joseph Richmond Adderley, William Campbell Adderley, Daniel Dewellmair Adderley and Sarah Ann Bain their
20 heirs and assigns forever as tenants in common and not as joint tenants absolutely free and absolutely discharged from all principle money and interest secured or intended to be secured by an Indenture dated 11th day of February 1879 made between Alliday Adderley of the one part and the said John Thomas Foulkes of the other part and all claims and demands or account thereon respectively or any part thereof respectively or in any wise thereof.

This document is recorded in the said Registry of Records in Book N.9 pages 345 to 350.

7. By an Indenture of the 8th May 1890 Joseph Richmond Adderley, William Campbell Adderley, Daniel Dewellmair Adderley and Sarah Ann Bain in consideration of the sum of \$854.--. each for one undivided fourth part or share of and in the same hereditaments granted (inter alia) unto W. Clough and his heirs.

1890
8th May

30 ALL THAT other parcel of land situated as aforesaid and containing One hundred and Eighty-five acres exclusive of allowance for swampy land being a part of a tract of three hundred and twelve acres originally granted to a certain William Moss bounded Northwardly by the sea Eastwardly by the tract of land originally granted The Honourable John Brown and land granted Michael Grant on the South by the other
40 part of the original track of Three hundred and Twelve acres granted to William Moss and on the West by land originally granted to Robert Johnson land recently granted G.A. Bosfield and S.J. Bosfield and by the sea the said two parcels or eighty-nine and one hundred and eighty-five acres

In the Supreme
Court

No. 6

Abstract of
Title of
Clotilda Higgs
and Roger C.
Adderley
19th June
1968

(continued)

respectively having the shape and dimensions delineated and set out in the plan or diagram thereof hereto annexed marked 'B'.

TOGETHER WITH all buildings fences hedges ditches ways watercourses liberties privileges easements and appurtenances and all the estate right title interest claim and demand whatsoever of the said Joseph Richmond Adderley W.C. Adderley, D.D. Adderley, and S.A. Bain in to and upon the said premises and every part thereof.

10

TO HAVE AND TO HOLD the hereditaments and premises hereby granted unto and to the use of the said William Clough his heirs and assigns forever.

This document contains the usual covenants of title and plans of the parcels conveyed. One hundred and Eighty-five (185) acres of the William Moss Grant was conveyed leaving a balance of One hundred and Twenty-seven (127) acres which by computation is shown on the plan hereto attached and thereon coloured Pink, Yellow and Green.

20

This document was executed by Daniel Dewellmair Adderley and Sarah Ann Bain to vest their respective interests in the Purchaser but there was in fact a partition since Richmond Adderley and William Campbell Adderley retained the purchase price in consideration of their former interest in the parcels sold. Since this date the heirs of Daniel D. Adderley and Sarah Ann Bain are the owners in fee simple of the remaining portion as Tenants in Common.

30

This document is recorded in the said Registry of Records in Book N.9 at page 273 to 281.

1890
9th July

By an Indenture of this date Joseph Richmond Adderley granted (inter alia) by way of Mortgage unto Robert Henry Sawyer and his heirs and assigns ALL his one undivided fourth part of him the said Joseph Richmond Adderley of and in the land situate in the Western District of the Island of New Providence known as "Goodmans" and described in Paragraph number eight (8) hereof. TOGETHER WITH appurtenances thereunto belonging and all the estate right title interest claim and demand whatsoever of the said Joseph Richmond Adderley into and upon the said premises and every part thereof to have and to hold the said one undivided

40

fourth part of the said hereditaments and premises hereby granted or expressed so to be unto and to the use of the said Robert Henry Sawyer his heirs and assigns forever subject to the proviso for redemption therein contained.

In the Supreme Court

—
No. 6

Abstract of
Title of
Clotilda Higgs
and Roger C.
Adderley
19th June
1968

(continued)

NOTE: This Mortgage is not marked satisfied on the Mortgage itself and neither have I been able to find any record of the satisfaction. Joseph Richmond Adderley at this date however, possessed no interest in the hereditaments which he attempted to Mortgage.

10

This document is recorded in the said Registry of Records in Book L.9 in pages 145 to 149.

9. By an Indenture of this date The Honourable Frederick Craigie Halkett Provost Marshall of the Bahama Islands granted and conveyed (inter alia) unto James Austin Thompson "one undivided fourth part" of the hereditaments described in paragraph Number Eight (8) hereof the said land having been sold by the Provost Marshall under the authority of a Writ of Venditione Expones issued out of the General Court at the suit of Anthony Roberts, Thomas Paul Moore and Joseph Burnside on the 14th day of May 1892 the property of William Campbell Adderley.

20

1892
25th May

TO HAVE AND TO HOLD the said land with all and singular the appurtenances as far as the said Provost Marshall can by law grant the same unto the said James Austin Thompson his heirs and assigns forever.

30

NOTE: The remaining Tenants-in-Common explained to the satisfaction of the Purchaser that Joseph Richmond Adderley possessed no interest in the hereditaments which he might convey and following the re-payment of the amount advanced the said James Austin Thompson re-conveyed to and agreed to surrender possession of the said land to Daniel Dewellmair Adderley free from any claim, interest or demand by the said James Austin Thompson. It is of interest to note that no person other than the Adverse Claimants or their predecessors in Title have ever been in possession of this land. My clients have not been able to locate the document and presume it to be lost.

40

In the Supreme Court

This document is recorded in the Registry of Records in Book Z.7 at pages 136 to 136A

No. 6

Abstract of Title of Clotilda Higgs and Roger C. Adderley
19th June 1968

10. On this date Roger Charles Adderley was born. (1897 26th April)

11. During this year Mary Ann McKinney Adderley, the wife of Daniel Dewellmair Adderley died intestate. (1910)

(continued)

12. On this date William Campbell Adderley died. (1926 28th November)

10

1930
8th April

13. On this date, Daniel Dewellmair Adderley made his last Will and Testament and after appointing his son Frederick William Adderley his executor made the following devise:-

To my children RICHARD CROWTHER ADDERLEY, CLOTILDA EUGENIA HIGGS, RODGER CHARLES ADDERLEY AND MARY ELLEN ADDERLEY I devise one quarter interest in the Goodman tract of land situate in the Western District of the Island of New Providence, TO HOLD the same as tenants in common and not as joint tenants, in fee simple, subject however to the life interest in the same of my natural son Frederick William Adderley I hereby direct that should my said children decide to sell the said interest before the death of the said Frederick William Adderley, then he the said Frederick William Adderley, shall have an equal share of the proceeds of such sale. I further direct that should the said land be worked by tenants that either the produce or the money derived from the sale thereof be equally divided between the said children including the said Frederick William Adderley.

20

30

1934
28th March

14. On this date Daniel Dewellmair Adderley died without having revoked his last Will and Testament.

1934
1st May

15. On this date Letters of Probate of all and singular the real and personal estate and effects of Daniel Dewellmair Adderley deceased, were granted by the Supreme Court of the Bahama Islands of Frederick William Adderley.

40

This document is recorded at the Registry of Records in Book B.12 at pages 361 to 364.

In the Supreme Court

No. 6

Abstract of Title of Clotilda Higgs and Roger C. Adderley
19th June 1968

(continued)

16. On this date the Government of the Bahama Islands by Notice Numbered Sixty-four (64) in the Official Gazette acquisitioned certain lands on the Island of New Providence for the purpose of the erection of Oakes Airport for war purposes. (1943 6th March)
- 10 The land thus acquired from the Adverse Claimants is shown coloured Green in the Plan hereto attached.
17. On this date Frederick William Adderley died.
18. By his Will of this date Richard Crowther Adderley devised all his interest in the tracts of land the subject of this Abstract to Roger Charles Adderley, Mary Ellen Adderley and Clotilda Eugenie Higgs in equal shares.
19. On this date Richard Adderley died.
- 20 20. On this date Mary Ellen Adderley filed an Amended Petition for Probate of the Will of Richard Crowther Adderley after Harcourt A. Tynes and Osbourne Higgs Executors named in the Will of the said Richard Crowther Adderley renounced on 28th May, 1958 and 29th November 1957 respectively their right to apply for Probate. The grant of Probate was duly given the Applicant on 9th January, 1959.
- 30 21. On this date Mary Ellen Adderley died intestate and unmarried.
22. On this date Letters of Administration of all and singular the real and personal estates and effects of the said Mary Ellen Adderley were granted by the Supreme Court of the Bahama Islands on its Probate Side to Roger C. Adderley her brother and heir-at-law in Application Number 174 of 1967.
- 40 NOTE: The tract of land secondly described in this Abstract has been occupied and farmed for the benefit and use of the Adverse Claimants and their Predecessors in title since the year 1873

1945

1956
29th August

1956
12th December

1959
9th January

1967
11th March

1967
14th July

Dated the 19th day of June, A.D. 1968

JAMES M. THOMPSON

Attorney for the above-mentioned ADVERSE CLAIMANTS

28.

In the Supreme
Court

No. 7

PROCEEDINGS

No. 7
Proceedings

Paul Bethel for Petitioner
Maillis for Roger Adderley
Thompson for Clotilda Higgs

22nd January
1968

ORDER As prayed in summons - time within which
to file - 28 days. Particulars to be
supplied by way of Abstract.

(sgd) H.C. Smith,
Judge
22/1/68

10

Bethel for Petitioner
Maillis for Adderley (A.C.)

28th May
1968

1. No order on the Summons of 28th April
1968 for further time.
2. As regards the Summons of 22nd May 1968,
order as prayed.
3. The said Alexander Maillis do serve a
copy of the order on Mr. R.C. Adderley.
4. Liberty to both parties to apply. 20

(sgd) H.C. Smith
28/5/68

Paul Bethel for Petitioners.

27th June
1968

I do not proceed with the Summons filed
on 17th June 1968 asking for the claims
to be struck out. I have now received
Abstracts of Title.

(sgd) H.C. Smith
Judge
27/6/68

30

P. Bethel for Petitioner
Thompson (James) for the Adverse
Claimants

31st October
1968

Summons dated 23rd October 1968
Evidence documentary and possessory.
Adjourned: 4th March, 1969 - 7 days
estimated length of trial.

(sgd) H.C. Smith
Judge
31/10/68

40

In the Supreme
Court

Petitioner's
Evidence

No. 8

Samuel Arthur
Noel Plante
Examination
(continued)

- | | | | |
|-------|---|------------------|----|
| 2. | Will of Jonas Thompson (No.23)
and probate of Abstract | Ex. "B" &
"C" | |
| 3. | | | |
| 4. | Death Certificate of Rhoda Thompson | Ex. "D" | |
| 5. | Conveyance 2/11/39 to Caves Coy.
Plan attached (Moss=92.33 Acres) | Ex. "E" | |
| 6. | Ren. of Dower (Thompson) 4/11/39 | Ex. "F" | |
| 7. | Crown Grant to Caves Coy.
15th May 1942 - 12.52 Acres | Ex. "G" | 10 |
| 7.(a) | Copy Plan | Ex. "G1" | |
| 8. | Conveyance of 6/11/62 - Caves
Coy. to Trustees of Sir Harry Oakes
(Plan) | Ex. "H" | |
| 9. | Conveyance of 6"1"64 by trustees
of Sir Harry Oakes to Nassauvianians
Ltd. (P.J.) | Ex. "J" | |
| 9(a) | C. Copy of Will of Sir Harry Oakes
dated 15/2/43 | Ex. "J1" | |
| 9(b) | Probate of said Will | Ex. "J2" | 20 |
| 9(c) | Deed of Assent | Ex. "J3" | |
| 9(d) | Deed of Discharge and | Ex. "J4" | |
| 9(e) | Appointment of Trustee | Ex. "J5" | |
| 9(f) | Will of William Pitt Oakes | Ex. "J6"? | |
| 9(g) | Probate of (f) | Ex. "J7" | |
| 9(h) | Deed of Assent - (William Pitt
Oakes) Estate | Ex. "J8" | |

I joined "Oakes Companies" January 1957 - my
duties affected land -- looked for squatters -
fence repairing.

30

I have been to the land in question. The first
time in 1958. Re the area 92.33 Acres - I was aware
of the $\frac{1}{4}$ undivided interest - but - I did not know

which part of the property that related to. There were men quarrying in the N.W. Corner - stone, for all I know they may have had a right to be there. I don 't think there was any activity in the rest of 92.33 Acres.

On the Blue Land - 12.55 Acres - I saw no activity at that time.

10 Since 1958, have been to the land often. In 1965 (I think) - I went to investigate a bush fire on the W. side of Gladstone Road, with Mr. Yurally of O'Brien Engineering Coy. I went through the two pieces of land along a road which runs through. I asked Mr. Yurally to point out the boundary lines of the 12.55 acres - which he did.

20 When I got to the 12.55 acres area, I saw a bulldozer being worked and a number of trucks loading up the rock. I asked the operator who he was. He said - a Mr. Higgs - related to "Adderleys" - and that the property belonged to the Moss's - and he was bulldozing for development.

Prior to 1965 - no activity: what was being bulldozed was a middle portion of the 12.55 acres.

Since 1965 - I would say there was more activity in the 12.55 acres area.

The 12.55 acres - was grown over - except for a new track road from Harold Road - going across the area and into the larger 92.33 acre tract - at the back of the 12.52 acre area.

30 There is a track road - running from West into the 92.33 acre area - and that road eventually finds its way into Harold Road.

40 In February 1969, I went along this back road - and when I got to the Western boundary of the 92.33 acres - I found a big area right across had been bulldozed up very recently - and I could not go through. The last time I got through was late in 1968 - no bulldozing then: this took place since August 1967 (when these proceedings began.)

In the Supreme Court

Petitioner's Evidence

No. 8

Samuel Arthur Noel Plante

Examination

(continued)

In the Supreme
Court

Petitioner's
Evidence

No. 8

Samuel Arthur
Noel Plante

Cross-
examination

Cross-Examined Thompson :-

Joined Oakes - 1957

Came to Bahamas in 1952.

Then had no interest in the land.

Used to go over lands with T. Knowles.

Wanted to see over the land.

Harold Road not now as in 1957.

Widening.

Origin of Harold Road not explained to me.

I only walked or drove through this land. 10

Roads through a track.

Not on arment.

Road from Gladstone Road $\frac{1}{2}$ through the point
and then turned into Harold Road. Access from
Adderley Road runs South right through to
92.33 Acres - up to any rate the South boundary.
The track road may run through. Access to Harold
Road and land through old Harold Road.

Never heard of Sir Harry having to pay for 20
damage because pipe line put in by line in 12.52 acres.

No criss cross roads in 12.52 Acres. In the
larger - two criss cross roads.

The land in question is hilly. No valleys.

Don't know the land East of the track road -
going North and South through the 92.33 acre tract.

1958. Saw only quarrying.

Other buildings to do with quarrying.

Other buildings put up since then.

No signs of farming on the land. 30

I say Higgs.

Approached his family.

No. of people on the land - cannot say.

I know Leonard Higgs.

He was involved in quarrying.

His age then 25/26.

Never saw the Higgs charge of the land.

South of the Hill. Don't think any clearance but not definite.

Saw no signs of fruit trees.

12.52 acres - no farms.

Underbrush would be 6 - 8 feet.

Not so dense as land south of L. Cunningham.

Age of underbrush - cannot say.

10 Eastern boundary of 12.52 Acres - old Harrold Road.

Didn't go into bush East and West of Harold Road.

Since 1958, someone told me Higgs' tenants are on the land.

How many? Don't know.

Saw quarrying only.

Saw pigs/horses - grazing near to quarry - on the South west side of what is now Adderley Road.

20 Saw nothing in Pine Barren area.

I never ordered Surveys to be made.

I never heard of them being 'opposed'.

Don't know many attempts to compile and plan filed.

Less occupied then than land on the 92.33 acres.

Quarrying on west of the tract-stones brought into the 92.33 acres. Plant for quarrying S.W. of the Adderley Road.

30 Yurally showed me a marker.

That marker was moved.

In the Supreme Court

Petitioner's Evidence

No. 8

Samuel Arthur Noel Plante

Cross-examination
(continued)

In the Supreme Court

Petitioner's Evidence

No. 8

Samuel Arthur Noel Plante

Cross-examination (continued)

Don't know who moved them.

Primarily, - I drove through the land.

Physically, didn't visit all the land.

Two roads criss cross the property E. and W.

Don't know where these roads ended going East.

Harry Oakes - I know the one Road in which goes right through from Gladstone Road and then to the Road, running North and South in the 92.33 Acres. From there - another road runs through towards the 12.52 acres. Didn't understand the Road was before Sir Harry Oakes time.

10

Understand Sir Harry Oakes put them in. Don't know about his pipe line.

It was mentioned by the surveyor.

Re-examined. None.

No. 9

Andrew Gordon Sommerville O'Brien

Examination

No. 9

ANDREW GORDON SOMMERVILLE O'BRIEN

Andrew Gordon Sommerville O'Brien sworn.

Examined Bethel.

Live Village Road/Nassau. Surveyor - my Coy. O'Brien Engineering Co. I began as apprentice with Browns since 1925.

20

My firm did a survey of land West of Harold Road, Nassau, for Caves Coy. Ltd. That land is shown on the Filed Plan. This Survey was in 1962. One Dennis Theophilus, an employee, did the Survey - He is not now an employee. He went on the land. He physically opened the boundary lines shown on this plan. Information for the Survey Plan the Deeds in the Estate office.

30

Shown Ex. "G" - that shows the Crown Grant.

The 12.52 acres - on the filed plan - is part of the Crown Grant. That is also shown on Ex. "G1". To the West of the Crown Grant - the land was granted to William Moss.

Shown Ex. "K" (Grant diagram) - that Grant is to William Moss of 312 acres. This Moss Grant shows the land granted to Michael Grant to the East of it. I can say the two Grants appear to tie in.

10 The 92.22 acres is shown on our plan as being bounded on the East by the Grant to the Caves Coy; and on the Crown Plan the land to the West of the Grant to the Caves Coy. is shown by land granted to William Moss. The 92.33 acres falls within then the Moss Grant; the 12.52 acres falls to the South of the land granted to Michael Grant. And that is comprised in the Grant to the Caves Coy. in 1940.

20 Shows Ex. "E" - to the Caves Coy. Ltd. the portion marked William Moss (90½ acres) bears the same relation as the land granted to William Moss in the 1940 grant. The 90½ acres on the Plan attached to Ex. "E" is the same as the 92.33 acres on the Filed Plan.

My surveyor encountered no opposition that I know of.

30 Aerial photos were taken of that Area - I have a set filed in my office - : they were done in 1962 by Southern Air Surveys: we set up ground control for them.

I have a plan showing the two areas in question. Put in Ex. "L".

There is a print from the Plan in my office. I know of a Quarry and that is revealed on this plan in the N.W. corner of the 92 acre tract. Apart from the quarry, I am not aware of any other activity on the land.

40 Track road - East/West - from Oakes Field - across Gladstone Road - to the shore of Lake Killarney.

Understand Sir Harry Oakes put in that road.

In the Supreme Court

Petitioner's Evidence

No. 9

Andrew Gordon Sommerville O'Brien

Examination (continued)

In the Supreme
Court

Petitioner's
Evidence

No. 9

Andrew
Gordon
Sommerville
O'Brien

Examination
(continued)

I know it was there in 1942. I saw it and went over it. It might have been there before 1942 for all I know.

I visited the property on 1st March, 1967 - and on the 26th July 1967 - and on the 3rd March 1969. On my last visit - I saw the land had been rock-ripped up as far back as the East to West Road and a portion of that Road had also been ripped up.

(It was my last visit that I saw the Road had been ripped up - but how recent it was I cannot say. 10

Apart from the quarrying, I saw no other activity. The quarrying was on the N.W. of the 92 acres tract.

The sign of quarrying had work further back along the road running north - towards the junction - the East and West road.

I have in my office a plan showing the area of land taken by the Crown from the Caves Coy. - for 20 the Road widening of Harold Road. I went to Govt. on behalf of Oakes Estate to get this plan. I produce this plan - Ex. "M".

The "old Harold Road" way is still in existence.

New Harold Road - now called East/West Highway.

Govt. negotiated with Oakes Estate for land for road widening.

Cross-
examination

Cross-examined by Thompson.

Began surveying in 1925. 30

No surveying in this area before 1942.

I was in Goodmans - 1926.

Also - Killarney

Then, mainly Grove Estate.

Had to do with Pleasant Ville - construction company.

I was a surveyor before then.

I was employed by Nassau Surveying Coy.

My job - laying out runways at Windsor Field.

Laying out Interfield Road.

Laid out boundaries for Oakes Field - i.e. Section Nassau St.

East/West exit of Oakes Field - by Esso Station.

Other surveyors had a section to do.

10 Various jobs for Oakes Estate e.g. markers (along main roads.)

- not by myself - but by S.B. Martin (of Nassau Engineering).

Gren light systems - around both airfields - had to do with that.

Pleasant Ville had to get in to put up the poles.

Authority to do that? don't know.

20 Circle of lights were around Oakes Field - like Windsor Field.

Don't know about pipe lining from Blue Hill Road - along Harold Road.

Govt. ran a pipe line - Prospect to Blue Hill Road.

Aerial Photograph - taken in 1962.

I haven't aerial photos prior to 1962.

1/3/67 - with Plant/Harry Oakes/myself - went on the land.

We drove through - up to Adderley Road.

30 The second trip - for the same purpose.

In the Supreme Court

No. 9

Andrew Gordon Sommerville O'Brien Cross- Examination

(continued)

In the Supreme Court

The last trip because notice given that Road had been ripped up.

No. 9

Petitioner's Evidence

The first two occasions were to see what had been happening on land not the subject matter of the petition - but land subject to another quieting.

Andrew Gordon Sommerville O'Brien Cross-Examination

Last occasion - we have to get through where the Road used to be.

Survey for the Filed Plan - 1 1/2 to 2 weeks.

(continued)

Lines would have to be cut.

10

Re-examination - None.

(Filed Plan put in marked - Ex. "N".

No.10

Edward "Ted" Knowles Examination

No. 10

EDWARD "TED" KNOWLES

Edward "Ted" Knowles sworn - Examined Bethel.

Sears addition/Shirley Heights, Nassau.

Job - foreman - Caves Coy., Oakes Field Estate.

Born 1905 - Familiar with Caves Coy. land. Have been round the biggest part of Oakes land, inspecting and closing up roads every year. Don't do that now. Has seen a mark, with an "O" on Harold Road, did not go around. Seen other marks on Oakes property. Because of the market, I thought the Co. has a piece of land there. Saw similar markers - Only Oakes Estate had this type. I saw the markers on Harold Road 10/11 years ago. 20

There is a Road from Gladstone Road - East, to Harold Road - the road starts at Big Pond and finally finishes up at Clifton Pier. It goes through Oakes Land - between Gladstone Road and Harold Road. 30

I stopped this road - several times - at the point where it passes Harold Road. We stopped it

for 24 hours to prevent traffic going through from time to time.

Last time I stopped the road at this point was about 10 years ago. I cut the road with Sir Harry beginning 1927.

I began with Caves Co. in 1935. I finished working on the road in 1938. I have stopped the road at Gladstone Road as well.

10 I never saw anyone farming at all. The bush was high few pine trees were on the Gladstone Road side - was nothing. The land was covered with trees - no farms.

Just a few years ago - I saw a tractor ripping up the land - I would say 3-4 years ago. Prior to that I had seen no activity.

From 1937 - 1941 - I was on the land off and on - but not since 1941. We stopped the road once a year - up to about 1959. Before then, once a year - from say 1940.

20 Cross-examined by Thompson:

I worked for Mr. Barlow.

He worked for Brown Engineering.

This was in 1925.

He also worked for Oakes.

Cannot say when he left Oakes.

Don't know if he surveyed the Road I made.

I think he was in Oakes employment then.

I was with Barlow since 1925.

I heard of Leonard Higgs.

30 Don't know Clothilda Higgs.

Don't know William Milton Higgs.

Don't know Mama Collins.

In the Supreme Court

Petitioner's Evidence

No. 10

Edward "Ted" Knowles

Examination

(continued)

Cross-examination

In the Supreme
Court

Petitioner's
Evidence

No.10

Edward "Ted"
Knowles

Cross-
examination
(continued)

Never heard of "Petty Sound".

Have heard of the Chicken Farms.

I put the road through to Clifton Pier.

The road I made went through the lake.

Foundation of the lake - cannot say if it
is there still.

Big Pond - Old Fort - route by W. Bay Street.

I don't know of any road on a Ridge.

Bahamas Govt. did not use my land, nor the
B.E.C.

10

My road was to Clifton Pier.

It crossed the present airport.

Marsh - east of Killarney - not too difficult
to cut a road through.

Saw no one in 1938 on the land.

Don't know Leonard Higgs.

I know some one who walks with an injured leg.

He used to do some work for us.

This was in 1967.

Last Hurricane --

20

I worked the land for the "Boss".

We used to call the land "Collins Ridge".

We made the Road out to the Clifton Pier. -
through the lake.

We just went through with our tractor.

I worked on the west and south of the wall
and on the East -on top of the Hill. This was
1940. Labourers would clean out the boundary
lines.

From the wall to Gladstone Road - about a mile. 30

No one used the land for okras and potatoes - saw no-one.

I put the road north and south to Carmichael Road by hand compass.

In 1938 only one North/South Road. The road which is to the north of the Chicken Farm ran East and West - going East.

Stop. 11/3/69.

10 There are hills on the property we were discussing.

The marks I found were on the West side of Harold Road. Driving towards the Airport - it would be on the left. The new Harold Road was not there when I found the marker (10/11 years ago)

I did not go off the road to look for other markers: I saw no other markers.

Did not erect any stakes in the area.

20 Can't show where I found the stake on the Filed Plan.

I blocked the road on the East of Carmichael Road and on the West of old Harold Road.

Blocked by putting up stakes (trees) - did not use wire - put up no notice.

I don't know why blocking off roads. Stopped in 1959.

30 People would remove the blocking after a day or two. If we put down drums - I would have to remove them. Immediately after we left - someone might have removed the road blocks.

I don't know if it was after 1937 that Sir Harry bought the land.

I know Mr. Dew.

He was office manager.

In the Supreme Court

Petitioner's Evidence

No.10

Edward "Ted" Knowles

Cross-examination

(cOntinued)

In the Supreme
Court

Petitioner's
Evidence

No. 10

Edward "Ted"
Knowles

Cross-
examination

(continued)

There were no tenants to run me off the land.

No one ever ran me off the land.

That was not the reason for stopping Road
blocking in 1959.

Don't know who taught my wife in school. Don't
know Mrs. Clothilda Higgs - whom I don't even know.

I never had to escape into the bush.

I don't know Calvin Cooper - nor any of the
O'Brien firm of surveyors.

Myier Sands worked for me - a driver of a
truck. 10

Cannot say who worked with me. We had two
tractors. I had thousands of men working for me.

I only know of one road running East and West
of this property.

I only made the road and nought else - nor do
I know of anybody doing anything else on the land
for Sir Harry Oakes.

Never saw any farms on the land.

I heard of a Sugar Mill near Kennedy Drive -
but all that was when I was a boy that I heard of
it. 20

I never saw any lime/coal kilns.

Pine trees about - yes.

Never noticed if anything had been cut down.

Don't know Miller K.

I worked for no one else in this area.

I have been in Nassau since 16 years of age.

Cannot say in what year I began to block the
access roads. 30

I never saw any coconut trees on the land.
Re-examined - None.

No. 11

CLIFTON DONALD BORER.

Clifton Donald Borer - sworn - Examined Bethel

Victoria Court - Elizabeth Avenue - Nassau.
I was a trustee Sir Harry Oakes Trust - now wound up.

Became trustee in 1960 - Director several Oakes companies, including company in question. Joined Oakes Service 22 years ago.

10 I had the deeds examined and the Estate Book - we had $\frac{1}{4}$ undivided interest in the pink and fee simple in the blue area.

Went to see the land in 1950/51 with a Mr. Martin of Nassau Engineering Company - who had been told to put up 'markers' - concrete pillars - with an "O" on the top - 18" above ground. A marker should have been put on this portion of the ground.

20 Total acreage - many thousands - development envisaged. I was to preserve the land for development. In 1953/4 I submitted to the Trustees a plan for development. The Trustees felt not entitled to spend millions on development which was speculative.

Trustees owned the shares of Caves Company Ltd. for the beneficiaries of the Will of Sir Harry Oakes. This division under terms of the Will - Caves Company became owned as to 23/27th by Lady Oakes principally and by Sir Sidney Oakes.

30 In order to get to this position a lot of arrangements, but in 1960 we entered into negotiations for sale of a larger area and had surveys done by Gordon O'Brien: the Filed Plan is the product of a later survey :- those negotiations went on until 1963 and proved abortive.

40 The distribution was still with Lady Oakes and Sir Sidney. Nassauvian is owned by Lady Oakes outright (Ex. "J") - Reason: we found convenient to convey Caves Company owning a defined area of land and as a result certain other lands were conveyed to Nassauvians, which had no relevance to the Caves Coy. sale.

In the Supreme Court

Petitioner's Evidence

No. 11

Clifton Donald Borer

Examination

In the Supreme
Court

Petitioner's
Evidence

No.11

Clifton Donald
Borer

Examination
(continued)

Cross-
examination

As a result, Nassauvian got this property in question as well as others.

This land was contemplated to be in the start sale :- then intending purchaser had hoped to erect a Medical Centre and later negotiations for such a project on the 12.52 acre tract.

Cross-examined Thompson.

I did not carry out a title search.

I instructed Sir Kenneth Solomon.

In the 1950 I know Mr. Adderley and Mrs. Higgs. 10

I had trouble with Mrs. Higgs as regards charcoal burning on the land in question to the Higgs.

I should have known if there was any negotiations at the time.

I cannot say there were none - but I should have known because I had custody of the deeds.

I know a "Higgs family" is on the 92.33 acre tract.

The question of the adverse possession was put to me since we had $\frac{1}{4}$ interest in the land - that we should wait until we had the overall plan approved and we were ready to go ahead. 20

There was no adverse possession price.

We saw the quarrying - 3 years ago. In the 1950's we saw a few persons in the bush.

In the 1950's - I looked to see what land we had and the nature thereof - as to possible use.

I did not go into the land - I went in on the Eastern side to stop burning of charcoal which was becoming a menace. This was on the West side of Gladstone Road. I think the name of Higgs was then mentioned. 30

Re-examination.

I refer to Recital "J" of Ex. "J" - the younger H. P. Oakes, became 30 in 1962; the effect being that then the Estate could begin to be wound off.

In the Supreme Court

Petitioner's Evidence

No.11

Clifton Donald Borer

Re-examination

No. 12

OLIVER VANSTOCK HIGGS

Adverse Claimants' Evidence

No.12

Thompson - I call :-

Oliver Vanstock Higgs

Examination

10

Oliver Vanstock Higgs, sworn - Examined Thompson.

Born 13/8/23: Live Farrington Road - Nassau.

Parents - Leonard Eugene Higgs and Clotilda Higgs. I can read a little of the plans. I think I know the land in question in this Quieting --

20

I first went on to this land in 1929 or 1930 with my father and mother on a donkey cart to collect 1/3 from the tenants on the Pink and the Blue area on the filed plan and "Edwards" land is shown on that plan. I left Wesleys School in 1937 - and after then I found out the boundaries of our land in this area.

As regards the blue portion (12.55) it was once part of the Adderley Estate - Adderleys owned land on the South side of Harold Road. It was Pine Yard barren - where tenants burned for coal.

30

A portion of the 12.55 acre tract - was "champion" land - good farming and there were farms there in the 1930's. Pine Barren crossed the new Harold Road - "champion" land was on a hill over which Mr. Oakes had his Road cut.

The 12.55 acres was a small portion of the then Adderley land. On that portion alone my parents would have about 5 tenants but East of the then

In the Supreme
Court

Adverse
Claimants'
Evidence

No.12

Oliver
Vanstock
Higgs

Examination

(continued)

Harold Road there was coal burning.

We were disturbed around 1937/38 by (Sir) Mr. Oakes invading the land. No Govt. officer ever told us to get off. Mr. POakes pushed the road through - I remember Ted Knowles - working for him. I worked for G.R. Baxter and Mr. Oakes. I didn't know of any survey being done Mr. Oakes trespassed by putting the road through. We took action - I saw Mr. Aranha (the then surveyor general) and heard that Mr. Oakes had taken only 80 acres off the Adderley Estate - my mother said it was more than that. The 80 acres was East of now Harold Road - where Oakes Air Field was. I don't remember if we tried to stop the road being put through: I saw Mr. Baxter - not a representative of Sir Harry Oakes - don't know if my mother saw him. Lawyer Callender was contacted - as was A.F. Adderley. No action was taken by my family. The making of the road led to others being able to steal from the tenants. I heard of one tenant being compensated. 10 20

No one tried to move me off the land - nor my father -: After the road was put through I heard of complaints from the tenants, who believed that Sir Harry Oakes owned the land.

I have never seen any other occupation by Oakes' people. After pipe line was run through and the road extended into a Road (at Prospect Ridge) - at the Eastern side - Mr. Oakes put up posts and barbed wire - and within that section it was called "Oakes Air Field". The posts went all round the boundary. I and my family have occupied the 12.55 acres tract. I would grow peas and corn in one year - for 3 years, until the soil got worn out and then I moved on. My tenants moved on from place to place and grew trees. 30

Largest number of tenants we ever had on the land was 12 or more.

My father's friends helped him and he had some permanent workers - I cannot remember how many. 40

As regards the 92 acres tract - our tenants grew corn and yam - pigeon peas - pumpkins - tomatoes for export - we had mango, peas - sour lime trees - sour oranges - and pineapples from my Messrs. Cash &

Knowles: Okras - beets - turnips.

Tomato farms - were larger than a task - these were 3-4 acres in extent. Tomatoes grown on a farm once - then we used to cut a new section.

This farming not over the whole 92 acres because part was pine barren. We farmed the tops of hills and valleys. I am still farming the 92-acre tract.

10 Yes - we still have tenants and I still collect our 1/3 shares.

My family is now farming on a large area - larger now than we farmed in the 1940's. The main farmer on the land was my father who died on 28th January 1969.

My brothers quarried the land - they farmed also - but they began quarrying in 1950 and onwards on other land that is on the 92 acre tract. I cannot remember when,

20 My great grandfather came from Mexico when he was 12 - on slavery: Sir Augustine Adderley lent him money to buy real estate - he bought the land in question. That is my knowledge of how the land came to be my family land. None of this land was sold - because other members of my family had rights in the land. My mother's brothers and one sister.

Cross-examined Bethel:

We occupied 12.52 acre land.

Can't say when we started.

30 Was part of Adderley holdings.

Shewn Plan to "Ex.E" - never seen that before.

East of old Harold Road - my family claimed property.

Our tenants farmed in Sweeting Coppice - as did my father.

Area of farming - I cannot say.

My father had the largest farm in Sweeting

In the Supreme Court

Adverse Claimants' Evidence

No.12

Oliver Vanstock Higgs

Examination

(continued)

Cross-examination

In the Supreme
Court

Adverse
Claimants'
Evidence

No.12

Oliver
Vanstock
Higgs

Cross-
examination
(continued)

Coppice.

We farmed very little on the 12 acre tract.

That was mostly pine yard area.

Tenants used to burn coal.

They still are.

On the Moss Grant (Pink) 92 acres. No coal
burning on the 12 acre tract.

The last time before the Oakes Road was made.

No coal burning since 1938 because taken in
by the airport (Base) East of Road Harold Road was 10
not taken in by Air Base but the West was.
Boundary of Adderley land - Sweeting Coppice on the
North - the Southern (pillar of lime and a tree.)
On the West - don't know. Acreage - don't know
exactly.

The 92.32 acre tract. Farming and all over
Adderley Estate (by tenants). Largest area farmed
at one time - by my father and a tenant in the hills,
through which Oakes cut his Road: corn, peas,
beans were grown - all in different places. 20

My father had farms on the hills - where the
road was put through. (1938) a Lot of corn was
planted.

I grew up in farming - 3 months for a corn crop
to grow. Tenants on the land since my grandfather's
time.

Farming over the whole area, at one time or
another. Poor land - later 7 years for soil to
secure strength. That happened in the case of the
land in question. 30

Fence put up to divide Oakes property from
property taken for the Air base.

Sweeting Coppice was taken in by Oakes Air
Field.

My father had fruit trees on Sweeting Coppice.
On the 92 Acre tract a Mr. Cash (tenant) had such

trees. W.C. Adderley was my grandfather's second eldest brother. I did not know of the sale of his interest. Didn't know he had $\frac{1}{4}$ undivided interest in the 92 acre tract, and that one of Oakes Companies got that $\frac{1}{4}$ interest.

Fruit trees on the 92.32 acre tract - planted by Mr, Cash.

Tomatoes grown on this tract.

Last year - I had a tomato farm.

10 And one the year before

Not every year in the same section.

I cannot estimate the acreage I farmed. From that West of my farming was near Gladstone Road. Eastward to the 92 acre tract. I supply the Govt. with soil also grow peas. We used to supply Major Holt with soil.

Re-examined:

Farmed for my own private use on the land.

20 - My brother Kenneth also farmed as did my father - Oswald - my younger brother.

My father had farms on Sweeting Coppice - grew crops there and fruit trees and vegetables and at the same time on the 92.33 acre tract.

Fenced separate other land from the Oakes land.

Pine Barren were on the Hill - but on the North and East of the Hill.

In the Supreme Court

Adverse Claimants' Evidence

No.12

Oliver Vanstock Higgs

Cross-examination (continued)

Re-examination

In the Supreme
Court

No. 13

PATRICK BOWE

Adverse
Claimants'
Evidence

Patrick Bowe - sworn - Examined Thompson

No.13

Patrick Bowe
Examination.

Land Surveyor - Crown Lands Office - Present
Records of the Photography - Area on Filed Plan.
East of Gladstone Road and S.W. of new Harold Road.
I produce Air photograph of the same general area -
taken between 1942/32 - includes ridge of hills
to the S.E. of Lake Cunningham. The old Adderley
Road runs parallel with a portion of what is now 10
known as John F. Kennedy Drive. Have heard of
Moss Grant. A portion is a portion of the Air
photograph. There is in evidence of some
clearances - I should say about 12 portions cleared.

To the West of the old Harold Road there appears
to have been a clearance at one time. I should say
before this photo was taken.

To the N.W. of old pipe line - clearance - in
the two areas - 92.3 and 12-acre tract - at least
12 or 13 farms. I cannot say the area. 20

To the south of the Road running East and West -
I would say the area had been cleared as a whole
and was into second growth when this picture was
taken - that is, the area immediately west of
old Harold Road.

Photograph put in Ex. 1.

Shown another photograph (taken in 1958), that
shows mainly the Western Section of the 92 acre
tract. It shows occupation and clearing. The
photo shows some of the 12.55 acre tract. There 30
appears to be clearing. The 1958 photograph shows
less farms than the 1943 photograph. 1958 photo
put in Ex. 2.

Cross-
examination

Cross-examined Bethel :-

That part of the photo showing the two tracts shown
about 12 clearings. Additional areas further South
also shows some clearings.

Re-examination - None.

No. 14

CLOTILDA HIGGS

Clotilda Higgs - sworn - Examined Thompson

I live Bahama Avenue - the Grove - Nassau - widow of Leonard Higgs. My father was Daniel DeWelonais. My mother was Mary Ann Adderley. My grandfather was Halliday Adderley. His wife was Cloe Ann.

In the Supreme Court

Adverse Claimants' Evidence

No.14

Clotilda Higgs Examination.

10 My grandfather married - I don't know when. My father was Halliday's third son. Halliday's children were Joseph and Richmond born (?) died - aged 47 - William Campbell died about the same time as Joseph (only a year between them). My father was next.

In addition, to the 3 sons - Sarah Adderley, who married a Bain. My father was Daniel - he had 6 children - his eldest daughter Caroline died - she was born in 1888 - and died 1923 (unmarried).

20 I was the next child of my father - I was born in 1890. (27th March). Richard Adderley was next to me - born in 1891. He died about 11 years ago (unmarried). Then came Mary Ellen Adderley - died 2 years ago - U.S.A. (unmarried) - the last was Royal Charles Adderley born in 1897. He is alive (unmarried).

30 Richard Crowden died - leaving a Will. Mary Ellen died intestate. The land came to be possessed by my grandfather, who bought it, 740 acres. Dillett and others (Trustees for Ella Cox) conveyed to Halliday Adderley - inter alia 312 acres - formerly granted to William Moss - in 1873 (8th October). All that land remained in Adderley name - except my grandfather sold to one Sweeting - 100 acres (Sweeting Coppice).

40 Up to 1890 - the 312 acres (inter alia) was Adderley's Estate. My grandfather died in 1885. Before his death - he gifted all his land and this was on 15th April 1878, to his four children. After 1878 - he executed a Will after his two eldest sons got him in debt. He was vexed. The Will only ruled that land which he had not gifted away. His children's issue got an interest - under the Will.

In the Supreme
Court

Adverse
Claimants'
Evidence

14
Clotilda
Higgs
Examination

(continued)

A sale was made to William Clough in 1890 by Joseph Richard and William Campbell and the other 2 children (Daniel and Sarah) - and by that sale being conveyed the part of the William Moss Grant - and all their interest in the John Brown grant - 153 acres - originally granted to Robert Johnson (that is, West of the William Moss Grant) - and this left the land that is the subject of this quieting.

My father told me of the sale of the interest of Joseph and William to Clough. My father and my Aunt Sarah - neither of them received any money. David and Sarah also had to sign because there was an undivided interest.

10

After the sale to Clough neither Joseph nor William nor children returned to the land.

My father had possession of the remainder of the Estate until his death in 1934.

After his death, the land was in the care of his half brother and myself -: The half brother was Fred Williams who was executor of my father's Will.

20

My father told me about the sale of the Provost Marshal on 25th May 1892.

In 1892, William Adderley had no interest in the land the subject of this Petition: He still had land in the Estate - known as "Sugar House". The Provost Marshal attempted to sell by the 1892 Deed, something in which William Adderley no longer had any interest.

30

We have the document for the land which William Adderley at the time owned.

William had bought this land from two Robertson brothers - I have read such a document - this was before I lost my eyesight 19 years ago. William Adderley owed debts in 1892 - to whom I cannot remember. My father later paid the expenses of William Campbell Adderley and the Deeds were turned to my father.

The purchaser, Thompson, nor the Provost Marshall Deed - nor his heirs - was never in possession

40

of the land, himself.

As a result of the final payment by my father in respect of my uncle William's debts, he got a receipt which I read, and gave to Lawyer Callender. I remember Mr. Oakes wanted to buy the land, - in 1940/41. That sale was "abandoned". This was after the Road had been pushed through by Mr. Oakes. That receipt was mislaid. The deeds were recovered from Mr. Callender by my son Oliver. I got the Sugar House deeds back myself.

William never married. Joseph and his children did not farm on the land.

After the sale to Mr. Clough - my father Daniel and my Aunt Sarah remained in possession. She died when I was a young girl: by Will she devised her interest to her god-children.

Her Executors sold the land to one Havarl Pinder. His sister Rachel inherited on his death - and she was in U.S.A. On her return in 1910, she sold the land to my brother "Richard".

I first went on this land in question since I was a schoolgirl and in my mother's lifetime (she died 50 odd years ago). My father was a tailor but he had about 6 tenants - a "Wright", "McNaughton", Mr. Cash - Mr. Knowles - Daniel Taylor - William Johnson and a Mr. Jones. I don't know my grandfather's tenants. William Johnson is alive and so is old Mr. Knowles. My father farmed 40 years ago - yes - by 1920 until his death. After he died, tenants stayed on the land - and worked continuously. Also coal burning went on. Farms got larger in my father's time.

I was a teacher at the Catholic School in addition to being a farmer. I have heard of Ted Knowles: I taught his wife.

When the road was put through - I was told it make the land more valuable.

1941 - Oakes prospective buyer - for £20.0.0. an acre: no contact with his lawyers.

In addition to Moss Grant - land to East of

In the Supreme Court

Adverse Claimants' Evidence

No.14

Clotilda Higgs Examination

(continued)

In the Supreme
Court

Adverse
Claimants' ²/₃
Evidence

No.14

Clotilda
Higgs
Examination

(continued)

old Harold Road - was part of the Estate - only lately have I heard of a land dispute - In the war, when Govt. took over part of the land - we were compensated.

I always knew the land East of old Harold Road, as part of the Estate. The Eastern boundary of the land was the Robert Hunt grant - saw it on the Deeds.

Southern boundary - was land owned by Farquharson:- Western boundary was called "No Man's Land".

10

Oakes had no water pipes. From the pond - Eastwards - but not very far. The pipeline was on our property. Adderley Estate - East of the pipeline - we still own it. I haven't seen the new Harold Road.

I and my family have been in complete occupation of the land the subject of this Quieting. Land sold for William Campbell is not part of this Estate.

20

Cross-
examination

Cross-examined Bethel :-

Property - W.C. Adderley's - personal land went in the Provost Marshal's sale - That sale is not legal - Don't know "Wheevil's Tract" - nor of a grant to "Michael Grant". My father was Daniel - He died in 1934 - made his Will in 1930. He gave his property to Richard and his children.

Item 13 of the A.C. Abstract - $\frac{1}{4}$ was my father's: $\frac{1}{4}$ was his sister's: his late brother sold the half to Mr. Clough. $\frac{1}{4}$ William C. Adderley sold to Mr. Clough, a part of the Moss Grant and part of other land that I cannot remember.

30

(NOTE)

By Mr. Thompson. Their interests - i.e. William Campbell and Joseph Adderley sold whatever interest they possessed in the lands conveyed by the Deed of Gift from their father to Mr. Clough, thereby severing the tenancy in common and the land that was left then vested only in her father and her aunt. (this is what the witness means.)

40

Evidence continued:

My aunt had willed her $\frac{1}{4}$ - when my father made his Will. I am daughter of Daniel Adderley. The two of us, Roger Adderley and myself own a half of the entire Estate - my father's and aunt's.

The other half - that has gone - Mr. Clough had this - but the present owner - I do not know.

10 My children are now working on the land - we are claiming all the land of which we are in possession - of the Moody Grant and Coakley Grant: and in the vicinity of Harold Road - up to Robert Hunt's land in the East - and on the West was Sugar House (William Campbell Adderley's personal property.)

20 We claim land at Gladstone Road. Most of the farming was on the South - now the Stapleton Gardens. There was farming also to the West. I cannot say the size of the farms. Farming was done by keeping moving through the land - no spot was ever continuously farmed. Women farmed up to 2 acres - Men up to 3 acres or 4. They go back to the old farms for vegetables. The entire land could not be covered.

The only land that was never gone back to was the land required for the War. Potatoes always kept growing in the same spot.

30 My father went away sometimes. He was a cook on a ship. He would come back. His farms would be looked after by his fellow farmers. He was always on the land since 1922.

Re-examined:

My two uncles sold their one half and what was left was my father's. My sister owned - that is $\frac{1}{2}$.

My father could write.

Sanko Johnson's Hill is on Hadley Edward's land. We alone were in possession of the land the subject of this Petition.

In the Supreme Court

Adverse Claimants' Evidence

No.14

Clotilda Higgs
Cross-examination
(continued)

Re-examination

In the Supreme
Court

No. 15

WILLIAM MILTON KNOWLES

Adverse
Claimants'
Evidence

William Milton Knowles, sworn - Examined Thompson

No.15

I was born in 1869 - Long Island. I came to New Providence in 1895. I had been sailing around the islands.

William
Milton
Knowles
Examination

I knew Mr. Alliday Adderley. He is dead. A long time ago. I know of lands around Lakes Killarney and Cunningham owned by Mr. Alliday. I worked on those lands between 1930 and 1948. I was a tenant and acting as attorney for the land - I was boss - put there by Leonard Higgs, son-in-law of Daniel Adderley.

10

I first went on the land - I worked around "Old Fort" in 1912 - to get there I went over a high hill through Adderley's Land.

Back in 1912, no one worked Adderley's land then - but Johnson was working on the Western side of Adderley's land. I used to go via Gladstone Road - and Petty Sound to Old Fort.

20

I worked for Daniel Adderley in 1930. Other tenants were Cash and good many others - including White - Green. No one worked on the land, when I first went there. I worked for Sanko Johnson down to the Cove (Sugar House).

Adderley had 'possession' land, which came into the base. Eastern boundary of Adderley's land was "Old Harold Road". Western - was other land of Adderley's. I remember I cut down acres of acres of land - over 100 acres - on different farms.

30

I remember the curve of old Harold Road.

There was a road Adderley Road - from Farrington Road - into Adderley land. "Sanko Johnson" - hill - I started there to farm.

I remember Sir Oakes putting through the Road - through Adderley land. Sir Oakes paid me £1.0. for compensation to my sugar cane. All that time I was farming and so was Cash. We were the only two.

40

I paid 1/3 to Mr. Adderley and after his death to Mr. Higgs.

I also burnt a lot of coal on the land.

I don't remember if I saw Sarah Adderley None of the Oakes were in possession of any part of the land.

At the end of the war I and Mr. Cash and some others - who worked on the hill. Tomatoes were grown for export.

In the Supreme Court

Adverse Claimants' Evidence

No.15

William Milton Knowles Examination (continued)

10 Cross-examined Bethel:

"Sanko Johnson" Hill is on the South side of Adderley's land. I never worked on that hill. Sanko Johnson is not Adderley land.

The "Cave" up to where I worked is to the West of Sanko Johnson Hill - and about 200 acres. This cave is near Gladstone Road.

H.Q. Road - is not the same at Gladstone Road?

20 I have farmed right there to the "Cave". That would be in 1948. In 1930 I had a farm at Sanko Johnson Hill. I just kept going west - and got to the "Cave" in 1948 - farming on the way. One of my farms would be say from here to Bay Street.

I let a farm grow right up and then I would go back to my first farm again.

I would put up lime kilns on the first farms - I also grew fruit trees.

30 I kept burning lime each and every year on the farms - between 1930 and 1948. From Sanko Johnson Hill right up to the "Cave".

North part of Adderley land - there was a boundary well - and I had farms there and down to the Dump - and burning lime at the same time.

Cross-examination

In the Supreme
Court

I did not go back to my old farms after
I reaped them.

Adverse
Claimants'
Evidence

No.15

William
Milton
Knowles
Cross-
examination
(continued)

re-examination

Re-examined:

I would go back to the first farms and burn
lime and replant. I would use the regrown trees
for lime.

No.16

Dudley
Johnson
Examination

No. 16

DUDLEY JOHNSON

Dudley Johnson : Examined Thompson:

Of Gibbs Corner - farmer - (Nassau). I know
the Adderley and Higgs property near Harold Road.
I farm the property. 10

In 1943 I went to Crown Lands Office to get
a lease to farm Govt. property, I got a lease
from Mr. Aranha. I told him the area and I
paid rent to the Crown of 6/- an acre. I asked
for 10 acres.

After I was working on the land for about 3
months, a Mr. Higgs hailed me. "Who is there?"
He is supposed to be owner of the land now. I
told Higgs I was farming. He said - "Do you
know this is private property?" I said I had
leased from the Government. Higgs went to see
Aranha. Aranha came to me and pointed out
Government land from private land. There was a
gamalamie tree with rocks separating Govt. land
from private land. I could show where that is. 20

I know Solomon's building - on the North of the new Road - I am on the South.

The boundary was N.W. of Harold Road.

Higgs gave me permission to carry on - as my farm was well on.

In 1940's, Aranha died - and the Crown Office would not give me another lease. I asked Higgs if I could carry on - he said yes. I worked on Higgs land from 1943 - 1960.

10 The only farms I saw were Mr. Higgs and his sons.

Mr. Knowles - Mr. Miller-Sidney Wylie - Mr. Sanders - Miss White - Etta? - and others were all working on Higgs land. I met the other farmers when I went there - the farms were only close to me.

Farms were all through the land. Mr. Higgs farmed the greater part of the land.

20 I had one farm of 2 to 3 acres. I farmed this one area. Kept cutting and burning a bit of land and then move on. Tomatoes - potatoes and corn. A new farm would have to be cut for tomatoes growing. Potato and cassava - worms - would destroy tomatoes.

We would grow beans - peas - others. I used to grow watercress - and supplied hotels. I raised cabbages, lettuce.

30 Mr. Higgs grew tomatoes for export. The hill land running down to Adderley Road was farmed.

Claridge had his farm on the S.W. - of the Gladstone Road part.

My age is 62.

Plenty valleys in the area. The roads run through them. It is all cut up now. I had to give up when that happened.

Aranha asked me to report coal burners.

In the Supreme Court

Adverse Claimants' Evidence

No.16

Dudley Johnson Examination

(continued)

In the Supreme
Court

Adverse
Claimants'
Evidence

No.16

Dudley
Johnson
Examination
(continued)

Mr. Higgs burnt coal - where they wanted.

I know the old Harold Road. Don't know the land prior to 1943.

At the time we only used donkey carts.

In 1943, on either side of Harold Road - "Higgs land".

I was never ordered off by Oakes people. No one interfered with me.

New Harold Road - runs through Higgs land - to my knowledge. There was no pipeline running through in 1943. Higgs had bananas south of the Dump. 10

I never saw any surveyors except the one in 1943 and Mr. Penford said they were to make a rain water system because of the high hill. For that reason the Govt. would not give me more land.

I only know of "soil thieves" who came and stole soil. I know of no other road blockings. I saw none.

Mr. Higgs had a pear orchard. 20

Cross-
examination

Cross-examined Bethel :

I used to live at my farm - stay for 2 or 3 months - I had a wooden thatched camp. This was built on Higgs land. I did a little farming on the Crown land.

I could point out my farm today.

I occupied land, where I thought.

I burnt coal.

Where I saw good pines for coal - I cut them down. 30

I burnt coal near Gladstone Road - from Harold's Pond straight to Gladstone Road.

I burnt where Mr. Nutt's farm is.

I didn't farm on to Gladstone Road - but East

of that Road over in the middle section - between Gladstone Road and Harold Road.

Higgs other family farmed up to Interfield Road.

My 2-3 acres made up several farms. I planted okras on the first farm - then potatoes - then peas and cassava.

I put my camp on my first farm.

Okras can be planted every year.

10 I had watercress going on one piece of land for 5 years, before 1960 when I left.

I paid Higgs 1/3 - I dealt with the Father Higgs. (Leonard). His sons did not distrust me after his death.

My farm was not near the Cave.

I burnt coal near Mr. Nutt's chicken farm - as I have said.

20 I used to burn coal for Mr. Fernander - but I had to give him 2 out of 6 bags, and so I went to Aranha - that is - third of whatever the number of bags.

Part of my 10 acres was pine land.

I left the land in 1960 (1943-1960).

Re-examined:

My farm was on the S.E. part - near Harold Pond. Most of the hills have caves - and under the Ridge where Mr. Edwards lives. I have never been to the Caves.

30 I grew plenty bananas. Anywhere I saw in the vicinity that I could use - I did so.

Miss Clarke has hogs, sheep and goats near Harold Road, when I came to the land.

Mr. Knowles - 50 yards from me.

In the Supreme Court

Adverse Claimants' Evidence

No.16

Dudley Johnson Cross-examination

(continued)

Re-examination

In the Supreme
Court

No. 17

ISAAC WYLLIE

Adverse
Claimants'
Evidence

Isaac Wyllie - Sworn - Examined Thompson

No.17

Meadow Street South - Nassau. Aged 75. I have known Higgs land all my days. I was never a tenant of Adderleys or Higgs. I owned land on Harold Road and sold it to Dr. Soltys.

Isaac
Wyllie
Examination

When I was a boy, I went to Higgs land - 1923/4/5 and before then.

I got my land from my mother.

10

To get to my land - I went via Blue Hill. Higgs was West of me.

I saw Higgs children on Higgs land - when they were in "britches".

Mr. Higgs invited me to his land on a visit.

I used the old Harold Road - which turns into Farrington Road.

Higgs told me he owned East and West of Harold Road at the curve.

I farmed on my own land. I have heard of "Sugar House" - we grew tomatoes, bananas - peas.

20

I knew Higgs' land all my days. Willie Knowles worked on his land. Sydney Wyllie - May Lock.

Cross-examined Bethel - None.

No.18

No. 18

Osborne
Higgs
Examination

OSBORNE HIGGS

Osborne Higgs - Sworn - Examined Thompson

Age 38 - son of Leonard Higgs. My earliest recollection is of my father burning lime and pine for coal on the land in this case. I remember seeing my father farming the land. I remember

30

some of my father's tenants. Willie Knowles - Miss Ward - Miss Miller and others. I can remember back to 1934/35.

I remember seeing lemon trees. He never shewed me the boundaries - he pointed them out at a distance.

Our land was on both sides of Harold Road. East of Harold Road - known as "Moss Grant".

10 I know when certain portions of our land were acquired. When I was aged 9 or so. Our family was compensated for acquisition by the Government of a part of the land.

I never helped my father. There were tenants. I know that coal was burnt - in the pine barrens. I don't know if my father was stopped from coal burning.

I have been on the land since the age of 5 or 6 years of age.

20 No Thompsons have ever interfered with me or my family.

I remember my father saying Ted Knowles interfered with him and said it was "Oakes Land". I heard Knowles came back once or twice.

I and my brothers told surveyors to get off our land - in 1962.

Wilmore Brown once cut out the lands. I instructed him to do this. One of the lines would be the boundary line between the Moss Grant and Poitier Grant.

30 We farmed the land - burned lime and coal kilns. Rock and fill and soil. Began the Rock Crushing in 1958/59. my brother and I were partners.

I had a farm - cut about an acre or so. I did not do much farming. My brother had his farms.

I can remember six farms on the land in the early war years. There may have been about 10% - of virgin land - on one hill. That was cut down when I was a boy. No 'virgin' pine in my time.

In the Supreme Court

Adverse Claimants' Evidence

No.18

Osborne Higgs Examination

(continued)

In the Supreme
Court

Adverse
Claimants'
Evidence

No.18

Osborne
Higgs
Examination
(continued)

Claridge was farming West of the Moss Grant.

My father grew crops on the Moss Grant. Tomatoes - okras - cane. He had four acres or so at a time for tomatoes - then other crops would follow - okras - cane.

For tomatoes - fresh ground was necessary - no germs.

In my lifetime my father followed tomatoes by other crops on the same piece of land and then put in fruit trees.

10

Road block in 1959 - but I unblocked it. This happened no more than twice.

I have never seen others on the land. Petitioners have never interfered with us in any way.

Late 1960's or 1960 early I first heard of another interest in the land.

Cross-
examination

Cross-examined Bethel:

This land was my mother's - Entire land from Mr. Edward's land to Gladstone Road.

20

I farmed personally - with my brother - say 10 acres.

Burnt lime over an area and then planted - a total area of the above - 10/15 acres - I don't know.

I began farming around 1950. I visited the land before then. 3 or 4 times a week.

Had a donkey cart.

We brought produce up.

I saw the land - before I was old enough to work.

30

I farmed to the North - and South of the Public Dump.

We had farms on the Moss and Poitier Grants.

Our biggest farm was on the Poitier Grant.

My father had farms East of the Moss Grant.

He farmed over a vast area. Coal burning - Stapledon Gardens area.

I never reached the boundaries of the Adderley land.

In the Supreme Court

Adverse Claimants' Evidence

No.18

Osborne Higgs Cross-examination
(continued)

Re-examined:

Re-examination

10 Sweeting Coppice is part of Adderley Estate - also where Pepsi Cola now stands. That was acquired by Government. And north of Adderley Road my dad farmed a citrus grove for which he got Government compensation.

No. 19

ETHELINE MAYLOCK

Etheline Maylock - Sworn - Examined Thompson

Dumping Ground Corner - Nassau. Aged 68. I know the "Adderley Estate". Controlled by Mr. Higgs. I worked on the land since 1932. I quit after R.A.F. took it over - about 1941/42.

20 I had a farm on the land - and I gave 1/3 to Mr. Higgs. Old Harold Road - from the Dump to the crest of the Hill. On the North side of the hill. - that is where I worked.

My farms were near Harold Road. I farmed 1 acre or 1½ acres - that was my only farm.

In 1932 - I met people working on both sides of Harold Road - working for Mr. Higgs.

No.19

Etheline Maylock Examination

In the Supreme
Court

Adverse
Claimants'
Evidence

No.19

Etheline
Maylock
Examination

(continued)

When I was there no one disturbed Higgs or his tenant farmers. I remember tenants - Willie Knowles, Saunders - Carey Sweeting- Marie Delancy. There were others whom I cannot remember.

I grew the ordinary vegetables.

Land South of Johnny Mack - I know to be "Adderley Land."

Cross-
examination

Cross-examined Bethel:

My farm was South of the Dump. Going by the Hill.

10

I know Adderley Road - East and West.

I farmed South of Adderley Road - about 4 acres of land between my farm and Adderley Road.

My farm 1½ acres or so.

Other farms near to me - Marie Delancy's.

The others were farther away.

I used to go to the land 3 or 4 times a week.

I sold produce to others plenty - because that was my only living.

20

I also raised pigs at home.

Re-
examination

Re-examined:

Tenants South of me were South of the hill. Marie Delancy farmed on the top of the hill. I left them all there when I quit my farm.

No. 20

ROGER CHARLES ADDERLEY

Roger Charles Adderley - sworn - Examined Thompson

I am an adverse claimant. My father was Daniel Adderley - the snn Mr. Alliday Adderley.

I am aged 72. Born 1897. I went on the land at the age of 11 or 12 years old. 1908/9.

I remember the land as one piece. My father had let the land to tenants for 1/3 share.

10 The crops grown were tomatoes - cassava, usually crops. There were pine trees - 50 years ago - no citrus that I can remember.

My uncles Joseph and William sold the Northern half of the land - and my father and Aunt were left with the Southern portion, part of which we are dealing with in this case.

I was last on the land in 1914-15. I left the Bahamas in 1917 for the U.S.A. Where I have stayed except for visits to the Bahamas.

20 My father's sister was Sarah Anne Adderley - who married a Bain.

Between 1915/16 my brother finished buying the land from Rachael Collins some relative of my Aunt Sarah.

The deed in favour of my brother who in turn had given to my father for recording - got missing - probably lost in a fire.

More of the Collins family have laid claim to the land.

30 About 1941, my half brother - F.W. Adderley, wrote that Sir Harry Oakes was interested in buying some of the property and he wanted a note from each of us - but I did not write.

None of the heirs of William Campbell and Joseph Adderley been on the land in question.

In the Supreme Court

Adverse Claimants' Evidence

No.20

Roger Charles Adderley Examination.

In the Supreme Court

I don't know if J.A. Thompson has ever been on the land.

Adverse Claimants' Evidence

No.20

Roger Charles Adderley Examination (continued)

Cross-examination

Cross-examined Bethel:

I knew of the Will of my father - Daniel Dewellmair Adderley. I have seen a copy of it.

He left Goodman land to his children, that is the land subject of this petition.

I can't say why my father left 1/4 Goodman tract to his children.

Re-examination

Re-examined:

10

Goodman's Tract - 92 acres - plus more (Sugar House.)

No.21

Kenneth Higgs Examination

No. 21

15th August.

KENNETH HIGGS

Kenneth Higgs - Sworn - Examined Thompson

Augusta Street, Nassau. I am the third son of Clotilda Higgs and the late Leonard Higgs (born 1929).

I am the son who has acted on behalf of my mother mostly.

20

I produce :-

- | | | | |
|----|---|--------|--|
| | 1. Conveyance by W.H.Dilletson to Alliday Adderley
of 8th November, 1873. | Ex. 3 | In the Supreme
Court |
| | <u>N.B.</u> (The land in question is a portion of the
312 acres) | | Adverse
Claimants'
Evidence |
| | 2. Mortgage of 20th March 1877 - Alliday Adderley
to Augustus Adderley | Ex. 4 | No.21 |
| | 3. Conveyance by Alliday Adderley to Joseph
Adderley and others dated 15th April
1878. | Ex. 5 | Kenneth
Higgs
examination
(continued) |
| 10 | 4. Mortgage of 11th February 1879 by
Alliday Adderley to J.T.Foulkes. | Ex. 6 | |
| | 5. Release dated 7th May 1890.
Augustus J. Adderley to Joseph Adderley
& Sons. | Ex. 7 | |
| | 6. Reconveyance dated 8th May 1890 from
John Thomas Foulkes to Joseph
Adderley sons. | Ex. 8 | |
| | 7. Conveyance dated 8th May 1890 by
Joseph Adderley and others to W.Clough | Ex. 9 | |
| 20 | 8. Mortgage dated 9th July 1890 by
Joseph Adderley to R.H.Sawyer. | Ex,10 | |
| | The Provost Marshal sale that took place in
1890 concerned my great uncle William Campbell
Adderley. The land that was sold by the Provost
Marshal was not part of the Adderley land nor
part of Goodman's but it was adjoining land. | | |
| | My grandfather Daniel D. Adderley at the sale
presented Lindsey and paid the debt. | | |
| 30 | I produce the Receipt for the debt paid to the
Provost Marshal. | Ex.11. | |
| | I produce a Conveyance dated 2nd February
1889 from G.A. Robertson and David C.
Robertson to William C. Adderley -
for 51 acres. | Ex. 12 | |

This 51 acres came out of Killarney Land or
"Sugar House" land, which comprises the Sarah
Poitier grant and the Peter Dean grant.

In the Supreme Court

The Eastern boundary of this land is Moss grant and Moody and Coakley grants.

Adverse Claimants' Evidence

That is the land which was mortgaged and sold by the Provost Marshal.

No. 21

Ex. 12 was in the custody of my father - who got it at the Provost Marshal's sale and he in turn passed it on to my mother.

Kenneth Higgs Examination (continued)

The whole of the land was used by my grandparents for money crops - mostly pineapple and citrus which were exported.

10

Ordinary vegetables were grown - potatoes - the usual kind.

Farming as an industry has gradually diminished.

I produce an Agreement of 17th March 1883 between Joseph Richmond Adderley and Adlophus Bullard.

(A lease for the whole of Goodman's for growing pineapples - sugar cane - for export). Ex. 13

I produce an Agreement between Alliday Adderley and Charles L. Lumley dated 31st March 1875. Ex. 14

20

(Also an Agreement for leasing.)

My parents continued this type of farming up until 1930 - I can remember as a boy helping my father to pack and crate tomatoes for shipping to the U.S.A.

I produce letter from Hamburger Corporation dated December 11, 1926. Ex. 15

Land used extensively for these farming purposes.

30

We don't grow tomatoes on a large scale because no foreign market. Same with okras - pineapples.

The timber bush on Goodman's today is 5 - 10 years in age. But all the land had been farmed up to 1930's - and it has been gradually overgrown since.

"Goodman's" on the "Adderley Estate" - around 1940 - is a vast amount of a land including Moss Grant - The Brown Grant - Michael Grant - Coakley and Moody Grant and others - in all, over 700 acres.

In the Supreme Court

Adverse Claimants' Evidence

No.21

Kenneth Higgs Examination

(continued)

10 On several occasions - my father was confronted by Mr. Oakes - and the latter Assistant called Dukes. Especially in 1940 - Oakes was asking my father if he could buy the rest of Goodman or Alliday Adderley's Estate. My father used to tell him that only my two uncles in the U.S.A. and my mother and aunt could sell him the land. Mr. Oakes asked my father to contact these other relatives and get them to see his, Oakes, lawyer. To my knowledge, my relatives were not interested in selling.

On several occasions Oakes Company sent surveyors to survey the land - this was in 1951/52.

20 I told them not to survey - I remember Calvin Cooper, Nigel Bain and Mr. Coakley - in the survey teams. One of my men chased them off with a cutlass.

I used to tell Oakes if anyone had sold him land, that person had no right to do so.

Oakes family used to threaten us that if we did not let them have anything out of Goodman's, they would not let us have anything out of Sugar House.

30 By 1956, my Uncle Richard Crowder Adderley (dead now) came from New York. He arranged for a meeting at Callender's office (I was present). The Oakes lawyer was there. We discussed the ownership of the land. Papers were produced. We was more or less agreed that no one could have sold anything remaining of the Goodman's land without the four parties concerned - my 2 uncles - Aunt and my mother.

40 Sugar House papers were produced - checked by Oakes. W.P. Adderley had tenants on Sugar House - according to a paper that I saw. The end result of the meeting was that Oakes family will keep the land West of Gladstone Road and my uncles

In the Supreme
Court

Aunt and mother would keep the land East of
Gladstone Road.

Adverse
Claimants'
Evidence

After that no other meeting with Oakes
Estate; Until a quieting Petition of some years
ago.

No.21

Kenneth
Higgs
Examination

As far as I know I and my family only were on
the land and our authorised tenants. I remember
back to 1933-34. We have been in undisturbed
possession.

(continued)

I remember the old Harold Road. On both
sides on the Road my father exercised authority
over. Land East of the old Harold Road not
included in land acquired by Government is my
family land.

10

The 12.52 acres claimed by the Petitioners
under a Crown Grant. That land was occupied by
my father and his tenants - farmed it - burnt
the pine - and I know of no one claiming it.
It was a part of Goodman's land.

Mr. Aranha never contacted me about the land.

20

The Eastern boundaries were swallowed up in
the Government acquired land.

Cross
examination

Cross-examined Bethel :

I am aged 41.

I speak from what my parents said - that is
the additional evidence.

William C. Adderley sold his 1/4 interest in
Goodman's to Clough and Menendes.

Shewn Ex. 9 - that is the Conveyance I am
talking about - the plan A shews the North
portion of the Moss Grant.

30

Plan B shews both the Northern portion and
the Southern portion of the Moss grant; the 185
acre portion of Plan B went to Clough - North
of Adderley Road.

I wouldn't say that the area south of the

Road was part of the land sold to Clough.

Taking away the land sold to Clough there remained the whole of Goodman's - to my grandfather Daniel 1/4; to my grand aunt Sarah Ann Adderley Bain 1/4. Half of "Goodman's" went to Clough - the other half went to my grandfather and grand aunt.

Ex. 5 was a Deed of Gift to three brothers and one sister.

- 10 All donees joined in Ex. 9 because they owned the whole of "Goodman's" jointly and no one could transact any sale without the consent of the others.

My grandfather and grand aunt (David & Sarah) signed Ex. 9 only to give them clearance for Clough and Menendes to get our 1/2 Goodman's.

The remaining land after the sale to Clough was not held by the three brothers and one sister as tenants in common.

- 20 I deny that the 1/4 interest of W.C. Adderley was conveyed by the Provost Marshal to James A. Thompson and is the 1/4 interest claimed by the Petitioner today.

The 1/4 of the entire Goodman land which went to my Aunt Sarah Ann Bain was willed by my Aunt to her godchildren and the executors sold that 1/4 to Hercules Pinder - who died and the 1/4 went to his sister Rachel Collins.

- 30 My uncle, R.C. Adderley bought this 1/4 from Rachel Collins and he placed the land in my father's care and there are letters that R.C. Adderley bought this land.

My father's first tenants that I know of were placed West of the Curve - of Nassau Ready Mix. This was in 1934 or so.

If David and Joseph had not conveyed their interest in the Estate of Alliday - their heirs long before would have attempted to oust me and my family (the present adverse claimants.)

In the Supreme Court

Adverse
Claimants'
Evidence

No.21

Kennaeth
Higgs
Cross-
examination

(continued)

In the Supreme
Court

Adverse
Claimants'
Evidence

No.21

Kenneth
Higgs
Cross-
examination
(continued)

Ex. 9 - all the donees in the Deed of Gift land to give Mr. Clough to F.S. because if grandfather and Aunt had not signed, Clough would only have got a 1/2 interest in the land he got before the 4 were tenants-in-common.

As regards remaining portions, my grandfather and grand aunt remained in possession and were entitled to the remaining portions.

I used to gather in the produce as soon as I could.

10

Farming never ceased.

More land required to produce commercial crops.

Inspection of this land on Friday afternoon at 2.30 p.m. (Counsel and Parties).

18th February Cross-examination continued.

Shewn Ex. "A" to J.A. Thompson:

But my grandfather acquired the 50 acres.

No one else worked the land except my grandfather and family.

The land was worked from end to end - farming where the land was fertile. Other bits coal and lime burnt.

20

Land has to be left - for regrowth.

We kept "ousting" people who trespassed.

My father (and 2 or 3 others) farming after 1960.

Rock crushing began in 1946 - on first machine in 1954.

Tractors used North and South of the land.

Shewn Ex. 2 - the white portion at the North is not a "bulldozing" but a quarry.

30

In 1953 I pushed up soil over an area of 1½ acres.

The ripping has been done only within the last three years.

Large scale stone crushing since 1954.

I supplied Balmoral Hotel with stone, etc.

In the Supreme Court

Adverse Claimants' Evidence

No.21

Kenneth Higgs Cross-examination (continued)

Re-examined:

Re-examination

By leave - I produce Last Will & Testament of Daniel Adderley - dated 8th April 1930.

Ex. 16

Affidavits by Clotilda Higgs dated 27th February 1969

Ex. 17

10 Affidavit by Clotilda Higgs of 14th May 1969

Ex. 18

Shown Ex. 1 :-

In 1943 - most of the land in question was occupied - farming all over.

The area on both sides of the road leading to Petty Sound was farmed.

When "export" farming ceased the farming done was only for the home market.

20 In 1951 exchange only took 40 bushels of my tomato crop.

No. 22

SAMUEL SAUNDERS

Samuel Saunders - Affirmed - Examined Thompson Finlayson Street - Nassau. I was a tenant of

No.22

Samuel Saunders Examination

In the Supreme
Court

No.22

Samuel
Saunders
Examination
(continued)

the Adderley's. I had a talk with Mr. Aranha in 1947. I was working.

He said East of the "Wall" was owned by three brothers - the Adderleys, that 2 had sold out their claim but that the other, David, had not. That the Oakes' had bought out the 2 brothers shares.

Cross-examined Bethel: None

No.23

Francis
Garroway
Examination

No. 23

FRANCIS GARROWAY

10

Francis Garroway - Sworn - Examined Thompson

Crown Lands Surveyor: Nassau. Trained in aerial photography and interpretation. I produce maps from such photographs. Recent training in Switzerland.

Shewn Ex. 1 (1943) I am familiar with "Moss Grant". I have marked the area on this photograph.

At the point where Harold Road turns N. E. a little to the South is shewn some "cutting" - also to the West of the present day Harold Road and on the East side of the Road. Most intensive occupation is West of Harold Road. 20

I see signs of farming along the Ridge and on both sides.

Shewn the Petitioner's Plan - there is quite a bit of scattered activity over the whole of the land coloured pink. The cultivation is not so intense on the blue area as on the pink.

On the blue area - coppice type of vegetation. 30

I would say roughly 40% of the usable land was being cultivated in 1943 - North and South of the ridge - i.e. of the land the subject matter of this petition.

Shewn Ex. 2 - 1958 - that shews less farming in 1958 than in 1943. I would say that some of the farming areas had been abandoned. I see some kind of construction in 1958 photograph, i.e. roads and houses.

In the Supreme Court

Adverse Claimant's Evidence

On both sides of intersection of drem line Road and the Road reservation leading to Gladstone Road.

Francis Francis Garroway Examination

(continued)

10 There are clearings on the Western side of this intersection - may be farms - or lime kilns.

Cross-examined Bethel:

Cross-examination

I see bulldozing activity North of intersection of grem line and road leading to Gladstone Road - in the 1958 plan.

I draw a line on Ex. 2 shewing the Western boundary of the filed plan.

The Northern boundary on pink part of the filed plan is about 400 feet South of Adderley Road.

20 The quarrying is therefore on N.W. section of the land in question.

Shewn Ex. "L", the vegetables would be scattered pine and coppice. There are one or two areas cleared, in the S.E. Area and near the Northern boundary going South towards the Road leading to Gladstone Road.

I would say looking at the 1943 photograph and the 1958 one and 1962 (Ex.2) plan, that farms had been moved from place to place.

30 There are some areas 1943-1962 which have not been touched at all, and in the vicinity of the Road leading to Gladstone Road.

Re-examined:

Re-examination

The ridges are quite steep - in some areas farming could go on. Quite a bit of the hilly

In the Supreme Court

area is untouched.

Adverse Claimants' Evidence

Bulldozing and ripping would show up differently on aerial photographs. In 1958 photo, North of the Ridge could have been bulldozed and East of the Quarry. Bulldozing would obliterate farms and in the N.W. corner (interesection of grem Line Road and the Road leading to Gladstone Road. In 1962 - there seems to have been some bulldozing in the S.E.

No.23

Francis Garroway Re-examination (continued)

Grem Road - a Govt. project. Crown would notify the owner - that road encircled the R.A.F. Airport.

10

No.24

Mervyn Evatt Lee Examination

No. 24

MERVYN EVATT LEE

Mervyn Evatt Lee - Sworn - Examined Thompson

Land Surveyor and draftsman - Nassau. I produce a plan of the land in dispute - compiled from other Survey Plans.

Ex. 19

Cross-examined Bethel: None.

No.25

Judge's Notes of addresses of Counsel 19th August 1969.

No. 25

JUDGE'S NOTES OF ADDRESSES OF COUNCEL

19th August.

Thompson:

1. Doc. Title--

2 points -

- 1. Provost Marshal Sale
- 2. Will of Daniel Adderley

20

2. Possessory Title

Pineapple - tomatoes until then was the main economic industry in the country.

Pineapples - lost after 1920.

Tomatoes - lost after 1930.

1883 onwards - land used for cultivation of pineapples. All arable land - was cultivated.

To support user

Exhibits 13 - 14

10 Exhibit A.

and C. Higgs - Mr. Knowles - witnesses.

Custom of subletting parcels of land.

No evidence to dispute A.C. possession prior to 1952/53.

Ted Knowles - surveyor. But Oakes paid for damage when he ran the road through.

Evidence to Mr. Knowles - 99 years old - on the land in 1912. A tenant of Daniel Adderley and in 1930 - a tenant of Leonard Higgs.

20 1943 aerial photo - shews uses of the land by the Adverse claimant.

The blue portion of the land - 12.53 acres. This land used by Adverse claimants as far back as can be remembered. Coal, lime, wood, and where possible, farming. It is part of Goodman's Estate - which includes Moss grant - Poitier grant, Moody and Coakley grants.

30 ALL the land was farmed. Higgs had never worked elsewhere. If land unusable and part of a larger tract - occupation of the arable land covers the unusable.

Halsbury 3rd Edition - Vol. 24 Section 482(p.251)

Petitioner has shewn no acts of enjoyment of this land.

In the Supreme Court

No.25

Judge's Notes
of addresses
of Counsel
19th August
1969

(continued)

In the Supreme Court

No.25

Judge's Notes of addresses of Counsel 19th August 1969

(continued)

Possession goes back to Deed of Gift (1878).

Petitioner has been ousted. In 1912, if Petitioner had any title they were ousted (1892).

Richard and William joined in the Conveyance in order to vest completely to fee simple in the Northern part of the Alliday Adderley - i.e. otherwise Clough would not have got a 1/2 interest in the land.

Agreement between the four - in consideration of their joining in the Conveyance and not receiving any portion of the consideration - Daniel and his sister Sarah Ann, remain in possession of the remainder of the land.

10

See Exhibit 12.

See Ch. 150 - Section 1 1892 - the years - right of action, etc.

Right of Joseph and William - extinguished at least by the year 1932.

A.F. Adderley - Chairman of Airport Board. He should have protected his rights (if he had any) in the land.

20

Sarah's interest - Her Will - to her children.

Roger Adderley said one of the last contacts he had with his father was witnessing to purchase of Sarah's interest.

Possession by Daniel - Clotilda and her husband Leonard - and her sons and all of the tenants, - who were tenants of the Higgs.

Permission to take anything off the land. From Higgs and his predecessor in possession. Also rents.

30

Paradise Beach Case -

A.E.R. 1968 - Vol. 1 at Page 530.

At Page 534 "F".

Section 12 of Ch. 148.

If Joseph, William or Sarah did not go into possession after 1878 time would begin to run against them from that date and their interest also extinguished by the occupation of Daniel.

In the Supreme Court

No.25

Will of Daniel Adderley - Ex. 16 "my 1/4 interest" in the Goodman tract".

Judge's Notes
of addresses
of Council
19th August
1969

What was meant by "Goodman".

(continued)

See Ex. 16/17/18 - Goodman & Adderley Estate practically synonymous.

10

That 1/4 - i.e. his 1/4 interest prior to the Clough Conveyance in 1890. Daniel and his successors have always acted in a manner which indicates that the 1/4 meant what was left. This view is suggested by the Actions of the rest of the family.

Construction of Deeds. Odgers 4th Edn.

Page 82. "User"----- Page 84.

Occupation from 1873 - and so, possession as against the Crown.

20

(71 of 1968)

Acquiescence.

Bethel:

1/4 interest of W.C.Adderley, whose interest was sold by the Provost Marshall in 1892 - to J.A. Thompson.

N. Portion of the land sold to Clough.

The southern portion is the land, the subject of this Petition (92.33 Acres).

Joseph Richard Adderley

30

William Campbell Adderley

Daniel Adderley

Sarah Ann Bain

The other 3/4 is in Joseph, Daniel and Sarah.

In the Supreme
Court

No. 25

Judge's Notes
of addresses
of Counsel
19th August
1969

(continued)

Daniel is the father of the adverse claimant -
Clotilda Higgs and of Roger Adderley.

Petitioners say that Clotilda Higgs and
R. Adderley - are entitled to a part or all of
the share of Daniel Adderley, by virtue of
Daniel Adderley's Will of 8th April 1930 (Ex.17).

D. Adderley left to his children -----

1/4 interest in the Goodman Tract.

the interest of Joseph Adderley and Sarah Ann
Bain

10

as far as documentary title is concerned
remains vested in them or their heirs.

(Paul Adderley and his father would be entitled
to the shares of Joseph Richard Adderley being
the grandchildren of Joseph).

Their interests are not affected in this
Action.

Perfect documentary Title - to the 1/4
undivided interest.

If court in favour of Adverse Claimant - then
only in respect of the 1/4 undivided interest
claimed by the Nassavian.

20

Efforts of adverse claimant to shew that the
title of the heirs of successors of Joseph Adderley
and Sarah Ann - have no effect in this Petition
because Petitioner is claiming neither their
shares nor Daniel's.

Roger Adderley had not been in possession of
any of the land in question. (He has been out
of the country since before 1917).

30

That interest is not being claimed by the
Petitioner. He still has a 1/16th interest -
but that does not conflict with the Petitioner.

Roger Adderley's claim is a misguided one because
no one is taking away his right in this Action
which he got from his father.

Petitioner is not claiming the interest of Clotilda Higgs - because she has 1/16 interest under the same Will.

Daniel - He could only devise 1/4 of what was left in the Goodman land.

In the Conveyance by Daniel Adderley and his 2 brothers and sisters to Mr. Clough - if the N. portion of the Goodman Tract was conveyed to Clough. Ex. 9.

In the Supreme Court

No.25

Judge's Notes
of addresses
of Counsel
19th August
1969

(continued)

10 Plan shews Northern portion disposed of. The Southern portion undisposed. This Southern portion is the land the subject of this Petition.

20 Petitioner put in Ex. K. - which shews the entire Moss Tract of 312 Acres. Putting Ex. 9 and K. together - that shews the land that is left - the subject of Petition. If again compared with Plan E - that shews the 90½ acres of William Moss - again being the Southern portion.

Conveyance to Mr. Clough - 4 of the children of Alliday Adderley conveyed this property and each gave a receipt in the Deed of the purchase price. It has been submitted Sarah and Daniel got none of this money. But that is at variance to what is in the Deed. In the absence of first-hand evidence, we can only rely on what is in the Deed.

30 If any agreement that Joseph Adderley and W.C. Adderley only received the money and left the Southern part of the property to Sarah and Daniel - then there should be some writing or first-hand evidence. Evidence about all this is hearsay.

40 Deed shows that all four sold to Clough and all four held on to the Southern portion and that when Daniel Adderley made his Will, he was dealing only with the 1/4 interest in the Southern portion, which is the subject of this Petition.

Good documentary title to 1/4 interest - no doubt about that.

In the Supreme
Court

No.25

Judge's Notes
of addresses
of Counsel
19th August
1969

(continued)

Refer to Ex. a. the Root of Title - Sale by
Provost Marshal to J.A. Thompson - this includes
land other than the subject of this Petition.

Something wrong - J.A. Thompson got no Title?

See. Ch. 116. Ch. 7

Ex. A - barred everyone else.

Title to 12.52 Acres.

Blue coloured land on the Plan.

Again documentary title and good Crown Grant
1840 - with Plan - 143 Acres - the company now
claims 12 acres-odd, the rest having been
acquired by the Govt. This is solely vested in
Petitioner. The adverse claimants have no claim -
if claiming by possession - 60 years prior to
the Crown Grant or 20 years after the Crown
Grant.

10

Petitioner's Title

Person who has documentary title - not
necessary to police vast areas.

Between 1892 and 1912 Evidence of adverse
possession - non existent.

20

Franks on Limitation of Action - 1st Edition.
Page 120.

Doc. of title are per the evidence of
possession on the part of persons holding the
documents;

Page 123 ---

Evidence - the farming has taken place on land
commencing from the Ready Mix Concrete operation -
to Gladstone Road. Impossible to oust - on the
evidence - this is only a part which the Adverse
Claimants say they have been possessing.

30

Farms of 3 acres or 5 acres - then moving on -
over a vast area.

True owner with doc. Title cannot be disposed
by this kind of activity.

User - development - vagueness - areas and sizes.

In the Supreme Court

Paradise Island Case - Page 535

No.25

Adverse claimants in possession of whole of the land - that would have to be proved - not spasmodic parts of it.

Judge's Notes of addresses of Counsel 19th August 1969

Ocean Estates Ltd. & Pinder

Acts of Possession of Petitioner.

(continued)

A road was put through. Ted Knowles blocked the roads - up to 1959.

10 Periodical inspections.

Surveyors - Lines cut out.

These are sufficient.

Williams Brothers - Rafferty 1958 Q.B.

Page 159. at Page 173

As to 12.52 Acres - no proof of exclusive possession (Evidence given as to the cultivation of this.

Thompson :-

20 Occupation prior to 1940 - no comment by Petitioner

User:

William Bros. ----

No person was allowed to go on the land. Petitioners met us on the land. Adverse Claimant was in possession and the documentary owners are trying to oust them.

Distinguish Ocean Est.Ltd. case - not commercial owners - they were shifting cultivators.

30 Lines should have been cut in presence of adverse claimants.

Megary - Real Property 1957 - Page 903.

In the Supreme Court

No. 26

No.26

Affidavit of James Maxwell Thompson 23rd January 1970.

AFFIDAVIT OF JAMES MAXWELL THOMPSON.

IN THE COMMONWEALTH OF THE BAHAMA ISLANDS IN THE SUPREME COURT

Equity Side

1967 No. 96

IN THE MATTER of those two parcels or tracts of land comprising 92.33 acres and 12.52 acres respectively and situate on the Southwest side of Harold Road in the Western District of the Island of New Providence

10

AND IN THE MATTER of the Petition of Nassauvian Limited under the Quieting Titles Act 1959.

A F F I D A V I T

I, JAMES MAXWELL THOMPSON, of Chambers, Frederick Street in the City of Nassau, Counsel and Attorney-at-Law, make oath and say as follows:

1. I am Counsel for the Adverse Claimants in this action.

20

2. On the 18th day of December A.D.1969 I was instructed by the said Adverse Claimants to draw a Conveyance from themselves to Manufacturers Agents Limited.

3. I was further directed to inform this Honourable Court of the said Conveyance so that the interests of the said Adverse Claimants as determined by the Honourable Court would be made subject thereto on final judgement.

JAMES M. THOMPSON

30

SWORN by the above-named) JAMES MAXWELL THOMPSON) this 23rd day of January) A.D.1970)

BEFORE ME,

P.J. RICHARDSON

Designated Clerk, Supreme Court.

No. 27

In the Supreme Court

JUDGMENT

No.27

BAHAMA ISLANDS

Judgment
29th January
1970

IN THE SUPREME COURT

No. 96

Equity Side

IN THE MATTER of those two parcels
or tracts of land comprising 92.33
acres and 12.52 acres respectively
and situate on the southwest side
of Harold Road in the Western
District of the Island of New Providence

10

AND

IN THE MATTER of the Petition of
Nassauvian Limited under The Quieting
Titles Act 1959.

JUDGMENT

29th January, 1970.

This is a petition to quiet the title of two
parcels of land comprising 92.33 acres and 12.52
acres respectively and situate on the southwest
side of Harold Road in the western district of
the Island of New Providence. They are the
parcels coloured pink and blue on the filed plan.

20

The petitioners, Nassauvian Limited, claim
only an undivided one-fourth part or interest in
the 92.33 acre tract and the entire ownership
of the 12.52 acre tract.

The adverse claimants Clotilda Higgs and
Roger Adderley according to their adverse claims,
claim to be "entitled to undivided interest in
fee simple in the land the subject of the
petition by virtue of a devise contained in the
will of Daniel Adderley dated 8th April 1930.

30

It is important to state that the petition is
limited to an undivided one-fourth part or
interest in the 92.33 acre tract. That point
cannot be over emphasised. Claim to ownership of

In the Supreme
Court

No.27

Judgment
29th January
1970

(continued)

the whole of this tract or any claim beyond that claimed by the petitioners in the Quieting would have required a separate petition by the adverse claimants. The two petitions could have been consolidated.

The petitioners claim that they have perfect documentary title in respect of each of the two tracts.

The 92.33 acre tract

This parcel forms the southern portion of a piece of land "Goodman's". This southern portion as well as the northern portion were owned in 1890 by Joseph Richard Adderley, William Campbell Adderley, Daniel Dewellman Adderley and Sarah Ann Bain. The northern portion was sold on 8th May 1890 to one William Clough. By the conveyance (Ex. 9) of that date the four vendors each sold their undivided one-fourth parts in the land and they acknowledged the receipt of the purchaser price. This left Joseph Richard Adderley, William Campbell Adderley, Daniel Dewellman Adderley and Sarah Ann Bain each with a one-fourth part of the southern portion. The one-fourth share of William Campbell Adderley was bought by J.A. Thompson under a sale and conveyance by the provost marshal dated 25th May 1892. The children of J.A. Thompson by a conveyance dated 2nd November 1939 sold to the petitioner's predecessors that one-fourth share.

Thus, Joseph Richard Adderley, Daniel Dewellman Adderley and Sarah Ann Bain remained vested only in the remaining three-quarter interest in this land. Daniel Dewellman Adderley is the father of Clotilda Higgs and Roger Adderley (the adverse claimants). By his will dated 8th April 1930 he devised his one quarter interest in the "Goodman" tract to his children. That one quarter interest, I have no difficulty in deciding is the one quarter interest in this southern portion of "Goodman's", the subject matter of this petition.

The petitioners say that they are not claiming and that the petition does not affect the interests of the adverse claimants.

To defeat this perfectly valid documentary title, the adverse claimants, allege that in the sale of the northern portion to Mr. Clough, only Joseph Richard Adderley and William Campbell Aderley received the purchase price and that they had agreed with the other two vendors Daniel Dewellman Adderley and Sarah Ann Bain that these two should be left as the sole owners of the southern portion. I can not accept the evidence tendered, which is only hearsay, of such an agreement and partition. The conveyance of 8th May 1890 to William Clough is clear and I accept as facts the terms of that document.

In the Supreme
Court

No.27

Judgment
29th January
1970

(cOntinued)

The adverse claimants allege that the debt of William Campbell Adderley was paid by Daniel Dewellman Adderley to the provost marshal and that the sale of William Campbell Adderley's one-fourth interest in the land in question by the provost marshal to J.A. Thompson was not therefore effected and that the conveyance has no validity. Again, I cannot possibly find that this is proved on the evidence. In these circumstances, section 7 of the Act, "Conveyances by Provost Marshal" (ch. 116) is applicable. That section provides "... that the conveyance by the provost marshal of such land shall operate as a bar to all estates existing at the time of sale, and in respect of which the parties entitled being of full age, and not being under coverture, beyond years, or subject to other legal disability, did not give notice in writing to the provost marshal of their claim or respective claims thereto."

So far as the 92.33 acre parcel of land is concerned, I find that the petitioners have established a perfectly good documentary title.

The 12.52 acre tract

The petitioners have a crown grant in respect of this parcel granted to their predecessors on 15th May 1940. The documentary title is, therefore, perfect.

Having found in favour of the petitioners as far as documentary title is concerned the remaining question is whether the adverse claimants have ousted the petitioners from their one-fourth interest in the 92.33 acre tract and

In the Supreme
Court

No.27

Judgment
29th January
1970

(continued)

from their interest in the 12.52 acre tract by adverse possession.

The secretary to the Petitioners a Mr. Plant, said he paid a first visit to the land in 1958. He did not know which part of the 92.33 acre tract related to his company's one-fourth interest. He saw some quarrying in the north west corner of the tract but elsewhere no activity. He made subsequent visits. His evidence, was that there were no signs, of occupation of the 12.52 acre tract until 1965. I have no reason to disbelieve him. His evidence is confirmed by Mr. O'Brien the surveyor. In addition, Mr. O'Brien spoke of a track road put through the land by Sir Harry Oakes, the petitioner's predecessor in title. He said his survey in 1962 was unopposed although the evidence for the adverse claimants was that the surveyors had been ordered to get off the land and on one occasion chased off the land. Nonetheless, the survey was duly completed. There is the evidence of Edmund Knowles, foreman for Oakes Estate, his employment dating from 1935. He is familiar with the land. He used to "stop" the track road which he said he made with Sir Harry Oakes, beginning the work in 1937. The road was "stopped" once a year between 1940 and 1959. From 1938 he seen no farming on the land. Mr. Borer, who has been in the Oakes Estate service for 22 years, said that this land was but part of an area comprising thousands of acres owned by the Oakes family. He had markers put on the land in 1950 or 1951 with a view to development.

10

20

30

In view particularly of the vast area of land owned by the petitioners predecessors in title, of which the land in dispute in this case is an infinitesimal portion, there have been, in my opinion, sufficient acts of possession by the petitioners - that is, the cutting of a road; the stopping of that road from time to time; the cutting of lines by a surveyor the erection of markers and periodical inspection of the land itself.

40

The adverse claimants, however, say that they have had continuous and exclusive possession of the whole land the subject matter of this petition for 20 years even before 2nd November 1939, the date of the conveyance in favour of the Caves Company

limited (predecessors in title of the petitioners). Roger Adderley one of the adverse claimants, went to the U.S.A. in 1914 and has never been on the land. But the other adverse claimant Clotilda Higgs alleges that the Higgs family has been in exclusive possession. Oliver Higgs speaks of his parents farming the land, and their tenantry. The farming consisted of the cultivation of the usual types of vegetables and in addition there was some coal burning. No action was taken by the Higgs family to prevent Sir Harry Oakes putting his road through the land in 1937. That is significant. I cannot hold on Oliver Higgs' evidence that his family farmed the whole of the land in question at any one time over a continuous period of 20 years. Any farming done was sporadic. Then Mr. Bowe, a surveyor, spoke of "some" clearances on the land as seen from an air photograph taken in 1942 or 1943 - in all indicating about 12 farms. Clotilda Higgs said "Farming was done by keeping moving through the land - one spot was not continually farmed." Mr. William Knowles' evidence is to the same effect. Mr. Garroway, Crown Lands Surveyor, examining the aerial photographs said that they indicated farms moved from place to place: that roughly 40% of the usable land was being cultivated in 1943. Some areas between 1942 and 1962 had not been touched at all. The letter dated December 11th, 1926 from the J. Hamburger Co. Inc. of New York shows that in that year Mr. Leonard Higgs shipped a consignment of tomatoes to that company. But the letter is not evidence of the exact locality in which the tomatoes were grown or for what years or for how many years shipments had been made. The evidence taken as a whole does not prove 20 years continuous and exclusive possession of the whole land.

The visit to the land certainly revealed a scene of vast activity. Industry has taken the place of any farming that was done. The land has been stripped to rock bottom and rock crushing on a vast scale has taken place. But this has only been done admittedly within the last three or four years by the Higgs family. All trace of former farming has been obliterated forever.

In the Supreme
Court

No.27

Judgment
29th January
1970

(continued)

In the Supreme Court

No.27

Judgment
29th January
1970

(continued)

It is impossible to say on the evidence that the petitioners have been ousted so far as the one-fourth interest they claim is concerned, and they are entitled to a certificate of title in respect of that interest. The adverse claimants are still entitled to whatever interest in the land they may have obtained under Daniel Adderley's will.

Costs to the petitioners.

H.C. SMITH, J.

10

No.28

Final
Order
29th January
1970

No. 28

FINAL ORDER

BAHAMA ISLANDS
IN THE SUPREME COURT

1967

Equity Side

No. 96

IN THE MATTER of those two parcels or tracts of land comprising 92.33 acres and 12.52 acres respectively and situate on the Southwest side of Harold Road in the Western District of the Island of New Providence

20

AND

IN THE MATTER of the Petition of Nassauvian Limited under The Quieting Titles Act 1959

FINAL ORDER

This matter coming on for trial on the 10th, 11th and 12th days of March, 1969 and the 14th, 15th 18th and 19th days of August, 1969 and UPON HEARING Mr. Paul H. Bethel of Counsel for the Petitioner and Mr. James Maxwell Thompson of Counsel for the Adverse Claimants IT IS HEREBY ORDERED:

30

1. That the Adverse Claims of Clothilda Higgs and Roger C. Adderley, the Adverse Claimants

In the Supreme
Court

No.29

Notice of
Appeal
12th March
1970

(continued)

or tract of land comprising 92.33
acres and 12.52 acres respectively
and situate on the southwest side
of Harold Road in the Western
District of the Island of
New Providence

AND

IN THE MATTER of The Petition of
Nassauvian Limited under The Quieting
Titles Act 1959

10

AND

IN THE MATTER of the Adverse Claims of
Clotilda Higgs and Roger Adderley

APPELLANTS

TAKE NOTICE that the Court of Appeal will be
moved as soon as Counsel can be heard on behalf
of the above-named Appellants on appeal from the
judgment herein of Mr. Justice Cunningham Smith
given on the 29th day of January, A.D.1970
whereby it was adjudged:

20

"I can not accept the evidence tendered, which
is only hearsay, of such an agreement and
partition"

"The Adverse Claimants allege that the debt of
William Campbell Adderley was paid by Daniel
Dewellman Adderley to the provost marshal and
that the sale of William Campbell Adderley's one-
fourth interest in the land in question by the
provost marshal to J.A.Thompson was not therefore
effected and that the conveyance has no validity. 30
Again, I cannot possibly find that this is proved
on the evidence"

"His evidence, was that there were no signs, of
occupation of the 12.52 acre tract until 1965. I
have no reason to disbelieve him"

"In addition, Mr. O'Brien spoke of a track road
put through the land by Sir Harry Oakes, the
petitioner's predecessor in title. He said his
survey in 1962 was unopposed although the
evidence for the adverse claimants was that the 40
surveyors had been ordered to get off the land
and on one occasion chased off the land.

Nonetheless, the survey was duly completed"

"The road was "stopped" once a year between 1940 and 1959. From 1938 he seen no farming on the land"

"In view particularly of the vast area of land owned by the petitioners predecessors in title, of which the land in dispute in this case is an infinitesimal portion, there have been, in my opinion sufficient acts of possession by the petitioners"

In the Supreme Court

No.29

Notice of Appeal
12th March
1970

(continued)

10

"The farming consisted of the cultivation of the usual types of vegetables and in addition there was some coal burning. No action was taken by the Higgs family to prevent Sir Harry Oakes putting his road through the land in 1937. That is significant."

20

"Any farming done was sporadic. Then Mr. Bowe a surveyor, spoke of some clearances on the land as seen from an air photograph taken in 1942 or 1943 - in all indicating about 12 farms."

"But the letter is not evidence of the exact locality in which the tomatoes were grown or for what years or for how many years shipments had been made. The evidence taken as a whole does not prove 20 years continuous and exclusive possession of the whole land"

30

"But this has only been done admittedly within the last three or four years by the Higgs family"

AND FURTHER TAKE NOTICE that the grounds of this appeal are :-

- (1) That the Learned Judge erred in law by concluding the Petitioner had proved any possession whatsoever of the land the subject of the Petition, which would maintain their interest as against persons in actual and undisturbed possession thereof.
- 40 (2) That the judgment of the Honourable Judge is unreasonable and cannot be supported by the evidence of the Petitioner which on its

In the Supreme Court

No.29

Notice of Appeal
12th March
1970

(continued)

own admission was never in possession of any part of the land the subject of the Petition.

(3) That the Learned Judge erred judicially by improperly rejecting the uncontradicted evidence led by the Adverse Claimants and such judgment resulting in a miscarriage of justice.

(4) That certain witnesses for the Petitioner in their capacity as agents knowingly and with intent to deceive this Honourable Court made material false statements as to acts of possession by the Petitioner and suppressed evidence of material facts in favour of the Adverse Claimants which would have had the effect of non-suiting the Petitioner.

10

(5) Any further or other ground which to the Honourable Court may seem a just ground of appeal.

20

Dated the 12th day of March, A.D.1970

JAMES M. THOMPSON

Attorney for the above-named Appellants.

To: The Petitioner or their Attorneys,
Messrs. McKinney, Bancroft & Hughes,
Chambers,
World Banking Corporation Building,
Shirley Street,
Nassau, Bahamas.

30

No. 30

In the Court
of Appeal

AMENDED NOTICE OF APPEAL

No.30

THE COMMONWEALTH OF THE BAHAMA ISLANDS

IN THE SUPREME COURT

EQUITY SIDE

No. 96

Amended
Notice of
Appeal
11th June
1970

AMENDED NOTICE OF APPEAL

IN THE MATTER of the Quieting Titles Act 1959

AND

10 IN THE MATTER of those two parcels
or tract of land comprising 92.33
acres and 12.52 acres respectively
and situate on the Southwest side
of Harold Road in the Western District
of the Island of New Providence

AND

IN THE MATTER of The Petition of
Nassauvian Limited under the Quieting
Titles Act 1959

AND

20 IN THE MATTER of the Adverse Claims of
Clotilda Higgs and Roger Adderley
APPELLANTS

TAKE NOTICE that the Court of Appeal will
be moved as soon as Counsel can be heard on
behalf of the above-named Appellants on Appeal
from the judgment herein of Mr. Justice
Cunningham Smith given on the 29th day of
January, A.D. 1970 whereby it was adjudged:

30 "I can not accept the evidence tendered,
which is only hearsay, of such an agree-
ment and partition"

"The Adverse Claimants allege that the debt
of William Campbell Adderley was paid by
Daniel Dewellman Adderley to the Provost
Marshal and that the sale of William

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of Appeal

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(continued)

Campbell Adderley's one-fourth interest in the land in question by the Provost Marshal to J.A.Thompson was not therefore effected and that the Conveyance has no validity. Again, I cannot possibly find that this is proved on the evidence"

"His evidence, was that there were no signs, of occupation of the 12.52 acre tract until 1965. I have no reason to disbelieve him"

"In addition, Mr. O'Brien spoke of a track road put through the land by Sir Harry Oakes, the petitioner's predecessor in title. He said his survey in 1962 was unopposed although the evidence for the adverse claimants was that the Surveyors had been ordered to get off the land and on one occasion chased off the land. Nonetheless, the survey was duly completed. 10

"The road was stopped once a year between 1940 and 1959. From 1938 he seen no farming on the land" 20

"In view particularly of the vast area of land, owned by the petitioners predecessors in title, of which the land in dispute in this case is an infinitesimal portion, there have been, in my opinion sufficient acts of possession by the petitioners."

"The farming consisted of the cultivation of the usual types of vegetables and in addition there was some coal burning. No action was taken by the Higgs family to prevent Sir Harry Oakes putting his road through the land in 1937. That is significant" 30

"Any farming done was sporadic. Then Mr. Bowe, a surveyor, spoke of "some" clearances on the land as seen from an air photograph taken in 1942 or 1943 - in all indicating about 12 farms"

"But the letter is not evidence of the exact locality in which the tomatoes were grown or for what years or for how many years shipments had been made. The evidence taken as a whole does not prove 20 years continuous and exclusive possession of the whole land" 40

"But this has only been done admittedly within the last three or four years by the Higgs family"

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(continued)

AND FURTHER TAKE NOTICE that the grounds of this appeal are:-

10 (1) That the Learned Judge erred in law by concluding the Petitioner had proved any possession whatsoever of the land the subject of the Petition, which would maintain their interest as against persons in actual and undisturbed possession thereof.

(2) That the judgment of the Honourable Judge is unreasonable and cannot be supported by the evidence of the petitioner which on its own admission was never in possession of any part of the land the subject of the Petition.

20 (3) That the Learned Judge erred judicially by improperly rejecting the uncontradicted evidence led by the Adverse Claimants and such judgment resulting in a miscarriage of justice.

(4) That certain witnesses for the Petitioner in their capacity as agents knowingly and with intent to deceive this Honourable Court made material false statements as to acts of possession by the Petitioner and suppressed evidence of material facts in favour of the Adverse Claimants which would have had the effect of non-suiting the Petitioner.

30 (5A) That the Petitioners claim is barred by the provisions of The Statutes of Limitation and its right and title, if any, to the said land have been extinguished by virtue of the said provisions and the continuous use and occupation of the said Clotilda E. Higgs.

(5B) Any further or other ground which to the Honourable Court may seem a just ground of appeal.

Dated the 11th day of June A.D. 1970.

JAMES M. THOMPSON

Attorney for the above-named
Appellant.

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No.30

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(continued)

This Amended Notice of Appeal was filed in
accordance with the provisions of Rule 14(b)
of the Court of Appeal Rules.

TO: The Petitioner or their
(1) Attorneys,
Messrs. McKinney, Bancroft & Hughes,
Chambers,
50 Shirley Street,
Nassau, Bahamas.

(2) Mr. Roger C. Adderley,
c/o Olive's Guest House,
Baillou Hill Road,
Nassau, Bahamas.

10

No.31

Affidavit
of James M.
Thompson
18th June
1970

No. 31

AFFIDAVIT OF JAMES M. THOMPSON

THE COMMONWEALTH OF THE BAHAMA ISLANDS
IN THE COURT OF APPEAL CIVIL APPEAL No.6 of 1970

BETWEEN:

CLOTILDA HIGGS

and

ROGER ADDERLEY

Defendants/Appellants

and

NASSAUVIAN LIMITED

Plaintiff/Respondent

20

AFFIDAVIT

I, JAMES MAXWELL THOMPSON of Chambers, Frederick
Street in the City of Nassau on the Island of
New Providence one of the Islands of the
Commonwealth of the Bahama Islands Attorney-at-Law, 30
make oath and say as follows :-

1. This affidavit is made to allege that certain
evidence material to the Adverse Claimants"

appeal has been inadvertently omitted from the record.

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No. 31

Affidavit of James M. Thompson
18th June 1970

(continued)

10 2. That the statement made by Mr. O'Brien inferring that the ground control set for the assistance of Southern Airways in taking aerial photographs of the area (Page 34/Transcript) and giving the impression that this control is situate on the disputed land is incorrect. The ground control is actually on the adjoining tract now occupied by one Hedley Edwards.

3. That the statement made by Edward Ted Knowles "there is a road from Gladstone Road - East to Harold Road - the road starts at Big Pond and finally finishes up at Clifton Pier. It goes through Oakes Land - between Gladstone Road and Harold Road (Page 36). The road I made ran through the lake (page 37) is incorrect. There is no such road.

20 4. That the Learned Judge failed to record the evidence led by the Appellant concerning the negotiations she or her agents had with the agents and Attorneys of the Oakes Estate in the year 1955 during which her documents of title (now mislaid or destroyed) were submitted and the resulting agreement.

30 SWORN by the above-named)
JAMES MAXWELL THOMPSON) JAMES M. THOMPSON
at the City of Nassau)
this 18th day of June)
1970)

Before me,

(sgd) Illegible

Registrar



In the Court
of Appeal

No. 32

RE-AMENDED NOTICE OF APPEAL

No. 32

Re-amended
Notice of
Appeal
19th June
1970.

BAHAMA ISLANDS
IN THE COURT OF APPEAL
CIVIL APPEAL NO. 6 of 1970

RE-AMENDED NOTICE OF APPEAL

BETWEEN:

CLOTILDA E. HIGGS (adverse Claimant)
Appellant

10

and

NASSAUVIAN LIMITED (Petitioner)
Respondent

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named (Adverse Claimant) Appellant on Appeal from those parts of the Judgment herein of the Honourable Mr. Justice Cunningham Smith given on the 29th day of January A.D. 1970 whereby it was adjudged:

20

"I can not accept the evidence tendered, which is only hearsay, of such an agreement and partition"

"The Adverse Claimants allege that the debt of William Campbell Adderley was paid by Daniel Dweelman Adderley to the Provost Marshal and that the sale of William Campbell Adderley's one-fourth interest in the land in question by the Provost Marshal to J.A. Thompson was not therefore effected and that the Conveyance has no validity. Again, I cannot possibly find that this is proved on the evidence"

30

"His evidence, was that there were no signs, of occupation of the 12.52 acre tract until 1965. I have no reason to disbelieve him"

"In addition, Mr. O'Brien spoke of a track road put through the land by Sir Harry Oakes, the

Petitioner's predecessor in title. He said his survey in 1962 was unopposed although the evidence for the adverse claimants was that the Surveyors had been ordered to get off the land and on one occasion chased off the land. Nonetheless, the survey was duly completed"

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"The road was "stopped" once a year between 1940 and 1959. From 1938 he seen no farming on the land"

(continued)

10 "In view particularly of the vast area of land, owned by the petitioners predecessors in title, of which the land in dispute in this case is an infinitesimal portion, there have been, in my opinion sufficient acts of possession by the petitioners"

20 "The farming consisted of the cultivation of the usual types of vegetables and in addition there was some coal burning. No action was taken by the Higgs family to prevent Sir Harry Oakes putting his road through the land in 1937. That is significant"

"Any farming done was sporadic. Then Mr. Bowe, a surveyor, spoke of "some" clearances on the land as seen from an air photograph taken in 1942 or 1943 - in all indicating about 12 farms"

30 "But the letter is not evidence of the exact locality in which the tomatoes were grown or for what years or for how many years shipments had been made. The evidence taken as a whole does not prove 20 years continuous and exclusive possession of the whole land"

"But this has only been done admittedly within the last three or four years by the Higgs family"

FOR AN ORDER :-

40 That the Certificate of Title granted to the Respondent herein by Order dated the 29th day of January A.D. 1970 be set aside

That Clotilda E. Higgs be declared entitled to a Certificate of Title to the interest in

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of Appeal

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(continued)

the land investigated by the Court.

AND FURTHER TAKE NOTICE that the grounds of this appeal are :-

(1) That the Learned Judge erred in law by concluding the Petitioner had proved any possession whatsoever of the land the subject of the Petition, which would maintain their interest as against persons in actual and undisturbed possession thereof.

(2) That the judgment of the Honourable Judge is unreasonable and cannot be supported by the evidence of the Petitioner which on its own admission was never in possession of any part of the land the subject of the Petition. 10

(3) That the Learned Judge erred judicially by improperly rejecting the uncontradicted evidence led by the Adverse Claimants and such judgment resulting in a miscarriage of justice.

(4) That certain witnesses for the Petitioner in their capacity as agents knowingly and with intent to deceive this Honourable Court made material false statements as to acts of possession by the Petitioner and suppressed evidence of material facts in favour of the Adverse Claimants which would have had the effect of non-suiting the Petitioner. 20

The said False Statements and material facts suppressed and each of them are as follows :-

1. Statements by Gordon O'Brien

(1) That his surveyors encountered no oppositions that he knew of. His evidence induced the Court to conclude that they did in fact carry out a ground survey. 30

(2) That he or his firm set up the Ground Controls for Southern Airways which Company carried out Aerial Photography and which controls he desired the Court to believe were situate on the land in question when in fact they were set some hundred yards or more from the 40

South-east boundary thereof

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(continued)

2. Statement by Edward Knowles that "there is a road from Gladstone - East to Harold Road - the road starts at Big Pond and finally finished up at Clifton Pier. It goes through Oakes land - between Gladstone Road and Harold Road --- I put the road through to Clifton Pier. The road I made went through the lake". There is no such road.

10 3. That Gordon O'Brien (and possibly Clifton Borer) (inter alia) were present at the meetings held in 1955 - 1956 between members of the Higgs family and agents of the Respondent and the Oakes interest concerning the land in question (inter alia) at which after perusing the documents submitted by the Appellant it was agreed that the parties hereto or the predecessor in title would partition that portion of the Estate known as
20 Sugar House and Killarney whereby the Respondent would retain all lands to the East of Gladstone Road, including the land now before the Court and the Oakes the lands to the West thereof.

4. That Mr. Borer who denied knowledge of such an agreement should have known thereof by virtue of his position.

5. That Wilmore Brown, then employed by Mr. O'Brien did in fact carry out the survey on behalf of the Appellant in accordance with the terms of the Agreement referred to above in the
30 year 1959, and the lines referred to by Mr. O'Brien as being cut by his surveyors were in fact those made by Mr. Brown on behalf of the said Appellant.

5A. That the Petitioners claim is barred by the provisions of the Statutes of Limitation and its right and title, if any, to the said land have been extinguished by virtue of the said provisions and the continuous use and occupation of the said Clotilda E. Higgs.

40 5B. Any further or other ground which to the Honourable Court may seem a just ground of appeal.

Dated the 19th day of June A.D. 1970.

JAMES M. THOMPSON Attorney for
the above-named Appellant

This Re-amended Notice of Appeal was filed in accordance with an Order in this Appeal dated the 18th day of June, A.D. 1970.

In the Court
of Appeal

No. 33(a)

JUDGMENT OF BOURKE P.

No.33(a)

Judgment of
Bourke P.
5th November
1970

BAHAMA ISLANDS
IN THE COURT OF APPEAL C.A. No. 6 of 1970
Civil Side

IN THE MATTER OF THE QUIETING TITLES ACT 1959.

CLOTILDA HIGGS Appellant

and

NASSAUVIAN LTD. Respondent

JUDGMENT OF BOURKE P.

10

This appeal arises out of proceedings under the Quieting Titles Act, 1959, which are in rem and in the nature of an inquiry by the Court: it is not purely and simply a matter of settlement of differences as in a normal inter partes action - and see per Scarr J. in Roberts and Cox, C.C. No. 170 of 1961. In August, 1967, the Respondent, Nassauvian Ltd., brought a petition under the Act seeking the grant of a Certificate of Title under section 17 (1) (c) in respect of two tracts of land of which the Petitioner claimed to be the owner in fee simple in possession. The two pieces of land are of 92.33 acres and 12.52 acres in area respectively. No question turns upon their identification. The larger area, which I will refer to as "Tract A", is to be observed as the part coloured pink on the Petitioner's filed survey plan of 1962; and the smaller area, which will be referred to as "Tract B", is denoted thereon by the part coloured blue. As to Tract A the Petitioner asserted title to an undivided one-fourth part of interest in the land; and as to Tract B claimed the ownership of the whole.

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30

There were two Adverse Claimants to the lands, Mr. Roger Adderley and Mrs. Clotilda Higgs, who are brother and sister and the children of Daniel D. Adderley who died in 1934. In his statement of adverse claim filed Mr. Roger

10 Adderley alleged ownership - "in fee simple of an undivided interest in the two parcels or tracts of land comprising 92.33 acres and 12.52 acres respectively the subject of the Petition filed in this matter". By her adverse claim lodged in the proceedings Mrs. Clotilda Higgs claimed entitlement - "to an undivided interest in fee simple in the land the subject of the Petition herein by virtue of a devise contained in the will of Daniel D. Adderley". These Claimants filed a joint abstract of title from which it seems apparent that they were also relying upon a possessory title covering the whole of both the tracts of land involved - at any rate they set out to make this case on the evidence.

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20 As to Tract A, the investigating judge said at the outset of his judgment, and there has been no criticism of this passage, - "It is important to state that the petition is limited to an undivided one-fourth part or interest in the 92.33 acre tract. That point cannot be over emphasised. Claim to ownership of the whole of this tract or any claim beyond that claimed by the petitioners in the Quieting would have required a separate petition by the adverse claimants. The two claims could have been consolidated". Concluding his judgment the learned judge said - "It is impossible to say on the evidence that the petitioners have been

30 ousted so far as the one-fourth interest (in Tract A) they claim is concerned, and they are entitled to a certificate of title in respect of that interest. The adverse claimants are still entitled to whatever interest in the land they may have obtained under Daniel Adderley's will". In respect of each tract it was found that the Petitioner had a perfectly good and valid documentary title to sustain their claim; that

40 there had been sufficient acts of possession by them and no discontinuance; and that there had been no extinguishment of title or ouster by way of limitation through long possession on the part of the Adverse Claimants or their predecessors in title. In the result a Certificate as prayed was granted to the Petitioner in respect of Tracts A & B, and the adverse claims were dismissed.

A notice of appeal was entered on behalf of

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both Adverse Claimants. When the matter came before this Court Mr. Roger Adderley, who was then unrepresented, stated that he was satisfied with the decision of the lower Court and that he had never wanted to appeal. He asked to withdraw his appeal and this was allowed, the Respondent waiving costs. On a re-amended notice of appeal the remaining Adverse Claimant, Mrs. Clotilda Higgs, asks on various grounds that the Certificate of Title granted to the Petitioner should be set aside and that she should be declared entitled to a Certificate to the interest in the land investigated by the Court. 10

The grounds of appeal do not seek to question the findings that the Respondent has a perfectly good documentary title in regard to each tract of land; and Mr. Thompson for the Appellant, Mrs. Clotilda Higgs, has stated more than once in the course of argument that he does not seek to dispute those findings. "My appeal is on possession", he said, "and I have not challenged the Respondent's documentary title". At the same time the submission is advanced, as to Tract A, that the interest claimed through the petition had passed to the Adderley family long ago through abandonment of possession by the Respondent's predecessors in title and ouster by reason of the continued and exclusive adverse occupation of the whole land by Mrs. Clotilda Higgs' family, the Adderleys. Thus as to Tract A it said that time began to run in favour of her predecessors in 1892 and extinguishment was completed through limitation by 1912 of the interest of a Mr. James Austin Thompson appearing on the line of previous title holders as disclosed by the Respondent's documents of title. Alternative dates for this extinguishment are put forward as 1936 or 1959 at latest. As to Tract B, it is argued that it is sufficiently established that this area was part of the Adderley family holdings since 1873 and in their exclusive and continuing possession since then so that the Crown's interest was extinguished by 1933. Alternatively time ran in the Adderley and the Appellant's favour from 1940, the year of a Crown Grant to Caves Co. Ltd. the Respondent's predecessor on the documentary title, so that adverse possession resulted in 20 30 40

extinguishing the Respondent's title by 1960.

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10 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, 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".

20 This conclusion has been questioned and it has been reiterated that the judge failed to consider all of the material offered as evidence by the Appellant to establish the contrary. I propose therefore in some little detail to refer to the evidence bearing upon this aspect of the matter. In the first place as to Tract A and, since the Appellant would seek to go back to 1892, it is not irrelevant to look to the documents of title as disclosing the large area of land that was Adderley property. Tract A of 92.33 acres was
30 part of an estate known as "Goodmans" of about 245 acres - see the conveyances of 25 May 1892, and 2 November 1939, exhibits A & B. It formed the southern portion of the "Goodmans" land. The northern portion had been sold by four members of the Adderley family including the Appellant's father Daniel Adderley to William Clough in 1890 (exhibit 9). In passing and with reference to this conveyance of 1890, it was the subject of
40 unsuccessful attack by the Adverse Claimants before the lower Court. I mention this now because in the notice of appeal part of the judgment rejecting the submission made, into which I need not go, is quoted as being taken exception to, though no ground of appeal pursues this point of the matter. Nevertheless, there was some attempt before this Court on behalf of the Appellant to introduce argument on the subject although expressly there was no challenge of the Respondent's proof

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of title. In any case I think there is no harm in saying that it is, in my opinion, as clear as it could be that in the circumstances and in law the learned judge could not properly have done otherwise than to decide to act upon the contents of the document.

I have referred to the extensive area of some of the Adderley holdings around 1890 out of deference to the submission by Mr. Bethel for the Respondent that so far as the evidence for the Appellant goes, some of the type of farming spoken of in evidence might well, particularly in the early stages, have been carried out over a far wider area other than those particular areas put in claim. According to the Appellant's witness, Mr. Kenneth Higgs: "Goodmans on the Adderley Estate - around 1940 - is a vast amount of a land including Moss Grant, the Brown Grant, Michael Grant, Coakley and Moody Grant - in all over 700 acres". For the Appellant it is said that there is shown to have been continuous and unopposed occupation by the Adderleys of the whole land in claim since 1875 to present times.

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Let us look, then, at the evidence as to farming and other activities by the Appellant's family and their tenants or agents in relation to the two Tracts. On this issue there was, as is not unfamiliar in this type of case, some conflict of evidence.

The Appellant called two Crown Lands Surveyors, Mr. Bowe and Mr. Garroway. The former produced two photographs of the land as marked pink and blue on the Respondent's plan (exhibits 1 & 2) which were taken respectively from the air around 1943 and in 1958. Interpreting exhibit 1 Mr. Bowe said that there was evidence of some clearances - "I should say about 12 portions cleared". To the West of the old Harold Road there appeared to have been a clearance at one time. To the Northwest of the old pipe line there was evidence of clearance in the two areas, Tracts A and B, for at least 12 or 13 farms of which the witness was unable to estimate the area. To the South of the East to West road, that is, the area immediately to the West of old Harold Road, he was of opinion that the area had been cleared as a whole and was into second growth when the picture was taken.

30

40

The second photograph of 1958 showed mainly Tract A and revealed occupation and clearing. It also showed some of Tract B on which there appeared to be clearing. The 1958 photograph showed less farms than the one taken 15 years earlier. The photograph including the two tracts showed about 12 clearings on them.

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10 As I understand it from the evidence, and I think this is not in dispute, most of the land with which we are concerned is arable. At the times of which Mr. Bowe spoke it does not seem that there was evidence, so far as the photographs are concerned, of clearance and farming on the whole area open to cultivation.

20 Mr. Garroway was familiar with the "Moss Grant" land and marked the area on the 1943 photograph. He observed on this picture signs of some "cutting" at the point where the old Harold Road turns N.E. and a little to the South - also to the West of and on the East side of the present day Harold Road. The most intensive occupation was indicated to the West of Harold Road. He saw signs of farming on the Ridge and its sides. Comparing the Respondent's plan he was able to say that the photograph depicted quite a bit of scattered activity over the whole of the land coloured pink (Tract A). The cultivation was not so intense on the blue area (Tract B) where there was a coppice type of vegetation. The witness
30 considered that roughly 40% of the usable land of both Tracts was being cultivated in 1943. As to the 1958 photograph, Mr. Garroway concluded that there was less farming shown in that year than in 1943. He thought some of the farming areas had been abandoned and he saw some kind of construction activity - roads and houses. On the N.W. section of Tract A near Adderley Road there was some quarrying. The witness was shown exhibit L -
40 the large photographic plan made in 1962 and produced by the Respondent's Surveyor, Mr. O'Brien: he said that the vegetables grown would be scattered pine and coppice, and the plan showed one or two areas cleared in the S.E. area and near the Northern Boundary. Looking at all the photographic material Mr. Garroway gave it as his opinion that the farms had been moved from place to place. In re-examination he was asked about the ridges on the land and said that though they are quite steep in

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some areas farming could go on. Quite a bit of the hilly area was untouched. It would seem that there the witness was speaking of the cultivable areas on the ridges.

It is appropriate at this stage to turn to the evidence of the third surveyor who testified, namely, Mr. O'Brien, who was called for the Respondent. His firm did a survey of the lands in question in 1962 for Caves Co.Ltd., which was one of the holding companies of the late Sir Harry Oakes, who, as I think, is shown, and it is anyway not disputed, to have been interested in acquiring and did acquire a very large area of land in the general locality for the purpose of development. The Caves Co. obtained the undivided one-fourth interest in Tract A by a conveyance of 1939. It was transferred to the Trustees of the Will of the late Sir Henry Oakes in 1962, who in 1964 conveyed to the petitioning Company, Nassauvian Ltd. Tract B was acquired by the Caves Co. under a Crown Grant in 1940 and similarly the title came to the Respondent under the 1964 conveyance.

The plan filed by the Respondent showing the two Tracts in pink and blue resulted from the O'Brien Engineering Co.'s survey in 1962. An employee, Mr. Theophilus, did the survey and went on the land. Mr. O'Brien said in evidence that he knew of no opposition being offered to the survey activities. He knew of the quarry in the N.W. corner of Tract A but was not aware of any other activity on the land. On visits to the land in 1967 he saw no other activity apart from the quarrying. In 1968 he saw extensive rock-ripping had taken place including portion of a road put on the land by the late Sir Harry Oakes, which I shall have occasion to mention later. As to this scarification of the surface, the investigating judge, who viewed the area, referred in judgment to his visit as revealing - "a scene of vast activity. Industry has taken the place of any farming that was done. The land has been stripped to rock bottom and rock crushing on a vast scale has taken place. But this has only been done admittedly within the last three or four years by the Higgs family. All trace of former farming has been obliterated forever".

A number of witnesses were examined for the

Appellant who knew and had worked upon the land, in the endeavour to establish exclusive and continuous possession of the whole of Tracts A and B by the Adderley and Higgs families not only for 20 effective years but since the late part of the last century. The Appellant, Mrs. Higgs, who was born in 1890, told of the 740 acres owned by her grandfather Alliday Adderley including 312 acres of former William Moss land (within which was Tract A as a southern portion) which came to his four children including her father Daniel Adderley who died in 1934. There was the sale of the Northern portion by the four children to William Clough in 1890 and, according to the witness, her father and Aunt Sarah Bain (formerly Adderley) remained in possession of the southern portion. The latter died when the witness was a schoolgirl and her father farmed the land. On the death of her father in 1934 the land was "in the care of" herself and his half-brother who was the executor of his will. Under that will she came in for a fourth share in the one-fourth undivided interest held by her father - a share that these proceedings do not touch. She made the case that James Austin Thompson, who obtained William Adderley's one-fourth part in 1892, (whence stems the Respondent's undivided one-fourth interest) and it seems, his widow, who succeeded to the interest by will and died in 1935, never went into possession; and the fourth child of Alliday Adderley with an interest, namely, Joseph, never farmed the land.

It is worthy of notice at this juncture that though the witness sought to show her father Daniel Adderley's exclusive possession for well over 20 years, his will made in 1930 does not suggest the recognition of any accruing further interest by way of possessory title to more than the one-quarter share coming from his father Alliday Adderley. The devise is to his four children, one of whom is the Appellant, of - "my one-quarter interest in the Goodman Tract of land situate in the Western District of the Island of New Providence, to hold as tenants in common..." However, the Appellant testified that she and her family have been in complete occupation of the land the subject of these Quieting proceedings. She said that she and her brother Roger, the other Adverse Claimant who is not an appellant, owned half of the entire Estate - presumably referring to the

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(continued)

southern part. Her father worked as a ship's cook and was sometimes away up to 1922 from when he was always on the land. He had farming tenants on the land who looked after his farms in his absence. After he died tenants stayed on the land and worked continuously. The witness could not say the size of the farms; but she said - "farming was done by keeping moving through the land. No spot was ever continuously farmed. Women farmed up to 2 acres - men up to 3 or 4. They go back to the old farms for vegetables. The entire land could not be covered. The only land that was never gone back to was the land required for the war. Potatoes always kept growing on the same spot".

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I have no wish to overload this judgment with an exhaustive setting out of the evidence as to user of the land by each witness. I am conscious of the fact that the investigating judge has made it plain in reaching his finding as to non-continuous occupation of the whole land that he considered all the evidence. Had there been a fuller analysis or reference to the evidence as to user afforded in the judgment of the lower Court, it might have obviated what appears, as voiced by her Counsel, to be a genuine sense of grievance felt by the Appellant that her case was not thoroughly explored. I therefore make no apology for a fairly complete exposition of what the witnesses deposed to though I shall essay to be as succinct as I can.

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There was no evidence of any walling or fencing or the putting up of any physical boundary to the land with which we are concerned or to any part of it. To continue with the evidence led for the Appellant, there was the witness Oliver Higgs, aged 45 years and the son of the Appellant and her husband Leonard Higgs deceased. He testified that he first went on to the land in claim in 1929 or 1930 with his father and mother to collect one-third of the produce due from tenants cultivating the soil. On Tract B the tenants "burned for coal"; a portion of it allowed good farming. There were farms there in 1930. About five tenants. He said - "I and my family have occupied the 12.55 tract. I would grow peas and corn in one year - for three years, until the soil got worn out and then I moved on. My tenants moved on from place to place and grew

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trees. The largest number of tenants we had on the land was 12 or more". In cross-examination the witness could not say when the family occupied the smaller Tract B or as to the area of farming on this tract. He said - "We farmed very little on the 12 acre tract. That was mostly pine yard area. Tenants used to burn coal. (there was) no coal burning on the 12 acre tract". Referring to Tract A - the family's tenants grew various kinds of vegetables and fruit on it. As to the tomato farms these were 3 to 4 acres in extent. "Tomatoes were grown on a farm once; then we used to cut a new section". This farming was not over the whole 92 acres because part was pine barren. "We farmed the tops of hills and valleys. I am still farming the 92 acre tract. We still have tenants and I still collect our 1/3 shares. My family is now farming on a large area - larger now than we farmed in the 1940's".

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This reference to farming at the time of the action for Quieting is peculiar. It can hardly be a loose way of describing the soil stripping and rock crushing carried out by the Higgs family within the previous three or four years that erased any sign of former cultivation. The witness further said that he had a tomato farm on the land - "last year - and one the year before. Not every year in the same section". Taxed further in cross-examination Mr. Oliver Higgs replied that farming went on all over the Adderley estate. The largest area farmed at one time in Tract A was by his father and a tenant in the hills. Vegetables and corn - a lot of corn - were grown in different places. There were tenants on the farm since his grandfather's time and farming over the whole area at one time or another. It was poor land and later 7 years was required - apparently of uncultivation - "for the soil to secure strength". He could not estimate the acreage he farmed.

William Knowles testified that he was born in 1869. He knew Alliday Adderley and his lands. He first went on the Adderley land in 1912. No one worked on the land then. He began to work for Daniel Adderley in 1930. He was a tenant on the land between 1930 and 1948 having been put there as "boss" and "attorney for the land" by Mr. Leonard Higgs. There were Mr. Cash and a good many other tenants there.

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He cut down acres of land - over 100 acres - on different farms. He remembered when Sir Harry Oakes put a road through the land (around 1938) and paid him £1 for compensation for his sugar cane. At that time he was farming and so was Cash - they were the only two. He used to pay the 1/3rd to Mr. Adderley and after his death to Mr. Higgs. In 1930 he had a farm at Sanko Johnson Hill, which was not Adderley land. He said - "I have farmed right there to the "Cave". That would be in 1948. In 1930 I had a farm at Sanko Johnson Hill. I just kept going West - and got to the 'Cave' in 1948 - farming on the way. I let a farm grow right up and then I would go back to my first farm again. I would put up lime kilns on the first farms. I also grew fruit trees. I kept burning lime each and every year on the farms between 1930 and 1948. From Sanko Johnson Hill right up to the 'Cave'. On the North part of Adderley land there was a boundary wall and I had farms there and down to the dump - and burning lime at the same time. I did not go back to my old farms after I reaped them. I would go back to the first farms and burn lime and replant. I would use the regrown trees for lime".

It is evident that the word "farm" is commonly employed by the witnesses to denote a small patch or area of land on which a particular crop is grown or activity carried on such as "coal burning". The evidence of Mr. Dudley Johnson brings this out and also, once again, the system of wandering from patch to patch for the purpose of cultivating whatever the soil might be able to take at the time. He gave evidence as to how Mr. Higgs permitted him to farm - apparently on Tract A - though it is not at all clear. Anyway he said he worked on Higgs land from 1943 to 1960. The only farms he saw were those of Mr. Higgs and his sons. He went on however to say that he saw others running farms on the Higgs land, some of whom he named. Farms were all through the land. Mr. Higgs farmed the greater part. The witness had one farm of 2 to 3 acres. He farmed this area. He kept cutting and burning a bit of land and would then move on. He used to live at his farm, staying for 2 or 3 months in a "wooden thatched camp". He did a little farming on the Crown land - whether that is a reference to Tract B is not clear. He said - "I occupied land where I thought. I burnt coal. Where I saw

good pines for coal I cut them down... My 2-3 acres made up several farms. I planted okras on the first farm - then potatoes, then peas and cassava. I put my camp on my first farm. Okras can be planted every year. I had watercress going on one piece of land for 5 years before 1960 when I left. I paid Higgs 1/3rd... Part of my 10 acres was pine land (whether that is a reference to one "farm" area or several "farms" one does not know). I grew plenty of bananas. Anywhere I saw in the vicinity that I could use I did so... Mr. Knowles was 50 yards from me".

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Osborne Higgs, a son of the Appellant, told of his father's farming activities, growing various crops over "a vast area" on the land and having tenants on it. He could remember six farms on the land in the early war years. The witness had a farm - he cut about an acre or so. He farmed with his brother - about 10 acres. In the late 1950's or 1960 he first heard of another interest in the land. The entire land was his mother's.

Mr. Etheline Maylock aged 68 knew the "Adderley Estate". He grew vegetables on a farm near Harold Road of 1 or 1½ acres from 1932 until "the R.A.F. took it over" about 1941/42 and gave 1/3rd of what he got off it to Mr. Higgs. There were other tenant farmers on the land working for Mr. Higgs and no one disturbed them during the witness's time on the land.

Mr. Roger Adderley, the other Adverse Claimant, went on the land about 1908 at the age of eleven. He remembered the land as one piece and his father Daniel Adderley letting to tenants for the 1/3rd share of various vegetable crops. He was last on the land in 1915 and went to the United States in 1917 where he lived.

Mr. Kenneth Higgs is the third son of the Appellant and the late Mr. Leonard Higgs, who was born in 1927 and remembered, he said, back to 1933-34. He stated that it was he who acted mostly on behalf of his mother and he produced a number of documents relating to Adderley property. He said the whole of the land was used by his grandparents for money crops - mostly pineapple and citrus which were exported.

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Ordinary vegetables were also grown. His parents continued this type of farming until 1930 and the land was used extensively for these farming purposes. He remembers as a boy helping his father to pack and crate tomatoes for shipping to the U.S.A. The timber bush on Goodmans land today is 5 to 10 years in age. But all the land had been farmed up to the 1930's - and it has been gradually overgrown since. On several occasions, especially in 1940, approaches had been made by and on behalf of Sir Harry Oakes with a view to buying the rest of Goodmans or Alliday Adderley's Estate. Kenneth Higgs' father used to tell him that only the witness's two uncles in the U.S.A. and his mother and aunt could sell him the land. His relatives were not interested in selling; and he used to tell Sir Harry Oakes that if anyone had sold him land that person had no right to do so. He spoke of an arrangement after a meeting in 1956 that the Oakes family would keep the land West of Gladstone Road and the Adderley and Higgs relatives would keep the land East of Gladstone Road. As far as the witness knew, he and his family and their authorised tenants were on the land - Tract A - in undisturbed possession; and Tract B was similarly occupied - it was farmed, the pine was burnt, and he knew of no one claiming it. It was part of Goodmans land. As to the earlier stage of occupation he was speaking from what he heard his parents say: no one else worked the land except his grandfather and family; it was worked from end to end - farming where the land was fertile. On other bits coal and lime were burnt. Land had to be left for regrowth. After 1960 only his father and 2 or 3 others farmed. Stone-crushing was carried on on a large scale since 1954 and the earth ripping or stripping commenced within the last three years. This witness produced three documents - exhibits 13, 14 and 15 upon which Mr. Thompson laid some stress and further complained that the judge below had neglected to consider them. But there is no reason to think that they were not taken into consideration together with the evidence as a whole, and the judge did actually refer to the contents of exhibit 15 as showing that Mr. Leonard Higgs shipped a consignment of tomatoes to New York in 1926. The judge added the comment that the letter is not evidence of the exact locality in which the tomatoes were grown or for what years or for how many years shipments had been

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made. The other two papers, exhibits 13 and 14, are dated 1883 and 1875 respectively and are agreements under which Joseph Adderley and Alliday Adderley permitted the cultivation of pineapples, sugar cane and other provisions for limited periods on Goodmans land in return for a share out of the produce. But no one disputes that a large part of the land is cultivable and no one disputes that the land has from time to time yielded farming produce to the benefit of members of the Adderley and Higgs families. What the investigating judge found was that such farming as went on over the years was sporadic in its nature and that at no time was there such continuous and exclusive occupation of the whole property as would serve to support an overriding possessory title in the Appellant so as to bar the Respondent as the true owner from obtaining a Certificate of Title to the one-fourth undivided interest claimed in Tract A and to the entire interest in Tract B.

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Four witnesses were called for the Petitioning Company including the surveyor Mr. O'Brien to whose testimony I have already referred. There was also the evidence of the documents of title. As to these Mr. Bethel has drawn attention to the law as restated in Ocean Estates Ltd. v. Norman Pinder, supra - "... where a person has dealt in land by conveying an interest in it to another person there is a presumption, until the contrary is proved, that he was entitled to the estate in the land which he purported to convey".

Mr. Plante, who came to the Bahamas in 1952 is secretary to various companies dealing with the Oakes Estate including the Respondent, Nassauvian Ltd. He knew the two tracts and had been to the land often. His duties affected the Oakes land. He used to look for squatters and see to fence repairing. Prior to 1965 there was no activity. Tract B was grown over. The witness spoke of the track road running through the properties. In 1965 he saw Tract B being bulldozed and in February, 1969, observed that a big area right across Tract A had been bulldozed since his last visit in 1968. The Quieting proceedings had been commenced in 1967. He first visited the lands in 1958 and only saw the quarrying in the N.W. corner and some pigs and horses grazing near the quarry;

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he did not think there was any activity in the rest of Tract A and there was no activity on Tract B at that time - there was underbush on it 6 to 8 feet high. There were no signs of farming or fruit trees on the lands. South of the Hill on Tract A he did not think there was any clearance, but could not be definite on this. In 1965 he saw a Mr. Higgs operating the bulldozing on Tract B who told him that the property belonged to the Moss's and that he was bulldozing for development. The witness never heard of a survey of the lands being opposed. He was shown a marker that had been moved. The roads he described running across the properties he understood to have been put in by Sir Harry Oakes.

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Mr. Ted Knowles is the foreman of the Caves Co. and familiar with the Oakes land. He used to inspect and close up roads every year and had seen Oakes' markers on Harold Road 10 to 11 years ago. He had stopped the road going through the land several times up to about 10 years ago to prevent traffic going through from time to time. In 1937 he had begun to cut the road with Sir Harry Oakes and finished it in 1938. It will be remembered that the conveyance to the Caves Co. of the 1/4 interest in Tract A was executed in 1939. The Appellant's evidence as to the road was that when it was put through she was told it would make the land more valuable; so it does not appear that she objected. And Mr. Oliver Higgs said in evidence that no action was taken by his family when the road was put through. Mr. Thompson has sought to make something of the contention that at the time the road was made Sir Harry Oakes would be a trespasser and this amounted to no act of possession by an owner coming to the property. But we do not know of the circumstances under which the road came to be built - it is unlikely that it would be embarked upon without some understanding or agreement. In any case there is the evidence as to the stopping of the road when the Caves Co. got its title to the undivided quarter share branching from William Adderley. Mr. T. Knowles went on to testify that he never saw anyone farming at all. The bush was high. The land was covered with trees - no farms. Three to four years ago he saw the ripping up of the soil but prior to that he had seen no activity. He said - "From 1937 - 1941 I was on the land off and on - but not since 1941. We

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stopped the road once a year up to about 1959. Before then once a year from, say, 1940". Mr. Thompson has seized upon this to point out that the witness could not have stopped the road up to 1959 if he was last on the land in 1941. But the road could have been stopped where it passed out of the Tracts and not necessarily on the land. The witness said the road was blocked on the East of Carmichael Road and on the west of old Harold Road. It was stopped several times at the point where it passes Harold Road and at Gladstone Road as well. There is no reason to think that the judge below did not evaluate the evidence when he found as a fact that there was a stopping of the road from time to time. The apparent discrepancy may be explained in this way, that the witness was giving a period within which he was on the land "off and on", that is, amounting to frequency of visits; but in his mind he distinguished a single annual visit to put up road blocks - assuming that it was actually on the land being quieted that the stopping occurred. In any case there would appear to be clear evidence of stopping between 1939 and 1941. The witness went on to say in cross-examination that in 1938 he saw no one on the land - he never saw any farms or vegetable growing or lime and coal kilns and never noticed if anything had been cut down. There were no tenants to run him off the land and no one had ever taken such action.

Finally there is the evidence of Mr. Clifton Borer, a director of several Oakes Companies including the Respondent. He had joined Sir Harry Oakes' service 22 years ago. He went to see the land in question in 1950/51 with a Mr. Martin of Nassau Engineering who had been instructed to put up Oakes markers on the land. His duty was to preserve the very large area of Oakes land in the locality for development. It was hoped to erect a medical centre on Tract B and negotiations had been in train for such a project. In 1950 he knew Mr. Adderley and Mrs. Higgs. He had trouble as regards charcoal burning on the land in question with Mrs. Higgs. He went in on the Eastern side "to stop the burning of charcoal which was becoming a menace". He knew the Higgs family was on Tract A. He said, "The question of adverse possession was put to me since we had a quarter interest in

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the land. (? It was decided) that we should wait until we had the overall plan approved and we were ready to go ahead". This appears to be a reference to project for development. There was no adverse possession price. The witness had seen the quarrying 3 years ago; and in the 1950's had seen a few persons in the bush. In the 1950's he had looked to see "what land we had and the nature thereof, as to possible use".

Before leaving the evidence for the Respondent I desire to refer to ground (4) of the notice of appeal which alleges as follows - "That certain witnesses for the Petitioner in their capacity as agents knowingly and with intent to deceive this Honourable Court (presumably this is meant to refer to the Court investigating at first instance) made material false statements as to acts of possession by the Petitioner and suppressed evidence of material facts in favour of the Adverse claimants which would have the effect of non-suiting the Petitioner.

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The said false statements and material facts suppressed and each of them are as follows:- "
- and then follows five paragraphs of particulars.

I think myself that this paragraph was open to be struck out on application; but Mr. Methel in reply to Mr. Thompson's argument on the merits contented himself with saying that such allegations had no place in these proceedings on appeal and that the allegation as to the existence of a partition agreement of 1955-56 contained in sub-paragraphs 3 and 4 of the particulars was incomprehensible to him. Let it be said once and for all that it rested with the investigating judge, who saw and heard the witnesses, to determine as to their credibility and as to the degree of reliance that he could place upon their testimony. It was open to the Appellant's Counsel to make such submissions in address as he saw fit as to falsehood or truth of testimony and as to the trustworthiness or untrustworthiness of any witness; and to put it to any opposing witness in cross-examination either that he was lying or was suppressing some material fact. As to the allegation of some agreement as just referred to, I note that under

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cross-examination Mr. Borer said - "I should have known if there was any negotiations at the time. I cannot say there were none - but I should have known because I had custody of the deeds". And there it was left - if these replies have any bearing upon the matter now particularised for the purpose of this so-called ground of appeal. As I read the evidence of the witness, nothing was put to him as to the existence of any partitioning agreement (if it has any relevance to the issue) or that he was being untruthful or even less than frank; or that he was deliberately concealing or distorting facts that would assist the course of justice. Nor was one word put in cross-examination to the Respondent's witness Mr. O'Brien about a partition agreement of 1955-6 and a survey resulting therefrom about which this witness is in particular alleged to have knowledge. At the commencement of the hearing of this appeal on 18 June, 1970, the Appellant's Counsel produced an affidavit sworn to by himself of the same date which actually purports to give evidence in correction and contradiction of Mr. O'Brien's and Mr. Ted Knowles testimony on other points in the case; and also deposing that material evidence (unspecified as to detail) had not been recorded by the trial judge. Mr. Bethel took objection and denied any omission of evidence. This Court held itself bound by the record as settled.

I will leave it there without further comment.

Dealing with the contentions as to discontinuance of possession and abandonment of the land, the judge of the Court holding the inquiry said in judgment: "In view particularly of the vast area of land owned by the petitioner's predecessors in title, of which the land in dispute in this case is an infinitesimal portion, there have been, in my opinion, sufficient acts of possession by the petitioners - that is, the cutting of a road; the stopping of that road from time to time; the cutting of lines by a surveyor, the erection of markers and periodical inspection of the land itself".

There is sufficient evidence to support that finding as to acts of possession. But it has been argued that it rested with the Respondent to show a going into possession and a maintaining of possession by each person holding the legal

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interest in the Respondent's chain of title going back, for instance, in the case of Tract A, to James Austin Thompson in 1892; and further it has been put forward that such possession should be shown by the Respondent by proof of acts of physical control and use of the land commensurate with and such as are required of the Appellant as an adverse claimant and co-owner seeking to set up a possessory title. I know of no authority for this surprising proposition. I should have thought the acts of user or possession shown by the Respondent on the evidence were enough to assert as against a co-owner its interest in the land. Mr. Bethel submits in reply that his client is the true owner having an undisputed perfect documentary title in respect of both tracts. There was neither dispossession nor discontinuance; and it was not necessary for him to establish that his predecessors in title were, so to speak, walking upon the land since time immemorial. In any event sufficient acts of possession of the lands in accordance with the finding were revealed on the evidence since the Tracts came respectively to Caves Co. Ltd. in 1939 and 1940. To my mind the validity of Mr. Bethel's contention cannot be assailed and on the evidence there cannot be any interference with the judge's finding. Cases of discontinuance of possession are anyway rare with respect to the surface of land; they chiefly occur in regard to mines and quarries which the owner has no present desire to work (see Lightwood on Possession of Land, 1894 edn. p.204). The slightest acts by the person having title to the land, or by his predecessors in title, indicating his intention to take possession are sufficient to maintain an action in trespass and are sufficient to negative any intention to abandon possession - Ocean Estates v Norman Pinder supra. And as was said by Bramwell L.J. in Leigh v Jack (1879) 2 Ex. 264,272, - "But after all it is a question of fact and the smallest act would be sufficient to show that there was no discontinuance". In the present case the true owner has made out his title and shown that he has carried out acts of possession in the past. More than that the Respondent's title is undisputed and it is submitted that, it seems correctly, evidence of possession is therefore unnecessary, Kingston Race Stand v Mayor of Kingston (1897) A.C. 509. The Appellant relies on possession alone and the onus of proving dispossession or discontinuance lies upon her, Leigh v Jack, supra; Solling v Broughton (1893)

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A.C. 556. Counsel for the Appellant has relied on Paradise Beach etc. and Ors. v. Cyril Price-Robinson and Ors. (1968) 2 W.L.R. 873. There the unsuccessful appellants established a paper title to an undivided share in a much smaller area of well defined land. Their predecessors had never entered into possession. The finding of fact was that two tenants in common were in possession for their own use and benefit and they and their successors had been in exclusive possession of the land since the death of the testator in 1913, or for more than 20 years before action brought in 1963. Accordingly the appellant's title was barred under the 1833 and 1874 Real Property Limitation Acts. No doubt that case would have assisted the present Appellant if there were similar facts as to possession; but in the instant proceedings it has not been shown that the Respondent or their predecessors had never entered into possession, or that there had been exclusive possession by the Appellant and her family of the lands for a 20 years period at any material time so as to effect ouster and extinguishment of the Respondent's title.

I proceed to the paragraph 5A of the grounds of appeal as to the Appellant's title by limitation said to have been established on the evidence. It has been submitted that - "the Appellant has proved sufficient acts of user to oust anyone including a co-owner". The judge found that any farming done was sporadic. He accepted that the "farms" were moved from place to place and that roughly 40% of the usable land of the two Tracts was being cultivated in 1943. Some areas between 1942 and 1962 had not been touched at all. After the early nineteen-forties, as the evidence goes to show, such farming activities as there were inclined to tail off. Viewing the whole evidence the judge clearly came to the conclusion that the Adderleys and the Appellant and her family and their tenants did not farm or occupy the whole of the land in question at any one time over a period of 20 years. There was no continuous and exclusive possession of the entire land over such a period. On those findings the most the Appellant could be said to have been doing was to protect any interest in Tract A that she might have inherited from her father Daniel Adderley. I have had

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occasion to refer more than once to the Ocean Estates Case, which is now the locus classicus in quieting investigations, on the question of rotational or peripatetic use of open land - circumstances that one has reason to believe caused difficulty in the past in resolving disputes on possessory title in the conditions of cultivation and user frequently obtaining on land in the Bahamas. I am fully aware that the Appellant, as it appears, has some legal interest in Tract A but it was necessary for her to show 20 years exclusive possession of the whole land. I think that some words of Scarr J., who was so expert on land law, in the Case to which I have referred to at the outset of this judgment, should not be lost sight of as affording a useful exposition of principles involved concerning scattered and itinerant farming on open land. I quote from the learned judge's judgment (at pp. 8-9) :-

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"Having decided that time could have run after the Crown Grantee's death, the next question is whether in fact it did so or not, i.e. whether the Adverse Claimant has in fact established 20 years continuous adverse possession. The law on the point is that before a trespasser can establish a squatter's title he must prove that he or his predecessors took such effective control over every portion of the land he now claims, that it was quite inconsistent with the rights of the true owner and precluded the true owner from enjoying the land as he intended or was entitled so to do. See Leigh v Jack 42 L.T. 463 and Wood v Leblanc (1904) 34 Canada Supreme Court Reports at page 427. Furthermore the trespasser must show that he has done this continuously without any gap for 20 years: during that time he must, (to use the rather colourful phrase approved at page 364 of the Canadian Report) "as it were keep his flag flying over the land he claims". It is only when these exacting conditions are fulfilled that the law rewards the trespasser and extinguishes the title of the true owner".

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The learned judge went on in that case to consider the evidence and continued :

"I am quite satisfied that although the Cox family may have farmed there, perhaps many times, since the Crown Grantee's death the farming has nevertheless been sporadic and there has not been that exclusive and continuous use required by the statutes during the period in question".

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10 Mr. Thompson in his creditable tenacious
argument on behalf of his client has made much of
the assertion that the appellant had a separate share
in the land, that is, Tract A - apparently an
undivided one-sixteenth as a tenant in common, and he
referred to several authorities and sections of the
Limitation Acts, such as section 12 of the Real
Property Limitation Act of 1833: his references were
to Bewley v Atkinson 41 L.T. 604; Thomas v Jenkins
112 E.R. 201; Rains v Buxton 14 Ch. D. 537; Baker v
20 Coombes 137 E.R. 1070; Wakeham v McKenzie (1968)
2 All E.R. 783. It is not a ground of appeal that
the Court below did not determine, in the absence
of a petition so to determine, whatever interest may
have descended to the Appellant under Daniel
Adderley's will. The Respondent proved its claim to
be the true owner on a perfectly valid documentary
title to an undivided one-fourth interest and the
case was fought on a possessory basis - that
through discontinuance and dispossession leading to
extinguishment of the title of the true owner through
possession for at least 20 years of the whole land,
30 the Appellant had proved an ouster and was entitled to
the one-fourth interest the subject of the petition.
As I have already said, this appeal was expressly
confined to a defeating of the Respondent's claim
through the submission that the evidence properly
considered established dispossession of a co-owner
and a possessory title in the Appellant by reason of
user and occupation for a period of 20 years.

40 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. And, accepting for present purposes, indeed
it is conceded, that the Appellant has a title to a
one-sixteenth undivided share and is a co-owner, I
fail to see how this factor can vitiate the effect

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of the findings or go to produce a different result: I think that Mr. Bethel is right in contending that it cannot. Leaving any alleged discontinuance on the part of James Austin Thompson and his widow in succession out of it, the Appellant puts it forward that her father Daniel Adderley as a tenant in common holding an undivided one-fourth share had in his lifetime seen the ouster of all other co-owners. That has not been established on the evidence. Then it is said that the Appellant as co-owner and her family were anyway in possession of the entirety and achieved an ouster thus defeating the Respondent's claim. This contention likewise failed on the view taken of the evidence. Mr. Thompson has referred more than once to s.12 of the Act of 1833 as, if I understood him rightly, in some way lightening the task of one co-owner when it comes to proof sufficient to show the ousting of another. In Carson's Real Property Statutes, 2nd edn. at pp. 149-30, there is useful commentary as to the effect of the section; but I quote from 19 Halsbury, 1st edn. p. 13 § 247 - "so for the purpose of the Real Property Limitation Acts 1833 and 1874 the possession of joint tenants, tenants in common and coparceners is separate and is not the possession of the other joint tenants, and without an actual ouster, one co-owner can bring ejectment against the other, and the other can defend his possession. If the person entitled to an undivided share in land is in exclusive possession of the whole land or of any part of it, whatever proportion such part may bear to the whole, the title of his companions to their undivided shares in such part will be extinguished by such possession"; Murphy v Murphy (1864) 15 I.C.L.R. 205; Thornton v France 1897 2 Q.B. 143. In this latter case the owner of one undivided moiety of land was barred by the sole possession of the owners of the other. 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.

As to the interest claimed in the whole of Tract B, it is evident enough that the judge came to

10 the same conclusions. Again, the reliability of witnesses was for him, and I do not see how it can validly be said that he has erred in his estimation and evaluation of the weight of the evidence. This Tract B is not specifically mentioned, as Mr. Bethel has pointed out, in the final paragraph of the judgment; but it is apparent that the evidence concerning it was also considered and that it was included in the earlier conclusion stated by the judge regarding "the whole land" - that is, the land the subject matter of the petition. The Certificate of Title issued to the Respondent also covered this smaller tract.

I would dismiss the appeal with costs.

PAGET J. BOURKE

5th Nov. 1970.

President.

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of Appeal

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Bourke P.
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(continued)

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JUDGMENT OF ARCHER, J.A.

No.33(b)
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1970

20 BAHAMA ISLANDS
IN THE COURT OF APPEAL

1970

CIVIL SIDE

No.6

ROGER ADDERLEY
CLOTILDA HIGGS

Appellants

NASSAUVIAN LIMITED

Respondent

JUDGMENT OF ARCHER, J.A.

30 This is an appeal from a judgment of the supreme court in proceedings brought under the Quieting of Titles Act, chapter 133. The respondent company by petition dated 23rd August, 1967 prayed that its title to an undivided one-fourth interest in a parcel of land delineated pink on a plan attached to the petition (hereinafter referred to as the pink area) and to the entirety of a parcel of land delineated blue on the same plan (hereinafter referred to as the blue area) be

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determined and declared. On the 13th and 16th October, 1967 respectively, the appellant's brother, Roger Adderley, and the appellant filed adverse claims. Each claimed to be entitled to an undivided interest in fee simple in the land the subject of the petition by virtue of a devise contained in the will of their father, Daniel Adderley.

The respondent company relied on documentary titles to its interests and on possession. It traced its title to the pink area through documents beginning with a conveyance dated 25th May, 1892 by the Provost Marshal. It relied on a Crown grant dated 15th May, 1940 for its title to the blue area. The appellants based themselves on the devise in their father's will and on possession adverse to the respondent. The judge found that the respondent company had established a good documentary title to the interests it had claimed and that it had neither discontinued possession nor been dispossessed of either area by the adverse claimants. He granted a certificate of title accordingly and dismissed the adverse claims.

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At the commencement of the hearing of the appeal, Roger Adderley sought and obtained leave to withdraw from the proceedings. The appeal got under way with Clotilda Higgs as the sole appellant after a preliminary skirmish which was provoked by the inadequacy of the notice of appeal which was, however, cured by an amended notice. As in the court below, the argument ranged far and wide but the real issues of fact once ascertained and resolved, the appropriate law can be readily applied.

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It must be emphasised at the outset, as the judge found it necessary to do, that the area of the dispute must be limited by the subject matter of the dispute and the parties to the dispute. With regard to the pink area, the respondent has never claimed title to more than an undivided one-fourth interest in a defined area and has obtained a certificate of title in respect of that interest. There is nothing in the judgment affecting the owners of other interests in the pink area. Before the supreme court the parties to the dispute were the appellant, her brother, Roger, and the respondent. The appeal is now concerned with the interests of the sole appellant and not with that of her relatives or any other person. It is largely for this reason that a great deal of the

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evidence about the farming activities of numerous members of the Adderley family and their tenants from time to time can be passed over lightly.

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10 The pink area which comprises 92.33 acres is part of a tract of 312 acres purchased by Halliday Adderley, the appellant's grandfather, in 1873. In 1877 he mortgaged that tract of land and other land but in 1878 he purported to convey the fee simple to his four children, Joseph Richard, William Campbell, Daniel (father of the appellant), and Sarah. The mortgage was not exhibited but it is referred to in the appellant's abstract of title which recites that the document is on record. In 1879 he again purported to convey the fee simple: this time, by way of mortgage. He died in 1885 and there was an end to these curious transactions. In 1890 Halliday Adderley's four children paid off the money due on the 1877 mortgage and acquired the tract of 312

20 acres as tenants in common. In that same year they sold 185 acres of the tract to William Clough. The land sold to Clough formed the northern portion of the tract. The Adderley estate, as it has been referred to, then consisted of the southern portion of the tract together with other lands that had been purchased by Halliday Adderley. The total area was several hundred acres.

30 The respondent exhibited a conveyance of 25th May, 1892 by which the Provost Marshal conveyed to James Austin Thompson (1) 50 acres of land lying to the west of the property known as Goodman's; (2) one undivided fourth part of certain land being part of Goodman's, under the authority of a writ of venditioni exponas issued out of the General Court at the suit of certain named persons. The conveyance recites that the land sold was the property of William Campbell Adderley. This conveyance is the respondent's root of title to the pink area and from it the respondent deduced title through a number of transactions down to a

40 conveyance from Caves Co.Ltd. to the respondent in November, 1939. Counsel for the appellant disclaimed any wish to question the respondent's documentary title but the conduct of the case and the evidence led by the appellant belied any such disclaimer.

The appellant admitted the sale by the Provost Marshal of William Campbell's one-quarter interest in part of Goodman's but contended that the sale was illegal because her father had paid William Campbell's

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debt by instalments after the sale. How this alleged payment affected the sale and rendered the conveyance of no effect she did not explain and the judge quite properly rejected this fanciful evidence. Her son, Kenneth Higgs, who was born in 1927, was adamant that William Campbell's one-fourth interest had never been sold by the Provost Marshal at all. It seems pretty plain that the evidence of the appellant and Kenneth Higgs was either a concoction or the repetition of an imperfectly understood story and, it would be pointless to spend any more time on it. But the appellant was not content to leave the issue of Thompson's acquisition there. Her counsel submitted that it had not been proved that Thompson or his successors had ever had possession of the land. 10

In proving its documentary title to an interest in the pink area the respondent company went back into the history of the land further than the Quieting of Titles Act demanded. Subsection (2) of section 8 of the Act is as follows :- 20

"(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or to produce any evidence which by the Conveyancing and Law of Property Act is dispensed with as between vendor and purchaser, or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs". 30

Subsections (3), (4) and (5) of section 3 of the Conveyancing and Law of Property Act, Chapter 115, read:

"(3) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions. 40

(4) A purchaser of land shall not be entitled to require a title to be deduced for a period of more than thirty years, or for a period extending further back than a grant or lease by

the Crown or a certificate of title granted by the court in accordance with the provisions of The Quieting of Titles Act, whichever period shall be the shorter.

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(5) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser, nor shall he require any information, or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document or that prior title is recited, covenanted to be produced, or noticed, and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will or other instrument, forming part of that prior title, are correct, and give all the material contents of the deed, will or other documents so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by acknowledgment, enrolment or otherwise".

The provisions of the Conveyancing and Law of Property Act referred to are the same as are to be found in the Vendor and Purchaser Act, 1874 of the United Kingdom and which now re-appear in the Law of Property Act, 1925. In the preliminary note on statutes on Real Property and Chattels Real in Vol. 20 of the 2nd ed. of Halsbury's Statutes under the head Transfer inter viros, their effect is summarised in the following words: "In the absence of an express stipulation to the contrary, a purchaser is precluded from enquiry as to documents (with certain exceptions) dated before the time prescribed by law or by the contract for the commencement of the title) and must assume, unless the contrary appears, that recitals of such documents are correct, recitals in deeds etc. twenty years old being made prima facie evidence of the facts recited therein: See the Law of Property Act, 1925 (c.20)"

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The conveyance of 2nd November, 1939 by Dora A. Johnson and others to Caves Co. Ltd. recites that James A. Thompson was at the time of his death in 1916 seised and possessed in fee simple of one undivided fourth part of the pink area, part of Goodman's, and that the vendors were at the date of the conveyance seised and possessed in fee simple of the said undivided part. This was evidence by the respondent of possession which could only be displaced by proof to the contrary by the appellant. There was no such proof. 10

The appellant also attacked the Crown Grant of the blue area and it was submitted that the Crown had been ousted before 1940. Here again, apart from other considerations with which I shall deal later, it was not for the respondent to prove that the Crown had not been ousted: in addition to the provisions of the Quieting of Titles Act and of the Conveyancing and Law of Property Act to which I have referred, there is the opinion of the Judicial Committee of the Privy Council expressed in *Ocean Estates Ltd. v. Pinder* (1969) 2 A.C.19, 'that where a person has dealt in land by conveying an interest in it to another person there is a presumption, until the contrary is proved, that he was entitled to the estate in the land which he purported to convey'. 20

The appellant was not in possession of either the pink area or the blue area before 1934 and it is meaningless to say that the Adderley family was in possession. The case is concerned with two defined areas and the appellant's interest in them. Her interest arose in 1934. Her immediate predecessor was her father and what she had to prove was that he, and, if necessary, his predecessors, were entitled to the interest she claimed. 30

Daniel Adderley acquired an undivided one-fourth interest in the southern portion of the Goodman tract by the conveyance in 1890. The appellant attempted to prove that neither Daniel nor his sister, Sarah, received payment for their interests in the northern portion of the tract when it was sold to William Clough in 1890, the whole of the purchase money going to Joseph and William, and that it was agreed that Joseph and William would surrender their interests in the southern portion to Daniel and Sarah. The judge did not accept the evidence as to this arrangement: it consisted 40

of the bald statement that Daniel Adderley had said that there was such an agreement. On the other hand, there was the acknowledgment by Daniel and Sarah in the conveyance of the receipt of their shares of the purchase money which was strong **presumptive** evidence of actual receipt, and, as will be mentioned later, the absence from Daniel's will of any reference to any interest in the southern portion of the Goodman tract in addition to the interest he acquired by purchase in 1890.

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Roger Adderley, the appellant's brother and the other adverse claimant in the court below, said that none of the heirs of Joseph or William Campbell had ever been on the land: the appellant said that after the sale neither they nor their children returned to the land. Joseph and William Campbell died about the same time. Joseph at about age 47 years and William Campbell a year younger, but in what year they died and as to whether testate or intestate is not known. This tenuous evidence is all that was offered in corroboration of the claim that the southern portion of the Goodman land fell to Daniel and Sarah.

Daniel Adderley's will dealt fully with the property he left at his death in 1934. The will contains no residuary clause. There is a specific devise of his one-fourth interest in the Goodman tract and the obvious inference is that he did not consider himself entitled to more than that interest. There was evidence that Sarah devised her interest in the Goodman tract to her god-children and that it was eventually acquired by Richard Adderley, a brother of the appellant, in his own right by purchase in 1910. In the light of this evidence which was led by the appellant, Daniel's additional interest in the southern portion of the Goodman tract, **if acquired in the way the appellant alleged, could** not have amounted to more than an undivided one-fourth interest. But as to this, again assuming his succession to it, he would have died intestate and it would go to his heir. The appellant is not Daniel's heir and, therefore, has no claim to any interests of Joseph and William transmitted as she alleged. As far as her documentary title to the pink area is concerned it remains limited to her share in the devise of an undivided one-fourth of the part of the Goodman tract of which her father, Daniel was the owner at his death.

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The interests in three-fourths of the pink area were not affected by Daniel Adderley's will. The plan attached to the respondent's petition shows the blue area adjoining the pink area. The plan attached to the conveyance of 2nd November, 1939 to Caves Co. Ltd. shows that the land represented by the blue area was Crown land in 1920 and its description as Crown or vacant land goes back to 1873 when Halliday Adderley purchased land in what came to be known as Goodman's. There is no substance in the suggestion that it was ever part of the Adderley estate and the appellant cannot, therefore, show any documentary title to it. 10

The respondent company led evidence of acts of user which, in the opinion of the judge, showed that it was exercising rights of ownership over both the pink and the blue areas. These areas had been acquired with a view to development and the respondent cut a road which was stopped from time to time, had the land surveyed and lines cut, erected markers, and periodically inspected the land. It was submitted that these acts were insufficient to protect the respondent against adverse possession and that the respondent could only preserve its rights by acts comparable with those of the would be adverse possessor. This proposition is untenable. In *Williams Bros. Direct Supply Ltd. v. Raftery* (1958) 1 QB.159, Sellers, L.J. observed during the course of the argument: "In *Leigh v. Jack, Cotton, L.J.* said that one must have regard to the nature of the property. A man who owns land which is good for nothing but building on at some future date would not be expected to show active signs throughout the statutory period. He had his legal right. Surely he cannot be dispossessed by someone who uses the land and does no harm at all, simply because he does not perform positive acts of ownership all the time". At page 171, Morris, L.J. said: "The plaintiffs had been in possession of the property and the question arose whether they had been dispossessed or had discontinued their possession It was pointed out by Bramwell, L.J. in his judgment in *Leigh v Jack* that the smallest act is sufficient to show that there is no discontinuance It was found by the judge that they intended to develop that land when an opportunity arose, and until that opportunity arose, they did not, in the meantime, intend to use it. The war came and there were the great difficulties of building on the land. So it came about that the land at the back of these premises was used for 30 40 50

purposes of growing garden produce ... It seems to me that the evidence shows that there was mere user of this land but not user amounting to dispossession of the owners of it". The other two judgments were to the same effect. The views expressed in these judgments which follow Leigh v Jack exemplify the concept of possession conveyed by Lord O'Hagan in Lord Advocate v Lord Lovat, 5 App. Cas. 288, when he said: "Possession must be considered in every case with reference to the peculiar circumstances the character and value of the property, the suitable and natural manner of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests, all these things, greatly varying as they must under various conditions, must be taken into account in determining the sufficiency of a possession".

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The evidence put forward to establish adverse possession was directed to proof of individual and sporadic farming and quarrying by various tenants and by children of the appellant.

The appellants' claim had been to an undivided interest in the pink and blue areas but this evidence was in support of a claim to the whole of the land in dispute and to land which the respondent had not claimed. It becomes necessary then to consider the appellant's claim that she and her brother, Roger, were alone in adverse possession of the two areas.

Daniel Adderley devised his one-quarter interest in the Goodman tract of land to his children Richard, the appellant, Roger, and Ellen, subject to a life interest in favour of his son, Frederick William. Richard died in 1958, testate. Ellen died in 1966, intestate. In addition to being given a life estate, Frederick William was appointed executor of his father's will. Section 3 of the Real Estate Devolution Act, Chapter 153, provides for the devolution of the legal interest in real estate on the death of a person: the legal interest becomes vested in his personal representative or representatives; and (by section 4) the personal representative holds the real estate as a trustee for the person or persons by law beneficially entitled. Section 5 makes provision inter alia for assent by deed to any devise contained in the deceased owner's will or conveyance to a devisee. The one-fourth

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undivided interest in the Goodman tract devised by Daniel Adderley vested in Frederick William in trust for his four children but subject to Frederick William's life estate. The appellant said that she and Frederick William took care of the land after her father's death. In reality Frederick William was in possession, both as executor-trustee and as tenant for life. He had a vested estate in possession and Daniel's children had vested interests which did not carry possession or the right to immediate possession of the land. Possession passed from Daniel to Frederick William during whose lifetime the appellant was not in possession. There is no evidence of the date of Frederick William's death, if, indeed he has died; but he was alive and active up to 1941 when he sounded Roger Adderley, who was then living in the United States of America, about Sir Harry Oakes' offer to treat. On her father's death the appellant became one of several cestuis que trust. It is difficult to see, therefore, on what basis the appellant claims that she or she and her brother, Roger, own the pink and the blue areas. It is only if they were in possession for the statutory period after the death of Frederick William Adderley (of which there is no proof) that they could make any such claim. They could not have ousted their brother and sister, Richard and Ellen during Frederick William's tenancy for life. During his lifetime - I am assuming that he is now dead - Frederick William Adderley was an express trustee and the rights of the cestuis que trust inter se were regulated by statute. Sections 24 and 25 of the Real Property Limitation (No.1) Act, Chapter 148 are a reproduction of sections 24 and 25 of the 1833 Limitation Act of the United Kingdom except that section 25 of the latter Act was enacted as a proviso to section 24 of that Act. This circumstance leads to no difference of construction of the respective provisions of the two Acts. In Knight v Bowyer (1858) 44 E.R. 1053, the facts are lengthy and complicated but, for the purpose for which I refer to the case, are sufficiently condensed in the headnote which reads: "Sir G.B. granted to six persons annuities, payable out of his life interest in the R. estate. He then executed a deed, called a receivership deed, to which the six annuitants and B. and R. were parties, by which he appointed B. and R. receivers of the rents; and it was declared that they should hold the rents in trust to pay the annuities, and then to pay the surplus to Sir G.B. or his assigns. The receivers accepted the trust.

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By another deed Sir G.B. conveyed his life estate to a trustee on trust for securing the six annuities, and subject thereto in trust for himself. He afterwards granted annuities to three other persons, and by a deed called a deed of direction, to which the three annuitants were parties, he directed the receivers and the trustee to pay the three annuitants out of the rents. Notice of this deed was immediately served on the receivers and the trustee. Held, by the Lord Justice Turner, affirming the decision of the Master of the Rolls (dubitante the Lord Justice Knight Bruce), -

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1. That the deed of direction made the receivers and the trustee express trustees for the three annuitants, subject to the rights of the six annuitants.

2. That in cases of express trust the Statute of Limitations is no bar to the demand of a cestui que trust, though the other cestuis que trust have for more than twenty years received from the trustee the whole of the rents to the exclusion of the claimant".

Turner, L.J., in the course of his judgment quoted section 24 of the 1833 Act and said: "This section, if there had been no proviso, would have extended to cases of express trust, but the 25th section provides as follows:- "He then quoted section 25 of the Act and continued: "It is argued by the appellants, that this proviso applies only as between the cestui que trust and the trustee, and not as between cestuis que trust, although under an express trust, where some have received to the exclusion of others, but the contrast between the 24th and 25th sections points, I think, to the opposite conclusion. The case between the cestuis que trust would have fallen within the 24th section if uncontrolled by the proviso. That section furnishes the general rule as to equitable estates and the proviso being general, it is reasonable, I think, so to construe it as to except, where there is an express trust, all the cases which would otherwise have fallen within the general rule. The reasonableness of this construction appears more strongly, when we consider what would be the remedies in the case of an express trust. If the right against the trustee is preserved, as it undoubtedly is, there would be the consequent right to a receiver, and how could the right to a

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receiver be maintained if the section be construed to create a bar as between the cestuis que trust. I do not see how in that case the land or rent could be recovered at all. Besides, it is not reasonable to suppose that the remedy was intended to be preserved against the trustee, but destroyed against the persons who had received the benefit of the breach of trust. I think, therefore, that the construction of the statute contended for by the appellants cannot be maintained, and that the appellant's case fails upon the point of the Statute of Limitations. The authorities seem to me to be very strongly in favour of that conclusion. I may refer to Ward v Arch (12 Sim. 472), Young v Lord Waterpark (13 Sim. 199), Cox v Dolman (2 DeG, M & G. 592), and Garrard v Tuck (8C.B.23). The case of Burroughs v M'Creight (1 Jo.+ (Lat.290), cited by Mr. Druce, does not, I think, apply. In that case the trustee had not acted".

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In Burroughs v M'Creight, to which Turner, L.J. referred in his judgment, a conveyance of certain lands was made in 1810 to trustees in trust for the plaintiff, among others. A person under whom the defendants claimed was then in possession of the whole of the lands, being entitled to a fourth part of them under a prior deed. There had been various dealings with the estate, which amounted to an acknowledgment of the plaintiff's title down to 1819. But the defendants, or those under whom they claimed, had been in possession down to the filing of the bill in 1842. It was held that the plaintiff was barred by the Statute of Limitations (the 1833 Act) and that his right was not saved by the 25th section of the Act. The Lord Chancellor said (71.R.Eq. at pp.54-55): "The fact appearing on the proof in this case is, that from 1810 down to the present time, the rents and profits were received through an agent by the defendants. Now that, in the absence of anything else, constitutes a clear title under the Statute of Limitations. There would be no answer to the defence of the Statute of Limitations, because, the rule has been altered, and possession of one co-parcener, joint-tenant, or tenant in common is no longer possession of the other, and, therefore, the possession here by a person receiving more than the share of the rent to which he was entitled, would in point of fact be such a possession as would not enure to his co-tenant. The consequence of which is, that he would be enabled to

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claim the whole, and in that way would acquire a good title Therefore, I see nothing to prevent the time from running from 1819, unless the 25th section of the statute prevents it. Now the 25th section is distinct, that if a trustee under an express trust be in possession, the time shall not run against the cestui que trust, that is, the title shall not be considered to have accrued, until there shall have been a conveyance by the trustee or those claiming under him bona fide to a purchaser. Therefore, if the trustee remains as trustee in possession, if he has no other title, the statute makes him liable" That statement of the law is repeated in Ashburner's Principles of Equity, 2nd ed. p. 514 in these terms: "The rule that no lapse of time barred the claim of a cestui que trust only holds as between the cestui que trust and the trustee but not as between one cestui que trust and another. As between one cestui que trust and another courts of equity before any statute was passed affecting equitable titles acted by analogy to the statute; now, where such statutes apply, they act in obedience to them. An equitable estate might be barred by adverse possession, where there was no duty which the person who held the possession had undertaken to discharge for him against whom he pleaded it. One cestui que trust, if he was in possession of property or in receipt of the rents, profits or income, might set up that possession as against another cestui que trust, and the other would be barred at the same time as he would have been barred if he had been claiming upon a legal title against another legal title". In the first edition (1902) at page 720 the statement of the law continued: "On the other hand, where trustees are themselves in possession of property or in receipt of the rents and profits or income, payment by them of the rents and profits or income to the wrong person cannot affect the right of the true cestui que trust; and he can recover the property, however long the time during which the wrongful payments have been made".

In the 3rd edition of Preston and Newsam on Limitation of Actions at page 148 the authors state the law as follows: "Where the trustee was out of possession, and the rents and profits were received by one beneficiary to the exclusion of another, it was formerly the rule that time ran against the excluded beneficiary in favour of the one in possession (Real Property Limitation Act, p.12,

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Burroughs v M'Creight), Bolling v Hobday (1882)
31 W.R.9, just as it does when a stranger obtains
possession even if he recognises the title of the
trustee".

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 10
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 20
sites but there was never anytime 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
interests of the other owners, whoever they may be,

I think that the judge came to the correct
conclusion and I would dismiss the appeal with costs. 30

C.W.H. ARCHER

J.A.

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CIVIL APPEAL NO. 6 of 1970Judgment of
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CLOTILDA HIGGS

Appellant

v

NASSAUVIAN LIMITED

Respondent

JUDGMENT

of Hogan J.A.

10 By a petition, dated 23rd August, 1967, the
Respondent, one of a number of property holding
companies of the late Sir Harry Oakes or his family,
sought the investigation, determination and
declaration, under the Quieting Titles Act 1959, of
its title as owner in fee simple in possession of
two parcels of land, one comprising 92.33 acres and
the other 12.52 acres; both situate on the South
Western side of Harold Road in the Western District
of the island of New Providence. In respect of the
20 larger parcel only an undivided one quarter interest
was claimed. In her Adverse Claim dated 16th
October 1967 the Appellant claimed that she was
entitled to "an undivided interest in fee simple"
to the two parcels but did not specifically seek an
investigation and declaration of title.

A similar Adverse Claim was made by Roger
Adderley.

30 The investigating judge found that the 92.33
acre tract, the southern portion of a piece of land
known as "Goodmans", was owned in 1890 by Joseph
Richard Adderley, William Campbell Adderley, Daniel
Dewellman Adderley and Sarah Ann Bain, the northern
portion having been sold by them to one William
Clough, on the 8th May 1890. The quarter share of
William Campbell Adderley in the southern portion
was sold by the provost marshal, on the 25th May
1892, and title to this share was subsequently
acquired by the Petitioner. In so finding the
investigating judge rejected two contentions of the

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adverse claimants. The first was that, on the sale of the northern portion to William Clough, the whole purchase price was paid to Joseph Richard Adderley and William Campbell Adderley only, in return for which they relinquished their interest in the southern portion to Daniel Dewellman Adderley, the father of the two adverse claimants, and to Sarah Ann Bain, their aunt. Also rejected was the second contention that the debt of William Campbell Adderley was paid to the provost marshal by Daniel Dewellman Adderley and that, consequently, the provost marshal's sale of William Campbell Adderley's interest in the land was invalid. 10

For the 12.52 acre tract the judge found that the Respondent had a crown grant, made to its predecessor in title, the Caves Company Ltd., on the 19th May 1940, at a peppercorn rent for ever.

Having found that the Respondent had a good documentary title to the two areas claimed, the judge proceeded to examine the evidence as to possession. He referred to the visits, the first in 1958, by Mr. Plant, the Respondent's secretary, who said he saw no signs of adverse occupation apart from some quarrying in the North. Mention was made of the cutting of a road, put through the land by Sir Harry Oakes, whom the judge described, apparently inaccurately, as the petitioner's predecessor in title. One witness, Edward Knowles, said this was done in 1937 - the reference to 1927 on p. 36 of the record appears to be a clerical error - and another, Andrew O'Brien, a surveyor, said it had been cut prior to 1942. The "stopping" of the road on behalf of the Caves Company, another Oakes undertaking between 1937 or 1940 and 1959 was also mentioned as was the action of Mr. Borer, who joined the Oakes Estates service some 22 years ago, in causing markers to be put on the land in 1950 or 1951 with a view to development. These factors together with the cutting of survey lines and periodical inspection of the land itself were described by the judge as "sufficient acts of possession" by the Respondent, by which I understand him to mean there had been no discontinuance of possession by the Respondent, as holder of the documentary title or owner (See Leigh v Jack (1)). 20 30 40

The judge proceeded then to deal with evidence

by the adverse claimants as to their possession of the land for 20 years and upwards: including the allegation by the Appellant, a lady of some eighty years, that the Higgs family had been in exclusive possession and the evidence of Oliver Higgs as to his parents farming the land and their tenantry. The judge said that Oliver Higgs's evidence was insufficient to show that his family farmed the whole of the land over a continuous period of 20 years. Any farming done was, the judge said, sporadic. Reference was also made to the evidence of Mr. Bowe, a surveyor, that air photographs of the land taken in 1942 or 1943 showed there were "some" clearances on the land, about 12 farms, which was supported by the evidence of Mr. Garroway, Crown Lands Surveyor, who said that the aerial photographs indicated farms moving from place to place; that roughly 40% of the usable land was being cultivated in 1943 but that " some areas 1943-1962 had not been touched at all". Note was made of the Appellant's statement that "Farming was done by keeping moving through the land - one spot was not continually farmed". This was said to be confirmed by another of the adverse claimants witnesses, William Knowles, and the judge concluded that the evidence taken as a whole did not prove 20 years continuous and exclusive possession of the whole land.

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Having referred to the vast activities by way of stripping and rock crushing seen on the land at the time of his recent inspection, activity which obliterated all trace of former farming but which had admittedly only been undertaken by the Higgs family in recent years, the judge ended by saying that the respondent had not been ousted in respect of the quarter interest claimed and was entitled to a certificate in respect of it. No mention was made of the claim to the entire ownership of the 12.52 acres but this has been included in the formal order issued and signed by the Registrar.

One of the adverse claimants, Roger Adderley, has withdrawn from the appeal but the appellant, Clotilda Higgs, contends that the judge erred in his findings as to possession and should have held that the Petitioner's claim was barred by the Statute of Limitations and its title extinguished by the provisions of that statute and the continuous use and occupation of the land by the appellant. One other matter, to which I will return, is raised

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in the grounds of appeal but the complaints made against the judgment centre on possession.

In a wide ranging argument addressed to this issue Counsel has, however, adverted to the alleged partition and the payment of William Campbell Adderley's debts; for the purpose, apparently, of indicating the nature and quality of the possession manifested by the acts of the appellant and her relatives. There was, at least, an implicit suggestion that this claim to a title left the onus as to evidence of possession not spread disparately between a rightful owner on the one hand and a trespasser on the other but equally distributed between both sides, as for competing trespassers or competing claimants with defective titles. See for example the approach of the court in *Des Barres and Another v Shey*⁽¹⁾.

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To the question whether a partition required writing Counsel replied that it could be established by long user (see *Tidball v James*⁽²⁾) and that equity would give effect to an agreement for partition not evidenced by writing if there had been part performance. But the judge below was not concerned with this aspect of the matter because he found neither a partition nor an agreement to partition. His reason for this may not have been very happily expressed when he said :-

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"I cannot accept the evidence tendered, which is only hearsay, of such an agreement and partition."

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This has been criticised by Counsel for the appellant as contravening the provisions of Section 8 of the Quietening Titles Act which makes hearsay admissible if the judge is satisfied of its truth. But, when read in its context, the passage does not, I think, mean that the judge was ruling the evidence to be inadmissible but rather that he was weighing this hearsay testimony against the documentary evidence and declining to accept or give it credence in preference to the latter. The fact that the appellant's father Daniel Dewellman Adderley, through whom she claims, referred in his will of the 8th

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(1) 29 L.T. 592

(2) 29 L.J. Ex.91

April 1930 to his "one quarter interest in the Goodman tract", tells heavily against the alleged agreement and I see no adequate reason for interfering with the judge's decision on this point or with his rejection of the submission that the provost marshall's sale was invalid because William Campbell Adderley's debts had allegedly been paid.

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10 With the documentary title of the respondent established, the onus of showing that it had been displaced would lie on those who claimed title by possession, See Kingston Race Stand Limited v Mayor and Council of Kingston⁽¹⁾ where the Privy Council said :-

"... as the title of the respondents was admitted, it could only be displaced by evidence that the respondents had been out of possession and the appellants in undisputed possession for twelve years."

20 In the present case the relevant period would be 20 years.

There would seem to be no good reason why a principle which applies to an admitted title would not apply with equal force to a title established after contest. That, in the absence of evidence to the contrary, possession can be inferred merely from the acquisition of title appears to have been taken as an accepted principle by the Privy Council in Wuta-Ofei v Danqah⁽²⁾, where Lord Guest, giving the judgment of the Privy Council, said :-

30 "... in order to establish possession it is necessary for a claimant to take some active step in relation to the land such as enclosing the land or cultivating it. The type of conduct which indicates possession must vary with the type of land. In the case of vacant and unenclosed land which has not been cultivated there is little which can be done on the land to indicate possession. Moreover, the possession which the respondent seeks to maintain is against the appellant who never had any title to the land. In these
40 circumstances the slightest amount of possession would be sufficient.....

(1) 1897 AC 509, 515

(2) 1961 1WLR 1238

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There is no evidence that the respondent ever abandoned her possession, which in virtue of her grant in 1939 she obtained."

Where there is evidence of possession by either side or both sides, very little by way of assertion of dominion is required from a title holder to negative evidence of discontinuance or abandonment of possession. Referring to an owner in the leading case of Leigh v Jack⁽¹⁾, Bramwell L.J. said "Very little is sufficient to show continuance of possession". The owner's acts are not measured in the same way as those of a trespasser and it is conceded before us that, as between co-owners, whoever sought to establish by possession a right in excess of that conferred by any other title must prove a possession of the additional interest no less exclusive and continuous than the ordinary trespasser.

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Moreover in determining whether there has been abandonment or dispossession, account must be taken of the purpose for which the owner held the land. In Leigh v Jack⁽¹⁾ the head note reads :-

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"Acts of user committed upon land which do not interfere, and are consistent, with the purpose to which the owner intends to devote it, do not amount to a "dispossession" of him, and are not evidence of "discontinuance of possession" by him within the meaning of the Act....."

Cockburn C.J. said :-

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"The defendant simply used the land until the time should come for carrying out the object originally contemplated. If a man does not use his land either by himself or by some person claiming through him he does not necessarily discontinue possession of it."

Bramwell L.J. said, in regard to discontinuance :-

"... the smallest act would be sufficient to show that there was no discontinuance."

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and in respect of dispossession :-

(1) 42 LT 463

"... acts of user are not enough to take the soil out of the plaintiff and her predecessors in title and to vest it in the defendant; in order to defeat a title by dispossessing the former owner, acts must be done which are inconsistent with his enjoyment of the soil for the purposes which he intended to use it:"

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Cotton L.J. said :-

(continued)

10 "In deciding whether there has been a discontinuance of possession the nature of the property must be looked at. I am of opinion that there can be no discontinuance by absence of use and enjoyment where the land is not capable of use and enjoyment."

By which I understand the learned Lord Justice to mean the use ultimately contemplated and intended by the owner.

20 Again in Williams Brothers v Raftery⁽¹⁾, where land of the plaintiffs adjoining property of the plaintiff and the defendant had been cultivated by the latter, Sellers L.J. said :-

"The land in question was idle. Its owners were waiting for an opportunity to build on it."

and then went on to hold they were not ousted by what he called "trivial acts of trespass", which did not interfere with the contemplated subsequent user.

30 Returning to the facts of the case before us, although the judge may have erred in his reliance on Sir Harry Oakes cutting of a road as evidence of the owner's intention to exercise dominion, since it was not shown that Sir Harry Oakes was acting for the documentary title holder at the time, nevertheless, in the light of the authorities just mentioned, the judge would appear to have been justified in treating the other acts specified as evidence of continuing possession at the relevant time and in refusing to
40 draw from the absence of evidence at an earlier stage any inference which would rebut the presumption of possession flowing from the acquisition of ownership.

(1) (1958) QB 159, 173

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On the issue as to actual dispossession by the petitioner and those through whom she claimed the road cutting would, of course, be relevant as indicating that there was no exclusive possession by the adverse claimants. On this issue, Counsel for the appellant has directed the main weight of his argument towards showing that the judge was wrong in refusing to accept the evidence of the appellant and her witnesses as to possession but the judge did not necessarily reject it. He would appear to have thought that much of it might be true but, weighing it as a whole, he did not think that it disclosed that continuous and exclusive possession of a clearly defined area for 20 years, which was shown in *Ocean Estates v Pinder* (1) to be necessary for a successful claim to a possessory title.

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The judge found that the alleged farming was sporadic, quoting the evidence of the appellant that "Farming was done by keeping moving through the land - no spot was ever continuously farmed" and the evidence of Mr. Garroway that the photographs on which he relied indicated farms moving from place to place. This disclosed a situation closer to that prevailing in *Ocean Estates v Pinder* (1) than to the facts in *Paradise Beach etc. v Price Jones* (2), from which Counsel for the appellant sought a measure of support.

20

We are not dealing here with acts supporting a colour of title - that went with the rejection of the claim to partition - and when due account is taken both of the evidence that the respondent was planning to use the land or its interest in the land for development and of the exacting proof required to defeat, by possession, the claims of a documentary title holder, there would appear to be no justification for holding that the Judge's decision on the issue of possession was erroneous.

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In addition, however, to the grounds of appeal going directly to the issue of possession, there is a further ground which is not altogether easy to understand. It refers to "material false statements" and the suppression of evidence but the arguments in support indicated that, apart from an alleged compromise, which remained so shadowy and

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(1) (1969) 2 AC 19, 24, 25

(2) (1968) 2 WLR 876

insubstantial as to merit no serious consideration, this ground, though expressed in pejorative form, was little more than an attempt to raise again certain aspects of the evidence as to possession and to weaken, in some measure, that of the respondent by introducing assertions as to fact through the mouth of Counsel in a manner that should not, I think, be encouraged. Neither in its original or amended form could this ground be sustained.

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Counsel for the appellant in the present case faced a difficult obstacle in the exposition of the law propounded by the Privy Council in the case of *Ocean Estates v Pinder* (1). In the light of that decision and the other authorities to which I have referred I can see no justification for questioning the judge's finding that the respondent is entitled to a quarter-interest in the 92.33 acre tract. The claim to the whole estate in the 12.44 acre tract does not appear to rest on quite such firm ground since the judge, as already indicated, omitted, for some reason, to refer to it specifically in his ultimate conclusions. True the formal order signed by the Registrar includes it but, in the absence of argument, I would hesitate to hold that the judge's substantive decision could properly be extended by the formal order. We have had no argument on this point as it has not been included in the grounds of appeal. It may well be that, despite the judge's opening reference to the importance he was attaching to the limited nature of the claim to the larger tract, Counsel felt the intention of the judge to deal with the user of the land as a whole was so clearly manifest in his judgment and his assessment of the evidence was so clearly relevant to both tracts that there was nothing to be gained by raising this issue on appeal. In these circumstances and as the error, if any, would seem to extend only to the judge's failure to give expression to what was clearly in his mind, since he found, not so much a lack of occupation exceeding her fair share by the appellant or her predecessors in title, as a lack of that continuous and exclusive possession which would defeat an undivided ownership, I don't think it

(1) (1969) 2 AC 19.

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is incumbent on us to pursue this aspect of the
matter and I would dismiss the appeal.

MICHAEL HOGAN.

5th November, 1970.

No. 34

Certificate
of Order
11th November
1970

No. 34

CERTIFICATE OF ORDER

BAHAMA ISLANDS

No. 16 of 1970

IN THE BAHAMAS COURT OF APPEAL

CIVIL SIDE

In the matter of the Quieting Titles Act 1959 10

B E T W E E N :

CLOFILDA HIGGS

Appellant

and

NASSAUVIAN LIMITED

Respondent

CERTIFICATE OF THE ORDER OF THE COURT

Appeal from the Judgment of the Supreme Court
handed down by Mr. Justice H.C. Smith on the 29th
day of January, 1970.

This appeal coming on for hearing on the 18th
day of June 1970 before Mr. Justice Paget Bourke 20
President and Sir Clyde Archer and Sir Michael Hogan,
Judges, in the presence of James M. Thompson, Esq.,
attorney for the appellant and Paul Bethell, Esq.,
attorney for the respondents: I hereby certify
that an order was made as follows :

153.

"I would dismiss the appeal with costs".

Given under my hand and the seal of the Court
this 11th day of November, 1970.

(Sgd) Illegible

Registrar.

In the Court
of Appeal

No. 34

Certificate
of Order
11th November
1970

(continued)

To: James Thompson Esq.,
Attorney for the Appellant,
Chambers,
Frederick Street,
Nassau.

10

and

Paul Bethell Esq.,
Attorney for the Respondents,
Chambers,
Shirley Street,
Nassau.

No. 35

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL

BAHAMA ISLANDS

20 IN THE COURT OF APPEAL

No. 6 1970

B E T W E E N

CLOTILDA EUGENIE HIGGS Appellant

and

NASSAUVIAN LIMITED Respondent

ORDER

DATED the 4th day of December, A.D., 1970.

UPON HEARING Mr. James M. Thompson of Counsel for
the Appellant herein and Mr. Paul H. Bethel of
Counsel for the Respondent IT IS HEREBY ORDERED
that Leave be granted on condition that :

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No. 35

Order granting
Conditional
Leave to
Appeal
4th December
1970

In the Court
of Appeal

No. 35

Order granting
Conditional
Leave to
Appeal
4th December
1970

(continued)

- (a) Appellant give security in the amount of L 1,000.--. or its equivalent in Bahamian currency in cash for prosecution of the Appeal and payment for any costs as may become payable by 10th February, A.D., 1971.
- (b) the Record to be prepared and dispatched to England by 10th February, A.D., 1971.

Dated the Fourth day of February, A.D., 1971.

M.J. THOMPSON

REGISTRAR

10

To: The above-named Respondent and to
Messrs. McKinney, Bancroft & Hughes,
Chambers,
Shirley Street,
Nassau, Bahamas.
Its Attorneys.

IN THE PRIVY COUNCIL

No. 11 of 1971

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

RECORD OF PROCEEDINGS

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Solicitors for the Respondent