

2

i.

6 OF 1974

IN THE PRIVY COUNCIL

No. _____ of 19 _____

ON APPEAL FROM THE WEST INDIES ASSOCIATED
STATES SUPREME COURT
(Appellate Jurisdiction)COURT OF APPEALDOMINICA.IN THE MATTER of CIVIL APPEAL No. 2 of 1972.

BETWEEN: HAKIM E. F. GORDON in his personal capacity and in his capacity as Personal Representative of Estate Clara Marguerite Gordon, deceased, .. Plaintiff/
Applicant/
Appellant.

and

CASTAWAYS DEVELOPMENTS LIMITED
and
CASTAWAYS HOTEL LIMITED

Defendants/
Respondents.

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1.

IN THE COURT OF APPEAL

NOTICE OF APPEAL

DOMINICA

CIVIL APPEAL NO. 2 of 1972

BETWEEN

CASTAWAYS DEVELOPMENT LTD.

AND

CASTAWAYS HOTEL LTD. Defendants/
Appellants

10

and

HAKIM E. F. GORDON in his personal
capacity and his capacity as
Personal Representative of Estate
Clara Marguerite Gordon deceased

Plaintiff/
Respondent

20

TAKE NOTICE that the Defendants/Appellants
being dissatisfied with that part of the
decision more particularly stated in paragraph
2 hereof of the High Court contained in the
judgment of the Honourable Mr. Justice Renwick
dated the 17th day of July 1972 doth hereby
appeal to the Court of Appeal upon the
grounds set out in paragraph 3 and will at
the hearing of the appeal seek the relief
set out in paragraph 4.

And the Appellants further state that the names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

2. Parts of the Decision referred to:

"In Civil Appeal No. 3 of 1970, it was held that Christianie Burke had a life interest only in the Mero Estate. It follows therefore that George James Christian, although he may well have intended to dispose of his entire interest in Mero Estate, the beneficial interest in fee simple always remained in him and so he was the reversionary owner of the equitable fee simple. The legal estate he had successfully vested in the trustees. It seems to me therefore that it does not matter whether Christianie Burke fulfilled all or any of the conditions set out in the trust instrument, the sole interest which she received under the trust instrument is a life interest.

10

20

In the Court of Appeal, P. Cecil Lewis J.A., said:-

'It is not disputed that the Appellant is a lawful son of Clara Gordon (nee Christian) one of the persons mentioned in paragraphs 5-7 of the settlement. She died in 1964 leaving lawful issue, but as her death took place before she obtained a vested interest in the hereditaments there was nothing to pass to her heirs by way of succession. Accordingly the Appellant could have no claim to the hereditaments as one of her heirs. In the circumstances the Court raised the question of his locus standi in the matter'.

30

I would normally have been bound by this specific ruling by the Court of Appeal. Unfortunately all the facts were not placed before the Court of Appeal. In particular an attempt by the Plaintiff to have the will of George James Christian put in evidence at the proceedings which gave rise to Civil Appeal No. 2 of 1970 was successfully opposed with the result that the Court of Appeal did not have that will before it. In these circumstances I feel justified in arriving at my own decision and to treat the ruling of the Court of Appeal as persuasive authority and that I am not completely bound thereby.

40

The position in these cases as I see it is as follows: George James Christian settled Mero Estate in various trusts. Whatever may have been his intention by the failure to use the technical expression "heirs" he created only life interests and as a result he was the reversionary owner of the equitable fee simple. Such an interest is a vested interest and not a future interest properly so called.

10 The will of George James Christian contains two residuary clauses. To my mind there is no necessity at this stage to determine which of these clauses is applicable because in each clause Clara Gordon, the mother of the Plaintiff, is a beneficiary. Clara Gordon died in 1964 approximately four years after the death of George James Christian so at the date of his death she had a vested interest. The Plaintiff is the legal personal representative and a
20 beneficiary of his mother's estate and consequently his interest is also a vested interest."

3. Grounds of Appeal.

(1) The learned Judge misdirected himself in holding that the will of George James Christian deceased was relevant to the ruling of the Court of Appeal in Civil Appeal No. 3 of 1970 on the issue of Locus standi.

30 (2) The learned Judge misdirected himself as to the distinction between "reversions" and "remainders" having regard to the declaration sought by the Plaintiff/Respondent as set forth in the judgment of the learned judge - "that the Plaintiff is one of the beneficial owners or remaindermen of the fee simple absolute of the aforesaid Mero Estate....."

40 (3) The learned Judge was wrong in law in holding that a claim to share in the residue of the Estate of George James Christian deceased conferred a vested interest in the hereditaments having regard to the Real Representative Ordinance (Cap 213 of the Laws of Dominica) section 2 the Plaintiff/Respondent not being or claiming to be a Personal Representative of George James Christian deceased.

4. Relief Sought.

(1) That the decision of the learned Judge be set aside.

(2) That the case be remitted to the Court below with such directions for the disposition thereof as to the Court may seem fit.

5. Persons directly affected by the appeal:

Names	Addresses
Castaways Developments Ltd.	3495 Lawrence Ave. East Scarborough, Ontario, Canada
Castaways Hotel Ltd.	Mero, Dominica.
Hakim E. F. Gordon	Morne Bruce, Roseau Dominica.

B. G. K. Alleyne

Alleyne & Company

Solicitors for the Appellants

Order IN THE HIGH COURT OF JUSTICE
Granting
Leave DOMINICA.
to
Appeal 1969 No. 70
27th
July BETWEEN
1972

HAKIM E. F. GORDON Plaintiff

and

CHRISTIANIE BURKE

CASTAWAYS DEVELOPMENTS LIMITED

and

CASTAWAYS HOTEL LIMITED Defendants

10

Consolidated with:

Suit No. 188 of 1971

BETWEEN:

HAKIM E. F. GORDON in his
capacity as Personal Rep-
resenative of Estate Clara
Marguerite Gordon, deceased.

Plaintiff

and

1) Christianie Burke

20

2) Edwin Lionel Pinard

3) Daphne Taylor

4) Castaways Development Limited

5) Castaways Hotel Limited

Defendants.

The Honourable Mr. Justice J. B. D. Renwick
Thursday the 27th day of July, 1972
Entered the 31st. day of July, 1972.

O R D E R

Upon the Application of Mr. Brian G. K. Alleyne Counsel for the Applicants.
And Upon hearing Mr. F. E. Degazon Counsel for the Respondent.

Order Granting Leave to Appeal 27th July 1972

IT IS ORDERED that the applicants be at liberty to appeal against the decision of the High Court given on the 17th day of July, 1972 to the Court of Appeal.

10 And that the costs of this Application be costs in the cause.

By the Court
(Sgd) E. F. Georges
Ag. Registrar.

IN THE HIGH COURT OF JUSTICE
DOMINICA
(CIVIL)
SUIT NO. 70 of 1969

Judgment 17 July 1972

20 BETWEEN: HAKIM E. F. GORDON Plaintiff
and
CHRISTIANIE BURKE
CASTAWAYS DEVELOPMENTS LIMITED
and
CASTAWAYS HOTEL LIMITED Defendants

Consolidated with
SUIT NO. 188 of 1971

30 BETWEEN: HAKIM E. F. GORDON IN HIS CAPACITY
AS PERSONAL REPRESENTATIVE OF
ESTATE CLARA MARGUERITE GORDON;
DECEASED. Plaintiff

and
1) CHRISTIANIE BURKE)
2) EDWIN LIONEL PINARD)
3) DAPHNE TAYLOR)
4) CASTAWAYS DEVELOPMENTS LIMITED)
5) CASTAWAYS HOTEL LIMITED)
Defendants

40 F. E. Degazon for Plaintiff
K.H.C. Alleyne, Q.C. with B. Alleyne for Christianie Burke and Castaways Developments Limited
K.H.C. Alleyne, Q.C. with E. Francis for Castaways Hotel Limited
R. H. Lockhart with M. E. Charles for Edwin Lionel Pinard

1972, Jan, 7, 11, Feb. 16, 17,
July 17

Jud-
ment
17th Renwick, J.
July
1972

JUDGMENT

Suits No. 70 of 1969 and No. 188 of 1971 were by order made on the 7th day of December, 1971 consolidated and the hearing into the locus standi of the plaintiff as regards Castaways Developments Limited and Castaways Hotel Limited be commenced on 7th January 1972 whether or not the other issues in the suits were ready for trial.

The plaintiff has claimed against the defendants jointly and severally, in respect of the Mero Estate now known as Castaways situate in the parish of Saint Joseph in the State of Dominica, in each and every instance on the grounds of breach of trust, actual and constructive, misrepresentation and fraud, for relief under eight heads, the sixth of which is "A declaration that the Plaintiff is one of the beneficial owners or remaindermen of the fee simple absolute of the aforesaid Mero Estate by virtue of the operation of the Indenture of Trusts dated March 1913 recorded in Book of Deeds E No. 7 folio 689, the last Will and Testament of George James Christian, deceased dated 22nd January, 1936 proved the 14th day of June, 1946, and the last Will and Testament of Clara Marguerite Gordon, deceased, duly proved and re-sealed in the State of Dominica on the 6th April, 1971 and recorded in Book of Probates "P" Folios 277-289."

In Civil Appeal No. 3 of 1970 between Hakim E. F. Gordon - Plaintiff/Appellant and Christianie Burke Defendant/Respondent, the Court of Appeal raised the question of the locus standi of the Plaintiff/Appellant who is the Plaintiff in these proceedings he having sued herein both his personal and representative capacities. For the purpose of that appeal only counsel for the Defendant/Respondent conceded that the Plaintiff/Appellant (to quote Lewis, J. A.) "had the right to move the Court for the determination of the question whether or not the respondent had the right to convey the fee simple in the Mero Estate as she purported to do."

The Plaintiff must show a sufficient interest in order to be permitted to maintain these proceedings. The Defendant it is conceded is entitled to have the question of the locus standi of the Plaintiff decided in limine. Indeed, not only was the question of the locus standi of the Plaintiff posed by the Court of Appeal, but having been

specifically pleaded, arises directly on the pleadings themselves.

Counsel for the Defendant referred to Daniell's Chancery Practice 7th Edition Vol. 1 at page 349 where the following words are to be found:

10 "The Plaintiff must not only show an interest in the subject matter, but it must be on actual existing interest; a mere possibility, of a future title will not be sufficient to sustain the action"

He relied on a statement to like effect per Lord Eldon in Allan v Allan 15 Vesey 130 at page 135.

In other words, the Plaintiff must establish that he is as he claims, a reversionary owner or a remainderman and having done so, that that is interest sufficient to enable him to maintain these proceedings.

20 The facts here are really not in dispute and are as follows:- By an Indenture made the 15th day of October, 1894 between Francis Thomas Burke and George James Christian, Mero Estate was mortgaged to George James Christian. Francis Thomas Burke was unable to redeem the mortgage debt and so by Indenture of Trust made the 18th day of March, 1913 George James Christian created a trust in which he named the following persons as likely beneficiaries: Francis Thomas Burke, his two children Margery and Christianie Burke and their lawful children, and Peter Charles
30 Christian, Clara Christian, Maud Christian and their lawful children.

Under the Indenture of Trust the legal estate in the Mero Estate and the Cassada Estate was conveyed to Thomas Howard Shillingford as trustee, his heirs or executors to the uses following:-

- 40 1. The Trustee, his heirs, or executors shall remain in possession of the said lands, hereditaments, and premises during the life-time of Francis Thomas Burke, or until the said Margery Burke and Christianie Burke shall attain their majority (or marry) or whichever event, the death of the said Francis Thomas Burke, or the majority or marriage of the said Margery Burke and Christianie Burke shall happen later.

Judg-
ment
17
July
1972

2. The said Trustee shall manage, superintend the management, or lease the said Estate or Plantation, whichever he may deem expedient and shall in no case be liable for impeachment for waste.

3. From the rent or net profits of the said hereditaments, the said Trustee shall pay and satisfy the amount which by Bond he the said George James Christian and the said Trustee have bound themselves to pay to the said Francis Thomas Burke, and from any balance which may remain, shall at his discretion pay the whole or such part thereof for the maintenance and personal support or benefit of Margery Burke and Christianie Burke until they shall attain the age of 21 years (twenty-one) or marry. 10 20

4. Should either the said Margery Burke or Christianie Burke die under the age of 21 years or without having married and leaving lawful issue, the whole of the lands, hereditaments, and premises shall be held in trust for the survivor.

5. Should the said Margery Burke and Christianie Burke die without attaining the age 21 years (twenty-one) or without having married and without having left lawful issue, then the said Trustee shall hold the said lands, hereditaments, and premises in trust for Peter Charles Christian, Clara Christian, and Maud Christian until they shall attain the age of 21 (twenty-one) years or, being girls, attain that age or marry, with power at his discretion to pay any part of the rents and profits of the said hereditaments and premises for the maintenance and personal support and benefit of the said Peter Charles Christian, Clara Christian, and Maud Christian. 30 40

6. Should either the said Peter Charles Christian, Clara Christian, or Maud Christian die without attaining the age of 21 (twenty-one) years or marrying and leaving lawful issue, then the whole of the said lands, hereditaments, and premises shall be held in trust for the survivor or survivors of them. Judgment 17 July 1972
- 10 7. Should the said Peter Charles Christian, Clara Christian, and Maud Christian all die without attaining the age of 21 (twenty-one) years or marrying and leaving lawful issue, then the whole of the lands, hereditaments, and premises shall be held by the Trustee, his heirs, or executors in trust for the said George James Christian or as he shall, by Deed or Will appoint."
- 20

By his last Will and Testament dated the 30th November, 1938 George James Christian made the following bequests -

30 "I give and bequeath all my interests in Syers Estate and Placeawill Estate, in the Parish of St. Joseph, Dominica, British West Indies, aforesaid, and houses and my other real or personal property or interest therein to Peter Charles Christian and Clara Gordon in equal shares absolutely as tenants in common. Mero Estate and Cassada Garden Estate I have already settled on Chrissie Burke and her lawful children (if any); but if she dies without lawful issue, then the said estates to follow the terms of the Deed of Settlement."

40 I give and bequeath all my property, not hereby other disposed of, unto my trustees in trust to convert same into money by sale, or otherwise, and to divide the proceeds, after paying my funeral and testamentary expenses and debts and the legacies hereby bequeathed, in equal shares among Peter Charles Christian, Clara Gordon, Chrissie Burke, Sarah Christian, Joseph Christian, Josephine Martha Christian, Howard Christian, and Amba or Angela Christian,

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ment
17
July
1972

all of whom are now of age, and the following who are now infants; namely Matilda Christian, Ferdinand Christian, and Edward Clifford Christian, who being sons attain the age of twenty-one years, or being daughter attains that age or marries, their respective shares, vesting on my death, and to raise any part not exceeding one moiety of any such infant's share and apply the same for the advancement or benefits of such infants. 10
And I also empower my said trustees to postpone the sale and conversion of any part of my estate for so long as they shall think fit; and the income of unconverted property shall, from the time of my death, go in the same manner as the income of the proceeds thereof would have been applicable if the same has been converted, provided 20
always that if any of the said beneficiaries; namely, Peter Charles Christian, Clara Gordon, Chrissie Burke, Sarah Christian, Joseph Christian, Josephine Martha Christian, Howard Christian, Matilda Christian, Ferdinand Christian, Amba or Angela Christian, and Edward Clifford Christian, shall die in my lifetime leaving a child or children who shall survive me, and 30
being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry under that age; then in every such case, the last-mentioned child or children shall take (and if more than one equally between them) the share which lies, or their parent would have taken of; and in the residuary trust funds if such parent had 40
survived me and attained the age of twenty-one years and if any of the said beneficiaries shall die during my lifetime without leaving a child or children who shall survive me, then such beneficiary's shall fall into residue and be equally divided among the remaining beneficiaries."

By an Indenture dated the 29th May, 1952 Christianie Burke as beneficial owner conveyed the Mero Estate containing approximately 179 acres and 1 rood to Lionel Edwin Pinard for £1,200. 50

By an Indenture dated 30th July, 1960 and recorded in Book of Deeds A No. 8 folio 218 Edwin Lionel Pinard conveyed 4.58 acres of Mero Estate to Daphne Taylor.

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ment
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July
1972

By an Indenture dated 29th May, 1964 and recorded in Book of Deeds C No. 8 folios 314-318 Edwin Lionel Pinard conveyed part of Mero Estate to Castaways Developments Limited.

10 By an Indenture dated 13th June, 1967 and recorded in Book of Deeds L No. 8 folios 269-272 Daphne Taylor conveyed 4.58 acres of Mero Estate to Castaways Hotel Limited.

Castaways Development Limited on the 10th April 1968 obtained a First Certificate of Title which is to be found in Register Book W 1 Folio 122 to Mero Estate.

In Civil Appeal No. 3 of 1970, it was held that Christianie Burke had a life interest only in the Mero Estate. It follows therefore
20 that George James Christian, although he may well have intended to dispose of his entire interest in Mero Estate, the beneficial interest in fee simple always remained in him and so he was the reversionary owner of the equitable fee simple. The legal estate he had successfully vested in the trustees. It seemed to me therefore that it does not matter whether Christianie Burke fulfilled all or any of the conditions set out in the trust instrument, the sole interest which
30 she received under the trust instrument is a life interest.

In the Court of Appeal, P. Cecil Lewis J. A., said:-

"It is not disputed that the Appellant is a lawful son of Clara Gordon (nee Christian) one of the persons mentioned in paragraphs 5-7 of the settlement. She died in 1964 leaving lawful issue, but as her death took place before she obtained a vested interest in the hereditaments there was nothing to pass to her heirs by
40 way of succession. Accordingly the Appellant could have no claim to the hereditaments as one of her heirs. In the circumstances the Court raised the question of his locus standi in the matter".

Judg-
ment
17
July
1972

I would normally have been bound by this specific ruling by the Court of Appeal. Unfortunately all the facts were not placed before the Court of Appeal. In particular an attempt by the Plaintiff to have the will of George James Christian put in evidence at the proceedings which gave rise to Civil Appeal No. 3 of 1970 was successfully opposed with the result that the Court of Appeal did not have that will before it. In these circumstances I feel justified in arriving at my own decision and to treat the ruling of the Court of Appeal as persuasive authority and that I am not completely bound thereby. 10

The position in these cases as I see it is as follows: George James Christian settled Mero Estate in various trusts. Whatever may have been his intention by the failure to use the technical expression "heirs" he created only life interests and as a result he was the reversionary owner of the equitable fee simple. Such an interest is a vested interest and not a future interest properly so called. 20

The will of George James Christian contains two residuary clauses. To my mind there is no necessity at this stage to determine which of these clauses is applicable because in each clause Clara Gordon, the mother of the plaintiff, is a beneficiary. Clara Gordon died in 1964 approximately four years after the death of George James Christian so at the date of his death she had a vested interest. The plaintiff is the legal personal representative and a beneficiary of his mother's estate and consequently his interest is also a vested interest. 30

Some of the arguments so ably and candidly put forward by Counsel for the defendants to my mind are substantive defences and should not be decided on the narrow issue of the plaintiff's locus standi which is before me at this stage. One such matter is the instrument of further assurance referred to in the defence of Christianie Burke. 40

No arguments were adduced before me on the probable effect of the counterclaim filed by the defendant Castaways Development Limited. On this counterclaim the plaintiff could and indeed would raise the issue which he seeks to do in his actions.

In my view in all the circumstances the interest of justice will best be served only if all the many and complex issues raised on the pleadings be fully ventilated and determined.

I hold therefore that the plaintiff has shown a sufficient interest to maintain these proceedings. Costs to be costs in the cause.

10

IN THE HIGH COURT OF JUSTICE
DOMINICA

ORDER
27
July
1972

Suit No. 70 of 1969

BETWEEN:

HAKIM E. F. GORDON Plaintiff

and

CHRISTIANIE BURKE

CASTAWAYS DEVELOPMENTS LIMITED

and

CASTAWAYS HOTEL LIMITED Defendants

20

Consolidated with:
Suit No. 188 of 1971

BETWEEN:

HAKIM E. F. GORDON in his capacity
of Personal Representative of
Estate Clara Marguerite Gordon, deceased

Plaintiff

and

- 1) Christianie Burke
- 2) Edwin Lionel Pinard
- 3) Daphne Taylor
- 4) Castaways Developments Limited
- 5) Castaways Hotel Limited

30

Defendants

Mr. Justice J. D. B. Renwick, Q. C.
the 27th day of July 1972
Entered this 31st. day of July 1972.

O R D E R

Order
27th
July
1972

These Suits coming on for hearing before the High Court.

And Upon hearing Counsel for the Defendants Castaways Developments Limited and Castaways Hotel Limited in limine that the Plaintiff has no interest or no sufficient interest to maintain the Suits and that the Plaintiff has no locus standi.

And Upon hearing Counsel for the Defendants. 10

And Upon hearing the evidence led on behalf of the Defendants/Plaintiff

And Upon reading the documents admitted as exhibits

It is Ordered that the Plaintiff has sufficient interest and has a locus standi to pursue his claim.

By the Court.

(Sgd) E F Georges
Ag Registrar 20

WRIT
OF
SUMMONS
30th
May
1969

DOMINICA
IN THE HIGH COURT OF JUSTICE
(CIVIL)
Suit No 70 of 1969

BETWEEN

HAKIM E F GORDON Plaintiff
and
CHRISTIANIE BURKE
CASTAWAYS DEVELOPMENTS LIMITED
and
CASTAWAYS HOTEL LIMITED Defendants 30

PLEADINGS

WRIT OF SUMMONS issued the 30th day of May 1969 by F E Degazon, of Chambers, Roseau, Dominica, Solicitor for the Plaintiff

SUMMONS IN CHAMBERS ON BEHALF of the Plaintiff
filed the 10th day of April, 1969.

Summons
in
Chambers
10th
April
1969

LET ALL PARTIES attend before His
Lordship, Mr. Justice Berridge, (in Chambers)
at the Court House, Roseau, Dominica, on the
17th day of April, 1969, at ten o'clock in
the forenoon or so soon thereafter as Counsel
may be heard, on the hearing of an application
on the part of the Plaintiff for the following
remedies:-

10

(i) On the grounds adduced in the Plain-
tiff's affidavit dated the 10th day
of April 1969 and filed herewith -
a declaration that the plaintiff is
one of the reversionary owners of the
fee simple absolute of the lands
included in the Indenture of Trusts
dated 16th March, 1913, and recorded
in Book of Deeds E No. 7 Folio 689,
the subject of this application.

20

(ii) The cancellation of the Indentures
of Conveyance listed below on the
ground that these instruments were
executed in fraudulent breach of
the Trusts created by the Indenture
of 1913, aforesaid, all the parties
thereto having had notice actual or
constructive of the Trusts, afore-
said:-

30

- (a) Indenture dated 29th May, 1952
recorded in Book of Deeds V 7
folios 154-156:
- (b) Indenture dated 30th July, 1960,
recorded in Book of Deeds A No.
8 folio 218:
- (c) Indenture dated 28th May, 1964,
Recorded in Book of Deeds C No.
8 folios 314-318;
- (d) Indenture dated 13th June, 1967
Recorded in Book of Deeds L No.
8 folios 269-272;

40

(iii) Cancellation of Certificate of Title
dated 10th April 1968, No. 139/1969,
Register Book W. 1 Folio 122, in
favour of Castaways Development Lim-
ited, the Registered Proprietor, as
having been procured in fraudulent
breach of the trusts aforesaid:-

Summons
in
Chambers
10th
April
1969

- (vi) Accounts to be rendered by the Defendants to the Plaintiff in respect of the administration of the corpus of the Trusts, aforesaid, from 1st. January 1929 to the date hereof;
- (v) An injunction restraining the defendants from dealing in any way with the corpus of the said Trusts; 10
- (vi) The appointment of a Trustee or Receiver of the corpus of the Trusts aforesaid

AND the costs of this application to be paid by the defendants to the Plaintiff.

Dated this 10th day of April, 1969.

This Summons was taken out by F. E. Degazon, of Chambers, Roseau, Dominica.

To the Defendants, 1, 2 and 3

(Sgd) F. E. Degazon
Solicitor for the Plaintiff

3.

Memorandum
of
Appearance
30th
October
1969

NOTICE AND MEMORANDUM OF APPEARANCE filed the 30th day of October, 1969, by Alleyne and Company, of Chambers, Roseau, Dominica, solicitors for the second named defendant, Castaways Developments Limited. 20

4.

Statement
of
Claim
10th
Nov.
1969.

STATEMENT OF CLAIM, delivered the 10th day of November, 1969, by F. E. Degazon, solicitor for the Plaintiff.

The Plaintiff is one of the reversionary owners of the fee simple of the lands, the subject of this suit, and his interest has been mis-appropriated by the defendants in fraudulent breach of the trusts included in the Indenture of Trusts dated 18th March, 1913, and recorded in Book of Deeds E No. 7 folio 689. 30

2. The Plaintiff's title is described in detail in his Caveat presented 10th April, 1969, particulars of which are attached to the Indorsement of Claim and the Summons in Chambers herein.

3. The plaintiff has reason to state that the Registrar of Titles has omitted to follow the procedure prescribed by sections 19 (2) 138 and 140 of the Title by Registration Ordinance (Cap. 222).

Statement
of Claim
10th
November
1969

4. Accordingly, the Plaintiff seeks:-

- (i) A declaration that he is one of the reversionary owners in fee of the subject of this action;
- 10 (ii) The cancellation of all the fraudulent Indentures of conveyance listed in his Caveat of 10th April, 1969;
- (iii) A direction to the Registrar of Titles to rectify or cancel the Certificate of Title dated 10th April, 1968, No. 139/1968, Register Book W. 1 Folio 122, in favour of the second-named defendant.
- 20 (iv) For Accounts to be rendered by the defendants to the Plaintiff in respect of the administration of the corpus of the Trusts, aforesaid, from 1st. January, 1929, to the date hereof;
- (v) An injunction restraining the defendants from dealing in any way with the corpus of the said Trusts, aforesaid;
- 30 (vi) The appointment of a Trustee or Receiver of the corpus of the Trusts;
and the costs of this suit.

Dated this 10th day of November, 1969.

(sgd) F. E. Degazon
Solicitor for the Plaintiff.

40 LETTER from Alleyne and Company, solicitors for Castaways Developments Limited, the second-named defendant in this action, dated 20th November, 1969, addressed to F. E. Degazon, solicitor for the plaintiff.

Letter Requesting Particulars.

Letter Requesting Particulars

Dear Sir,

Re: High Court 70/1969

Gordon v Christianie Burke & Others

On behalf of Castaways Developments Limited I request further particulars of your Statement of Claim, as follows:-

(1) As to Paragraph 1 of your statement of Claim the manner in which the Plaintiff is one of the reversionary owners of the Fee simple of the land, and in particular how has the reversion arisen and how does the Plaintiff acquire his interest. 10

(2) As to Paragraph 3 of the Statement of Claim, in what particulars has the Registrar of Titles omitted to follow the procedure prescribed by Sections 19(2), 138 and 140 of the Title by Registration Ordinance (Cap. 222).

These Particulars requested are essential for the preparation of the defence and an early reply would therefore be appreciated. An extension of time of 10 days after delivery of the Particulars is also requested, and we look forward to your co-operation. 20

Yours faithfully

ALLEYNE & COMPANY

(sgd) B. Alleyne
Brian G. K. Alleyne

6

Letter giving Particular 16th Nov. 1969

LETTER from F. E. Degazon, solicitor for the Plaintiff to Alleyne and Company, solicitors for Castaways Developments Limited, the second-named defendant, dated the 16th November, 1969. 30

"Dear Sir,

Gordon v Burke et al
High Court Suit No 70/1969

In reply to your letter of 20th November, I state that

- Letter
giving
Partic-
ulars
16th
Nov.1969
- 10 (i) Under paragraphs 4-7, of the Deed of Settlement to which reference is made in paragraphs (ii) and (iii) of the Schedule to the plaintiff's caveat, which was served with the Writ, the plaintiff, as one of the lawful issue of Clara Gordon, born Christian, and grandson of the donor, is capable of inheriting part of her interest under the trust created in her favour by the Deed of Settlement, in the event of the death of Christianie Burke, unmarried and without leaving lawful issue.
- 20 (ii) Should, for any legal reason, the said trust fail, by his Last Will and Testament, George James Christian, deceased, derived his residuary real property in Dominica, to Clara Gordon and Peter Charles Christian in equal shares as tenants in common. The lands in suit would, in that event, form part of the residue of the Dominica Estate of the said George James Christian. The plaintiff would, thus, also be capable of inheriting part of his mother's (Clara Gordon's) interest in the lands aforesaid.
- 30 (iii) To the best of the plaintiff's knowledge, information and belief, the Duplicate Certificate of Title, held by the second-named defendant, in respect of part of the lands in issue, has not yet been recovered, as by law required, by the Registrar of Titles for the purpose of:
- 40 (a) Noting the caveat;
(b) Applying for direction thereon; or
(c) Correcting or cancelling the Title.

Yours faithfully

(sgd) F. E. Degazon

Solicitor for Plaintiff."

- Defence
Castaways
Develop-
ment
Limited
7th.
Jan
1970
- DEFENCE, delivered the 8th day of January, 1970. by Alleyne & Company, solicitors for Castaways Developments Limited, the second-named defendant.
1. The Defendant (Castaways Developments Limited) is the registered proprietor of all the lands described in Certificate of Title Number 159 of 1968 issued the 10th day of April, 1968 filed in Register Book W folio 122. 10
 2. The Defendant is in possession of said land.
 3. The Defendant denies each and every allegation of fact set out in the Plaintiff's Statement of Claim as if the same were set out and denied seriatim.
 4. The Defendant will object in limine that the Plaintiff has not sufficient interest to maintain the suit. 20
- Dated the 7th day of January, 1970

(sgd) B. Alleyne

ALLEYNE AND COMPANY

Solicitors for the Defendant
Castaways Developments Limited

- Request
for
Part-
iculars
15th
Jan.
1970
- LETTER from F. E. Degazon, solicitor for the plaintiff, to Alleyne and Company, solicitors for the second-named defendant Castaways Developments Limited, dated 15th January, 1970 30
- "Dear Sirs,

Gordon v Castaways Developments Ltd.
et al.

Suit No. 70 G 1969

Please be good enough to supply further

and better particulars of paragraph 4 of your Defence.

Request for Particulars

2. The Plaintiff's claim is for an interest in reversion. He either has some interest or none at all. In your Defence you plead lack of "sufficient" interest in the Plaintiff. Are you admitting, therefore, that he has some interest, however small or great?

10

Yours faithfully

(sgd) F. E. Degazon

Solicitor for Plaintiff."

9.

LETTER from Alleyne and Company, solicitors for Castaways Developments Limited, the second-named defendant, to F. E. Degazon, solicitor for the plaintiff, dated 20th January, 1970.

Letter giving particulars 20th January 1970

"Dear Sir,

20

Re: Gordon v Castaways Developments Ltd. & Others Suit No. 70/1969

In reply to your letter of 15th January, 1970 I wish to state that the plea is to the effect that the Plaintiff lacks sufficient interest to maintain the suit. The effect of this plea is to require your client to prove his interest, if any.

Yours faithfully

ALLEYNE & COMPANY.

30

(sgd) B. Alleyne.
Brian G. K. Alleyne"

10.

JOINIER OF ISSUE AND REPLY dated and delivered the 27th day of January, 1970 by F. E. Degazon solicitor for the plaintiff.

Joinder of Issue & reply

The Plaintiff says that:-

- Joinder of Issue & Reply
1. He joins issue with the second-named defendant on its Defence.
 2. In particular, he denies paragraphs 1 and 4 of the said Defence.

Dated and Delivered this 27th day of January 1970.

(sgd) F. E. Degazon

Solicitor for the Plaintiff

Writ of Summons
5th Nov
1971

WRIT OF SUMMONS

Issued 15th November, 1971

10

INDORSEMENT OF CLAIM

The Plaintiff's claim is against the Defendants jointly or severally in respect of the Mero Estate now known as Castaways situate in the Parish of Saint Joseph in the State of Dominica, in each and every instance on the grounds of breach of trust, actual and constructive, misrepresentation and fraud, for:

- (i) The cancellation of divers relevant Indentures of Conveyance; 20
- (ii) In the case of the fourth-named Defendant Company, the rectification or cancellation of the Certificate of Title in its name, No. 139/1968, Register Book W 1, Folio 122;
- (iii) Accounts;
- (iv) An injunction restraining the Defendants and each of them from dealing with the subject matter of this suit; 30
- (v) The appointment of new Trustees or a Receiver of the corpus of the Trusts involved herein;
- (vi) A declaration that the Plaintiff is one of the beneficial reversionary owners or remaindermen of the

Writ of
Summons

10 fee simple absolute of the aforesaid Mero Estate by virtue of the operation of the Indenture of Trusts dated 18th March, 1913 recorded in Book of Deeds E No. 7 Folio 689, the last Will and Testament of George James Christian, deceased, dated 22nd January, 1936, proved the 14th day of June, 1946 and the last Will and Testament of Clara Marguerite Gordon, deceased, duly proved and re-sealed in the State of Dominica on the 6th day of April, 1971, and recorded in Book of Probates "P" folios 277-289;

(vii) Recovery of possession of the corpus of the Trusts aforesaid; and

(viii) Damages.

20 AND the costs of this suit.
Dated the 15th day of November, 1971

(sgd) F. E. Degazon

(F. E. Degazon)
Solicitor for the Plaintiff.

STATEMENT OF CLAIM

Dated and served this 27th day of November, 1971.

Statement
of Claim
27th Nov.
1971

- 30 1. The Writ of Summons in this cause was issued on the 15th day of November, 1971.
2. The Plaintiff is the Personal Representative of Estate of Clara Marguerite Gordon who died in the Islands of Bermuda on the 27th day of September, 1964.
3. The Plaintiff is the elder son of the aforesaid deceased and is one of the beneficiaries and residuary legatee under her last Will and Testament.
- 40 4. Before her death, and since the year 1952, Clara Marguerite Gordon was the reversionary owner of, with right of entry upon, the Mero Estate, now known as Castaways, in the Parish of Saint

- Statement of Claim Joseph.
5. The Plaintiff has succeeded to that status by virtue of the following:-
- (i) Deed of Settlement by George James Christian and Thomas Francis Burke, deceased, dated 18th March, 1913, and registered in the Book of Deeds E, No. 7, Folio 689;
 - (ii) Last Will and Testament of the aforesaid, George James Christian, deceased, dated 18th March, 1936, proved the 14th June, 1946, and recorded in Book of Probates E, Folios 133 to 144. 10
 - (iii) Judgment of the Court of Appeal in Suit No. 3 of 1970, dated 30th November, 1970;
 - (iv) Last Will and Testament of Clara Marguerite Gordon, nee Christian, deceased, duly proved and resealed in Dominica on 6th April, 1971, and recorded in Book of Probates P, Folios 277 to 289. 20
6. The deceased Clara Marguerite Gordon, is the only descendant of George James Christian, deceased, who fulfilled the conditions for becoming sole-cestui-que-trust under the Deed of Settlement of 1913, in that she attained the age of 21, married and died, leaving lawful issue her surviving. 30
7. The said Marguerite Gordon, as a residuary devisee, on the demise of George James Christian, her father, in 1940, also inherited a vested equitable interest as a reversionary owner of the Mero Estate now known as Castaways.
8. In 1952, the Defendant Christianie Burke executed a tortious conveyance of the said Mero Estate to the Defendant Edwin Lionel Pinard as appears from the Indenture of Conveyance dated 29th May, 1952, recorded in Book of Deeds V 7, Folios 154-156. 40

9. At the time of the execution of the aforesaid conveyance, the said Christianie Burke was merely a tenant for life of the corpus of the aforementioned Mero Estate which was then, and still remains, subject to the provisions of the Deed of Settlement of 1913. Statement
of Claim
10. The said Christianie Burke was, at all times, well apprised of the provisions and purport of the trusts created by the said Deed of Settlement and consequently forfeited her life tenancy at the very moment of the execution of the 1952 conveyance. She was also aware of the contents of the last Will and Testament of George James Christian, deceased.
11. From then, a right of entry accrued to Clara Marguerite Gordon who was still alive, and who died on 27th September, 1964, in the Islands of Bermuda.
12. The said Christianie Burke is still alive, is unmarried and has no lawful issue. Her sister, Margery Burke, died in 1919, unmarried and without leaving lawful issue as also did Maud and Peter Charles Christian on other dates prior to 1952.
13. The trustee named in the Deed of Settlement of 1913 is dead but is now represented as follows:-
- (i) Under the Deed of Settlement of 1913, Thomas Howard Shillingford, deceased, was appointed Trustee. By his last Will and Testament duly proved and recorded in Book of Probates F, Folio 62, his joint Executors were Mary Eliza Shillingford and Howell Donald Shillingford who became joint personal representatives.
- (ii) Mary Eliza Shillingford died on the 20th day of September, 1943, and probate of her last Will and Testament was granted in Book of Probates D, folios 148 to 149, No. 1831 of 8th October, 1943, to her Executor, Donald Shillingford.

- Statement of Claim
- (iii) By his last Will and Testament, George James Christian appointed Peter Charles Christian sole Executor and Trustee of his Dominican Estate. Peter Charles Christian died before Probate which was granted to his sole Executor, Isaac Newton Shillingford, in Book of Probates E, Folios 133 to 144 on 14th June, 1946. 10
- (iv) Isaac Newton Shillingford died on the 27th day of September, 1970, appointing by his last Will and Testament as his Executors, Stafford Shillingford and Patrick Shillingford.
14. Although the Trustees of the Settlement were vested with the legal estate in fee simple in the corpus of the trust property, they at no time conveyed the same to any person or persons, nor did they intervene to protect the said Trust Property nor in any way to preserve its integrity. 20
15. The conveyance of 1952 by Christianie Burke to Edwin Lionel Pinard constituted a fraudulent breach of trust because:-
- (i) The purported vendor was aware of the trusts which she recited in the said conveyance; 30
- (ii) She omitted from the recital paragraphs 5 to 7 thereof concerning Clara Marguerite Gordon, although paragraphs 1 to 4 thereof were, therein, quoted verbatim;
- (iii) As a beneficiary thereof, Christianie Burke knew the contents of the last Will and Testament of George James Christian aforesaid, because although she had invaded the trust property in 1927 at the age of 21, and even before then (see 1952 conveyance); after the death of George James Christian in 1940, she attorned to his Executor, Peter Charles Christian, 40

for administration of the trusts,
and for possession of the trust
property which, indeed, she re-
tained in her physical possession
until 1952;

- 10 (iv) Christianie Burke, accordingly,
deliberately and fraudulently
misrepresented her title; and
the purchaser, Edwin Lionel Pinard,
accepted the conveyance with the
knowledge and notice of the trusts
created by the Deed of Settlement
of 1913.
16. On 30th July 1960, the pretending pur-
chaser, Edwin Lionel Pinard, purported
to convey 4.58 acres of the said lands
to the Defendant, Daphne Taylor, by
Indenture recorded in Book of Deeds A,
No. 8, Folio 218. It is to be assumed
20 that the purported purchaser, Daphne
Taylor, duly investigated the purported
Vendor's Title for at least 40 years.
In any event, the Indenture of 29th
May, 1952, recited in the Indenture of
1960, clearly indicated the existence
of the Indenture of 1913, which created
the Trusts. Between 1913 and 1952,
there had been no dealings with the
land in question; accordingly, the
root of title remained in the 1913 In-
denture.
- 30 17. On 29th May, 1964, Edwin Lionel Pinard
purported to convey part of the said
lands to the Defendants, Castaways
Developments Limited, by Indenture
recorded in Book of Deeds C, No. 8 Folios
314 to 318. At paragraph 10 of that
Indenture, reference is, yet again, made
to the Indenture of 1913 and specifically
to the fact that it created certain Trusts.
40 Again, it must be assumed that the int-
ending purchaser had duly investigated
the purported Vendor's Title. Paragraphs
11 and 12 of the Indenture of 1964
purported to repeat that Christianie
Burke became seized of the lands in
question for sole use and benefit as sub-
sequently did Edwin Lionel Pinard.
18. Notwithstanding, Castaways Developments
Limited on the 10th April, 1968, procured

Statement
of Claim

- the issue of a First Certificate of Title No. 139, 1968, Register Book W 1, Folio 122, for the said lands, although the Indenture of 1913 creating the Trusts was included in the Abstract of Title filed with their application for a registered Title.
19. On 13th June, 1967, Daphne Taylor, by Indenture No. 105/1967, Book of Deeds L, No. 8, Folios 269 to 272. purported to convey 4.58 acres of the said land to the Defendant, Castaways Hotel Limited. This instrument recites the 1960 conveyance as the root of Title. However, the said criteria of notice apply. 10
20. The Defendants, Castaways Developments Limited and Castaways Hotel Limited are in physical possession of the Trust property. 20
21. Accordingly, the Plaintiff claims against the Defendants jointly and severally for:-
- (i) A declaration that the Plaintiff is the reversionary owner of the fee simple absolute of the lands included in the Indenture of Trusts, dated 18th March, 1913, and recorded in Book of Deeds E, No. 7, Folio 689.
- (ii) The cancellation of the Indentures of Conveyance listed below on the ground that these instruments were executed in fraudulent breach of Trusts created by the Indenture of 1913, aforesaid, all the parties thereto having had notice actual or constructive of the Trusts, aforesaid:- 30
- (a) Indenture dated 29th May, 1952, recorded in Book of Deeds V 7, Folios 154-156; 40
- (b) Indenture dated 30th July, 1960, recorded in Book of Deeds A, No. 8, Folio 218;
- (c) Indenture dated 13th June, 1967, recorded in Book of Deeds L, No. 8 Folios 269-272.

- Statement
of Claim
- (iii) Cancellation or rectification of Certificate of Title No. 139/1968, Register Book W 1, Folio 122, in favour of Castaways Developments Limited, Registered Proprietors, as having been procured in fraudulent breach of the Trusts aforesaid;
- 10 (iv) Accounts to be rendered by the Defendants to the Plaintiff in respect of the administration of the corpus of the Trusts, aforesaid, from 1st. June, 1952 to the date hereof;
- (v) An injunction restraining the Defendants from dealing in any way with the corpus of the said Trusts;
- (vi) The appointment of a Trustee or Receiver of the corpus of Trusts, aforesaid;
- 20 (vii) Recovery of possession of the corpus of the Trusts aforesaid;
- (viii) Damages, particulars of which are annexed hereto -- \$5,000,000. AND THE COSTS of this suit.

dated and served this 27th day of November, 1971.

(sgd) F. E. Degazon

30 (F. E. Degazon)
Solicitor for the Plaintiff
Chambers
5 Cross Street
Roseau, Dominica
West Indies

ANNEXURE

PARTICULARS OF DAMAGE

- (i) The area of the Trusts Property in dispute measuring some 365.38 acres.
- 40 (ii) On 29th May, 1952 Christianie Burke conveyed the said property to Edwin Lionel Pinard for £1,200.0. or \$5,760. Or 28th May, 1964, Edwin Lionel Pinard conveyed the same to Castaways Developments limited for \$80,000. a percentage increase in the region of 1,330% in 12 years, or 110% per annum.

(iii) Castaways Developments Limited have currently been disposing of the said lands at the rate of about \$20,000 per acre. For the total area, this represents a current capital value of some \$7,300,000 excluding the value of Castaways Hotel Limited, its shares and revenues; and a capital gain of nearly 100 times the purchase price of \$80,000.

(iv) Assuming a return of 10% per annum for 20 years, the loss to the Plaintiff, in interest only, is in excess of \$5,000,000. The Plaintiff, accordingly, claims \$5,000,000 damages. 10

Memorandum
of
Appearance
30th
Nov.
1971

IN THE HIGH COURT OF JUSTICE
STATE OF DOMINICA
1971 No. 188

Between

HAKIM E. F. GORDON in his personal
capacity and in his capacity as
Personal Representative of Estate
Clara Marguerite Gordon deceased. Plaintiff 20

and

CASTAWAYS DEVELOPMENTS LIMITED Defendants

To: Sylvia J. Bertrand
Registrar.

Please enter an Appearance for Castaways
Developments Limited the defendant in this
action.

Dated the 30th day of November 1971.

30

(sgd) B. G. K. Alleyne
Alleyne & Company
Solicitors for Defendants
whose address for service
is 8 Castle Street,
Roseau, Dominica.

IN THE HIGH COURT OF JUSTICE
DOMINICA
1971 No. 188

Defence &
Counterclaim
of
Castaways
Development
Ltd.

BETWEEN:

HAKIM E. F. GORDON in his capacity
as Personal Representative of
Estate Clara Marguerite Gordon,
deceased. Plaintiff

and

- 10 1) Christianie Burke
 2) Edwin Lionel Pinard
 3) Daphne Taylor
 4) Castaways Developments Limited
 5) Castaways Hotel Limited Defendants

DEFENCE AND COUNTERCLAIM
of
CASTAWAYS DEVELOPMENTS LIMITED

Delivered the 14th day of December, 1971.

- 20 1. The defendant, Castaways Development
 Limited, is the registered proprietor
 of all the lands described in Certif-
 icate of Title No. 139 of 1968 issued
 on the 10th day of April 1968 and
 filed in Register Book W 1 folio 122;
2. The said lands are not co-extensive
 with the property described by the
 plaintiff and the Defendant will refer
 to the Abstract of Title with its
 application for First Certificate of
 Title;
- 30 3 By Indenture dated 29th May 1964 re-
 corded in Book of Deeds C No. 8 folios
 314 to 318 the Defendant purchased
 part of the hereditaments from Edwin
 Lionel Pinard;
4. Certificate of Title No. 139 of 1968,
 duplicate whereof is filed in Register
 Book W folio 122, was issued on 10th
 April, 1968 after due investigation
 of the Defendant's Abstract of Title,
40 advertisement and absence of caveat.
 The defendant in its application dis-
 closed all material facts in its know-
 ledge affecting its application;

- Defence 5. If as is alleged by the Plaintiff in
& paragraphs 8, 10 and 11 of the State-
Counter- ment of Claim (but not admitted by
claim the Defendant) the first-named Def-
endant Christianie Burke executed a
conveyance on 29th May 1952 thereby
forfeiting her life tenancy at the
very moment of the execution by her
of the said conveyance and that from
then a right of entry accrued to Clara
Marguerite Gordon who died on 27th
September 1964 any pretended right of
action by the said Clara Marguerite
Gordon or her successors is barred
by reason of the Real Property Limit-
ation Act. 10
6. The Defendant will object in limine
that the Plaintiff has no sufficient
interest or locus standi to maintain
the suit. 20

Counterclaim

And the Defendant Counterclaims:

1. The Defendant is a development comp-
any engaged in the establishment of
services on the hereditaments in dis-
pute and the sale of residential lots,
hotel sites, marinas and commercial
properties;
2. By reason of the Plaintiff's vexacious
suits and caveats forbidding any deal-
ings in the lands contained in the
Certificate of Title in the name of
the Defendant, the Defendant's revenues
have been reduced from an average of
\$14,000.00 per month to \$1,200.00 per
month from about August, 1969; 30
3. As a consequence of the Plaintiff's
libel against the title of the Def-
endant the Defendant has suffered
damage, particulars whereof are
shown hereunder: 40

Particulars of Damages

- (a) Loss of actual income from August
1969 to date of judgment at the
rate of \$12,800.00 per month.
- (b) Loss of anticipated increased

earnings from August 1971 to the date hereof - \$150,000.00.

Counter-Claim

(c) Loss of reputation affecting future earnings, and loss as a result of delayed development lands - \$1,000,000.00.

And the Defendant counterclaims for damages.

And the costs of the Counterclaim.

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Dated the 13th day of December, 1971.

(sgd) B. Alleyne

ALLEYNE & COMPANY

Solicitors for the Defendant
Castaways Developments Limited.

REPLY TO DEFENCE

and

DEFENCE TO COUNTERCLAIM

Reply to
Defence
& Defence
to
Counter-
Claim

1. The Plaintiff denies paragraphs two, three, four and five of the Defence.
- 20 2. Clara Marguerite Gordon, born Christian, left Dominica in the year 1926, with the Plaintiff, and never returned.
3. The Plaintiff returned to Dominica in the year 1968, but did not ascertain the concealed and fraudulent breach of trust upon which he has based his claim, until 30th November, 1970.
- 30 4. The Defendant, Castaways Developments Limited is estopped from pleading the Real Property Limitation Act as the basis or root of their Title having since 1962 and, onwards, formally attorned to the Trust in issue and the Trustees thereof.
5. The Plaintiff joins issue with the Defendants, Developments Limited on their Defence.

Defence
to
Counter- 6.
claim

DEFENCE TO COUNTERCLAIM

The Plaintiff denies paragraphs two and three of the Counterclaim and joins issue with the Defendants, Castaways Developments Limited. on their Counterclaim.

Dated and served the 30th day of December 1971.

(sgd) F. E. Degazon

(F. E. DEGAZON)
Solicitor for the Plaintiff

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IN THE HIGH COURT OF JUSTICE
STATE OF DOMINICA
1971 No. 188

Between

HAKIM E. F. GORDON in his personal capacity and in his capacity as Personal Representative of Estate Clara Marguerite Gordon deceased.

Plaintiff 20

and

CASTAWAYS HOTEL LIMITED

Defendants

To: Sylvia J. Bertrand
Registrar

Please enter an Appearance for Castaways Hotel Limited the Defendant in this action.

Dated the 3rd day of December, 1971

(sgd) B. G. K. Alleyne
Alleyne & Company
Solicitors for Defendants
whose address for service
is Castaways Hotel, Mero
Dominica.

30

DEFENCE of Castaways Hotel Limited

Delivered the 6th day of January, 1972.

Defence
of
Castaways
Hotel Ltd.

1. The Defendant Castaways Hotel Limited is the bona fide purchaser of the legal estate in respect of 4.58 acres of the Mero Estate without notice of any breach of trust affecting the same, by virtue of an Indenture dated the 13th day of June 1967 recorded in Book of Deeds L No. 8 folios 269 to 272 from Daphne Taylor to Castaways Hotel Limited.
2. The particulars of the Defendant's title are as follows:
- (a) Indenture dated the 15th day of October, 1894 between Francis Thomas Burke of Mero, of the one part, and George James Christian also of Mero of the other part, recorded in Book of Deeds Y No. 6 folios 421 to 422 reciting in consideration of the sum of £120.0s.0d paid to the said Francis Thomas Burke by the said George James Christian the said Francis Thomas Burke covenanted to pay the said George James Christian on the 30th day of June 1899 next the sum of £120.0s0d. with interest thereon in the meantime at the rate of five (5) per centum per annum from the 15th day of October, 1894, and also so long after that day as any principal money remained due, interest at the same rate by equal yearly instalments on the 30th day of June in each year. In consideration whereof the said Francis Thomas Burke "as Beneficial owner hereby conveys unto the said George James Christian all that estate or plantation known as Mero estate"..... etcetera..."To Hold the same unto and to the use of the said George James Christian in fee simple. Provided always": here follows the proviso for redemption and the power of entry and sale.

Defence of
Castaways
Hotel Ltd.

(b) Indenture dated the 18th day of March 1913 between Francis Thomas Burke of Mero, George James Christian of Roseau and Thomas Howard Shillingford of Hobbs Hole reciting that Francis Thomas Burke is well seised and entitled to the Mero Estate; that on the 15th day of October 1894 the said Francis Thomas Burke executed a Mortgage in favour of the said George James Christian of the said Mero Estate for the sum of £120.0s0d. with interest, which the said principal sum and interest are still unpaid. "And Whereas Francis Thomas Burke hath agreed with the said George James Christian for the sale to him of the hereditaments intended to be hereby granted, and the inheritance thereof in fee simple in possession free from incumbrances at the price of £584.0s0d. and it has been agreed that the said mortgage debt of £120.0s0d. and interest shall be retained by the said George James Christian out of the said purchase money and also in consideration of the payment by the said George James Christian of the mortgage debt and interest when it becomes due to the said Alexander Davis Riviere under the mortgage security above mentioned, and also in consideration of an annuity of £25.0s0d. to be paid to the said Francis Thomas Burke during his life and to be secured by the bond of the said George James Christian and Thomas Howard Shillingford. And Whereas in consideration of the love and affection which the said George James Christian bears to Margery Burke and Christianie Burke, Peter Charles Christian, Clara Christian and Maude Christian, the said George James Christian is desirous of settling the said estates in the manner hereinafter expressed. And the said Thomas Howard Shillingford (hereinafter called the trustee) hath at his request agreed to accept the conveyance to himself of the above-

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mentioned hereditaments and to be the trustee of the said intended settlement. Now This Indenture Witnesseth that in pursuance of the said agreement"...etcetra ..."The said Francis Thomas Burke at the request of the said George James Christian doth hereby grant to the said Thomas Howard Shillingford his heirs and Executors All That estate of plantation"...etcetera."To Hold the same unto the use of the said trustees his heirs or Executors to the uses following" Then follow the uses recited in the said Deed to which the Defendant will seek to refer fully during the trial.

Defence of
Castaways
Hotel LTD.

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- (c) Indenture dated the 29th day of May 1952 between Christianie Burke of Roseau and Edwin Lionel Pinard of Roseau whereby "the Vendor as Beneficial Owner hereby conveys unto the Purchaser all that estate and plantation known as Mero Estate situate in the parish of Saint Joseph in the said Colony of Dominica...To Have and to Hold the same unto and to the use of the Purchaser and his heirs in fee simple forever.

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30

"And it is hereby agreed and declared that the usual qualified covenants on the part of the Vendor for right to convey for quiet enjoyment for freedom from incumbrances and for further assurance are intended to be implied from the use of the expression "Beneficial Owner" in these presents as if Section 76 of the Law of Property Act (15 Geo.V.C.20) now in force in England reenacting the Conveyancing Act 1881 (44 & 45 Vict.C41) were in force and applicable to conveyance made in or relating to land situate in Dominica."

40

- (d) Indenture dated 30th day of July 1960 between Edwin Lionel Pinard aforesaid and Daphne Taylor recorded in Book of Deeds A Number 8 folio 218 conveying to the said Daphne Taylor and her heirs all the fee simple estate in 4.58 acres part of the said Mero Estate.

Defence of
Castaways
Hotel Ltd.

- (e) Indenture dated the 13th day of June 1967 between Daphne Taylor aforesaid and the Defendants Castaways Hotel Limited recorded in Book of Deeds L Number 8 folios 267 to 272 conveying to the said Castaways Hotel Limited the fee simple interest in the said 4.58 acres.
- (f) Indenture made the 19th day of June 1971 by Christianie Burke as tenant for life under the Settled Estates Act and in pursuance of her covenant for further assurance further assuring unto the said Edwin Lionel Pinard and his heirs the fee simple estate in the said land. 10
3. By the Indenture of 1913 it was provided inter alia in paragraph 5 of the Trust provisions as follows: "Should the said Margery Burke and Christianie Burke without attaining the age of 21 years or without having married, and without having left lawful issue, then the said trustee shall hold the said lands, hereditaments and premises in trust for Peter Charles Christian, Clara Christian and Maude Christian until they attain the age of 21 years or being girls attain that age or marry with power at his discretion to pay any part of the rents and profits of the said hereditaments and premises for the maintenance and personal support and benefit of the said Peter Charles Christian, Clara Christian and Maude Christian." 20 30
- The contingencies or contingency giving effect to a gift over have not occurred.
4. The residuary devise of the Will of the said George James Christian dated the 22nd day of February 1936 reads as follows: "I give and bequeath all my property not hereby otherwise disposed of unto my trustees in trust to convert same into money by sale or otherwise, and to divide the proceeds after paying any funeral and testamentary expenses and debts and the legacies hereby bequeathed in equal shares among Peter Charles Christian, Clara Gordon, Chrissie Burke, Sarah Christian, Joseph Christian, Josephine Martha Christian, Howard Christian, and Amba or Angela Christian, 40

all of whom are now of age, and the following who are now infants, namely Matilda Christian, Ferdinand Christian and Edward Clifford Christian, who being sons attains the age of 21 years, or being daughter attains that age or marries, their respective shares vesting on my death." etcetera.

Defence
of
Castaways
Hotel Ltd.

5. The said George James Christian has by his said Will made no appointment of the corpus of the Trust.
- 10
6. Christianie Burke on the 19th day of June 1971, as tenant for life of the said settlement under the Settled Estates Ordinance with intent to fulfil the covenant contained in the said Indenture dated the 29th day of May 1952 and recorded in Book of Deeds V number 7 folios 154 to 156, executed an instrument of further assurance in favour of the said Edwin Lionel Pinard and caused the same to be left with the said Edwin Lionel Pinard.
- 20
7. The Defendant does not admit paragraph 2 and paragraph 3 of the plaintiff's Statement of claim.
8. The Defendant denies paragraphs 4 to 7 of the Plaintiff's Statement of Claim, and states that Clara Marguerite Gordon died without having obtained any vested interest in the hereditaments and accordingly there was nothing to pass to her heirs by way of succession.
- 30
9. Accordingly the plaintiff can have no claim to the hereditaments as an heir and has no interest or sufficient interest to maintain the present suit.
10. The plaintiff can have no claim to the reversion of the fee simple of the corpus of the Trust, and has failed to show any or any sufficient interest therein.
11. In the alternative, there is no privity of contract or estate between the plaintiff and the Defendant.
- 40
12. If as alleged by the plaintiff in paragraphs 8, 10 and 11 of the Statement of Claim (but not admitted by the Defendant) the first-named

Defendant Christianie Burke executed a conveyance on the 29th May 1952 thereby forfeiting her life tenancy at the very moment of the execution by her of the said conveyance and that from then a right of entry accrued to Clara Marguerite Gordon who died on 27th September 1964 any pretended right of action by the said Clara Marguerite Gordon or her successors is barred by reason of the Real Property Limitation Act. 10

13. Save as hereinabove expressly admitted the Defendant denies each and every allegation affecting it as if the same were fully set out and denied seriatim, and in particular denies that its dealings with the hereditaments have been in any way tortious

Dated the 6th day of January, 1972

(sgd) B. Alleyne

ALLEYNE & COMPANY
Solicitors for the Defendant 20
Castaways Hotel Limited

Judge's
Notes

JUDGE'S NOTES

Friday 7th January 1972

70/1969	Hakim E. F. Gordon and (1) Christianie Burke (2) Castaways Developments Ltd. (3) Castaways Hotel Ltd.	Plaintiff Defendants	
188/1971	Hakim E. F. Gordon in his capacity as personal representative of estate Clara Marguerite Gordon; deceased and 1) Christianie Burke 2) Edwin Lionel Pinard 3) Daphne Taylor 4) Castaways Developments Limited 5) Castaways Hotel Limited	Plaintiff Defendant	30

F. E. Degazon for Plaintiff in both actions.
K.H.C. Alleyne Q.C. for Christianie Burke

4. Castaways Developments Ltd.
holding papers for Mr. Francis - Castaways
Hotel Ltd. with him Mr. B. Alleyne.
Mr. Francis with Mr. Alleyne
As regards 70 of 1969 the writ has been served
only on Castaways Developments Ltd. he appears
for that Deft.

10 Mr. Degazon: States it was as far as he
understood the wish of Defts. to have case
heard.

Mr. Lockhart appears with Miss Charles for
Deft No. 2 Edwin Lionel Pinard in suit
No. 188/1971.

20 Mr. Degazon: When originating summons was
heard it was by agreement
heard on a specific issue as
to whether Christianie had
right to convey fee simple.
The rest of the issues are
not yet determined and are
incorporated in 188/1971 as
well as 70/1969. It is true
that 188/1971 is new and Def
No. 2 has been served for the
first itme. He has appeared
but not filed a defence. Part-
iculars were requested yesterday.
Appearance was entered on 15th
December, 1971.

30 Mr. Alleyne: Suit No. 70/1969 as regards (2)
is ready to be heard. There is
a preliminary objection in limine.

(1) Is the plaintiff entitled to
interest he claims or any
sufficient interest to sue

(2) If he has such an interest has
it been infringed

(3) What damage has he suffered

40 Mr. Degazon: Does not agree to.
Plaintiff's title depends partly on
a document which is not yet in
evidence.

Judge's Mr. Alleyne: We may proceed with 70/1969.
Notes In which the objection is
pleaded.

Mr. Degazon: The Plaintiff Hakim Edgar Frederick
Gordon. Son of Clara Marguerite
Gordon nee Christian. Clara Marg-
uerite Gordon died Bermunda 27/7/64
Pl. is elder son and is benef-
iciary and residuary legatee of her 10
will. Probate resealed in this
Court. Pl's claim right to bring
suit mortem as (1) reversionary
owner of the corpus of trust
property known as Mero now called
Castaways Developments Ltd.

A reversion is something which
has not gone away. A reversion is
always vested. Megarry & Wade 1947
Edition. P.174;P 175 para. 2.

George James Christian made a 20
trust in 1913 out of which he creat-
ed certain life interests. The
Plaintiff says his mother is one of
the beneficiaries of his Grand-
father's trust deed. The will and
deed make reference to each other.

In his will Christian left all
his property in Dominica that he
had not disposed of to Clara
Marguerite Gordon, Peter (In his 30
Will) Christian. The will can-
not change the terms of the Deed of
Settlement. (Indenture of Trust)
-- the root of title.

The Plaintiff's mother is only
one who performed all conditions
set out in Deed of Settlement.

Last Will and Testament of Clara
Gordon.

In Conveyance dated 18/5/52 the
Indenture of Trust is recited only 40
to 4 uses. 5, 6, and 7 were not
recited, these were the paras in
which name of Clara Gordon was
mentioned. This Conveyance and
Deed of Settlement are both cited

10 in Abstract of Title for the Certificate of Title to Castaways Developments Ltd. The moment Certificate of Title was granted Conveyance 18/5/52 died - see chaps. 222 - section 5. By section 20 no way to transfer land under T by R than by procedure under Cap. 222. In 1971 a deed was executed using the conveyance of 18/5/53. The person who signed died in June 1971, Christianie Burke purports to re-assume premises held under a Certificate of Title.

Christian had intended to benefit Burke first. Clara Gordon is residuary legatee of Christian.

20 Megarry & Wade P. 197 "Tortious conveyance". The application for the Certificate of Title is not based on long possession. The Statute of Limitations does not apply here.

30 Christianie Burke was one of the beneficiary of George James Christian. She swore in instant suit dated 20th Jan. 1920 an affidavit. Transactions are in 1913, 1940 death of Christian, 1952, 1964 - 40 years search 12 years long possession.

Adj. at 11 - 11.15 a.m.
11.15 a.m. Court resumed.

40 By the conveyance of 1952 Christianie forfeited her life interest by the tortious conveyance. Right of entry to Marguerite accrued in 1952; time runs from time fraud is discovered.

Section 12 of Cap. 222. Grounds for application of 1st. Cert. of Title.

- (a) Documentary Title.
- (b) Undisturbed possession.

Judge's
Notes

Castaways got title under (a) Can title be now claimed as long possession? Christianie Burke deceived Pinard by the Conveyance in 1952. Clara Marguerite Gordon left Dominica in 1926. Until Clara heard of death of Christianie Burke there was nothing to excite her. The Trustees did nothing. Plaintiff returned in 1968. 10

Under Settled Land Act, Cap. 221 a tenant for life has a statutory right of sale. The tenant for life must sell under the statutory powers, and the consequences of the statutes must be observed. The proceeds of the sale must be held upon the same trusts. Section 3(2), 3(4). In this case there was a settlement created with trustee. 20
Section 11, the Court is given power to authorise sale of whole or part of Settled Estates. Section 17 - states what consents are necessary. Section 19 requires notice to be given. Section 22 provides for the disposition of the purchase monies. Section 35 provides for the investment of the proceeds of sale. Section 50 requires that the tenant for life to 30 give notice. Section 54 is made a trustee for other beneficiaries. Section 61. Section 29 applies where there are no trustees. Court calls attention to section 29.

Fraud in equity does not have same meaning as at common law it can be negligence, carelessness, etc. Directors of Deft. had knowledge of Trust, and so Shillingford v A. G. 40
of Dominica: 12 Part 1, W. I. R. 82, 83, 1968 12 W.I.R. 57. by "wilful representation" used in section 19(2)

"Indefeasible" definition "fraud" used in Schedule.

All subsequent purchasers should have had notice of the trust.

Mr. Alleyne: The plaintiff must establish a title to sue or locus standi or he must show a sufficient interest. P.14 of the decision of the Court of Appeal. Daniell's Chancery Practice 7th Edition Vol. 1 p.349. There must be a right of Pl. to move the Court. Page 4-5 of pleadings. In particular he is relying on the capability of inheriting part of his mother's estate.

Judge's
Notes

10

In his indorsement of claim (vi) Plaintiff is described as beneficial reversionary owner and remainderman.

20

In Cheshire's Modern Law of Real Property 5th Edition P. 433 P.434 Future interests. The Deed of Settlement 1913. There is a Mortgage. Thomas Francis Burke the father of Christianie Burke to Christian.

Legal reversion was in Trustees of 1913 Deed of Settlement. If the trusts all failed, the Trustees hold reversion for Christian. He only has a life interest himself. Dyer (1788)2 Cox 92.

30

Boys v Carritt (1884) L. R. 26 Ch. D. 531 Resulting trust.

40

The settlement itself could have resulted in a complete disposition of the fee simple. If the tenant for life under exercise of powers as contained in Settled Estates Act Cap. 221 had disposed of the fee simple. Sec. 29,34. Section 50(5). This section disproves submission that Cap. 221 must be strictly followed.

Plaintiff's title through George Christian reversion is too remote. By Cap 213 section 2 The Real Estate vested in P. R. of George Christian. Adj. at 1 p.m. to 2.30 p.m.

Mr. Alleyne contd.

Judge's
Notes

The supposed rights of Pl. under will of George James Christian. The submission that Pl. is entitled as residuary legatee depends on a misreading of the will of G. J. Christian. George James Christian can hardly have intended to give Mero Estate or any reversion of Mero Estate by virtue of the clause read. There was reserved to him him Deed of 1913 a power of appointment by Deed or will he can hardly have intended to exercise that power in this casual way. If he had an undisposed of reversion it would go under his general residual clause. I give etc., (Marked B) This residuary clause establishes a Trust for Sale. On death the property is converted into personalty.

10

20

The third objection is based on Settled Estates Act. The tenant for life has the power of alienation (Gordon at P.10, Lewis at p.16) Allen v Allen (1808) 15 V. Reports 130. As to interest and locus standi of trustee comes before other interest. The tenant for life had power of sale. If the case goes beyond preliminary stage I will argue the tenant for life has sold under Settled Estates Act and has brought money into Court.

30

Conditions for gift over were that they both should be under 21 unmarried without lawful issue. There could never be a remainder to Clara Gordon under the provisions of this deed. No vested interest until conditions other than death of life tenant had fulfilled. Clara Gordon could only possibly have a life interest. Since she died before the possibility of that interest being vested it did not go to her heirs.

40

Mr. Degazon: The Will and trust refer to one another. The formal words of limitation are not required in a will.

The legal estate is vested in trustees. Norton Deeds 1928, P.410. Reference to Will: "Therein" means Dominica. Christianie Burke has forfeited her life interest.

Judge's
Notes

Beneficiary under a will is not too remote to bring action. Adj: to Monday 12th January 1972 at 10 a.m.

10

MONDAY 12th JANUARY 1972

70/1969) Continued at 10 a.m.

188/1971)

Both cases being dealt with as far as the pleadings permit.

Mr. Degazon starts.

20

At the hearing in first instance of Suit 70/1969 and later in the Appeal as regards Deft/Respondent Christianie Burke the Defendant and the reply to the appeal the argument was that she was a tenant in fee simple absolute in possession. This argument did not include any allegation that she was a tenant for life or that she had inherited the reversion in fee from the settler of the instant trust. Accordingly the Court of Appeal accepted it as a fact which was challenged neither at first instance nor on appeal, that George James Christian was the settler. He is so referred to in the Judg. of the C. of A. in more than one place. I make this statement because my learned friend had hinted that the settler was Thomas Burke. I say as a matter of fact on reading the judg. of Court of Appeal that the settler was George James Christian. When the will of George James Christian is put in evidence it will be seen that he exercised the power of appointment given to him by the Settlement which was signed by Thomas Burke himself and Thomas Howard Shillingford. It will be seen

30

40

Judge's Notes

furthermore from this will that their exercise of that Power of Appointment was a testamentary disposition of the land and that the exercise of this Power of Appointment created a chain of succession in the settled land in the construction of which chain of succession technical words of limitation were not necessary on account of the testamentary character of the exercise of the power. The Court of Appeal did not reach this far because the will which will now be in issue formed no part of the case either in fact or law from either side - Appellant or Respondent - on which that Higher Court adjudicated and handed down its judgment. 10

Mr. Alleyne: I am at a loss to discover what is fact and what is suspicion. Page 1 of the Appeal decision states the issue before the Court of Appeal.

page 4

I accept as a fact that the will of George James Christian was never in issue. There is no indicator as regards Christianie Burke. Does not accept opinion as to exercise of power of appointment by will. The confirmation in the will. It is illogical to exercise a power of appointment after the thing has already been given. 30

Documents admitted by consent.

1. Deed of Settlement 40
2. Will of George James Christian
3. Judg of Court of Appeal
4. Resealed Grant of Probate.
Clara Gordon
5. Conveyance 29/5/52
6. Will of Thomas Howard
Shillingford
7. Mary Eliza Shillingford.

Judge's Notes

It is that of Ronald R. MacDonald, I know a man by that name. I last saw him at the reading of the Court of Appeal, in Court. I saw him before that. I had discussions with him at Mero Beach Motel. He is the same person whose signature I see on the letter shown to me as far as I can understand. As I understand he was Chairman of the Board of Castaways Development Ltd. I saw this on a document in A.G's office, Toronto, Canada. I now have a letter dated 12/8/1969 It is signed by Ronald R. MacDonald. I have seen the signature more than once. I spoke to him. He said he had written us a letter. This was in 1970. The letter is addressed to F. E. Degazon. You first showed me the letter. The handwriting in green ink is yours.

Documents admitted

Contents of letter are inadmissible unless it is proved that that author was at the time a member of the Co.

Documents admitted and marked A for identification.

I was told I was 18 months old when I was taken to Bermuda where I was brought up. I am not aware that my mother ever returned to Dominica. I returned to Dominica June 10th. 1968. I went to look for Christianie Burke. I spoke to her. I came here to wind up my mother's estate. I got powers of attorney from my brother and 4 sisters. They are all recorded. I now produce them in evidence. (no objection). Admitted. and marked together Exhibit B. I did not know where my mother's estate was. I discovered that my mother's estate included land on the morne.

10 I discovered about Syers Estate and Mero Estate. I then met Mr. Harris. This was when I first went to the beach. I was advised and I searched for the Deed of Settlement. I discovered that Mero had been sold. This was about 5 weeks after I had come to Dominca. I saw Exhibit "I". I sought legal advice. Peter Christian was my uncle and Christianie was my aunt. Shortly after I saw the application for the 1st. Certificate of Title. I saw the Deed from Burke to Pinard. I noticed that 3 of the uses of the Deed of Settlement had been quoted. The rest had been omitted.

20 When I knew that there was a judgment in my favour. I waited for 8 weeks and made sure that there was no Appeal to Privy Council.

WEDNESDAY 16th FEBRUARY 1972

70/1969)
)
188/1971)

30 H.E.F.Gordon resworn. I noticed that in the Indenture of 1952 the last 3 clauses of the trust were omitted. In 1952 my mother was alive so that Burke could not be sole cestui qui trust. Burke lived in our house in Bermuda, and left there in 1942. She lived with us for about 6 years. The purchase price in the 1952 deed was a give away at £1250. There are no words of limitation in the deed of 1952.

40 My grandfathers will is divided into two main parts. The executor in Dominica was Christian. I have always understood that my mother inherited the property as she fulfilled all the conditions laid out in the Trust Deed.

Judge's Notes

Since I came to Dominica I have visited Mero Estate. There is a hotel on the beach a motel across the road and 3 or 4 houses. Some of the land looked like agricultural land. I saw the publications and brochures dealing with development of Castaways. Being sold at \$4,600 U.S. a lot. I now produce documents. Admitted in evidence and marked Exhibit "J". I now produce my birth certificate admitted in evidence and marked Exhibit "K".

10

I am suing in two capacities. I am asking for remedies set out in Statement of Claim.

xxD by Mr. Alleyne. I am suing in two capacities. George James Christian did not devise anything to me personally. If Mero Estate is a part of my mother's estate, it was specifically devised to me. I am suing as p.r. of my mother's estate. Under the will of my mother the Bank of Bermuda was named executor. I obtained a Grant of Administration with will annexed. There is no specific mention of Mero Estate as such in the will.

20

30

Barbara, Joyce and Evelyn, Marjorie, Kenneth and I are the persons interested in my mother's estate. I don't know if I have the leave of the Court to sue as personal representative.

I am claiming through my grandfather's will, Chrissie Burke is my cousin. Her mother was my grandfathers sister. Burke had owned Mero. I discovered he had borrowed some money from my grandfather. I accept that it was £120. Burke died in 1913. Christianie Burke is still alive. She had a daughter. The will was not in evidence at the first trial.

40

Mero is sometimes quite green. It is sometimes arid. I do not know the revenue of Mero in 1952 would have been. I do not know what the market value of Mero Estate was in 1952. I would not have parted with it for less than £1 m.

Judge's
Notes

10 I don't know what Mac Donald said on Oath. We could not serve the Writ on the Company because it has no registered office here. (On p. 8 of Examination - p. 11) I understood MacDonald was a Director of the Company.

20 Minutes of Settlement dated 21/1/1969 MacDonald sold his shares and interests in Castaways Developments. I entered caveats against the Deft's titles to land. It was to stop all dealings with the land. I do not know if documents have been registered since the caveats. Christianie Burke was a tenant for life. At this moment she is not tenant for life. I am claiming whatever I am entitled to.

30

Re-sworn: First signature of Minutes of Settlement is Mac Donald. I understood that Mac Donald was going to sell the property. (P.6) I am only claiming what I am entitled to. Christianie Burke never married. Adj. to 17/2/72.

THURSDAY 17th FEBRUARY 1972

40 Hakim Gordon (Cont'd)

It is agreed that Mr. Alleyne address. Question arises out of mortgage in 1894. (13) 15/1031894

Judge's
Notes

In 1913 Burke not having paid int. or principal, agreed to sell interest to Christian. When 2nd. Mortgage was due Christian was to meet that payment. There was a settlement. Who the real settler or Donor was, assuming that Christian was settler. Burke died in very year of the settlement. Meaning of the limitations are in dispute. Daughters should enjoy Trustees should retain possession until they attain 21, dying leaving lawful issue. 10

A conveyance by Christianie Burke to E. L. Pinard in 1952. 4 paras. of Settlement were recited. In 1960 Pinard sells a portion to Daphne Taylor 30/7/1960 (9). In 1964 Pinard sold remainder of Mero to Castaways Development Co. In 1967 Daphne Taylor sold to the Castaways Hotel Ltd. In 1968 Castaways Development applied for and obtained 1st.C of T.W.I. folio 122. Then enter the Plaintiff in this matter. He sued in a personal capacity No. 70 of 1969 - served only on the Development Co. which was out of the jurisdiction. 20 30

Pl. is grandson of George James Christian son of Clara Gordon named in Deed of Settlement. Claims he is an after reversionary owner. The other suit is 188/1971 - Claims a Declaration that he is one of the reversionary owners or remaindermen of the Deed of Settlement. 40

The Plaintiff has no sufficient interest to maintain suit and he has no locus standi.

The interest necy to maintain a suit must be a present interest, and not a contingent one.

Where property is devised or descends upon death the personal representative is the only proper person to bring an action. When there is a trust it is the trustees who must interpose.

Cites 1 and 2 of notes supplied.

10 When tenant for life is alive and there are gifts over the interest is contingent and not vested.

Tenant for life must die under 21 or without issue and unmarried.

Since parties died before tenant for life (P.11)

20 White v Supple 2 J and W. (1842) p. 471 aid of interpretation of limitation.

To whom does the reversion belong heirs of Christian or heirs of Burke? If heirs of Christian it would have to be disposed of either according to terms of Settlement, or the will of Christian.

30 Para 7 of Settlement, hasn't happened yet. It cannot happen since Christianie Burke has attained 21 years.

40 In this case there are 2 provisions in Christian's Will. P.3 - P.6. Does it have testamentary effect as regards Christianie Burke. Even if this provision could remotely be regarded as giving reversion to Clara Gordon and Peter Christian, the title and the right to sue would be in the Trustee - in trustee or executor of the Will.

Vol. 38 p. 1039 Para. 1789, 1790. Have trustees been

Judge's
Notes

approached to bring action.
P.R. must obtain leave of the
Court to sue in representative
capacity.

Mere expectancy was enough
to found on action for account.

Phillips v Bignell & ORS.
(1811) Myddleton v Rushout.

Tenant for life has brought the
Corpus into Court. 10

The position of the Plaintiff
vis-a-vis the companies.

Atkin Court Forms Vol. 2 at p.49
Criticism of Further Assurance by
tenant for life.

It is evident that number of
lawyers made mistake as to con-
struction of terms. Vol. 14 p.
545 - 1022 p. 541 - 1015

It was her duty to give fur-
ther assurance and bring further
assurance into Court. 20
Doctor of St. Albans.

Coots & Co. (1962) 2 A. E.R.
402 Tenant for life has power of
sale. See Challis on Real Prop-
erty 1887 Ed. P 109 - 111 Real
Property Act Cap. 219 s. 11.
Fines and recoveries should apply
here and that there was no for-
feiture for tortious conveyance. 30
1913 Edition of Hals. P. 652 para
1134 Vol. 25.

Mr. Degazon: It has been conceded that
George James Christian was settler
under Deed of Settlement. This
point was not challenged before.
None of the beneficiaries could
have attained anything but a life
estate under clause 7 a power of
appointment. 40

You can have a contingent interest. Judge's
 Settlor always had equitable fee Notes
 simple. The moment life estate
 limitation (P.174 1957 Ed. Megerry
 & Wade) the reversion is a vested
 interest.

10

Forfeiture at Common law if a life
 tenant made a tortious conveyance
 the life tenancy terminated and
 also only intermediate interest.
 Cap. 219 s. 11. The life interest
 was forfeited not estate of
 contingent remainders Sec. 61 of
 Settled Estates Act. Cap. 221.
 Further Assurance is of no effect
 since land brought under T by R.
 Lewin on Trusts 15 Edition P.
 61., P. 80 section 5.
 Castaways in application for
 certificate of Title filed
 the Trust Instrument so indeed
 may be trustees.

20

I do not see any provision
 to prevent a Cestui que trust
 from suing. Defendants filed
 pleadings - now states leave
 to sue must be obtained.

Wills Act Cap. 215.

30

A contingent interest can
 be vested. The Will says go
 to Settlement, but as that
 was in a will, words of
 limitation are not necy.

Power of Appointment - no
 need for words of limitation.

E X H I B I T SDEED OF SETTLEMENT

Deed
of
Settle-
ment

Recorded this 27th day of March, 1913, @ 1.10 p.m.

(Sgd.) C.A.B.

DOMINICA.

This Indenture made the 18th day of March
in the year of Our Lord one thousand nine
hundred and thirteen Between Francis Thomas
Burke of Mero Estate in the Parish of St. Joseph 10
in the Presidency of Dominica, Planter of the
First Part, George James Christian of the town
of Roseau in the said Presidency Barrister-at-
Law of the Second Part and Thomas Howard Shill-
ingford of Hobbs Hole Estate in the Parish of
St. Joseph in the said Presidency, Planter, Of
the Third Part. Whereas Francis Thomas Burke
is well seised and entitled to the Mero Est-
ate situate in the Parish of Saint Joseph in
the Presidency of Dominica and also to the 20
Cassada Garden Estate situate in the Parish
of Saint Joseph in the Presidency aforesaid.
And Whereas on the 15th day of October 1894
the said Francis Thomas Burke executed a mort-
gage in favour of the said George James
Christian of the said Mero Estate and a moiety
of the said Cassada Garden Estate for the sum
of One hundred and twenty Pounds with interest
after (sic) the rate of Five per centum per
annum which said principal sum of One hundred
and twenty Pounds and interest from the said 30
15th day of October 1894 to date are still un-
paid And Whereas on the 17th day of April 1909
the said Francis Thomas Burke executed a
second mortgage of the Cassada Garden Estate
in favour of Alexander Davis Riviere for the
sum of One Hundred Pounds with interest after
the rate of Eight Pounds per centum per ann-
um which said principal sum and interest are still
unpaid And Whereas the said Francis Thomas
Burke hath agreed with the said George James 40
Christian for the absolute sale to him of
the hereditaments intended to be hereby grant-
ed and the inheritance thereof in fee simple
in possession free from incumbrances at the
price of Five hundred and eighty four Pounds
and it has been agreed that the said mortgage
debt of One hundred and twenty Pounds and
interest shall be retained by the said George

James Christian out of the said purchase money And Also in consideration of the payment by the said George James Christian of the Mortgage Debt and interest when it becomes due to the said Alexander Davis Riviere under the mortgage security abovementioned and also in consideration of an annuity of Twenty five Pounds to be paid to the said Francis Thomas Burke during his life and to be secured by the Bond of the said George James Christian and Thomas Howard Shillingford. And Whereas in consideration of the love and affection which the said George James Christian bears to Margery Burke and Christianie Burke, Peter Charles Christian, Clara Christian and Maud Christian the said George James Christian is desirous of settling the said Estates in the manner hereinafter expressed and the said Thomas Howard Shillingford (hereinafter called the Trustee) hath at his request agreed to accept the conveyance to himself of the abovementioned hereditaments and to be the Trustee of the said intended settlement. Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the sum of Two hundred and thirty Pounds retained by him the said George James Christian in full satisfaction of the principal sum of One hundred and twenty Pounds and interest as aforesaid due and owing to him upon the said mortgage security and which last mentioned sum the said George James Christian doth hereby declare to be fully satisfied accordingly and from the same doth hereby release the said Francis Thomas Burke, and also in consideration of the sum of Fifty Five Pounds to be paid to the said Alexander Davis Riviere abovementioned and also in consideration of the annuity of Twenty five Pounds secured by the said Bond as aforesaid the said Francis Thomas Burke at the request of the said George James Christian doth hereby grant to the said Thomas Howard Shillingford his heirs or Executors All that Estate or plantation known as the Mero Estate situate in the Parish of Saint Joseph in the Presidency of Dominica And Also all that Estate known as Cassada Garden Estate situate in the said Parish of Saint Joseph and Presidency aforesaid. Together with all buildings commons

Deed of
Settle-
ment

fences hedges ditches ways waters watercours-
es liberties privileges easements and
appurtenances whatsoever to the said Estates
belonging or in anywise appertaining or us-
ually held or occupied therewith or reputed
to belong or be appurtenant thereto. And
All The Estate right title interest claim
and demand whatsoever of the said Francis
Thomas Burke into and upon the said premises
and every part thereof. To hold the messuage
lands and hereditaments and all other the
premises hereby granted unto the said Trust-
ee his heirs or Executors to the uses
following:-

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1. The Trustee his heirs or Executors
shall remain in possession of the said lands
hereditaments and premises during the life-
time of Francis Thomas Burke or until the
said Margery Burke and Christianie Burke
shall attain their majority (or marry) or
which ever event the death of the said Francis
Thomas Burke or the majority or marriage of
the said Margery Burke and Christianie Burke
shall happen later.

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2. The said Trustee shall manage, superin-
tend the management or lease the said Est-
ates or plantation which ever he may deem
expedient and shall in no case be liable
for impeachment for waste.

3. From the rent or net profits of the
said hereditaments the said Trustee shall
pay and satisfy the amount which by Bond he
the said George James Christain and the
said Trustee have bound themselves to pay
to the said Francis Thomas Burke and from
any balance which may remain shall at his
discretion pay the whole or such part there-
of for the maintenance and personal support
or benefit of Margery Burke and Christianie
Burke until they shall attain the age of
twenty one years or marry.

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4. Should either the said Margery Burke
or Christianie Burke die under the age of
twenty one years or without having married
and leaving lawful issue the whole of the
lands hereditaments and premises shall be
held in trust for the survivor.

5. Should the said Margery Burke and Christ-
 anie Burke die without attaining the age of
 twenty one years or without having married
 and without having left lawful issue then
 the said Trustee shall hold the said lands
 hereditaments and premises in trust for
 Peter Charles Christian, Clara Christian
 and Maud Christian until they shall attain
 the age of twenty one years or being girls
 10 attain that age or marry, with power at his
 descretion to pay any part of the rents and
 profits of the said hereditaments and pre-
 mises for the maintenance and personal
 support and benefit of the said Peter Charles
 Christian, Clara Christian and Maud Christ-
 ian.

6. Should either the said Peter Charles
 Christian Clara Christian or Maud Christian
 die without attaining the age of twenty
 20 one years or marrying and leaving lawful
 issue then the whole of the said lands
 hereditaments and premises shall be held in
 trust for the survivor or survivors of
 them.

7. Should the said Peter Charles Christian,
 Clara Christian and Maud Christian all die
 without attaining the age of twenty one years
 or marrying and leaving lawful issue then the
 whole of the lands hereditaments and premises
 shall be held by the Trustee his heirs or
 30 Executors in trust for the said George James
 Christian or as he shall be Deed or Will
 appoint.

In Witness whereof the parties to these
 presents have hereunto set their hands and
 seals the day and year first within written.

Signed by the Said Francis)
 Thomas Burke sealed and)
 delivered in the) (sgd) Francis T.
 40 presence of) Burke (L.S.)
 (sgd) J. R. Devin
 (sgd)

Signed by the said George)
James Christian sealed)
and delivered in the) (sgd) Geo. J. Christian
presence of) (L.S.)

(sgd) J. R. Devin

(sgd)

Signed by the said Thomas)
Howard Shillingford,)
sealed and delivered in) (sgd) T. H. Shillingford
the presence of,) (L.S.)

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(sgd) J. R. Devin

(sgd)

Leeward Islands

Certified a true copy

(sgd) S. Bertrand
Registrar.

LAST WILL OF

Will of
George J.
Christian

GEORGE JAMES CHRISTIAN

This is the last will and testament

of

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George James Christian of Dominica
British West Indies and of Dominica House
Sekondi in the Western Province of the Gold
Coast, Barrister-at-Law.

I hereby revoke all former wills and
testamentary dispositions made by me.

I hereby appoint Howard Christian now
at Gray's Inn London George Francis Esquire
merchant at Tafo in the eastern Province and

William Plange Esquire merchant of Elmina in the Central Province of the Gold Coast aforesaid to be executors and trustees of my real and personal estates in the Gold Coast aforesaid and also of my English Investments.

Will of
George J.
Christian

10 I hereby also appoint and constitute Peter Charles Christian of Roseau Dominica aforesaid the sole executor and trustee to administer my estates such as are in Dominica aforesaid.

I give and bequeath the following sums to the following respective persons.

- (1) One hundred pounds (£100) sterling to each of the executors and trustees of this my will.
 - (2) One thousand pounds (£1000) sterling each to Clara Gordon, Peter Charles Christian, Howard Christian, Ferdinand Francisco Christian, Edward Clifford Christian and Abba French.
 - (3) Five hundred pounds (£500) sterling each to Sarah Christian, Joseph Christian, Josephine Christian, Angela or Amba Christian and Matilda or Essie Christian.
 - (4) Two hundred and fifty pounds (£250) sterling to Chrissie Burke.
 - (5) Two hundred and fifty pounds (£250) sterling to each of the four daughters of my daughter Clara Gordon and Two hundred and fifty pounds (£250) sterling to each of her two sons.
 - (6) Two hundred pounds (£200) sterling each to Constance Lockhart and Mrs. Hedwig Leung.
 - (7) One hundred pounds (£100) sterling each to May Christian of Roseau, Dominica, Felicia Ansah, Resina A. Dakoah, Jacob Levenson and Madam Adjua Bussum.
 - (8) Twenty five pounds (£25) sterling each to the four daughters of my late uncle Emmanuel Laudat of Coulibistrie Dominica aforesaid.
- 20
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Will of (9) Twenty five pounds (£25) sterling each to
 George J. Kate Ladoo and Mrs. Lizzie Halliday both
 Christian of the island of Antigua British West and
 Madam Ambah Ackum.

I give and bequeath all my interests in Syers Estate and Placeville Estate in the Parish of St. Joseph Dominica British West Indies aforesaid and Houses and land in Roseau Dominica and any other real or personal property or interest therein to Peter Charles Christian and Clara Gordon in equal shares absolutely as tenants in common. Mero Estate and Cassada Gardens estate I have already settled on Chrissie Burke and her lawful children (if any) but if she dies without lawful issue then the said estates to follow the terms of the Deed of Settlement. 10

I give and bequeath my library and office furniture to Howard Christian and all furniture in Dominica House to Howard Christian, Matilde Christian, Ferdinand Christian and Edward Clifford Christian. 20

And I give and bequeath my residence known as Dominica House situate at the corner of Poassi Road and Court Road Sekondi and the house adjoining it numbered 21/5 and now occupied by Messrs. United Africa Company Limited and the land the premises on which both houses are situated to Aba French and her four children, Howard Christian, Essie or Matilde Christian, Ferdinand Christian, and Edward Clifford Christian absolutely as tenants in common. 30

I give and bequeath unto Sarah Christian, Joseph Christian and Josephine Christian all that piece or parcel of land with the buildings thereon situate lying and being at Poassi Road Commercial Town Sekondi aforesaid and bounded on the north by an open space or Market on the South by Poassi Road on the east by land in possession of James Andrew Noonoo and on the west by land demised to Lemuel Courtis Davies, Auctioneer and measuring eighty-two (82) feet more or less backwards or in depth or howsoever otherwise the same may be bounded known, described or distinguished. 40

I give and bequeath unto Angela Christian all that piece or parcel of land with the buildings thereon situate lying and being at Assie Street Sekondi aforesaid formerly the property

of Saibee Akibi known as Number 20A Assie Street and having a frontage to Assie Street on the south of Forty (40) feet more or less and bounded on the west by High Street along which it extends Fifty (50) feet more or less on the North by a Lane along which it extends Forty (40) feet more or less and on the east by the property of Mr. Kane along which it extends Fifty (50) feet more or less or howsoever otherwise the same may be bounded known described or distinguished.

Will of
George J.
Christian

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I give and bequeath unto Peter Charles Christian and Clara Gordon all that piece or parcel of land with the buildings thereon situate lying and being at Sekondi aforesaid and bounded on the North by Acheiaboanda Road to which it has a frontage of one hundred and seven (107) feet more or less on the south by a Pathway lying between the said piece or parcel of land and the property of one Cookoon to which pathway it has a frontage of eighty-six (86) feet more or less on the east by the road between the said land and the property of Kudjoe Dadie to which road it has a frontage of sixty-one (61) feet more or less and on the west partly by property of F & A. Swanzy Limited now United Africa Company Limited and partly by property of Henry Scheck on which side it measures seventy-five (75) feet more or less which said piece or parcel of land is described in and demised by Indenture of Lease dated seventh day of June one thousand nine hundred and three and made between Chief Guamina Annaisie II and others of the one part and F.W. Rust of the other part now vested in me as Purchaser and the reversion whereof is vested in me.

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I give and bequeath all my property not hereby otherwise disposed of Unto my Trustees in Trust to convert into money by sale or otherwise and to divide the proceeds after paying my funeral and testamentary expenses and debts and the legacies hereby bequeathed in equal shares among Peter Charles Christian, Clara Gordon, Chrissie Burke, Sarah Christian, Joseph Christian, Josephine Martha Christian, Howard Christian and Amba or Angela Christian all of whom are now of age and the following who are now infants namely Matilda Christian, Ferdinand Christian and Edward Clifford Christian who being sons attain the age of twenty-one years

Will of George J. Christian or being daughter attains that age or marries their respective shares vesting on my death and to raise any part not exceeding one moiety of any such infants share and apply the same for the advancement or benefits of such infants. And I also empower my said Trustees to postpone the sale and conversion of any part of my estate for so long as they shall think fit and the income of unconverted property shall from the time of my death go in the same manner as the income of the proceeds thereof would have been applicable if the same had been converted Provided Always that if any of the said beneficiaries namely Peter Charles Christian, Clara Gordon, Chrissie Burke, Sarah Christian, Joseph Christian, Josephine Martha Christian, Howard Christian, Matilde Christian, Ferdinand Christian, Amba or Angela Christian and Edward Clifford Christian shall die in my lifetime leaving a child or children who shall survive me and being a son or sons shall attain the age of twenty one years or being a daughter or daughters shall attain that age or marry under that age then in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which his or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty one years and if any of the said beneficiaries shall die during my lifetime without leaving a child or children who shall survive me then such beneficiary shall fall into residue and be equally divided among the remaining beneficiaries.

And I hereby appoint Aba French of Chama to be the Guardian of my younger children namely Matilde Christian Ferdinand Christian and Edward Clifford Christian.

And whereas I did on the thirty-first December one thousand nine hundred and thirty-five with the Atlas Assurance Company Limited whose Head Office is 92 Cheapside London E.C.2 by the payment of single premiums assure the payment of educational annuities on the lives of Edward Clifford Christian, Francis Ferdinand Christian, Edgar Frederick Gordon, Kenneth Clifford Montgomery Gordon the particulars whereof as follows:-

One thousand seven hundred pounds payable respectively in respect of each in instalments of one hundred and fifty pounds per annum for three years and two hundred and fifty pounds per annum for following five years. First instalments payable on fifteen birthday payable quarterly. The first payments respectively to be Edward Clifford Christian twenty seventh November one thousand nine hundred and forty-five Francis Ferdinand Christian second January one thousand nine hundred and forty-one Edgar Frederick Gordon twenty third January one thousand nine hundred and thirty nine Kenneth Clifford Montgomery Gordon thirteenth February one thousand nine hundred and forty-two.

Will of
George J.
Christian

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I desire and direct my trustees Howard Christian George Francois and William Plange or other the Trustees for the time being of my real and personal estates in the Gold Coast and of my English Investments to make arrangements with the Atlas Assurance Company Limited during the lives of the said assured beneficiaries for the payment of the payment of the said respective annuities to Mrs. Gordon for her two sons Edgar Frederick Gordon and Kenneth Clifford Montgomery Gordon and to Abba French in respect of Edward Clifford Christian and Francisco Ferdinand Christian to the intent that the said Mrs. Gordon and Abba French and in the event of the death of either Mrs. Gordon or Abba French then any guardians the trustees shall approve shall apply the said annuities to the education of the said children respectively.

The said education annuities are in addition to other devises or bequests.

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In witness whereof I the said George James Christian have to this my last will and testament set my hand this 22nd. day of February one thousand nine hundred and thirty six (1936).

Signed by the above named George)
James Christian as his last will)
in the presence of us both being)
present at the same time who in)
his presence and in the presence)(sgd) Geo J.
of each other have subscribed) Christian
our names as witnesses)

Will of (sgd) Isaac Abraham
 George J. Clerk High Court, Sekondi
 Christian

(sgd) J. Moore
 Chief Clerk, B.B.W.A. Ltd.
 Sekondi
 (Intd A.N.D.)

L.S. I George James Christian of Dominica British
 West Indies, and of Dominica House, Sekondi,
 in the Western Province of the Gold Coast Colony,
 Barrister-at-law, declare this to be a first 10
 codicil to my will which bears date the twenty
 second day of February one thousand nine hundred
 and thirty-six.

Whereas by the said will I have made several
 bequests; I now wish to and hereby make some
 additional ones, namely: Three hundred (£300)
 each to Dr. A.E.C. Beausoliel and George Francois
 of St. Lucia but now of Tafo in the Gold Coast
 Colony aforesaid.

One hundred pounds (£100) to C.E.M. Abben- 20
 setts, Barrister-at-law of Sekondi.

Fifty pounds (£50) each to R.U. Riley, the
 St. Andrews Church at Sekondi and the Roman
 Catholic Church at Sekondi. One hundred pounds
 (£100) in memory of my trusty deceased friend
 John French towards renovating the Wesleyan
 Church at Shama.

In witness whereof I the said George James
 Christian have hereunto set my hand this eleventh 30
 day of March, one thousand nine hundred and thirty-
 eight (1938).

Signed by the above named George)
 James Christian in the presence)
 of us both being present at the)
 same time who in his presence)(sgd) Geo. J.
 of each other have subscribed) Christian
 our names as witness:)

(Sgd) Isaac Abraham
 Clerk, High Court Sekondi

(Sgd) J. A. Levenson

Will of
George J.
Christian

I George James Christian Barrister-at-law of Gray's Inn practising in the Gold Coast Colony of Ashanti and in Great Britan elsewhere at present residing at Sekondi Declare this to be a second codicil to my will which bears date the twenty second day of February one thousand nine hundred and thirty six. Whereas part of my estate consists of immoveable and moveable property in the islands of Bermuda and I desire that my daughter Clara Marguerite Gordon who at present resides in the islands of Bermuda shall in addition to the share of my estate that she will have under my will have also the interest in my immoveable and moveable property in the island of Bermuda hereinafter stated and that the same shall not be in substitution of or diminution of her share of my estate under my will and that her children living at her deceased shall have the interest hereinafter stated in addition to any interest that I may have provided for them or any of them under my will and not in substitution thereof or in diminution thereof I appoint the Bank of Bermuda Limited to be the sole executor and Trustee of this my second codicil. I declare that the expression "my trustee" used by me in this codicil shall be construed as comprising and referring to the trustees or trustee for the time being of this codicil and that the power of appointing new trustees of this codicil shall be exercisable by my daughter Clara Marguerite Gordon I hereby devise all immoveable estates in the islands of Bermuda which at the time of my decease shall be vested in me as a trustee or mortgagee unto and to the use of my trustee its successors and assigns subject to the trusts and equities affecting the same estates respectively I devise all the rest residue and remainder of the immoveable estate in the islands of Bermuda and I bequeath all the moveable estate in the islands of Bermuda of or to which I shall be seised possessed or entitled at the time of my decease unto and to the use of my trustee its successors and assigns Upon Trust to sell my immoveable estate in the islands of Bermuda together or in parcels by public auction or private contract with power to make any stipulations as to the title or evidence of title or otherwise and to buy in at any public sale and to rescind or vary either on terms or gratuitously any contract for sale and to resell as aforesaid without being answerable for any con-

Will of sequential loss and to call in and convert into
 George J. money my moveable estate in the islands of
 Christ- Bermuda And Upon Further Trust after payment
 ian thereout of my just debts if any in the islands
 of Bermuda to invest the net monies arising from
 the sale calling in and conversion of my said
 immoveable and moveable estates (hereinafter
 called my "trust fund") in the name of my trustee
 in or upon any of the public stocks funds or
 securities of the islands of Bermuda or of the 10
 United Kingdom of Great Britain the Dominion of
 Canada or the United States of America or any or
 more of the said countries or on real securities
 in the said islands or in or upon any securities
 which by the Laws of the said islands or the
 United Kingdom or the said Dominion of Canada
 or the United States of America trust funds are
 by law permitted to be invested but not else-
 where and not in or upon any other kind of
 security But with power for my trustee to vary 20
 the investments from time to time for any other
 or others of the descriptions aforesaid And Upon
 Further Trust to pay the annual income derived
 from my trust fund to my said daughter Clara
 Marguerite Gordon during her life and after her
 decease Upon Further Trust to divide my trust
 fund and the unapplied income derived from the
 same and to pay the same to such of the children
 of the said Clara Marguerite Gordon as shall 30
 be living at the time of her decease and if
 more than one equally I Declare that my trustee
 shall have a discretionary power to postpone
 for such period as to it shall seem expedient
 the sale calling in or conversion of any parts
 of my said immoveable or moveable estates but
 any unsold immoveable estate and the outstand-
 ing moveable estate shall be subject to the
 trusts hereinbefore contained concerning my
 trust funds and the rents and yearly produce
 thereof shall be deemed annual income for the 40
 purpose of such trusts and only unsold immove-
 able estate shall be deemed to be converted as
 from the time of my death and be transmissible
 as personal estate accordingly But I Declare
 that no sale of immoveable estate shall be
 made during the life time of my said daughter
 without her consent I hereby Direct and Empower
 my trustee to apply for the maintenance and
 education or otherwise for the benefit of each
 such grandchild of mine during his or her 50
 minority the whole or any part of the income
 of the share of my trust fund to which such
 grandchild shall be entitled and the unapplied

income (if any) shall be accumulated and the accumulations be subject to the like power and so subject shall form part of the capital of the share whence the same income shall have arisen I expressly Direct that my trustee shall notwithstanding its acceptance of the offices of trustee and executor of my will and its acting in the execution thereof be entitled to make the same professional charges and to receive the same pecuniary emoluments and remunerations for all business done by it and all attendances time and trouble given or bestowed by it in or about the execution of the trusts and powers of my will or the management and administration of my trust estate real or personal as it is entitled to do or make by its statutory authority I direct that my trustee may employ bailiffs collectors clerks accountants and servants in collecting debts and rents and otherwise in the administration of my said immoveable and moveable or trust funds and in making out and keeping its accounts thereof with such remuneration as my trustee shall think reasonable And I Hereby Request Declare and Direct that the Executors of my will shall arrange with the executor and trustee of this codicil as to the professional charges and expenses of management in relation to implementing in that respect this codicil and I authorise the executors of my will to charge the same as an expense of the general estate included within my will as a matter to guide the said executor of my will I point out that the whole property in the islands of Bermuda is of small value I revoke my wills made in the islands of Bermuda dated ninth September one thousand nine hundred and thirty eight the contents thereof having been reproduced in this codicil In all Other Respects I confirm my said will.

Will of
George J.
Christian

Dated the thirtieth day of November one thousand nine hundred and thirty eight.

Signed by the above-named George)
James Christian in the joint)
presence of himself and us who)
at his request and in said joint) (sgd) Geo. J.
presence have hereunto subscrib-) Christian
ed our names as witnesses:

(Sgd) Isaac Abraham
Clerk, High Court, Sekondi

Will of
George J.
Christian

(sgd) J. Moore
Senior Clerk
B.B.W.A. Ltd.
Sekondi

I, George James Christian of Dominica British West Indies and of Dominica House, Sekondi in the Western Province of the Gold Coast Colony, Barrister-at-law, Declare this to be a third codicil to my will which bears the date the twenty-second day of February one thousand nine hundred and thirty-six (1936) 10

Whereas by my said will I have appointed William Plange Esquire, Merchant of Elmina in the Central Province in the Gold Coast aforesaid one of my executors and trustees of my real and personal estates in the Gold Coast aforesaid and also of my English Investments and have given and bequeathed unto him the sum of one hundred pounds (£100) sterling; And Whereas by my said will and two codicils there- 20 to dated the 11th March and 30th November, 1938, respectively I have made several bequests.

Now I wish to And Hereby make a revocation variation or amendment in the said appointment and bequest and make substitut-
ional and additional bequests namely:-

I hereby revoke the said appointment by me of the said William Plange as my executor and trustee aforesaid and also revoke any bequests to him by me made under my will aforesaid And I Hereby Appoint And 30
Constitute Charles William Tachie Menson Esquire of Sekondi in the Western Province of the Gold Coast aforesaid in place and instead of the said William Plange to be one of the executors and trustees under my said will of my real and personal estates in the Gold Coast and also my English invest-
ments. 40

I Hereby give and bequeath the following sums to the following respective persons:-

- (1) Seven hundred and fifty pounds (£750) sterling to Matilde or Essie Christian.
- (2) Two hundred pounds (£200) to George Joseph Armah son of Dr. J. E. Armah

and my daughter Josephine.

Will of
George J.
Christian

- (3) Seventy five pounds (£75) sterling to Madam Ambah Ackun.
- (4) Ten pounds (£10) sterling each to my maid servants, Mahawoo, Adjaeah Attoh, Bentuma, Essie Tawiab and Essie Yebuaba.
- (5) Fifty pounds (£50) sterling to Nora Awoona Williams.
- 10 (6) One hundred pounds (£100) sterling to Isaac Abraham.
- (7) One hundred and fifty (£150) sterling to Frans Dove.
- (8) One hundred pounds (£100) to Charles William Taochie-Menson as my executor and trustee aforesaid.
- (9) Twenty pounds (£20) sterling each to Ambah French, Essie Rebecca French, and Yacoba French who are sisters of Madam Abba French.
- 20 (10) Forty pounds (£40) sterling to Twiba the mother of Madam Abba French, and twenty pounds (£20) to my driver Kwesi.
- (11) I give and bequeath unto Angela Christian all that piece or parcel of land with the buildings thereon situate lying and being at Poassi Road, Sekondi, and commonly known as and called Robinson and numbered 26 (6 by the Sekondi Town Council.
- 30 (12) I give and bequeath unto Madam Abba French all that piece or parcel of land with the buildings thereon situate and being at Poassi Road, Sekondi and commonly known as Handcock and numbered 25/6 by the Sekondi Town Council.

Dated at Sekondi this day of
March, 1940

Will of
George J.
Christian

Signed by the said George)
James Christian as the)
third codicil to his last)
will and testament in the)
presence of us both of us) (sgd) Geo. J.
being present at the same) Christian
time who in his presence)
and in the presence of ea)
ch other and at his requ-)
est have hereunto subscri-)
bed our names as witness-)
es)

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(sgd) D. E. Shooter

(sgd) Joseph Erzuah Armah
(Intd.)A.N.D.

Certified a true copy

(sgd) Joseph V. Jean Pierre
Registrar.

Resealed
Grant of
Probate
Clara M.
Gordon

RESEALED GRANT OF PROBATE OF

CLARA M. GORDON BOOK P.
Folios 277 - 289.

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In the High Court of Justice
Dominica

(Probate)

Sealed with the seal of the High Court of
Justice of Dominica this 6th day of April,
1971 pursuant to the Order of S. J. Bertrand,
Registrar of the High Court, Dominica dated
the 6th day of April, 1971.

And it is hereby certified that an Affidavit
in verification of the account of the said
Estate has been duly filed wherein it is
shown that the value of the said Estate within
the State amounts to \$72,000.00 payment of
Estate Duty in the amount of \$3,600.00 having
been postponed to 19th July, 1971 (with inter-
est at the rate of 3% per annum from 27th
September, 1965 to date of payment.)

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(sgd) S. J. Bertrand
Registrar.

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Extracted by F. E. Degazon, Solicitor for
Applicant

Resealed
Grant of
Probate of
Clara M.
Gordon

In the Supreme Court of Bermuda In the
Estate of Clara Marguerite Gordon, Deceased.
Exemplification of Grant of Letters of Admin-
istration with Will annexed.

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Be it Known, that upon
search being made in
the Registry of the
Supreme Court of
Bermuda, at Hamilton
in the islands of
Bermuda, it appears
that on the 3rd. day
of September, 1970,
Letters of Administ-
ration of the Personal
estate of Clara Margu-
erite Gordon, Deceased,

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who died on the 27th day of September, 1964,
at Sandys Parish in the Islands of Bermuda and
who at the time of her death had a fixed place
of abode in Sandys Parish aforesaid, were
granted to Edgar Frederick Gordon, eldest son
of the said deceased and a residuary legatee
And which Grant now remain of record in the
Registry aforesaid. The true tenor of the
said Grant of Letters of Administration with
will annexed, and affidavit of Edgar Frederick
Gordon and renunciations of The Bank of Bermuda
Limited, Kenneth Clifford Montgomery Gordon,
Joyce Eugene Gordon, Barbara Amelia Wilcoxon,
Marjorie Clara Davis and Evelyn Marguerite
Powell marked "A" "B" "C" "D" "E" "F" "G" "H"
& "I" and initialled by me appears on the
Eleven pages annexed hereto. In Faith and
Testimony Whereof these letters testimonial
are issued.

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Given at the City of
Hamilton in the Islands
of Bermuda, as to the
time of the aforesaid
search and the sealing
of these presents under
the Seal of the said
Court this 14th day of
September, 1970.

(sgd)
Registrar, Supreme
Court of Bermuda.

Resealed
Grant of
Probate of
Clara M.
Gordon

In the Supreme Court of Bermuda

Be It Known that Clara
Marguerite Gordon,
late of Sandys Parish
in the Islands of
Bermuda deceased who
died on the 27th day
of September, 1964, at
Sandys Parish aforesaid,

(sgd)

Acting Chief Justice

made and duly executed her last Will and Test-
ament dated the 24th day of March, 1939 and did
therein name The Bank of Bermuda Limited, the
Sole Executor. And Be It Further Known that The
Bank of Bermuda Limited having renounced all
right and title to a Grant of Probate of the
said Will.

And Be It Further Known that Kenneth Clifford
Montgomery Gordon, Joyce Eugene Gordon, Barbara
Amelia Wilcoxon, Marjorie Clara Davis and Evelyn
Marguerite Powell, residuary legatees, having
renounced all right and title to a Grant of
Letters of Administration with Will annexed.

And Be It Further Known that on this 3rd. day
of September, 1970, Letters of Administration
with the said Will annexed, of the personal
estate of the deceased, are hereby granted by
this Court to Edgar Frederick Gordon, eldest
son of the said deceased and a residuary legatee,
he having been first duly sworn, as appears by
his affidavit which is hereunto annexed.

Given under my hand and the Seal of the
Supreme Court of Bermuda this 3rd. day
of September, 1970.

This is the Last Will and Testament of me
Clara Marguerite Gordon of Sandys Parish in
the Islands of Bermuda the wife of Edgar Fitz-
gerald Gordon (1) I Hereby Revoke all wills
and testamentary dispositions heretofore made
and executed by me (2) I appoint The Bank of
Bermuda, Limited to be the sole executor and
trustee of this my last Will and Testament
(3) I Hereby Declare the the expression
"my Trustee" used by me in this my Will shall
be construed as comprising and referring to
the trustee or trustees for the time being
of this my Will and that the power of appoint-
ing new trustees of my Will shall be exercis-
able by The Bank of Bermuda Limited.

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(4) I Devise all real estates vested in me upon trust or by way of mortgage unto and to the use of my Trustee absolutely subject to the trusts and equities affecting the same estates respectively (5) I Devise all other real estate to which I shall be seised possess or entitled at the time of my decease unto and to the use of my Trustee absolutely And I Bequeath all the personal estate to which I shall be possessed or entitled at the time of my decease

10 unto my Trustee absolutely Upon Trust to sell my real estate together or in parcels by public auction or private contract with power to make any stipulations as to title or evidence of title or otherwise and to buy in at any public sale and to rescind or vary either on terms or gratuitously any contract for sale and to resell as aforesaid without being answerable for any consequential loss And to

20 call in an convert into money my personal estate and after payment out of the monies arising from such sale calling in and conversion of my just debts general and testamentary expenses in trust for my children in equal shares the respective shares of such children to be absolutely vested on my death and if any of my children shall die in my lifetime leaving issue any of whom shall be living at my death such issue living at

30 my death shall take equally amongst them if more than one the share which their respective parents would have taken if living at my death (5) I Empower my Trustee in the discretion of my Trustee and notwithstanding any of the trusts hereinbefore declared concerning my trust fund to apply the whole or any part or parts of the Capital of the fund or share to which each or any child of mine shall be entitled in or towards the

40 maintenance education or advancement in life or otherwise for the benefit of the same child whether such child shall be a son or daughter or shall be under the age of twenty-one years or not (6) I also Empower and Direct my Trustee to invest the whole or such part or parts thereof as it shall deem advisable of the part or share to which each or any child of mine shall be entitled in or upon stocks funds or

50 securities of the United Kingdom of Great Britain Northern Ireland or the Islands of Bermuda of in or upon any other kind of security but which power for my Trustee to vary the investments from time to time for any other or others of the descriptions

Resealed
Grant of
Probate
of Clara
M. Gordon

Resealed
 Grant
 of
 Probate
 of
 Clara M.
 Gordon

aforesaid and with power for my said Trustee to withdraw the whole or any part of the fund or share to which each or any child of mine shall be entitled and apply the same for the purposes contained in the last preceding clause of this my Will And as to the income derived from the investment as aforesaid of the whole or any part or parts of the fund or share to which each or any child of mine shall be entitled as aforesaid in or towards the advancement in life or otherwise for the benefit of the same child whether such child shall be a son or daughter or be under the age of twenty-one years or not (8) I declare that my Trustee shall have a discretionary power to postpone for such period as to my Trustee shall seem expedient the sale calling in or conversion of any parts of my real or personal estate but the unsold real estate and the outstanding personal estate shall be subject to the trusts, hereinbefore contained and the yearly produce thereof shall be deemed annual income for the purposes of such trusts and the unsold real estate shall be deemed to be converted as from the time of my death and be transmissible as personal estate accordingly (9) I Hereby Empower my Trustee to take receive and have all commissions charges and expenses which by the laws of the said Islands it may take receive and have for its services in the settlement of my estates and the carrying out of the trusts of my said Will or any codicil thereto In Witness Whereof I have hereunder set my hand to this my last Will and Testament this Twenty-fourth day of March one thousand nine hundred and thirty-nine.

(sgd) Clara Marguerite Gordon

Signed by Clara Marguerite Gordon of Sandys Parish in the Islands of Bermuda the wife of Edgar Fitzgerald Gordon as her last Will and Testament in the presence of us present at the same time who at her request in her sight and presence and in the presence of each other have subscribed our names as attesting witnesses.

(sgd) E. Maude Mather

(sgd) R. C Hollis Hallett

In The Supreme Court of Bermuda. In the Estate of Clara Marguerite Gordon, deceased. I, Edgar Frederick Gordon of Pembroke Parish in the Islands of Bermuda now temporarily residing at Roseau in the Island of Dominica, Anthropologist make oath and say that I believe the paper writing hereto annexed and marked "W" and initialled by me to contain a copy of the true and original last will and testament of Clara Marguerite Gordon of Sandys Parish in the Islands of Bermuda deceased, who died on the 27th day of September 1964 at Sandys Parish aforesaid; that the executor therein named has renounced all right and title to the probate and execution of the said will; that I, the said Edgar Frederick Gordon am a residuary legatee in trust named therein; that I will administer according to law the personal property of the said deceased; that I will exhibit a true and perfect inventory of the said personal estate and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate amounts to B D \$535.66 or thereabouts, to the best of my knowledge, information and belief.

Resealed
Grant of
Probate
of Clara
M. Gordon

Sworn by the said Edgar Frederick Gordon
this 18th day of August 1970

(sgd) Edgar Frederick Gordon

Before me:

(sgd) F. E. Degazon
Notary Public.

To All Whom These Presents Shall Come.

I Frederick E. Degazon, of Roseau in the Associated State of Dominica in the West Indies Notary Public Do Hereby Certify that on the day of the date hereof before me personally appeared Edgar Frederick Gordon to me known to be the person named and described in the foregoing Oath of Administration marked "I" and the said Edgar Frederick Gordon did in my presence sign the said Oath of Administration as his act and deed for the purpose therein expressed and that the signature Edgar Frederick Gordon thereon is the signature and handwriting of the said Edgar Frederick Gordon

Resealed Grant
of Probate
of Clara M.
Gordon

(sgd) F E Degazon
In Testimony Whereof I Frederick
E. Degazon Notary Public have
hereunto set my hand and Notar-
ial Seal this 18th day of Aug-
ust 1970.

In The Supreme Court of Bermuda In the
Estate of Clara Marguerite Gordon, deceased.

Renunciation of Probate

Whereas Clara Marguerite Gordon, of Sandys 10
Parish in the Islands of Bermuda, deceased,
died on the 27th day of September, 1964 at
Sandys Parish aforesaid having made and duly
executed her last will and testament, bearing
date the 24th day of March 1939 and thereof
appointed The Bank of Bermuda, Limited to be
the sole executor and trustee. Now I Dudley
Grey Cooper an officer duly authorized by
the Bank of Bermuda, Limited do hereby declare
that the said Bank of Bermuda, Limited has 20
not intermeddled in the estate of the said
deceased, and will not hereafter intermeddle
therein with intent to defraud creditors and
I the said Dudley Grey Cooper on behalf of
the said Bank of Bermuda, Limited hereby
renounce all right and title to the probate
and execution of the said will.

Dated the 24th day of December, 1969

The Common Seal of the Bank of Bermuda, Limited
has been hereto affixed in the presence of: 30

(SGD) D. G. Cooper

(sgd)
Senior Trust Officer

Witness
(sgd)
Trust Officer,

In The Supreme Court of Bermuda
In the Estate of Clara Marguerite Gordon, deceased

Renunciation of Administration.
With Will annexed.

Resealed
Grant of
Probate of
Clara M.
Gordon

10 Whereas Clara Marguerite Gordon, of Sandys
Parish in the Islands of Bermuda, deceased,
died on the 27th day of September, 1964 at
Sandys Parish aforesaid, having made and duly
executed her last will and Testament bearing
date the 24th day of March 1939 and therein
appointed The Bank of Bermuda, Limited to
be the sole executor and trustee. And Where-
as The Bank of Bermuda, Limited aforesaid
has renounced all right and title to the
probate and execution of the said will: Now
I the undersigned residuary legatee under the
said will do hereby renounce all my right and
title to the letters of administration with
the will annexed, of the estate of the said
deceased.

20 Signed by Kenneth Clifford Montgomery Gordon
this 30th day of December 1969 in the
presence of:

(sgd) K. C. M. Gordon.

(sgd) F. W. Grain
Notary Public
Notary Public, London.

30 To All To whom these Presence shall
come I, Felix William Grain of No. 27,
Cockspur Street London S. W. I., England,
in the United Kingdom Notary Public Do
Hereby Certify that on the day of the date
hereof before me personally appeared
Kenneth Clifford Montgomery Gordon to me
known to be the person named and described
in the foregoing Renunciation marked "D"
and the said Kenneth Clifford Montgomery
Gordon did then acknowledge before me that
he had signed the said Renunciation as his
act and deed for the purpose therein ex-
pressed and that the signature "K.C.M. Gordon"
40 opposite the seal thereon was the signature
and handwriting of the said Kenneth Clifford
Montgomery Gordon.

In Testimony Whereof I the said Notary
Public have hereunto set my hand and
Notarial Seal this 30th day of December
1969.

(sgd) F. W. Grain
Notary Public

Resealed
Grant of
Probate
Clara M.
Gordon

In The Supreme Court of Bermuda
In the Estate of Clara Marguerite Gordon
deceased
Renunciation of Administration
With Will Annexed

Whereas Clara Marguerite Gordon of Sandys
Parish in the Island of Bermuda, deceased
died on the 27th day of September 1964 at
Sandys Parish aforesaid, having made and
duly executed her last Will and testament 10
bearing date the 24th day of March 1939
and therein appointed The Bank of Bermuda
Limited to be the sole executor and trustee.
And Whereas The Bank of Bermuda, Limited
aforesaid has renounced all right and title
to the Probate and execution of the said
Will: Now I the undersigned residuary
legatee under the said Will do hereby re-
nounce all my right and title to the letters
of administration with the will annexed, 20
of the estate of the said deceased.

Signed by Joyce Eugene Gordon this 12 day
of December 1969 in the presence of:

(sgd) Joyce Eugene Gordon.
(sgd) Carl Dinnerstein
Notary Public.

To All To Whom These Presents Shall Come.

I, Carl Dinnerstein of 55 W. 42 St. New York
City in the State of New York in the United
States of American Notary Public Do Hereby 30
Certify that on the day of the date hereof
before me personally appeared Joyce Eugene
Gordon to me known to be the person named
and described in the Renunciation hereto
annexed marked "C" and the said Joyce
Eugene Gordon did then acknowledge before
me that she had signed the said Renunciation
as her act and deed for the purpose therein
expressed and that the signature Joyce
Eugene Gordon opposite the said thereon was 40
the signature and handwriting of the said
Joyce Eugene Gordon.

In Testimony Whereof I the said Notary
Public have hereunto set my hand and
Notarial Seal this 12 day of December
1969.

(sgd) Carl Dinnerstein

In the Spreme Court of Bermuda
In the Estate of Clara Marguerite Gordon,
deceased.

Renunciation of Administration
With Will annexed.

Researed
Grant of
Probate of
Clara M.
Gordon.

10 Whereas Clara Marguerite Gordon, of Sandys
Parish in the Islands of Bermuda, deceased
died on the 27th day of September 1964 at
Sandys Parish aforesaid, having made and
duly executed her last will and testament,
bearing date the 24th day of March 1939
and therein appointed the Bank of Bermuda,
Limited to be the sole executor and trustee.
And Whereas the Bank of Bermuda, Limited
aforesaid has renounced all right and
title to the probate and execution of the
said will: Now I the undersigned residuary
legatee under the said will do hereby
20 renounce all my right and title to the
letters of administration with the will annexed,
of the estate of the said deceased.

Signed by Barbara Amelia) (Sgd) Barbara Amelia
Wilcoxon this 15 day of) Wilcoxon.
Dec. 1969 in the presence)
of:
(sgd) William J. Hamilton
Notary Public.

30 To All To Whom These Presents Shall Come
I, William J. Hamilton of Cleveland in the
State of Ohio in the United States of America
Notary Public Do Hereby Certify that on the
day of the date hereof before me personally
appeared Barbara Amelia Wilcoxon to me
known to be the person named and described
in the Renunciation hereto annexed marked
"D" and the said Barbara Amelia Wilcoxon
did then acknowledge before me that
she has signed the said Renunciation as her
act and deed for the purpose therein expressed
40 and that the signature Barbara Amelia Wilcoxon
opposite the seal thereon was the signature
and handwriting of the said Barbara Amelia
Wilcoxon.

In Testimony Whereof I the said Notary
Public have hereunto set my hand and
Notarial Seal this 15th day of December,
1969.

(sgd) William J. Hamilton

Resealed
Grant of
Probate
Clara M.
Gordon

In The Supreme Court of Bermuda
In the Estate of Clara Marguerite Gordon,
deceased
Renunciation of Administration
with Will Annexed

Whereas Clara Maeguerite Gordon of Sandys
Parish in the Islands of Bermuda, deceased,
died on the 27th day of September 1964 at
Sandys Parish aforesaid having made and
duly executed her last will and testament, 10
bearing date the 24th day of March, 1939
and therein appointed the Bank of Bermuda,
Limited to be the sole executor and Trustee.

And Whereas The Bank of Bermuda, Limited
aforesaid has renounced all right and title
to the probate and execution of the said Will:
Now I the undersigned residuary legatee under
the said will do hereby renounce all my right
and title to the letters of Administration 20
with the will annexed, of the estate of the
said deceased.

Signed by Marjorie Clara Davis this 6th
day of January 1970 in the presence of:

(sgd) Marjorie C. Davis
(sgd) Lois M. Browne

A Commissioner for taking Affidavits,
declarations and affirmations in The
Supreme Court of Bermuda.

In The Supreme Court of Bermuda
In The Estate of Clara Marguerite Gordon, 30
deceased
Renunciation of Administration
with will annexed.

Whereas Clara Marguerite Gordon of Sandys
Parish in the Islands of Bermuda, deceased
died on the 27th day of September, 1964 at
Sandys Parish aforesaid, having made and
duly executed her last will and testament,
bearing date the 24th day of March, 1939
and therein appointed the Bank of Bermuda,
Limited to be the sole executor and trustee. 40

And Whereas the Bank of Bermuda, Limited
aforesaid has renounced all right and title
to the probate and execution of the said
will: NOW I the undersigned residuary legatee

under the said will do hereby renounce all my right and title to the letters of administration with the will annexed, of the estate of the said deceased.

Resealed
Grant of
Probate
of
Clara M.
Gordon

Signed by Evelyn Marguerite
Powell this 9th day of January
one thousand nine hundred and (sgd) Evelyn M.
seventy in the presence of: Powell

10 (sgd) Lois M. Browne
A Commissioner for taking Affidavits,
declarations and affirmations in the
Supreme Court of Bermuda.

A True Copy
Certified a true Copy
(sgd) S. J. Bertrand
Registrar
(sgd) S. J. Bertrand
Registrar

20 WILL OF PETER C CHRISTIAN
Book E Folios 133-134
Dominica Will of
Peter
C. Christian

This is the last will and testament
of me Peter Charles Christian of the town
of Roseau in the said Island.

I declare this to be my last will and
testament and revoke all other testamentary
dispositions I may have heretofore made.

I appoint Isaac Newton Shillingford to
be the sole executor of this my will.

30 I give devise and bequeath my share of
the estate known as Passaville situate in
the village of Couilibistrie to my cousin
Christianie Burke.

I give devise and bequeath my share in
the estate known as Syres situate in St.
Joseph to Christianie Burke.

40 I give devise and bequeath to my brother
Howard Christian now living at Sekondi,
Gold Coast, my lot of land and premises
called Sekondi House, situate in Hanover St.
in Roseau.

Will of Peter C. Christian
 I give devise and bequeath to Mrs. Aba Christian my share in the property called Christian Dominica House situate at Sekondi, Gold Coast.

I give devise and bequeath to Christianie Burke and Clara Gordon as tenants in common in equal shares absolutely my lot of land with the houses situated thereon known as Christionville lying between Great Marlborough Street and New Street. 10

I give and bequeath to each of the servants who shall at my death be in my service the sum of five pounds (£5) each.

I give and bequeath to May Christian the sum of twenty pounds. (£20)

I give and bequeath to Christianie Burke the sum of twenty pounds. (£20)

I give and bequeath to Justine Boyer the sum of twenty pounds. (£20)

I give and bequeath to Isaac Newton Shillingford the sum of twenty pounds. (£20) 20

I give and bequeath to Alfred Tudor the sum of twenty pounds. (£20)

I give and bequeath to Andrezine Andrews the sum of two pounds. (£2)

I give and bequeath to Claire Winston the sum of two pounds. (£2)

I give and bequeath to Constance Tavernier the sum of two pounds. (£2)

I give and bequeath to Irma Boyd the sum of five pounds. (£5) 30

I give and bequeath to my Goddaughter Princess William the sum of five pounds. (£5)

I give and bequeath to Owen Joseph the sum of five pounds (£5)

I give and bequeath to the Reverend Father Superior of the Roseau Cathedral the sum of Ten pounds (10) to be used for the celebrating of masses for the repose of my soul.

I give and bequeath to Rose Marie
my Caretaker of St. Joseph the sum of
five pounds (£5)

Will of
Peter C.
Christian

I give and bequeath to Mrs. Octavia
Pending the sum of five pounds (£5)

10 I give devise and bequeath all my real
and personal estate whatsoever and whereso-
ever, not hereby or by any codicil hereto
otherwise specifically disposed of, to my
brothers Howard, Ferdie and Teddy as ten-
ants in common in equal shares absolutely.

It is my profound desire that I be
buried in the grave of my aunt Anne Sedon.

In witness whereof I have hereunto set
my hand this 5th day of April one thousand
nine hundred and forty-five.

20 Signed and declared by the)
above Peter Charles Christian)
as his last will, in the)
presence of us both present)(sgd. Peter
at the same time who in his) Christian
presence and in the presence) Hanover Street
of each other have here unto) Roseau
set our names as witnesses)

(sgd) L. A. Roberts

(sgd) J. R. Thomas

Certified a true copy
(sgd) Joseph V. Jean Pierre
Registrar
23rd April, 1964

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Mortgage of
1894

MORTGAGE OF 1894 Book Y No. 6
Folios 421-422

Dominica

This Indenture made the Fifteenth day of October A.D. 1894 Between Francis Thomas Burke of Mero in the parish of St. Joseph in the said Island planter of the one part and George James Christian also of Mero in the parish of St. Joseph in the said Island Government Teacher of the other part 10

Witnesseth that in consideration of the sum of £120 paid to the said Francis Thomas Burke by the said George James Christian on or before the execution of these presents (the receipt whereof the said Francis Thomas Burke doth hereby acknowledge) the said Francis Thomas Burke doth hereby covenant with the said George James Christian to pay him on the 30th day of June 1899 next the sum of £120 with interest thereon in the meantime after the rate of £5 per cent per annum computed from the date of these presents and also so long after that day as any principal money remains due under these presents to pay to him interest thereon after the same rate by equal yearly instalments on the 30th day of June in each year 20

And this Indenture also Witnesseth that for the consideration aforesaid the said Francis Thomas Burke as beneficial owner hereby conveys unto the said George James Christian 30

All that Estate or plantation known as the "Mero" Estate situate in the parish of St. Joseph in said Island containing One Hundred and seventy nine acres one rood or thereabouts and butted and bounded as follows:-

Northerly by the Macoucherie Estate Southerly by land formerly belonging to Antoine Gibson and now belonging to the heirs of Rand and Westerly by the Sea And all that moiety of land 40

part of the Estate known as "Cassada Garden" situate in the parish of St. Joseph in the said Island containing in the whole fifty acres more or less To hold the same unto and to the use of the said George James Christian in fee simple Provided always that if the said sum of £120 with interest thereon shall be paid on the 30th day of June 1899 next according to this foregoing covenant in that behalf the said premises 50

Mortgage
of 1894

shall at the request and cost of this said Francis Thomas Burke his heirs or assigns be reconveyed to him or them And it is hereby agreed and declared that if default shall be made in payment of the said sum of \$120 and interest or any part thereof on this said day hereinbefore provided for that purpose it shall be lawful for the said George James Christian his Executors administrators or assigns at any time or times without any further consent on the part of the said Francis Thomas Burke his heirs or assigns to sell the hereditaments and premises hereby conveyed or any part or parts under the power of sale now conferred upon mortgages by the statute in such case made and provided. In witness whereof the parties hereto have hereunto set their hands and affixed their seals on the day and year first in the beginning written.

Signed sealed and delivered (sgd) F.T. Burke
in the presence of (L.s.)
(sgd) Geo. J. Christian

(sgd) Robert S. Stowe
(sgd) J. W. Serrant
(sgd) S. Huckleman

Certified a true copy
(sgd) Mona Rigsby James
Registrar

Draft Deed
Further
Assurance
C. Burke to
E. L.
Pinard

DRAFT DEED - FURTHER ASSURANCE
C. BURKE TO E L PINARD

DOMINICA

THIS INDENTURE is made the day of
1971 BETWEEN CHRISTIANIE BURKE as Tenant for
life, of Cork Street, Roseau in the parish
of St George in the State of Dominica,
spinster, (hereinafter called "the Vendor"
which expression wherever the context so
allows shall include her heirs, personal 10
representatives and assigns) of the one
part and EDWIN LIONEL PINARD, Proprietor,
(hereinafter called "the Purchaser", which
expression wherever the context so allows
shall include his executors and assigns),
of Goodwill in the parish and State afore-
said, of the Other Part --

WHEREAS:

- (1) By Grant dated 14th May, 1773 a portion
of land containing 231 acres was granted 20
to Peter Simond, John Hankey and Robert
Orme, bounded according to the plan
thereof as follows:-

North-West by land of Geoffrey Hodge
and unappropriated land;
South by Mero River;
North-West by a gulley called the
Lagoon and
West by the Three Chains;

- (2) The said portion of land was by Transfer 30
dated the 24th day of May, 1788 and
registered in Book E No 3 folios 271-
276 conveyed and confirmed to Francis
Vidal according to the description of
the parcels hereinabove set out save
that the land of Geoffrey Hodge was
stated to lie to the North-East;

- (3) On a sale by the Provost Marshall made
the 3rd day of August 1838 and reg- 40
istered in Book S 5 folio 87 reciting
the original Grant of the said land
and that the sons of Francis Vidal had
disposed of the said land as follows:-

9 acres to Thomas and Etienne Fournett on 10th July, 1830 registered in Book K 5 folio 37;

Draft Deed
Further
Assurance
C. Burke to
E. L. Pinard

15 acres to Sabine Fournett on 20th April, 1827, registered in Book G 5 folio 286;

2 acres to Sabine Fournett on the 7th May, 1831, registered

10 10 acres to Jean-Bapriste Beauplan on the 10th September, 1832, registered Book K 5 folio 439;

9 acres 3 roods to Susannah Anne Blondel on 22nd. October, 1828 registered Book L folio 286;

6 acres to Benjamin Giroux in respect of which no record has been found.

20 Being 51 acres 3 roods in the aggregate, Henry Nisbet the said Provost Marshall conveyed to Benjamin Giroux the remainder of 179 acres 1 rood then comprising the estate described as bounded North by Macoucherie Land; South by lands of Antoine Gibon now belonging to the heirs of Rand and West by the Sea;

30 (4) The portion of land in the possession of Antoine Gibon follows the description of that purchased by Geoffrey Hodge in 1777 nevertheless on 27th August, 1790 the same was granted to William Blizzard, Jarvis and Henry Thomas Jarvis vide Book H 3 folio 46 referring to lots 11 of 154 acres and 12 of 164 acres it appearing that the same later came into the possession of Antoine Gibon vide Book C folio 196.

40 (5) On a sale by the Provost Marshall made the 2nd April, 1867 registered in Book N 6 folio 341 Fabelle Provost Marshall conveyed to Francis Thomas Burke the land known as the Mero Estate said to comprise 179 acres 1 rood expressed to be bounded North by the Macoucherie land, South by land formerly belonging to Antoine Gibon and now belonging to the heirs of Rand; West by the Sea.

- Draft Deed (6) By Grant dated 2nd November, 1804
 Further registered in Book C 4 folio 314
 Assurance Thomas Winspears became seized and poss-
 C. Burke essed of a portion of land containing
 to 30 acres bounded as follows:
 E.L. North-West: on the Mero River;
 Pinard North-East by land granted to John
 Adamson;
 South-East: by lands granted to Alex- 10
 ander Gordon;
 South-West: by land reserved next to
 the sea;
- (7) By Indenture dated 17th October, 1805
 and registered in Book D 4 folio 229 the
 said Thomas Winspeare conveyed the land
 mentioned parcel to Francois Vidal.
- (8) By Grant dated 15th August, 1867 and
 recorded in Book of Grants No. 3 folio
 428 a portion of the Queen's Three 20
 Chains containing 9 21 acres was grant-
 ed to Thomas Burke
- (9) All the said portions of land together
 with the portion of 6 acres previously
 to the sale by the Provost Marshall
 purchased by Benjamin Giroux from the
 sons of Francis Vidal and referred to
 in the conveyance by the said Provost
 Marshall dated 3rd August, 1938 reg- 30
 istered in Book S 5 folio 87 and in
 paragraph (3) above have been in the
 occupation of the Vendor and his pre-
 decessors in title and known together
 as the Mero Estate
- (10) By an Indenture made the 18th day of
 March 1913 and recorded in Book of
 Deeds E No 7 folio 689 Francis Thomas
 Burke conveyed the Mero Estate to George
 James Christian and Thomas Howard
 Shillingford upon certain trusts.
- (11) Francis Thomas Burke died on the 17th 40
 day of June, 1913 and under the trust
 hereinabove expressed to have been
 created and in the events that occurred,
 Christianie Burke became seized of the
 said estate for an estate for life.

(12) By an Indenture dated the 29th day of May, 1952 and recorded in Book of Deeds V No. 7 folios 154 and 156 between the said Christianie Burke and Edwin Lionel Pinard, the said Christianie Burke conveyed the said land to the said Edwin Lionel Pinard with covenants for further assurance.

Draft
Deed
Further
Assurance
C. Burke
to E. L.
Pinard

10 (13) By Judgment of the West Indies Associated States Supreme Court (Court of Appeal) dated the 30th day of November, 1970 it was declared that the Vendor was a tenant for life of the Settlement under the Settled Estates Ordinance Cap 221 of the Revised Laws of Dominica.

(14) The Purchaser and the Vendor have agreed that the Vendor should further assure the said land unto the Purchaser

20 NOW THIS DEED DOTH WITNESS that the Vendor as Tenant for life of the Settlement doth hereby grant, convey, assure, confirm enfeoff unto the purchaser and his heirs all that estate and plantation at Mero in the Island of Dominica, including all buildings thereon being known as the Mero Estate situate in the parish of Saint Joseph in the Island of Dominica, West Indies, consisting of two non-contiguous portions, one portion bounded on the North by land of Elgiva Henry, H. D. Shillingford, Florina Castor, V A Blanchard, by Crown Land and by Macoucherie Estate and Mount Vernon Estate, on the West by the Castaways Hotel and the Sea; on the South by land of Marsden Romain; on the East by Davis Estate owned by the heirs of P.D. Riviere and D. A. Riviere and, Crown Land and land of Alberta Laurent and Julius Serrant, and on the South-East by a ravine separating it from lands of Clarence Jackson and of the heirs of Coolie Sablon; the other portion of land bounded on the North by Mero River separating it from land of the heirs of Coolie Sablon; on the South by a ravine separating it from lands of Alberta Laurent, of Julius Serrant and Crown land; on the South-East by Davis Estate

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Draft owned by the heirs of P D Riviere
 Deed and D. A. Riviere and land of Celestia
 Further Eudora commonly called May Christian,
 Assurance and on the East by land of Celestia
 C Burke Eudora commonly called May Christian,
 to and the said two portions of land contain-
 E.L. ing in the whole 344,8 acres, all as
 Pinard the same are delineated on the plans
 thereof dated 1964 by Karol Winski,
 licensed Surveyor or howsoever otherwise 10
 the same may be butted or bounded, known,
 distinguished or described, TO HAVE AND
 TO HOLD the same unto and to the use of
 the Purchaser, his heirs, successors
 and assigns in fee simple forever

IN WITNESS WHEREOF the parties hereto
 have hereunto set their hands and seals
 the day and year first above written----

Signed, Sealed and Delivered)
 by the said CHRISTIANIE BURKE) (sgd) 20
 the 19th day of June 1971) Christianie
 Before and in the presence of:- Burke
 Signed, Sealed and Delivered (sgd) J.
 by the said EDWIN LIONEL Cools-Lartigue
 PINARD Before and in the
 presence of:-

Conveyance CONVEYANCE - C. BURKE to E.L. PINARD
 C Burke 29 5 52 Book V No. 7
 to Folios 154-156
 E.L. No. 53/52 30
 Pinard

Colony of Dominica

This Indenture is made the 29th day of
 May, in the year of Our Lord One Thousand
 nine hundred and fifty two Between Christ-
 ianie Burke of the Town of Roseau, in the
 Parish of St. George in the Colony of Domin-
 ica, hairdresser and beauticulturist here-
 inafter called the Vendor (which expression
 wherever the context so allows shall include
 heirs, executors, administrators and assigns) 40
 of the One Part And Edwin Lionel Pinard of
 the said Town, Manager of Cable and Wireless
 (West Indies) Ltd , in the said Colony of
 Dominica hereinafter called the purchaser
 which expression wherever the context so
 admits shall include heirs personal represent-
 atives and assigns of the Other Part

Whereas (1) by an Indenture made the 18th day of March 1913 between Francis Thomas Burke of the first part, George James Christian of the second part, and Thomas Howard Shillingford of the third part and duly recorded in the Registry of the Supreme Court of the said Colony in Book of Deeds E. No. 7 folio 689, and the said Francis Thomas Burke who was well seized and entitled to the hereditaments known as Mero Estate hereinafter more particularly described, granted the said Mero Estate in the form provided by Statute in that behalf to the use of the Vendor in the following terms, that is to say:- (1) The Trustee his heirs or executors shall remain in possession of the said lands hereditaments and premises during the lifetime of Francis Thomas Burke or until the said Margery Burke and Christianie Burke shall attain their majority (or marry) or which ever event the death of the said Francis Thomas Burke or the majority or marriage of the said Margery Burke and Christianie Burke shall happen later. (2) The said Trustee shall manage superintend the management or lease the said Estates or Plantation which ever he may deem expedient and shall in no case be liable for impeachment for waste. (3) From the rent or net profits of the said hereditaments the said Trustee shall pay and satisfy the amount which by Bond he the said George James Christian and the said Trustee have bound themselves to pay to the said Francis Thomas Burke and from any balance which may remain shall at his discretion pay the whole or such part thereof for the maintenance and personal support or benefit of Margery Burke and Christianie Burke until they attain the age of twenty one years or marry. (4) Should either the said Margery Burke or Christianie Burke die under the age of twenty one years or without having married and leaving lawful issue the whole of the lands hereditaments and premises shall be held in trust for the survivor.

Convey-
ance C.
Burke
to
E. L.
Pinard

(2) The said Francis Thomas Burke died on the 17th day of June, 1913. (3) The aforesaid Margery Burke died on the 8th day of April, 1919 without attaining majority and without having married and leaving lawful issue.

Convey-
ance
C. Burke
to
D.L
Pinard

(4) The said Christianie Burke attained majority on the 19th day of January, 1930, having already entered into possession of the said hereditaments. (5) The Trustee above-mentioned has long ceased or failed to manage or superintend the management of the said Trustee has refrained from managing or superintending the management of the said premises, for the purposes of the Indenture above-referred to or any other purpose, and the premises have thereby becoming ruined and abandoned, wherefore the vendor as sole cestui que trust entered into possession of the aforesaid premises before attaining her majority as explained above. (6) The vendor on attaining her majority became seized as sole cestue que trust to uses in fee simple of the aforesaid hereditaments for an estate in fee simple absolute in possession free from incumbrances and hath agreed with the purchaser for the sale to him of same for the sum of £1200.0.0 sterling.

Now Therefore This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the sum of £1200.0.0 paid by the purchaser to the vendor (the receipt whereof the vendor hereby acknowledges) the vendor as Beneficial Owner hereby conveys unto the purchaser all That Estate and Plantation known as the "Mero Estate" situate in the Parish of St Joseph in the said Colony of Dominica containing 179 acres 1 rood or thereabout and bounded as follows:-
Northerly by the Macoucherie Estate; Southerly by land formerly belonging to Antoine Gibson and now belonging to the heirs of Rand; Westerly by the Sea or howsoever otherwise the same may be butted bounded known distinguished or described To Have and To Hold the same Unto and To The Use of the purchaser and his heirs in fee simple for ever.

And It Is Hereby Agreed And Declared that the usual qualified covenants on the part of the vendor for right to convey for quiet enjoyment for freedom from incumbrances and for further assurances are intended to be implied from the use of the expression "Beneficial Owner" in these presents as if Section 76 of the Laws of Property Act (15 Geo. V. c 20) now in force in England

re-enacting the Conveyancing Act 1881 (44 & 45 Vict. C. 41) were in force and applicable to conveyances made in or relating to land situated in Dominica.

Convey-
ance
C.Burke
to
E.L.
Pinard

In Witness Whereof the Party of the One Part has hereunto set her hand and seal the day and year first above written.

10 Signed as for her own)
act and deed by the said)(sgd) Christianie
Christianie Burke, before) Burke
and in the presence of:) (L.S.)

Signed, F.O.C. Harris
and acknowledged
before me:

(sgd) A.B.Marie
Acting Registrar

IN THE COURT OF APPEAL
DOMINICA

Judgment
5th Dec.
1972
20th
March 1973

CIVIL APPEAL No. 2 of 1972

20 Between: CASTAWAYS DEVELOPMENTS LIMITED
AND
CASTAWAYS HOTEL LIMITED
and

Defendants/
Appellants

HAKIM E. F. GORDON in his personal
capacity and in his capacity as
Personal Representative of Estate
Clara Marguerite Gordon deceased

Plaintiff/
Respondent

30 Before: The Honourable The Acting Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Louisy (Acting)

K. Alleyne, Q. C. and B. Alleyne for appellants
F. Degazon for respondent.

1972 December 5, 1973 March 20

JUDGMENT

Judg-
ment
5 Dec.
1972;
20th
March
1973

Cecil Lewis, C. J. (Acting)

The respondent instituted two suits in the High Court of Dominica. The first was Suit No. 70 of 1969 in which Christianie Burke, Castaways Developments Ltd., and Castaways Hotel Ltd. were the defendants. The second was suit No. 188 of 1971 in which Christianie Burke, Edwin Lionel Pinard, Daphne Taylor, Castaways Developments Ltd. and Castaways Hotel Ltd. were the defendants. These suits were consolidated by an order of Renwick, J. dated December 7, 1971. 10

In the first suit the respondent sued in his personal capacity and in the second as a personal representative of his mother Clara Marguerite Gordon. His claims for relief in the two suits overlap somewhat. He alleges in his statement of claim in each suit that he is one of the reversionary owners of the fee simple of an area of land known as Mero Estate, and among his claims for relief is a claim for a declaration to this effect. He also claims that Christianie Burke who is a defendant in both actions made a "tortious conveyance of the said Mero Estate to the defendant Edwin Lionel Pinard" who in turn disposed of 4.58 acres thereof to Daphne Taylor and another portion to the appellant Castaways Developments Ltd. In addition to his claim for the declaration referred to above the respondent asked for further relief including the cancellation of various indentures listed in the statement of claim in the second suit, recovery of possession of Mero Estate, an order that accounts be rendered by the several defendants in the two suits in respect of this estate, an injunction to restrain them from dealing with the said estate, the appointment of a trustee and receiver of the estate and damages in the sum of \$5m. 20 30

The "tortious conveyance" to Edwin Lionel Pinard referred to above, is a conveyance made on May 29, 1952 by Christianie Burke to Edwin Lionel Pinard of the Mero Estate for £1200 in which she claimed to convey as beneficial owner. 40

In Suit No. 70 of 1969 the appellant Castaways Developments Ltd. pleaded that an objection in limine would be taken that the respondent "has not sufficient interest to maintain the suit", and in suit No. 188 of 1971 a similar plea was

put forward in its defence. This preliminary issue was argued before the trial judge who made an order that the respondent "has sufficient interest and has a locus standi to pursue his claim". Judgment

10 The relevant facts which give rise to this appeal are as follows: Francis Thomas Burke was indebted to George James Christian in the sum of £120 and in 1894 he executed a mortgage in his favour, on the Mero Estate and the Cassada Garden Estate as security for the said loan. In 1913 this loan with interest thereon was still unpaid. Burke had borrowed the sum of £100 from one A. D. Riviere in 1909 and executed a second mortgage in his favour on the Cassada Garden Estate as security for this loan. This sum and the interest thereon were still unpaid in 1913 and it was agreed between Burke and Christian that Burke would sell the Mero Estate to Christian for £584 out of which Christian would repay the loan due to himself and also the mortgage debt due to A. G. Riviere. It was further agreed that an annuity of £25 would be paid to Burke and this was secured by a bond entered into by Christian and one Thomas Howard Shillingford.

20

30 In consideration of the aforesaid premises and in further consideration of the love and affection which the said George James Christian bore to Margery Burke and Christianie Burke, Peter Charles Christian, Clara Christian and Maude Christian, Francis Thomas Burke at the request of George James Christian conveyed Mero Estate to Thomas Howard Shillingford in fee simple on March 18, 1913 to hold the same as trustee "to the uses following":

- 40 "1. The Trustee, his heirs, or executors shall remain in possession of the said lands, hereditaments, and premises during the lifetime of Francis Thomas Burke, or until the said Margery Burke and Christianie Burke shall attain their majority (or marry) or whichever event, the death of the said Francis Thomas Burke, or the majority or marriage of the said Margery Burke and Christianie Burke shall happen later.
2. The said Trustee shall manage, superintend the management, or lease the said Estates or Plantation, whichever he may deem expedient and shall in no case be liable for

Judgment

impeachment for waste.

3. From the rent or net profits of the said hereditaments, the said Trustee shall pay and satisfy the amount which by Bond he the said George James Christian and the said Trustee have bound themselves to pay to the said Francis Thomas Burke; and from any balance which may remain, shall at his discretion pay the whole or such part thereof for the maintenance and 10 personal support or benefit of Margery Burke and Christianie Burke until they shall attain the age of 21 years (twenty-one) or marry.
4. Should either the said Margery Burke or Christianie Burke die under the age of 21 years or without having married and leaving lawful issue, the whole of the lands, hereditaments, and premises shall be held in trust for the survivor. 20
5. Should the said Margery Burke and Christianie Burke die without attaining the age of 21 years (twenty-one) or without having married and without having left lawful issue, then the said Trustee shall hold the said lands, hereditaments, and premises in trust for Peter Charles Christian, Clara Christian, and Maud Christian until they shall attain the age of 21 (twenty-one) years or, being girls, attain that age 30 or marry with power at his discretion to pay any part of the rents and profits of the said hereditaments and premises for the maintenance and personal support and benefit of the said Peter Charles Christian, Clara Christian and Maud Christian.
6. Should either the said Peter Charles Christian, Clara Christian, or Maud Christian die without attaining the age of 21 (twenty-one) years or marrying and leaving 40 lawful issue then the whole of the said lands, hereditaments, and premises shall be held in trust for the survivor or survivors of them.
7. Should the said Peter Charles Christian, Clara Christian, and Maud Christian all die without attaining the age of 21 (twenty-one) years or marrying and leaving lawful issue, then the whole of the lands,

hereditaments, and premises shall be held by the Trustee, his heirs, or executors in trust for the said George James Christian or as he shall, by Deed or Will appoint." Judg-
ment

10 It is common ground that Christianie Burke who is still alive and who was the survivor under paragraph (4) of the limitations in the trust, holds only a life interest in Mero Estate. It was so held in Gordon v. Burke (1970) 16 W.I.R. 204, when on an application by the respondent in suit No. 70/1969 to determine whether Christianie Burke was empowered to sell the fee simple in Mero Estate as beneficial owner, this Court, reversing the decision of the High Court, held that she was not so empowered as she took only a life interest under the settlement.

20 Under the settlement the settler George James Christian created only life interests and did not dispose of the beneficial interest in the Mero Estate. As held in Gordon v Burke (Supra) Christianie Burke accordingly became entitled only to a life interest in the said estate, and by virtue of this decision under paragraph (6) of the settlement the survivor or survivors of the persons mentioned therein would similarly take a life interest or life interests as the case may be. The result is that George James Christian having not effectively disposed of the equitable interest in the Mero Estate there was a resulting trust to him on the very date on which he executed the trust instrument on March 18, 1913 so that, on that date the equitable fee simple became vested in him.

30

40 George James Christian made a will in 1936 in the residuary clause of which he bequeathed all his property not otherwise disposed of unto his trustees to convert the same into money by sale or otherwise and to divide the proceeds in equal shares among eleven named persons who included Christianie Burke and Clara Gordon the respondent's mother. Under this clause the respondent's mother who died in 1964 became entitled to a share in the equitable interest in Mero Estate which had resulted to her father under the settlement because she was alive in 1940 when he died.

Judgment

The respondent is a beneficiary under his mother's will and also her personal representative and trustee.

The question which arises in this appeal is whether the respondent is entitled to maintain an action in respect of the Mero Estate in his representative capacity and also in his personal capacity.

Counsel for the appellant contended that the relevant representation is the estate of George 10
James Christian, the reversioner under the settlement and not that of Clara Gordon, a beneficiary under the will of George James Christian. He further contended that a residuary legatee has no interest in any particular part of the assets of an estate where administration is not complete. There was admittedly no vesting assent by the personal representative in respect of the Mero Estate to Clara Gordon and therefore she had no interest and could not sue. Her personal rep- 20
resentative, the respondent, therefore could not sue. He supported his contention by citing the case of Corbett v Commissioners of Inland Revenue (1938) 1 K.B.567. In that case it was held that the legatee of a share in residue has no interest in any property of the testator until the residue has been ascertained, and that this proposition is applicable to all cases of residue which is being ascertained and which cannot be ascertained until administration is complete. It appears to 30
me that the answer to this submission is that the residue in the present case is ascertained. It is the Mero Estate containing approximately 179 acres.

In my opinion the respondent has an equitable interest under the will of George James Christian but is only entitled to sue if the person in whom the legal estate is vested are made parties to the action.

Rule 2 (2) and rule 3 (1) of Order 63 R.S.C. 1907 are applicable to the circumstances of this 40
case. The relevant portions of these are as follows--

"2(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions:-

(c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust." Judgment

10 "3-(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant."

20 The terms of the above rules, in my view, reflect "the general rule" referred to by Viscount Findlay in *Performing Right Society Ltd. v London Theatre of Varieties Ltd.* (1924) A.C.1 at page 18 where he stated the position as follows:-

30 "It follows that when Messrs Chappell and Messrs. Keith, Prowse & Co respectively acquired the copyright in these songs, the equitable interest in the performing rights in respect of them vested in the society as assignees from them. The society became entitled to sue in respect of the interests so acquired, but their right to sue is subject to the general rule that the owner of the legal estate should be joined as a party. It is true the owner of a merely equitable estate may in certain cases sue alone, as where there are special circumstances which make it inconvenient that the owner of the legal estate should sue, or where his conduct with reference to the estate is in question. But there is no case in which it has been held that the presence of

40 the legal owner in an action against a third party can be dispensed with on such grounds as those which are alleged in the present case.....Except under very special circumstances the ordinary rule should be observed, that the legal owner should be a party to the proceedings."

In the present case there are no special circumstances which show the respondent is entitled to sue without joining the persons in

Judgment

whom the legal estate is vested.

The respondent's actions are only maintainable if he joins as co-plaintiffs the persons in whom the legal estate in the trust property is vested. The respondent will therefore be given the opportunity of amending the writs, pleadings and other documents in his actions on payment by him in any event of all costs thrown away. If the respondent elects within thrity days to amend on these terms, the actions can proceed, but if he does not so elect the actions will be dismissed with costs. The trial judge's order will therefore be set aside and the appeal allowed with costs here and in the court below. 10

P. CECIL LEWIS
Acting Chief Justice

St. Bernard, J. A.
I agree.

E. L. ST. BERNARD 20
Justice of Appeal

Louisy, J. A. (Acting)
I agree.

ALLAN LOUISY
Justice of Appeal (Acting)

IN THE COURT OF APPEAL
DOMINICA

Order
21st.
March
1973

CIVIL APPEAL No. 2 of 1972

Between: Castaways Developments Limited
and
Castaways Hotel Limited Defendants/
Appellants 30
and

Hakim E. F. Gordon in his personal
capacity and in his capacity as
personal representative of Estate
Clara Marguerite Gordon deceased.
Plaintiff/
Respondent

Cert-
ificate
of Order
3rd.
April
1973

This appeal coming on for hearing on the 6th day of December 1972, before The Honourable the Acting Chief Justice P. Cecil Lewis, Mr. Justice St. Bernard and Mr. Justice Louisy in the presence of K. H. C. Alleyne, Q.C. and B.G.K. Alleyne for the Appellants and F. E. Degazon for the Respondent.

I HEREBY CERTIFY that an Order was made as follows:-

Appeal allowed with costs here and in the Court below. Order of the Court below set aside. 10

Respondent's actions only maintainable if he joins as co-plaintiffs persons in whom legal estate in trust property is vested.

Respondent permitted to amend writs pleadings and other documents on payment in any event of all costs thrown away.

If the Respondent elects within thirty days to amend on these terms, the actions can proceed, but if he does not so elect the actions will be dismissed with costs. 20

Given under my hand and the Seal of the Court this 3rd. day of April, 1973.

(Sgd) E. F. Georges
Ag. Registrar.

Notice
of
Motion
for
leave to
appeal
to Privy
Council
5th
April
1973

IN THE COURT OF APPEAL

DOMINICA

(CIVIL APPEAL No. 2 of 1972.) MOTION No. 1 of 1973.

Between: Castaways Developments Limited
Defendants 30

and
Castaways Hotel Limited Appellants
and

Hakim E. F. Gordon in his personal capacity and his capacity as Personal Representative of Estate of Clara Marguerity Gordon, deceased.

Plaintiff/
Respondent.

NOTICE OF MOTION FOR LEAVE
TO APPEAL

Notice
of
Motion
for
Leave to
Appeal

TAKE NOTICE that the Court will be moved on Tuesday the 10th day of April, 1973, by the Plaintiff/Respondent at 9 o'clock in the forenoon or so soon thereafter as Counsel may be heard that LEAVE TO APPEAL to HER MAJESTY in Council against the Judgment of the Court dated 20th March, 1973, be granted;

10 AND FURTHER TAKE NOTICE that the grounds of the proposed appeal and of this NOTICE are as follows:-

20 (i) (a) The Court erred and was wrong in law in holding that the Plaintiff/Respondent had not in suits Nos. 70 of 1969 and 188 of 1971 joined the persons in whom the legal estate was then vested. At the time that these suits were entered the legal estate in the lands in issue as well as the equitable estate therein were vested by Registered Title in the first-named Defendant and by Registered Conveyance at Common Law in the second-named Defendant both of whom were in possession thereof.

30 (b) From the inception of these proceedings, it was consistently part of the Defendants/Appellants' case that from 1967 onwards, they were the legal and equitable owners in fee simple in possession of the lands in issue. Paragraphs 1 of their Defences dated respectively 7th January, 1970, 13th December, 1971, and 6th January, 1972, are apposite.

40 (ii) The Court erred and was wrong in law in failing to consider that suits Nos. 70 of 1969 and 188 of 1971 were by Order of the 7th December, 1971, consolidated; WITH LIBERTY TO APPLY FOR further consolidated therewith of suit No. 189 of 1971 instituted against the persons in whom the legal estate in the aforesaid lands had been vested some years prior to the grant of the aforesaid Registered Title in 1968 and the Conveyance at Common Law of 1967.

(iii) The Court erred and was wrong in law in deciding that in the year 1969 and onwards there were persons or trustees vested with the legal estate in issue other than the two Defendants/Appellants herein.

Notice of Motion for Leave to Appeal (iv) The Court erred and was wrong in law in deciding that there were no special circumstances which showed that the Plaintiff/Respondent was entitled to sue without joining the persons in whom the legal estate was vested. At Paragraph 14 of the Statement of Claim dated and served on the 27th November, 1971, the following occurs:-

"Although the Trustees of the Settlement were vested with the legal estate in fee simple in the corpus of the trust property, they at no time conveyed the same to any person or persons, nor did they intervene to protect the said Trust Property nor in any way to preserve its integrity." 10

This statement clearly indicated that the Plaintiff/Respondent was alleging negligence or misconduct on the part of the former trustees.

(v) The Court erred and was wrong in law in requiring the Plaintiff/Respondent to join as co-plaintiffs the persons "in whom the legal estate in the trust property is vested." At the time of entry of the suits, the legal and equitable estates in issue were vested in the two Defendants/Appellants who were incompetent to sue themselves at the instance of the Plaintiff/Respondent. 20

(vi) The Court erred and was wrong in law in making any order, conditional or otherwise as to costs ad torrorem, the said Court having confirmed the substantial finding of the trial Judge that the Plaintiff/Respondent "has an equitable interest under the Will of George James Christian.....". 30

2. The Judgment of the Court omits entirely any indication that Counsel for the Plaintiff/Respondent made any submission at all throughout the course of the hearing or that any consideration was given to any such submission or submissions. 40

3. AND TAKE FURTHER NOTICE that the said Court will at the time and date hereinbefore specified be MOVED to direct that EXECUTION of the said Judgment of the Court dated 20th March, 1973, be suspended pending the hearing

of the proposed appeal on such terms as to the Court may seem just and equitable.

Notice
of Motion
for Leave
to Appeal

4. The relief sought will be that the decision of the Court be set aside and that the Judgment of the Trial Judge be upheld.

5. The persons directly affected by the appeal will be:-

- 10 (i) Castaways Developments Limited of
3495 Lawrence Avenue East,
Scarborough, Ontario CANADA.
- (ii) Castaways Hotel Limited of
Mero, Dominica, WEST INDIES;
and
- (iii) Hakim E. F. Gordon of Morne Bruce,
Dominica, WEST INDIES.

6. The Plaintiff/Respondent's affidavit in support of this Notice of Motion is filed herewith.

dated the 5th day of April, 1973.

20 (Sgd) F. E. Degazon
Solicitor for the Plaintiff/
Respondent
of
Chambers, 5 Cross Street,
Roseau, Dominica
WEST INDIES.

To:

30 The Defendants/Appellants and to
their Solicitors, Messrs. Alleyne
& Company, of Chambers, Roseau,
Dominica, WEST INDIES.

Affid-
avit in
support
thereof

IN THE COURT OF APPEAL
DOMINICA
CIVIL APPEAL No. 2 of 1972

5th
April
1973

Between: Castaways Developments Limited Defendants/
and
Castaways Hotel Limited Appellants
and

Hakim E. F. Gordon in his personal
capacity and in his capacity as
Personal Representative of Estate 10
of Clara Marguerite Gordon, deceased.
Plaintiff/
Respondent.

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION
FOR LEAVE TO APPEAL

I, HAKIM E. F. GORDON, Proprietor, of Morne
Bruce, in the Parish of Saint George, in the State
of Dominica, the intending Appellant in this
suit, MAKE OATH and SAY as follows:-

1. I am the Plaintiff/Respondent/Applicant 20
and intending Appellant in this suit.

2. I have been advised, accordingly, and
do verily believe that I have grounds for
appeal against the Judgment of this Court in
this suit dated 20th March, 1973.

3. The grounds of appeal set out in the NOTICE
OF MOTION for LEAVE to APPEAL attached hereto
are my said grounds of appeal.

4. The subject matter of this proposed appeal
has been valued to be in excess of \$5,000,000.00; 30
and I am advised, and do verily believe that the
questions involved, by reason of their great and
general importance ought to be submitted to Her
Majesty in Council for decision.

5. I have been advised and do verily believe
that EXECUTION of the aforesaid Judgment of the
Court dated 20th March, 1973, should be suspended
pending the hearing of the proposed appeal on
such terms as to the Court may seem just and
equitable. 40

Sworn at the Court House,)
Roseau, Dominica, this 5th)(Sgd) Hakim E. F. Gordon
day of April, 1973)

Before me:-

(Sgd) M. Roberts
Commissioner for Oaths.

This Affidavit is filed on behalf
of the Plaintiff/Respondent.

10 This NOTICE OF MOTION was served by me at Mero,
Saint Joseph, Dominica on Brian Alleyne for
Castaways Developments Ltd., the first-named
Defendants/Appellants on Friday the 8th day
of June, 1973.

Indorsed the 8th day of June, 1973, by me:

(Sgd) Mark Dober
Bailiff

20 This NOTICE OF MOTION was served by me at Mero,
Saint Joseph, Dominica on William Harris for
Castaways Hotel Ltd., the Second-named
Defendants on Thursday the 7th day of June,
1973.

Indorsed the 7th day of June, 1973 by me:

(Sgd) Mark Dover
Baliff.

IN THE COURT OF APPEAL
DOMINICA

MOTION No. 1 of 1973.

Affidavit of
Service of
Notice of
Motion

30 Between: Castaways Developments Limited Defendants/
and
Castaways Hotel Limited Appellants
and

Hakim E. F. Gordon in his personal
capacity and in his capacity as
Personal Representative of Estate
of Clara Marguerite Gordon, deceased
Plaintiff/
Respondent.

Affidavit of
Service of
Notice OF
Motion for
Leave to
Appeal
30th
May
1973

AFFIDAVIT OF SERVICE OF NOTICE
OF MOTION FOR LEAVE TO APPEAL.

I, MYRTLE JOSEPH, Solicitor's Clerk of
Chambers, 5 Cross Street, Roseau, Dominica,
MAKE OATH and SAY as follows:-

That I served the Notice of Motion for
leave to Appeal to Her Majesty-in-Council, No. 1
of 1973, filed herein on the 5th day of April,
1973, upon Messrs Alleyne & Co., Solicitors for
the Defendants/Appellants, who accepted service
on behalf of the said Defendants/Appellants,
on the 6th day of April, 1973, in accordance
with the Court of Appeal Rules.

10

Sworn to at the Court House,
Roseau, Dominica, on the)
30th day of May, 1973.)(Sgd) (Myrtle Joseph)

Before me:-

(Sgd) M. Roberts
COMMISSIONER OF OATHS.

This Affidavit is filed on behalf of
the Plaintiff/Respondent.

20

Order
Granting
Leave
to
Appeal
10th
July
1973

IN THE COURT OF APPEAL
DOMINICA

Motion No. 1 of 1973.

Between: HAKIM E. F. GORDON in his personal
capacity and in his capacity as
Personal Representative of Estate
Clara Marguerite Gordon, deceased.

Applicant/
Appellant

30

and
CASTAWAYS DEVELOPMENTS LIMITED
and
CASTAWAYS HOTEL LIMITED Respondents

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice E.L.St. Bernard
The Honourable Mr. Justice A.F.L. Louisey
(Ag.)

F.E.Degazon with Dr. N.J.O. Liverpool and Dr. J.
Cools-Lartigue for Applicant/Appellant.

K.H.C Alleyne, Q. C. with B G.K. Alleyne and
E. H. Francis for Respondents.

ON NOTICE OF MOTION FOR LEAVE
TO APPEAL TO HER MAJESTY IN COUNCIL

Order
granting
leave to
Appeal

ORDER

Dated July 10th, 1973

10 UPON HEARING Mr. F.E. Degazon, counsel for
the applicant and Mr. B.G.K. Alleyne, counsel
for the respondents and UPON READING the Notice
of Motion and the affidavit in support thereof
by the applicant as to the value of the property
in dispute.

IT IS HEREBY ORDERED that leave to appeal
to Her Majesty in Council in pursuance of
section 99 of the Dominica Constitution Order
1967 be granted to the appellant upon condition
that the appellant -

- 20 (a) within a period of ninety days from
the date of hearing of this application
enter into good and sufficient security
to the satisfaction of the Court in a
sum not exceeding five hundred pounds
sterling (which security may consist in
whole or in part of a deposit of money)
for the due prosecution of the appeal
and the payment of all such costs as
may become payable by the applicant in
the event of his not obtaining an order
granting him final leave to appeal, or
30 of the appeal being dismissed for non-
prosecution, or of the Judicial Comm-
ittee ordering the appellant to pay the
costs of the appeal (as the case may be);
and
- (b) within four months from the date of the
hearing of this application, take the
necessary steps for the purpose of
procuring the preparation of the record
and the despatch thereof to England;

40 AND in the meantime the execution of the decision
of this Court dated March 20, 1973 which is being
appealed from is hereby suspended pending the
appeal.

The costs of this application to be costs in
the appeal.

By Order of the Court,
(Sgd) E.F. Georges
Deputy Registrar Court of Appeal.

OTHER DOCUMENTS not so far included in Record of Proceedings but under reference in Judgment of the Court of Appeal at paragraph 1, page 100 ; in Judgment of Renwick, J., paragraph 1, page 7 of the said Record and at paragraph 1 (b)(ii) of Notice of Motion for leave to appeal to the Privy Council at page 108 of the Record.

State- ment of Claim 15th Nov. 1971	IN THE HIGH COURT OF JUSTICE DOMINICA 1971, No. 189 Between	10
	HAKIM E. F. GORDON in his personal capacity and in his capacity as Personal Representative of Estate Clara Marguerite Gordon, deceased	Plaintiff ₂₀
	and	
	(1) HOWELL DONALD SHILLINGFORD and (2) DONALD SHILLINGFORD in their capacities as Trustees and as Personal Representatives of Estate Thomas Howard Shillingford, deceased, and as Trustees of George James Christian, deceased;	
	and	
	(3) STAFFORD SHILLINGFORD and (4) PATRICK SHILLINGFORD in their capacities as intending Trustees and as Executors of Estate Isaac Newton Shillingford, deceased, and of Estate George James Christian, deceased.	30 Defendants

STATEMENT OF CLAIM

Dated this 13th day of December, 1971

F. E. DEGAZON
Chambers
5 Cross Street
Roseau, Dominica
West Indies

STATEMENT OF CLAIMState-
ment of
Claim

1. The Writ of Summons in this cause was issued on the 15th day of November, 1971.
2. The Plaintiff is the Personal Representative of the Estate Clara Marguerite Gordon who died in the Islands of Bermuda on the 27th day of September, 1964.
3. The Plaintiff is the elder son of the aforesaid deceased, and is one of the beneficiaries and residuary legatee under her last Will and Testament.
4. Before her death, and since the year 1952, Clara Marguerite Gordon was the reversionary owner of, with right of entry upon, the Mero Estate, now known as Castaways, in the Parish of Saint Joseph.
5. The Plaintiff has succeeded to that status by virtue of the following:-
 - (i) Deed of Settlement by George James Christian and Thomas Francis Burke, deceased, dated 18th March, 1913, and registered in Book of Deeds E, No. 7, Folio 689;
 - (ii) Last Will and Testament of the aforesaid George James Christian deceased, dated 22nd January, 1936, proved the 14th June, 1946, and recorded in Book of Probates E, Folios 133 to 144;
 - (iii) Judgment of the Court of Appeal in Suit No. 3 of 1970, dated 30th November, 1970;
 - (iv) Last Will and Testament of Clara Marguerite Gordon, nee Christian, deceased, duly proved and re-sealed in Dominica on 6th April, 1971, and recorded in Book of Probates P, Folios 277 to 289.
6. The deceased, Clara Marguerite Gordon, is the only descendant of George James Christian, deceased, who fulfilled the conditions for becoming sole-cestui-que-trust under the Deed of Settlement of 1913, in that she attained the age of 21, married and died, leaving lawful issue her surviving.
7. The said Clara Marguerite Gordon, as a residuary devisee, on the demise of George James Christian, her father, in 1940, also inherited inter alia a vested equitable interest as a reversionary owner of the Mero Estate now known as Castaways.

Executor, Donald Shillingford.

Statement
of Claim

- (iii) By his last Will and Testament, George James Christian appointed Peter Charles Christian sole Executor and Trustee of his Dominica Estates. Peter Charles Christian died before Probate which was granted to his sole Executor, Isaac Newton Shillingford, In Book of Probates F, Folios 133 to 144 on 14th June, 1946.
- (iv) Isaac Newton Shillingford died on the 27th day of September, 1970, appointing by his last Will and Testament as his Executors, Stafford Shillingford and Patrick Shillingford
14. Although the Trustees of the Settlement were vested with the legal estate in fee simple in the corpus of the trust property, they at no time conveyed the same to any person or persons, nor did they intervene to protect the said Trust Property nor in any way to preserve its integrity
15. The conveyance of 1952 by Christianie Burke to Edwin Lionel Pinard constituted a fraudulent breach of trust because:-
- (i) The Purported vendor was aware of the trusts which she recited in the said conveyance;
- (ii) She omitted from the recital paragraphs 5 to 7 thereof concerning Clara Marguerite Gordon, although paragraphs 1 to 4 thereof were, therein, quoted verbatim;
- (iii) As a beneficiary thereof, Christianie Burke knew the contents of the last Will and Testament of George James Christian aforesaid, because although she had invaded the trust property in 1927 at the age of 21, and even before then (see 1952 conveyance); after the death of George James Christian in 1940, she attorned to his Executor/Trustee, Peter Charles Christian, for administration of the trusts, and for possession of the trust property which, indeed, she retained in her physical possession until 1952;

Statement
of Claim

- (iv) Christianie Burke, accordingly, deliberately and fraudulently misrepresented her title; and the purchaser, Edwin Lionel Pinard, accepted the conveyance with knowledge and notice of the trusts created by the Deed of Settlement of 1913.
16. On 30th July, 1960, the pretending purchaser, Edwin Lionel Pinard, purported to convey 4.58 acres of the said lands to Daphne Taylor by Indenture recorded in Book of Deeds A, No. 8, Folio 218. It is to be assumed that the purported purchaser, Daphne Taylor, duly investigated the purported Vendor's Title for at least 40 years. In any event, the Indenture of 29th May, 1952, recited in the Indenture of 1960, clearly indicated the existence of the Indenture of 1913, which created the Trusts. Between 1913 and 1952, there had been no dealings with the land in question; accordingly, the root of title remained in the 1913 Indenture. 10
17. On 29th May, 1964, Edwin Lionel Pinard purported to convey part of the said lands to Castaways Developments Limited by Indenture recorded in Book of Deeds C, No. 8, Folios 314 to 318. At paragraph 10 of that Indenture, reference is, yet again, made to the Indenture of 1913 and specifically to the fact that it created certain Trusts. Again, it must be assumed that the intending purchaser had duly investigated the purported Vendor's Title. Paragraphs 11 and 12 of the Indenture of 1964 purported to repeat that Christianie Burke became seized of the lands in question for her sole use and benefit as subsequently did Edwin Lionel Pinard. 30
18. Notwithstanding, Castaways Developments Limited on 10th April, 1968, procured the issue of a First Certificate of Title No. 139, 1968, Register Book W 1, Folio 122, for the said lands, although the Indenture of 1913 creating the Trusts was included in the Abstract of Title filed with their application for a registered Title. 40
19. On 13th June, 1967, Daphne Taylor, by Indenture No. 105/1967, Book of Deeds L, No. 8, Folios

269 to 272, purported to convey 4.58 acres State-
of the said land to Castaways Hotel Limited. ment of
This instrument recited the 1960 conveyance Claim
as the root of Title. However, the said
criteria of notice apply.

20. Castaways Developments Limited and Casta-
ways Hotel Limited are in physical possess-
ion of the Trust Property.
- 10 21. Accordingly, the Plaintiff claims against
the Defendants/Trustees jointly and sever-
ally for:-
- (i) Accounts of the administration of the
Trusts and Estate of George James Christ-
ian, deceased, with particular reference
to the Mero Estate now known as Casta-
ways in the Parish of Saint Joseph in
the State of Dominica;
- 20 (ii) The payment of any balances of such
accounts found due and owing to the
Plaintiff by the Defendants/Trustees;
- (iii) Recovery of possession and transfer to
the Plaintiff of the corpus of the
instant trusts;
- (iv) Damages for loss of the trust property--
\$7,300,000 or loss of interest--
\$5,000,000 or both in accordance with
particulars annexed hereto;

AND THE COSTS of this suit.

Dated this 13th day of December, 1971.

30 (F.E. Degazon)
Solicitor for the Plaintiff
Chambers
5 Cross Street
Roseau, Dominica
West Indies

ANNEXURE

PARTICULARS OF DAMAGE

- (i) The area of the Mero Trust Property measures
365.38 acres.

- Part-
iculars
of
Damage
- (ii) On 29th May, 1952, Christianie Burke conveyed the said property to Edwin Lionel Pinard for £1,200.0.0 or \$5,760. On 28th May, 1964, Edwin Lionel Pinard conveyed the same to Castaways Developments Limited for \$80,000. a percentage increase in the region of 1,330% in 12 years or 110% per annum.
- (iii) Castaways Developments Limited have currently been disposing of the said lands at the rate of about \$20,000 per acre. For the total area, this represents a current capital value of some \$7,300,000 excluding the value of Castaways Hotel Limited, its shares and revenues; and a capital gain of nealy 100 times the purchase price of \$80,000. 10
- (iv) Assuming a return of 10% per annum for 20 years, the loss to the Plaintiff, in interest only, is in excess of \$5,000.000. 20

Summons
in
Chambers
by the
Plaint-
iff
26th
Nov.
1971

IN THE HIGH COURT OF JUSTICE
DOMINICA
1969, No. 70

BETWEEN

Hakim E. F. Gordon Plaintiff

and

(1) Christianie Burke
(2) Castaways Developments Limited
(3) Castaways Hotel Limited

Defendants 30

SUMMONS IN CHAMBERS BY THE PLAINTIFF

Let all parties concerned attend before the Honourable, Mr. Justice J.D.B. Renwick, Q.C., in Chambers, at the High Court, Roseau on Tuesday the 30th day of November, 1971, at nine o'clock in the forenoon or so soon thereafter as Counsel may be heard on the hearing of an application on the part of the Plaintiff that an order be made for the consolidation of the following causes and matters:-

High Court, Suit 1969, No. 70
 High Court, Suit 1971, No. 188
 High Court, Suit 1971, No. 189

Summons
 in
 Chambers
 by the
 Plaintiff
 26th Nov.
 1971

on the grounds that:

- 10 (i) common questions of law and fact arise in all these causes and matters; namely, that breaches of trust, misrepresentation, and fraud generating from the same circumstances are involved in the Plaintiff's claim for the cancellation of certain relevant Indentures of Conveyance and the rectification or cancellation of Certificate of Title No. 139/1968 in REGISTER Book W1, Folio 122, in respect of the Mero Estate and in the name of Castaways Developments Limited as registered proprietors;
- 20 (ii) the rights to relief claimed are in respect of and arise out of the same transaction or series of transactions;
- (iii) for purposes of expedition, it is desirable that all the issues involved be tried together, and an appropriate order is, consequently, desirable;

30 AND that all further proceedings be stayed until the said causes and matters have been ordered by the Court to be tried, accordingly, at the same time or immediately after one another until they have been determined.

All as the same are set out in the affidavit filed herewith

AND that the costs of this application be costs in the cause.

Dated this 26th day of November, 1971.

To the Defendants (1),(2), (3)

40 (F.E. Degazon)
 Solicitor for the Plaintiff
 whose address for service
 is Chambers, Roseau, Dominica.

Affidavit IN THE HIGH COURT OF JUSTICE
 for DOMINICA
 Plaintiff 1969, No. 70
 29th
 Nov. Between
 1971

Hakim E. F. Gordon Plaintiff

and

- (1) Christianie Burke
 - (2) Castaways Developments Limited
 - (3) Castaways Hotel Limited
- Defendants 10

AFFIDAVIT FOR PLAINTIFF

I, Frederick Eutrope Degazon, Barrister-at-Law, and Solicitor of the Supreme Court, of Chambers, in the Town of Roseau, in the State of Dominica, make oath and say as follows:-

1. I am the Solicitor for the Plaintiff in this cause.

2. The causes and matters listed here-
 under have been instituted in the High
 Court of Justice all in the name of 20
 the Plaintiff, Hakim E. F. Gordon,
 both in his personal and in his rep-
 resentative capacity as Administrator,
 with Will annexed, of the Estate of
 Clara Marguerite Gordon, deceased, by
 me as the Plaintiff's solicitor:-

High Court, Suit 1969, No. 70
 High Court, Suit 1971, No. 188
 High Court, Suit 1971, No. 189

3. All these causes and matters are pend- 30
 ing in the High Court of Justice and:-

 - (i) involve common questions of law and
 fact in all these causes and matters;
 namely, that breaches of trust,
 misrepresentation, and fraud gener-
 ating from the same circumstances
 are involved in the Plaintiff's
 claim for the cancellation of cert-
 ain relevant Indentures of Conveyance
 and the recitfication or cancellation 40
 of Certificate of Title No. 139/1968
 in Register Book W1, Folio 122, in
 respect of the Mero Estate and in the

name of Castaways Developments Limited as registered proprietors; (ii) the rights to relief claimed are in respect of and arise out of the same transaction or series of transactions; Affidavit for Plaintiff

10 (iii) for purposes of expedition, it is desirable that all the issues involved be tried together, and an appropriate order is, consequently, necessary; and

(iv) all further proceedings should be stayed until the said causes and matters have been ordered by the Court to be tried, accordingly, at the same time or immediately after one another until they have been determined

20 4. Accordingly, it is appropriate that the Court should order that all these causes and matters be consolidated on such terms as it may think just and order them to be tried at the same time or one immediately after another and that any of them be stayed until after the determination of any other of them.

Sworn by the said Frederick Eutrope Degazon at the Court House, Roseau, (Sgd) this 29th day of November, 1971) F.E. Degazon

30 Before me:

(Sgd) M. Roberts

A Commissioner for Oaths

IN THE HIGH COURT OF JUSTICE
DOMINICA
1969. No. 70

Order
7th
Dec.
1971

Between: Hakim E. F. Gordon Plaintiff

and

- (1) Christianie Burke
- (2) Castaways Developments Limited
- (3) Castaways Hotel Limited Defendants

Order
7th
Dec.
1971

ORDER
for

CONSOLIDATION of High Court Suits 1969 No. 70
1971 No. 188 and 1971 No. 189.

The Honourable Mr. Justice J.D.B.Renwick, Q.C.
IN CHAMBERS.

Dated the 7th day of December, 1971

Entered the 23rd. day of December, 1971

UPON THE APPLICATION of Mr. Frederick Eutrope
Degazon of Counsel for the Plaintiff/Applicant, 10
and UPON HEARING Mr. Brian K.J.Alleyne of Counsel
for the Defendants (1), (2), and (3); and upon
reading the affidavit filed by the Plaintiff/
Applicant in support of the application, aforesaid;

IT IS ORDERED that the caveat entered herein
and High Court Suits Nos. 1969 No. 70 and 1971
No. 188 be consolidated as a single cause and be
heard together and at the same time.

WITH LIBERTY granted to the Plaintiff/
Applicant to apply for the further consolidation 20
with the two suits, aforesaid, of Suit No. 189
of 1971, on such terms as may be deemed just and
expedient;

AND THAT the costs of this application be
costs in the cause.

BY THE COURT.

(Sgd) S. J. Bertrand
Registrar

Served 28-12-71

Judgment
of
Court of
Appeal

By an Indenture of Trust (hereinafter referred to as "the trust instrument") executed on the 18th March, 1913, George James Christian, a Barrister-at-Law, created a trust in which he named the following persons as likely beneficiaries:

Francis Thomas Burke, his two children Margery and Christianie Burke and their lawful children, and Peter Charles Christian, Clara Christian, Maud Christian and their lawful children.

10

Under the trust instrument the legal estate in the Mero Estate and the Cassada Estate was conveyed to Thomas Howard Shillingford as Trustee, his heirs or executors to the uses following:-

"1. The Trustee, his heirs, or executors shall remain in possession of the said lands, hereditaments, and premises during the life-time of Francis Thomas Burke, or until the said Margery Burke and Christianie Burke shall attain their majority (or marry) or whichever event, the death of the said Francis Thomas Burke, or the majority or marriage of the said Margery Burke and Christianie Burke shall happen later.

20

2. The said Trustee shall manage, superintend the management, or lease the said Estate or Plantation, whichever he may deem expedient and shall in no case be liable for impeachment for waste.

30

3. From the rent or net profits of the said hereditaments, the said Trustee shall pay and satisfy the amount which by Bond he the said George James Christian and the said Trustee have bound themselves to pay to the said Francis Thomas Burke; and from any balance which may remain, shall at his discretion pay the whole or such part thereof for the maintenance and personal support or benefit of Margery Burke and Christianie Burke until they shall attain the age of 21 years (twenty-one) or marry.

40

- | | | | |
|----|----|---|--------------------------------------|
| | 4. | Should either the said Margery Burke or Christianie Burke die under the age of 21 years or without having married and leaving lawful issue, the whole of the lands, hereditaments, and premises shall be held in trust for the survivor. | Judgment
of
Court of
Appeal |
| 10 | 5. | Should the said Margery Burke and Christianie Burke die without attaining the age of 21 years (twenty-one) or without having married and without having left lawful issue, then the said Trustee shall hold the said lands, hereditaments, and premises in trust for Peter Charles Christian, Clara Christian, and Maud Christian until they shall attain the age of 21 (twenty-one) years or, being girls, attain that age or marry, with power at his discretion to pay any part of the rents and profits of the said hereditaments and premises for the maintenance and personal support and benefit of the said Peter Charles Christian, Clara Christian, and Maud Christian. | |
| 20 | | | |
| | 6. | Should either the said Peter Charles Christian, Clara Christian, or Maud Christian die without attaining the age of 21 (twenty-one) years or marrying and leaving lawful issue, then the whole of the said lands, hereditaments, and premises shall be held in trust for the survivor or survivors of them. | |
| 30 | | | |
| | 7. | Should the said Peter Charles Christian, Clara Christian, and Maud Christian all die without attaining the age of 21 (twenty-one) years or marrying and leaving lawful issue, then the whole of the lands, hereditaments, and premises shall be held by the Trustee, his heirs, or executors in trust for the said George James Christian or as he shall, by Deed or Will appoint." | |
| 40 | | | |

The following facts relating to persons named in the instrument were excepted by the court below:

Judgment
of
Court of
Appeal

Francis Thomas Burke died on the 17th June, 1913. Margery Burke who was born on 24th February 1902 died in 1919 without lawful issue.

Christianie Burke - the respondent in this case - was born on the 19th January 1906. She is unmarried and had been in possession of the trust property since she became 21 years.

Thomas Howard Shillingford died in 1917 (according to a statement by counsel) without having named anyone as his successor to administer the trust. The record does not disclose who his executors were.

10

Maud Christian and Peter Christian both died without issue.

Clara Gordon, nee Christian, died in 1964 leaving lawful issue of whom the appellant is one.

By a conveyance dated the 29th May, 1952, the respondent as beneficial owner in fee simple sold approximately 179 acres of the Mero Estate to Lionel Edwin Pinard for £1,200.

20

In the course of his judgment dismissing the application the learned judge stated thus:

"In my view, the two conditions set out in Clause 4 of the trust deed of attaining majority and of marriage and leaving lawful issue, are in the alternative; and Margery Burke, having died without having attained her majority, unmarried and without issue, the right to possession of the Trustee lapsed when the survivor, Christianie Burke, attained her majority in 1927.

30

I am further of the view that Christianie Burke then became the sole cestui-que trust with full beneficial interest and was entitled to have the hereditaments conveyed to her and, in turn, entitled to dispose of the same."

40

By leave of the Court the grounds of appeal filed by the appellant were amended and the appeal was argued on the following grounds:

"(a) the decision of the learned trial judge be set aside; and that it be declared that:-

- (b) the learned trial judge erred and was wrong in law in holding that merely by the attainment of her majority in 1927....
'Christianie Burke then became the sole cestui-que-trust with full beneficial interest and was entitled to have the hereditaments conveyed to her and, in turn, entitled to dispose of the same', notwithstanding the conditions as to marriage and issue in paragraphs 4,5,6 and 7 of the said Trusts.

Judgment
of
Court of
Appeal

It was conceded by counsel for the respondent for purposes of this appeal only that the appellant has a right to move the Court.

- Counsel for the appellant urged on this Court, firstly that the absence of technical words of limitation from the trust instrument precluded the respondent from taking the fee simple in the trust property on her having attained the age of 21 years, as was contended by her when she purported as beneficial owner to sell the Mero Estate to Edwin Lion Pinard for £1,200 (see conveyance by Christianie Burke to Edwin Lionel Pinard of 29th May 1952); secondly, that on a proper interpretation of paragraph 4 as modified by paragraph 5 and subsequent paragraphs of the trust instrument, the respondent on attaining her 21st birthday without marrying and having lawful issue, took either an estate in tail or a life interest; thirdly, that by virtue of the conveyance the respondent was estopped from denying that she sold as beneficial owner and consequently could not at this stage avail herself of the terms of the Settled Estates Ordinance, (Cap. 221) Laws of Dominica.

Counsel for the respondent urged that because -

- (a) the attitude of the courts was to presume in favour of divesting, particularly in a case such as this where the clear intention of the settlor was to convey the legal estate to the respondent on her attaining the age of 21 years; and
- (b) the provision whereby the respondent was entitled on attaining her majority to call upon the trustee to convey the legal estate to her, rendered the trust an

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of
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Appeal

executory one and such as to fall within the category of cases to which the courts were inclined to lend a liberal interpretation in order to give effect to the intention of the settlor.

The peculiar circumstances of the instant case, he submitted, rendered it a fitting one for the Court to read "and" for the word "or" in paragraph 4 of the trust instrument.

In inviting the Court to adopt such a course, counsel further urged that by doing so absurdities in the trust instrument (e.g. no legal estate in the trust property could vest in anyone,) would be avoided, and the trust brought to a satisfactory end.

10

Because of the Real Property Ordinance (Cap. 219) Laws of Dominica which came into force in 1873 and the fact that the Dominica Legislature never adopted the Conveyancing Act (U.K.) 1881, the operative law in relation to conveyances by deed in Dominica is to be found in (a) the Real Property Ordinance (Cap. 219) Laws of Dominica, and (b) in the common Law of England as it was prior to 1881 when the Conveyancing Act (U.K.) 1881 came into force there.

20

The requirements for creating certain legal estates are indicated by section 16 of the Real Property Act (Cap. 219) Laws of Dominica which reads as follows:

30

"No estate of fee tail shall be created, after the passing of this Ordinance, by any deed, or by any will or other instrument, otherwise than by an express limitation to a person and the heirs of his body, or the heirs, male or female, of his body, as the case may be."

as also by the following excerpt from Megarry and Wade, 3rd Edition, p. 51 -

"The rule at common law was that a freehold estate of inheritance could be created in a conveyance inter vivos (i.e. a transfer of land between living persons) only by a phrase which included the word "heirs". In no other way could

40

a fee simple or fee tail be created."

Judgment
of
Court of
Appeal

It is also noteworthy that by section 29 of the Wills Ordinance (Cap. 215) Laws of Dominica (in force since 1872) which reads -

10 "Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will."

adequate provision is there made whereby a devise of a fee simple estate may pass such an estate without the use of words of limitation.

20 From the fact that this provision has been specially created in respect of wills only, it therefore follows that in order to effectively pass the legal estate in real property by a deed, technical words of limitation must necessarily be used.

30 It is settled law that the fundamental rule of interpretation of deeds as instruments is that:- to interpret a deed the expressed intention of the parties must be discovered, and in support of this contention the following among other excerpts are cited in Norton on Deeds, 2nd Edition at p. 53:

40 "I adopt the observation of Alexander C.B. in Colmore v. Tyndall 1828 Younge & J 605 at p. 622 that this Court deals with a deed according to the clear intention of the parties appearing in the four corners of the deed itself. If the court sees an intention clearly and distinctly established by it, it has no difficulty in carrying that into effect; subject of course to any rules of law that may be applicable to it, but only qualified to that extent."

Sir J. Romilly M.R. in Beaumont v. Marquis of Salisbury (1854) Beav. 196 at p. 206 - and

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of
Court of
Appeal

".....in construing instructions you must have regard, not for the presumed intention of the parties, but for the meaning of the words which they have used."

per Brett L.J. Ex p. Chick Re Meredith (1879)
ch. D. 731 at p. 739.

The effect of the above dicta as I see it, is that while the Courts wherever possible will give full effect to the intention of a donor or settlor as indicated in the deed, that intention must be qualified by the legal effect and meaning of the words actually used in the document.

10

Adverting to the trust instrument it is there clearly indicated that in consideration of the love and affection which George James Christian had for Margery Burke, Christianie Burke, Peter Charles Christian, Clara Christian and Maud Christian he settled the hereditaments on them in turn on the conditions set out in paragraphs 1 - 7 of the trust instrument (supra).

20

Paragraph 4 provides that in the event of either one or other of the two sisters not attaining the age of 21 or not marrying and having lawful issue, the whole of the hereditaments and premises shall be held in trust for the survivor. Margery Burke having died under the age of 21 years and being unmarried, it followed that the property continued to be held in trust for the survivor Christianie, and by virtue of paragraph 1 the trustee was to remain in possession until Christianie attained the age of 21 years.

30

The question then arises as to what interest did Christianie Burke acquire on her becoming 21 years. Counsel for the respondent contends that she acquired the fee simple and was entitled to have it conveyed to her, while counsel for the appellant contends that she could only acquire an estate in tail or a life interest.

40

An examination of the instrument reveals that while paragraph 4 provides what should happen in the event of either Margery or Christianie dying under 21, unmarried and without lawful

issue, paragraph 5 goes on to provide what should happen in the event of both Margery and Christianie dying under 21 years or without having married and without having left lawful issue, in which case the trust property is to be held in trust for Peter, Clara and Maud Christian until they in turn attain the age of 21 years or marry.

Judgment
of
Court of
Appeal

10 Having regard to the provisions of paragraph 5, it would appear that the intention behind paragraph 4 is that in the event of one of the two Burkes dying, as in fact occurred, then the hereditaments would be held by the trustee in trust for the survivor of the two sisters, in this case Christianie. It follows on this that the most that Christianie could have had on her attaining the age of 21 years was a life interest, and the fact that she entered into possession of the trust property
20 ever since she was 21 years and that the trustee in whom the legal estate was vested had died without having conveyed the legal estate to any other person as trustee, made no difference to the interest which the respondent held. On her death, should she not have married and had lawful issue, then in accordance with paragraph 5, the hereditaments which comprise the trust must remain in trust for Peter Charles Christian
30 Clara Christian and Maud Christian until they attain the age of 21 years, or until the girls marry and have lawful issue.

Paragraph 6, like paragraph 4, then provides what should happen in the event of the death of either of those beneficiaries there named, and paragraph 7 what should happen if all should die.

40 It is to be observed that in paragraphs 4 and 6 whenever the word "survivor" appears it is not followed by any technical words of limitation, and that in paragraph 7 which provides for the final reversion of the fee simple in the trust property to the settlor, while there is a similar absence of words of limitation, provision is there made for the settlor to further appoint by deed or will.

In Re Bostock's Settlement (1921) 2 Ch. D. 469, by an indenture dated 1886, W. Bostock conveyed the equitable interest in freehold lands to trustees "in trust for the child or

In the instant case the fact that the terms of the trust have been finally declared by the settlor in such a complete manner that no instrument is required to define the limitation to which he intends to subject his property, in my view makes the instrument an executed trust and therefore not subject to the arguments urged by counsel for the respondent as being applicable to executory trusts. In this connection support for this view is to be found in the following statement of Sargant J. in Re Monckton's Settlement (1913) 2 Ch. D. at p.642, cited with approval by Warrington L.J. in Re Bostock's Settlement (supra) at p.135:

Judgment
of
Court of
Appeal

"In the case of an executed document as distinguished from an executory document the rule is fairly well settled that the same words of limitation are necessary to convey an equitable estate in fee simple as would have been necessary if the conveyance had been one of a legal estate in fee simple. Equity follows the law in that respect."

Paragraph 5 of the trust instrument clearly indicates that it was not the intention of the settlor that the respondent should take a fee simple if she did not marry and have lawful issue. The dictum of Jessel M.R. in Smith v. Lucas (1881) 18 Ch. D. 531 at p.542 - "One must consider the meaning of the words used, not what one may guess to be the intention of the parties:" is in point, and in my view defeats the argument of counsel for the respondent in relation to the intention of the settlor in the instant case.

The argument of counsel for the appellant that the respondent would be entitled to a fee tail is also defeated by the absence of any words of limitation as called for by section 16 of the Real Property Ordinance (Cap. 219) Laws of Dominica, following on the word 'survivor' in paragraph 4 of the trust instrument.

The fact that the amending effect of the Conveyancing Act (U.K.) 1881 and the Real Property Act (U.K.) 1925 on the real property law in the United Kingdom, does not apply in Dominica, coupled with the provisions of the Real Property Ordinance (Cap. 219) of the Laws of Dominica, lead

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me to the conclusion that in the instant case the effect of the absence of words of limitation which included the word "heirs", after the word "survivor" in paragraph 4 of the trust instrument, is that only a life interest passed to the respondent on her attaining the age of 21 years.

In the light of the above I am of the view that the appellant never had a beneficial interest amounting to a fee simple estate, to sell, as she purported to do. 10

It is however to be noted that in the Settled Estates Ordinance (Cap. 221), Laws of Dominica, provision is there made for the holder of a life interest to sell the settled land and the conditions under which such a sale can properly be effected. As the relief sought in the amended grounds of appeal does not involve this question, and as all parties who ought to be joined for the determination of the question of the disputed conveyance, including the purchaser therein, are not before the Court, I would not give any opinion on this question. 20

I would therefore declare -

- (1) that Christianie Burke was entitled under the Indenture of 18th March, 1913, to an estate for life only in the hereditaments therein settled, and
- (2) that the said Christianie Burke at the date of the said Indenture of Conveyance by herself to Edwin Lionel Pinard was seized as cestui-que-trust of an estate for life in the said hereditaments and not of an estate in fee simple and was accordingly not entitled to sell the said hereditaments as absolute owner thereof in fee simple. 30

For the above reasons I would allow the appeal with costs here and in the court below. 40

(K.L. Gordon)
Justice of Appeal

LEWIS, C.J.

I agree.

(Allen Lewis)
Chief Justice

CECIL LEWIS, J.A.

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10 An indenture made the 18th day of March, 1913 between Francis Thomas Burke of the first part, George James Christian of the second part and Thomas Howard Shillingford of the third part had a two-fold purpose. It gave effect to an agreement between Francis Thomas Burke and George James Christian, a barrister-at-law, for the sale by Burke to Christian of certain hereditaments and it also contained a settlement by the said George James Christian of the said hereditaments on certain trusts (to be hereinafter mentioned) with Thomas Howard Shillingford as the trustee of the settlement.

The hereditaments in question were the Mero Estate and the Cassada Garden Estate in Dominica (hereinafter referred to as "the hereditaments".)

20 The indenture having recited that "in consideration of the love and affection which the said George James Christian bears for Margery Burke and Christianie Burke, Peter Charles Christian, Clara Christian and Maud Christian, the said George James Christian is desirous of settling the said estates in the manner hereinafter expressed, and the said Thomas Howard Shillingford (hereinafter called the Trustee) hath at his request agreed to
30 accept the conveyances to himself of the above-mentioned hereditaments and to be the Trustee of the said intended settlement" went on to record that in pursuance of the said agreement between Francis Thomas Burke and George James Christian and for the consideration therein mentioned, "the said Francis Thomas Bruke at the request of the said George James Christian doth hereby grant to the said Thomas Howard Shillingford his heirs or executors all that
40 estate or plantation known as the Mero Estateand also all that estate known as Cassada Garden Estate....." to hold the messuage land and hereditaments and all other premises hereby granted unto the said Trustee, his heirs or executors to the uses following:-

- 1 The trustee, his heirs, or executors shall remain in possession of the said lands, hereditaments, and premises during the lifetime of Francis Thomas Burke,

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or until the said Margery Burke and Christianie Burke shall attain their majority (or marry) or whichever event, the death of the said Francis Thomas Burke, or the majority or marriage of the said Margery Burke and Christianie Burke shall happen later.

2. The said Trustee shall manage, superintend the management, or lease the said Estates or Plantation, whichever he may deem expedient and shall in no case be liable for impeachment for waste. 10
3. From the rent or net profits of the said hereditaments, the said Trustee shall pay and satisfy the amount which by Bond he the said George James Christian and the said Trustee have bound themselves to pay to the said Francis Thomas Burke; and from any balance which may remain, shall at his discretion pay the whole or such part thereof for the maintenance and personal support or benefit of Margery Burke and Christianie Burke until they shall attain the age of 21 years (twenty-one) or marry. 20
4. Should either the said Margery Burke or Christianie Burke die under the age of 21 years or without having married and leaving lawful issue, the whole of the lands, hereditaments, and premises shall be held in trust for the survivor. 30
5. Should the said Margery Burke and Christianie Burke die without attaining the age of 21 years (twenty-one) or without having married and without having left lawful issue, then the said Trustee shall hold the said lands, hereditaments, and premises in trust for Peter Charles Christian, Clara Christian, and Maud Christian until they shall attain the age of 21 (twenty-one) years or, being girls, attain that age or marry, with power at his discretion to pay any part of the rents and profits of the said hereditaments and premises for the maintenance and personal support and benefit of the said Peter Charles Christian, Clara Christian, and Maud Christian. 40

6. Should either the said Peter Charles Christian, Clara Christian, or Maud Christian die without attaining the age of 21 (twenty-one) years or marrying and leaving lawful issue, then the whole of the said lands, hereditaments, and premises shall be held in trust for the survivor or survivors of them.

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10 7. Should the said Peter Charles Christian, Clara Christian, and Maud Christian all die without attaining the age of 21 (twenty-one) years or marrying and leaving lawful issue, then the whole of the lands, hereditaments, and premises shall be held by the Trustee, his heirs, or executors in trust for the said George James Christian or as he shall, by Deed or Will, appoint."

20 In Megarry & Wade's The Law of Real Property, 3rd Edition, the following statement dealing with the requirements of the common law for the use of words of limitation in order to create a fee simple occurs at page 51:

30 "The rule at common law was that a freehold estate of inheritance could be created in a conveyance inter vivos (i.e. a transfer of land between living persons) only by a phrase which included the word "heirs". In no other way could a fee simple or fee tail be created. Any attempted grant of a freehold estate in other terms (as "to A" or "to A in fee simple") gave A merely a life estate... It is important to note that no other word would do in place of "heirs": "relatives", "issue", "descendants", "assigns", "for ever", "in fee simple", "in tail" and so on were all ineffective. "Heirs" was the sacred word of limitation, and had a magic which no other word possessed".

40 In this case it will be observed that the settlor used the appropriate word necessary at common law for creating a fee simple estate which estate was vested in the trustee upon the trusts hereinbefore mentioned. Strict conveyancing language with a definite legal meaning having been used in this instance, it must be assumed that the language in the other parts of the indenture was intended to bear a similarly strict legal meaning.

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In regard to the first paragraph of the settlement the following facts are agreed:

(a) Francis Thomas Burke died on June 17, 1913; (b) Margery Burke who was born on February 24, 1902, died in 1919. She thus did not attain her majority. She was unmarried at her death and left no lawful issue; (c) Christianie Burke who was born on January 19, 1906, is still alive but is unmarried and without lawful issue. It is also common ground that when Christianie Burke attained her majority in 1927 she was, under the terms of this paragraph, entitled to physical possession of the hereditaments as against the trustee.

10

By paragraph 4 of the settlement it is provided that if "either the said Margery Burke or Christianie Burke die under the age of 21 years or without having married and leaving lawful issue, the whole of the lands, hereditaments and premises shall be held in trust for the survivor." In the events which have happened, Christianie Burke, the respondent herein, was the survivor and the hereditaments were accordingly held in trust for her. The important question which arises in this appeal is what estate did the respondent take?

20

The respondent by an indenture dated May 29, 1952, purported as beneficial owner to sell the fee simple in the Mero Estate to Edwin Lionel Pinard for £1,200.

30

The appellant issued a summons dated April 10, 1969, in which he asked for certain relief including, inter alia, a declaration that he is one of the reversionary owners of the fee simple absolute of the hereditaments, thereby indirectly questioning the respondent's right to sell the fee simple in the Mero Estate as she purported to do as aforesaid. At the hearing of the summons the sole issue on which the Court's ruling was desired was agreed between the parties and the trial judge recorded this agreement in his judgment as follows:

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"it was accepted that the entire issue revolved around the question as to whether the "respondent "had the right to convey the land in question on 29th May, 1952, by conveyance recorded in Book

of Deeds V, No. 7, Folios 154-156 to Edwin
Lionel Pinard."

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10 It is not disputed that the appellant is the
lawful son of Clara Gordon (nee Christian) one
of the persons mentioned in paragraphs 5-7 of
the settlement. She died in 1964 leaving lawful
issue, but as her death took place before she
obtained a vested interest in the hereditaments
there was nothing to pass to her heirs by way of
succession. Accordingly, the appellant could
20 have no claim to the hereditaments as one of
her heirs. In the circumstances, the Court
raised the question as to his locus standi in
this matter. Counsel for the respondent con-
ceded that for the purposes of this appeal only,
the appellant had the right to move the Court
for the determination of the question whether
or not the respondent had the right to convey
the fee simple in the Mero Estate as she pur-
ported to do.

The trial judge decided this question in
the respondent's favour. He said:

30 In my view, the two conditions set out
in Clause 4 of the trust deed of attain-
ing majority and of marriage and leaving
lawful issue, are in the alternative;
and Margery Burke, having died without
having attained her majority unmarried
and without issue the right to possession
of the trustee lapsed when the survivor,
Christianie Burke, attained her majority
in 1927.

I am further of the view that Christianie
Burke then became the sole cestui-que
trust with full beneficial interest and
was entitled to have the hereditaments
conveyed to her and, in turn, entitled
to dispose of the same."

40 Counsel for the appellant before this Court sub-
mitted that the fee simple did not pass to the
respondent under paragraph 4 of the settlement
but that only a life interest, or an estate
tail passed to her. He said he preferred to
contend that an estate tail passed because it
is a greater estate than a life estate and if
she had had children then her children could
have succeeded thereto. The alternative sub-
mission that an estate tail passed to the

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respondent is untenable by reason of the provisions of section 16 of the Real Property Ordinance, Cap. 219 (Dominica) which Ordinance came into force on August 4, 1873. This section reads as follows:

"No estate of fee tail shall be created, after the passing of this Ordinance, by any deed, or by any will or other instrument, otherwise than by an express limitation to a person and the heirs of his body, or the heirs, male or female, of his body, as the case may be." 10

It will be seen that there is no express limitation to the heirs of the body of the survivor under paragraph 4 of the trust instrument and accordingly an estate of fee tail was not created under this paragraph. Counsel for the appellant will therefore have to rely on his first submission that a life interest only passed to the respondent and he said that this was so because of the absence of the words of limitation "and her heirs" after the word "survivor" at the end of the fourth paragraph of the settlement which were the words required at common law to create a fee simple estate. This common law rule is still in effect in Dominica. 20

A statement of Warrington L.J. in In Re Bostock's Settlement (1921) 2 Ch. 469 is here directly in point. He said at p. 484 (ibid): 30

"According to technical rules a limitation to A and his heirs to the use of or in trust for B confers on B a legal estate for life only."

This is exactly the situation here. There has been a limitation to the trustee and his heirs (and in the events which have happened) to the use of or in trust for the respondent under paragraph 4 of the settlement. Thus, the respondent would take an estate for life only. 40

Counsel for the respondent however challenged this conclusion on the ground that the trusts in this case are executory, and therefore, he said, the duty of the Court is to construe the settlement in order to ascertain the intention of the settlor; in which case the absence of words of limitation is irrelevant.

He submitted that the trust under paragraph 4 was executory because on the assumption that the respondent was entitled on attaining her majority to call upon the trustee to convey the legal fee simple to her, this meant that there was something left to be done by the trustee to perfect the trust. Even if the respondent were entitled to a conveyance of the fee simple on attaining her majority (which in my view was not so) the necessity for such a conveyance by the trustee would not by itself be a sufficient ground for regarding the trust as executory. The reason why this is so is fully explained in a passage from Lord St. Leonard's judgment in Egerton v. Earl Brownlow & ors. (1843-1860) All E.R. Reprint 970. In this passage the learned judge in differentiating between executed and executory trusts said at pp. 1000 and 1001 (ibid):

".....all trusts are in a sense executory, because a trust cannot be executed except by conveyance, and therefore there is something always to be done. But that is not the sense which a court of equity puts upon the term "executory trust". A court of equity considers an executory trust, as distinguished from a trust executing itself, and distinguishes the two in this manner: Has the testator been what is called, and very properly called, his own conveyancer? Has he left it to the court to make out from general expressions what his intention is, or has he so defined that intention, that you have nothing to do but to take that which he has given to you, and to convert them into legal estates."

If one applies this test to the circumstances of this case, it will readily be seen that the trust under paragraph 4 of the settlement is an executed one. The nature of the trust is such that the respondent becomes entitled to her interest in the hereditaments merely by fulfilling the conditions of the trust. Her entitlement arises by operation of law and is so to speak an automatic process requiring no action by anyone to make it effective. Neither the assistance of the Court nor of the trustee is

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necessary to complete the limitation to the respondent in this case for the trust is expressed in terms which are in themselves final, and in such circumstances all that the Court can do is to construe it according to the import of the words used. I therefore reject the submission that the trust under paragraph 4 is executory and hold that it is, in the language of Lord St. Leonard's "a trust executing itself".

10

For the reasons given above, I am of the opinion that the appellant's contention that the respondent took a life interest only is correct. She therefore could not sell the fee simple in the Mero Estate as she purported to do under the deed of indenture dated May 29, 1952.

The respondent was however a tenant for life of the settlement under the Settled Estates Ordinance, Cap. 221 (Dominica) and in this capacity she could have sold the hereditaments pursuant to the power of sale conferred on a tenant for life by this Ordinance, but she did not purport to sell in this capacity. The question of the validity of the sale by the respondent does not arise in this appeal and therefore I express no opinion thereon.

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I agree with the order proposed by Mr. Justice Gordon and would accordingly allow the appeal with costs here and in the court below.

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(P. Cecil Lewis)
Justice of Appeal