

1/84

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

NELLIE EVELYN CRICHLOW (Widow)
 GEORGE CARLTON CRICHLOW
 DONOVAN RUSSEL CRICHLOW
 VERONICA AUGUSTA CRICHLOW
 GEORGINA ELIZABETH CRICHLOW
 PHILMORE HAMEL CRICHLOW
 EILEEN ESTHER FORRESTER (Nee CRICHLOW)

Appellants

- and -

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

RespondentCASE FOR THE RESPONDENTRecord

1. This is an appeal against the judgment of the Court of Appeal of Trinidad and Tobago (Corbin, J.A., Kelsick, J.A., Cross, J.A.) dated 21st May 1981 allowing the Respondent's appeal against the judgment and order of the High Court (Braithwaite J.) dated 1st December 1978. The learned trial Judge ordered the Respondent to pay a sum of \$240,000 with interest at the rate of 6% from January 1958, being his assessment of mesne profits to which the Appellants were entitled. By its order the Court of Appeal reduced the amount payable to \$26,100 with interest at the rate of 6% per annum computed annually on the profits due and owing at the end of each year or part thereof from 1st January 1958 to the date of payment.

p.84-90

p.65-70

p.70

2. The principal issue raised by this appeal is whether the Court of Appeal were entitled to interfere with the trial judge's assessment. If the Court of Appeal were justified in setting aside the judge's assessment no issue arises on the propriety of the Court of Appeal substituting its own assessment as opposed to remitting the matter to the High Court.

p.88.
1.12

3. The Appellants' claim relates to 20 perches of land (more particularly described in the writ and Re-Amended Statement of Claim) situated in the Parish of St. Andrew in the Island Ward of Tobago. The 20 perches formed part of a larger parcel of land comprising 2 Roods and 22 perches, which land was also described with particularity in the pleadings.

4.	The Appellants' action commenced as a claim for possession and mesne profits in relation to the 20 perches. The action was, as the Court of Appeal observed, subject to appalling delay, the important aspects of the chronology being as follows:	<u>Record</u>
16th June 1966	Action commenced against Texaco (Trinidad) Limited	
5th June 1967	The Respondent was joined as Second Defendant	p.10
11th Nov. 1971	Re-amended Statement of Claim served	p.19
19th May 1972	Before Rees J judgment by consent was entered against the Second Defendant, in default of Defence, for possession and further the Second Defendant consented to an order that mesne profits from the year 1958 until delivery of possession be assessed by a Judge in Chambers.	p.30
21st April 1975	McMillan J ordered the assessment of mesne profits to take place on 26th June 1975.	p.58
12th June 1978	The Registrar of the High Court ordered the assessment of mesne profits to take place on 22nd June 1978	p.59
June/July 1978	Hearing before Braithwaite, J	p.60-64
1st Dec. 1978	Judgment of Braithwaite J.	p.65
12th Jan. 1979	Notice of Appeal to the Court of Appeal	p.79
21st May 1981	Judgment of Court of Appeal	

5. The principal witness for the Appellants on the hearing for the assessment of mesne profits was George Crichlow. His evidence was to the effect that the family was put off the land, which they farmed, in 1952, and that they made about \$5,000 to \$6,000 per annum out of the rearing and sale of animals. (The reference at p.61 l.11 of the Record to \$50,000 to \$60,000 is an error). He gave other evidence as to rents and profits and the extent of the farming activities; and at one point said:

"Eighteen thousand, five hundred square feet would, in those days, have brought about \$1000 per month."

6. The judgment of the learned trial judge recited part of the history of the action and in particular referred to the prayer in the re-amended Statement of Claim for "mesne profits from the year 1952 to date of delivery of possession", and the terms of the consent order before Rees J referring to the year 1958 as the commencement date for the calculation of mesne profits. Later in his judgment the learned judge observed:

"For reasons unknown and not mentioned to this Court, the parties to this matter had agreed that the assessment should be taken from the year 1958 as distinct from the year 1952 when the unlawful intrusion first took place."

Record

Having recited the history the learned judge concluded as follows:

- (i) that the Government of Trinidad & Tobago had leased land to Texaco (Trinidad) Limited which it had no right to lease; p.69 1.22
- (ii) that the scope of the assessment was not confined to the 20 perches referred to in the pleadings but extended also in respect of a further 2 roods and 22 perches; p.69 1.11
- (iii) that in addition, the unlawful occupation of 20 perches had prevented access to a further 18,500 square feet. p.69 1.28

6. As to the assessment of mesne profits the learned judge took the evidence that 18,500 square feet brought in \$1000 per month, and proceeded to calculate mesne profits for the 20 perches by taking that figure as the multiplicand, applied a factor of 12 for each year and multiplied by 20 to cover the period from 1958 to 1978 namely the date of his judgment. p.70

7. The Respondent appealed to the Court of Appeal and the Appellants cross appealed. The Respondent complained (inter alia) of the Judge's use in his assessment, of evidence given in relation to 18,500 square feet of land which was not the subject matter of the claim. The Appellants complained that the basis of the calculation should have been the rental value of the land for petroleum installations in 1952 increased by 12% per annum, and further sought by the Respondent's Notice to go behind the terms of the consent order and to obtain mesne profits from 1952. Notice was given that the notes of Rees J. would be relied upon. p.79 p.81

8. The judgment of the Court of Appeal was delivered by Cross J.A. The Court upheld the complaint in relation to the Judge's assessment, concluding that the judgment disclosed "no logical or evidential basis for the assessment made." Applying well known general principles, the Court of Appeal took the evidence as to profit from the land as an indication of the rental value, and allowing for the higher estimate as to profit given by George Crichlow correctly calculated the proportion of rental value (mesne profits) to be applied to 20 perches.

The Appellants did not produce the notes of Rees J. to the Court of Appeal and did not pursue the claim for mesne profits from 1952. Notwithstanding, the Record for the Board in this appeal (pages 27-29) includes copies of the said notes. The Respondent objects to the use of the notes on this appeal.

9. It is submitted that the learned trial Judge having so substantially erred in his approach to the assessment of mesne profits and having so significantly misapprehended the nature of the case, it was, on general well known principles, legitimate for the Court of Appeal to interfere with his assessment. It is submitted that the assessment made by the Court of Appeal was in accordance with principle and in accordance with the terms of the consent order and was correct.

10. It is respectfully submitted that this appeal should be dismissed for the following among other

R E A S O N S

1. BECAUSE Braithwaite J fell into grave error in his assessment of mesne profits.
2. BECAUSE the Court of Appeal were right to interfere.
3. BECAUSE the Court of Appeal correctly assessed mesne profits.

GEORGE NEWMAN Q.C.

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

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Respondent

CASE FOR THE RESPONDENT

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