

25, 1953

In the Privy Council.

No. 42 of 1951.

ON APPEAL FROM THE SUPREME COURT OF  
BERMUDA

UNIVERSITY OF LONDON  
W.C.1.  
12 NOV 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

33501

BETWEEN

MARGARET YOUNG HORNE and RICHARD  
CLEVELAND FOX ... (Defendants) *Appellants*

AND

RODERICK ALEXANDER FERGUSON (The Younger)  
and HERMAN FREDERICK LESEUR (*Plaintiffs*) *Respondents.*

RECORD OF PROCEEDINGS

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# In the Privy Council.

No. 42 of 1951.

## ON APPEAL FROM THE SUPREME COURT OF BERMUDA

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BETWEEN

MARGARET YOUNG HORNE and RICHARD  
CLEVELAND FOX ... .. (Defendants) *Appellants*

AND

RODERICK ALEXANDER FERGUSON (the Younger)  
and HERMAN FREDERICK LESEUR (*Plaintiffs*) *Respondents.*

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## RECORD OF PROCEEDINGS

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No. 1.  
Writ of Summons.

No. 1.  
Writ of  
Summons,  
14th  
February,  
1951.

Between

RODERICK ALEXANDER FERGUSON (the younger) and  
HERMAN FREDERICK LESEUR ... .. *Plaintiffs*

and

MARGARET YOUNG HORNE and RICHARD CLEVELAND FOX ... *Defendants.*

10 GEORGE VI, by the Grace of God, of Great Britain, Ireland,  
and the British Dominions beyond the Seas, King, Defender of the  
Faith. To Margaret Young Horne and Richard Cleveland Fox, both of  
Warwick Parish, Bermuda.

WE COMMAND YOU that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Roderick Alexander Ferguson (the younger) and Herman Frederick Leseur ; and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

20 WITNESS the Honourable Sir Cyril Gerard Brooke Francis, Chief Justice of our said Court the Fourteenth day of February in the year of Our Lord One thousand nine hundred and fifty one.

No. 1.  
Writ of  
Summons,  
14th  
February,  
1951—  
*continued.*

THE PLAINTIFF'S CLAIM is for the return of the sum of £1,000 paid by the plaintiff to the first named defendant, who was acting as agent for the second-named defendant as owner of certain land in Warwick Parish in the Islands of Bermuda, which sum was paid by way of deposit and in part payment of the purchase price of £5,000 under a contract for the purchase of said land ; for the payment of the sum of £20 paid by the plaintiffs as expenses incurred in the examination of the title to the said land ; for damages in respect of the non-completion of the sale ; and for interest and costs.

This writ was issued by Appleby Spurling & Kempe of Ardleigh Cottage, 10 Reid Street, Hamilton, Attorneys for the Plaintiff, whose address for service is the same. The Plaintiff Roderick Alexander Ferguson (the younger) resides at " Clitheroe " in Penbroke Parish in the Islands of Bermuda, and the Plaintiff Herman Frederick Leseur resides at " Valley Forge " in Paget Parish in the said Islands.

This writ was served by me at " Warwick Villa " Warwick Parish Margaret Young Horne and Richard Cleveland Fox on the defendant on Wednesday the Twenty-first day of February 1951.

Indorsed the 21st day of February 1951.

W. A. HENDERSON, 20  
a/Inspector.

I, John Strang McBeath, Provost Marshal General of the above named Court hereby depute and authorise William Alexander Henderson of the Bermuda Police Force to serve this writ in my place and stead.

Dated this 20th day of February, 1951.

J. S. McBEATH,  
*Provost Marshal General.*

No. 2.  
Statement  
of Claim,  
March,  
1951.

No. 2.  
Statement of Claim.

Between

30

RODERICK ALEXANDER FERGUSON (the younger) and  
HERMAN FREDERICK LESEUR ... .. *Plaintiffs*

and

MARGARET YOUNG HORNE and RICHARD CLEVELAND FOX ... *Defendants*

1.—By an oral agreement evidenced by instruments in writing dated June 24, 1949 and July 18, 1949, the second-named defendant, acting through the first-named defendant as his agent, agreed to sell and

the plaintiffs agreed to purchase jointly certain freehold property situate on the South Shore in the Parish of Warwick in the Islands of Bermuda for £5,000 of which £1,000 was to be paid forthwith and the balance to remain on mortgage for a period of 10 years or less at the option of the purchasers.

No. 2.  
Statement  
of Claim,  
March,  
1951—  
*continued.*

2.—On June 18, 1949, the first-named plaintiff paid to the first-named defendant (hereinafter called “the agent”) the sum of £500 by way of deposit and in part payment of the said £5,000. An instrument in writing (inadvertently dated July 18, 1949 instead of June 18, 1949, the date on which it was drawn and executed) was signed by the first-named defendant. This acknowledged receipt of the said £500 as a deposit on the said purchase price of £5,000 and stated, *inter alia*, that it was understood that the land described therein (being the land mentioned in paragraph 1 above) was to be purchased jointly by the plaintiffs.

3.—On June 24, 1949, the second-named plaintiff paid to the agent the sum of £500 by way of deposit and in part payment of the said £5,000 and received from the agent an instrument in writing, dated June 24, 1949, duly signed by her and witnessed. This instrument acknowledged receipt of the said £500 as part payment on the purchase of the aforesaid land and, *inter alia*, stated:

“If the Owner or Owners cannot give a clear title to the above property or proper rights of way then this contract is cancelled and all deposits and expenses are to be refunded to the purchasers.”

4.—The second-named defendant (herein called “the owner”) is unable to give good title to the said land and, notwithstanding repeated requests by the plaintiffs, he and/or the agent have neglected and refused and continue to neglect and refuse to perform his or their part of the said agreement.

5.—The plaintiffs have suffered damage in the premises. The plaintiffs jointly claim:—

- (1) Damages for breach of the said agreement.
- (2) Repayment of the said desposit of £1,000 with interest at the rate of 5 per cent. from the 24th June, 1949, until repayment.
- (3) Costs.
- (4) A declaration that the plaintiffs are jointly entitled to a lien on the said property for their deposit (together with interest thereon), damages and costs awarded in this action.
- (5) Further and other relief.

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APPLEBY, SPURLING &amp; KEMPE.

Delivered the            day of March, 1951, by Appleby, Spurling & Kempe, of “Ardleigh Cottage,” Reid Street, Hamilton, Bermuda, Attorneys for the Plaintiffs.

No. 3.  
Defence of  
both  
Defendants,  
19th March,  
1951.

**No. 3.**  
**Defence of both Defendants.**

1.—The Defendants admit the facts as set out in Paragraph (1) of the Statement of Claim.

2.—The said Defendants admit the facts as set out in Paragraph (2) of the Statement of Claim.

3.—The said Defendants admit the facts as set out in Paragraph (3) of the said Statement of Claim.

4.—The second-named Defendant was able to give good title to the land which was agreed to be purchased and it was agreed that Mr. E. T. Richards, Barrister-at-Law was to draw up the necessary documents, the same to be approved by Messrs. Hallett and Whitney, Barristers-at-Law. 10

5.—In September 1949, the said Defendants had an opportunity to sell the said property for more money to other purchasers and acquainted the said Plaintiffs of this fact. The said Plaintiffs insisted however, that they wished to carry on with their agreement and refused to sign any documents which would give the first-named Defendant the right to resell the property to other purchasers.

6.—On the 27th day of January 1950 the said E. T. Richards Esq., wrote to the said Plaintiffs informing them that he was awaiting a reply from them concerning the boundaries which were to be surveyed by a surveyor and to be approved by them. Information, on behalf of the said Defendants, was sought as to whether or not the surveyor had approved of the said boundaries. The said letter further states that unless the matter was cleared up within Three weeks from the said 27th day of January, 1950, the first-named Defendant would consider the contract rescinded. 20

7.—The said Defendants again state that they were able to give good title to the said property and most emphatically deny that either or both of the said Defendants have neglected and refused and continue to neglect and refuse to perform his or their part of the said agreement. 30

8.—The said Defendants have suffered damage in the premises and the said Defendants jointly claim

- (1) Damages for breach of the said agreement.
- (2) The right to hold the said deposit of £1,000.
- (3) Costs.
- (4) A declaration that the said Defendants are under no obligation to the said Plaintiffs in connection with this matter as the breach of the agreement was caused solely by the said Plaintiffs and
- (5) Further and other relief.

Signed DAVID TUCKER,  
*Attorney for the Defendants.*

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Delivered the 19th day of March 1951.

To Messrs. Appleby, Spurling & Kempe,  
of "Ardleigh" Cottage, Reid Street,  
Hamilton, Bermuda, Attorneys for  
the Plaintiffs.

No. 4.  
Reply.

No. 4.  
Reply,  
13th April,  
1951.

1.—The plaintiffs deny each and every allegation contained in paragraph 4 of the Defence and state that by a letter dated the 4th day of February, 1950, the agreement that the defendants' attorney should draw up the necessary documents and that title should be approved by Messrs. Hallett & Whitney was changed, and the plaintiffs, availing themselves of their right as purchasers to select their own attorney, instructed Messrs Appleby, Spurling & Kempe to draw up the said documents on their behalf.  
10 The plaintiffs further state that the second-named defendant failed to show good title to the said attorneys for the plaintiffs.

2.—The plaintiffs deny each and every allegation contained in paragraph 5 of the Defence and specifically deny that they were ever informed of the defendants' opportunity to sell the said premises as alleged, and state that they were at all times ready and willing to carry out the terms of the said agreement.

3.—The plaintiffs admit receiving the letter dated the 27th January, 1950, referred to in paragraph 6 of the Defence, and say that their said attorneys replied by letter dated the 4th February, 1950, stating  
20 *inter alia*, "the burden of proving a good title to the premises and the " responsibility for accurately designating the correct area and boundaries " of the premises is that of your client, and, therefore, we would request " that all relevant information be submitted by you to us with the title " documents."

The plaintiffs further state that the then attorney for the defendants did not deliver any documents of title to the said attorneys for the plaintiffs until the 24th March, 1950. The plaintiffs therefore refute any charge that they are responsible for the rescission of the contract.

4.—The plaintiffs deny each and every allegation contained in  
30 paragraph 7 of the Defence.

5.—The plaintiffs deny that the defendants have suffered damage in the premises and that the defendants are entitled to the relief claimed in the Defence or to any relief.

Dated and delivered the 13th day of April, 1951.

Signed APPLEBY, SPURLING & KEMPE,  
*Attorneys for the Plaintiffs.*

To David Tucker, Esq.,  
Counsel for the Defendants.



Plaintiffs'  
Evidence.

PLAINTIFFS' EVIDENCE.

No. 5.  
Preliminary  
Submissions  
of Counsel,  
21st May,  
1951.

No. 5

Preliminary Submissions of Counsel.

W. R. KEMPE, Esq. for Plaintiffs.

DAVID TUCKER, Esq. for Defendants.

Kempe mentions the Case.

Tucker makes submission and applies for trial by jury. Cites R.S.C. Ord. XXXVI, Rule 1, also Rule 2.

1st Point. As to "all causes or matters . . . . were tried with "a Jury." Tucker has been unable to satisfy me that the cause now before the Court is one which before 1905, i.e. "The Enactment of the "Supreme Court Act, 1905," was one which was tried, as of right, by a Jury. 10

2nd Point. As to the time, Rule 1 gives notice, "within four days," "or within such time as the Court may allow." Tucker admits that he is out of time.

3rd Point. Admitting that he is out of time Tucker now invokes the discretion of the Court under the latter part of Rule 1. As to Rule 2 (a) he cites :—

Proviso, "that in any such case . . . . Court with a Jury." 20

Tucker says that he feels that he has failed to show that he has a right to a Jury and now founds his application on the discretion of the Court in the proviso to Rule 2 (a).

After further submission Kempe now addresses :

There are no questions of fact which cannot be found quite conveniently by a Judge. There are however many questions of law.

Tucker heard in reply :

I decide that I will not exercise my discretion in favour of Jury trial.

1. It has not been shown that this is a case which prior to The Enactment of the Supreme Court Act, 1905, was triable as of right with a Jury. 30

2. The application is in any event too late.

I observe that all the discussion on this question should have been had in Chambers on Summons.

Tucker informs the Court as to this, that he was instructed in the matter only recently.

ORDER. The trial is to proceed without a Jury.

## No. 6.

Roderick Alexander Ferguson.

Plaintiffs'  
Evidence.No. 6.  
Roderick  
Alexander  
Ferguson,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief.

KEMPE now opens and calls

RODERICK ALEXANDER FERGUSON, sworn.

I am a Commission Merchant and live in Pembroke Parish. I remember Mr. Leseur coming to see me in June 1949 with reference to a deal in property. As a result I went with him to inspect the property on the South Shore in Warwick Parish, subsequently we both went to see the Defendant Horne. We discussed with her the purchase of this particular piece of property.

10 At the time of first meeting no terms were agreed upon. Subsequently terms were agreed. The purchase price was £5,000.

It was understood between us that before any option was given a sizeable deposit was required. The amount was not then agreed upon.

Later, on June 18th, 1949, I went to see Mrs. Horne myself.

As the result of this visit we wrote out an agreement for sale—I produce this—signed by Mrs. Horne but not by me.

Produced as Ex. "A.1."

I gave her a cheque for £500. I produce the paid cheque (Ex. "A.2") which was returned to me by my Bank. The date on "A.1" is an error,

20 it should be as of June 18th, 1949.

I know as a fact that at a later date, I think on June 24th, another agreement in duplicate was executed between the Defendant Mrs. Horne and Mr. Leseur. That agreement dealt with the balance of £500 which was payable as the deposit.

The final agreement was to be made out by Lawyer Richards.

I said Hallett and Whitney were my lawyers as far as deeds of transfer were concerned.

I do not know if Lawyer Richards drew the deed of sale. I was never asked to sign. Richards never handed over to Messrs. Hallett and Whitney

30 the deeds appertaining to this land from which the deed was to be drawn.

I wrote a letter to Mrs. Horne asking her to transfer the deeds to Hallett and Whitney.

*Note* : Notice to produce original has been given. This is the original document typed by me and signed by Leseur. (Ex "B.")

(Letter read.)

I sent an intimation of this letter to Messrs. Hallett and Whitney. The letter is dated August 10th, 1949.

Nothing happened. As a result of this delay I consulted Hallett and Whitney and as a result of their advice I, at a later date in 1949, consulted

40 Messrs. Appleby, Spurling and Kempe. I interviewed Mr. Spurling.

Before consulting Mr. Spurling I received this letter (Ex "C"), dated 27th January 1950, from Attorney Richards.

(Letter read.)

Plaintiffs' Evidence.

No. 6,  
Roderick  
Alexander  
Ferguson,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief—  
*continued.*

Up to the receipt of this letter I had no idea that any duty lay on me or my partner Leseur to cause a survey of the property to be made.

I did realise however that there would be a question of survey but only after the deeds held by Mrs. Horne had been examined by my attorneys and approved.

This was necessary to discover whether the area corresponded with the area I had bargained for. That part of the letter dealing with rescission came as a surprise and thereafter I consulted Mr. Spurling.

As a result of this interview a letter was addressed to Mr. Attorney Richards, dated 4th February, 1950, by Spurling. (Ex. "D.") 10  
(Letter read.)

After some time I made enquiry and discovered from my attorney, Spurling, that certain deeds had been turned over to him.

I think the documents took a few months to arrive with Mr. Spurling.

After they arrived I requested my attorney, Spurling, to complete the conveyance.

He gave me certain reasons why he could not complete the deeds of conveyance.

Subsequently I was informed of a conference between defendant Horne and her attorney, Richards, and my attorney, Spurling. Certain proposals 20 or compromises emanating from Mrs. Horne were put forward to me.

I did not accept but put forward counter proposals.

I caused Spurling to put my counter proposals in a letter to be addressed direct to Mrs. Horne. I saw it and say this is a copy.

*Note :* Notice to produce original. It is not produced and the duplicate is now admitted—Ex "E"—it is dated 18th December, 1950.

I was shown a letter by Mr. Spurling which was received by him in answer to Ex. "E." I produce this letter—(Ex. "F").

I understood from this that my proposals were not agreed to.

Title has not been passed to me. I have not the £500 I gave to 30 Mrs. Horne.

Cross-exam-  
ination.

CROSS-EXAMINATION. It was Leseur who asked me if I were interested in the property.

The measurements mentioned in Ex. "A.1" were given me by Mrs. Horne.

When I went to her house in 1949 she was not expecting me. She had quoted the measurements before. She did not hesitate to give us the measurements. There were two meetings before the agreement, Ex. "A.1.", which was written by me at her house. I made two copies. I gave her one and Ex "A.1" I retained. 40

I drew up agreement between Leseur and Mrs. Horne. I copied it from Ex "A.1." We both paid our money on the respective dates, £500 each.

I always specified Messrs. Hallett and Whitney were my lawyers. When I first went to see Mrs. Horne she told me her lawyer was Mr. Richards and she would not have any other lawyer.

We always said that when we bought we wanted Hallett and Whitney.

I never agreed to any conveyance being drawn by Richards.

My £500 was paid first and Leseur's was paid after.

I received Ex. "C" and noted the last paragraph. I was surprised at getting this letter.

I believe Messrs. Appleby, Spurling and Kempe received the deeds of title referring to this land about March 1950 and that they were returned to Richards in October, 1950.

10 I was informed by my attorney that he required more information and had tried to obtain this without success.

I don't know if Mrs. Horne had a better offer for the property whilst the matter was dragging on.

Mrs. Horne has informed me within the last few weeks that she had received a better offer than ours for the land in question.

I say definitely that Mrs. Horne did not approach me in September 1949 for a release from her agreement of June 18th, 1949.

Counsel puts to Witness a carbon copy of an agreement between Leseur and Mrs. Horne. (Later put in as Ex. "H.1").

20 Witness continues: I have seen this before. I composed it.

Counsel reads the paper typed.

I cannot agree that Mrs. Horne ever approached me with a view to a release from the terms of the agreement, Ex. "A.1," and I do not agree that to do so she would be acting reasonably.

Court adjourned.

Court resumed.

Ferguson on his former oath: I did examine something which appeared to me as a plan of the property delineated in Ex "A.1." I cannot remember whether it was a surveyor's plan.

30 I was not shown a surveyor's plan.

Two plans, later put in as Exs. "P.1" and "P.2," purporting to be a survey of the land delineated in Ex. "A.1" are shown to the Witness.

Witness continues: I have not seen these plans before. I have never been given a plan of the land.

I don't know whether Mr. Leseur has ever been given any such plan.

I had seen or inspected this property but Mrs. Horne was not with me. She never walked "The meets and bounds."

I have never told Mrs. Horne that I wished to be released from my purchase of this property.

40 Ex. "A.1" was drawn up at my suggestion.

I was agreeable to Mr. Richards drawing up another agreement.

I was agreeable to a more formal agreement being drawn up by Lawyer Richards.

After Leseur got his agreement signed we then experienced difficulty, we expected that Mrs. Horne would send the deeds. She did send the deeds about March, 1950,—about eight months afterwards.

Plaintiffs' Evidence.

No. 6.  
Roderick  
Alexander  
Ferguson,  
21st May to  
6th June,  
1951.  
Cross-examination—  
*continued.*

Plaintiffs'  
Evidence.

No. 6.  
Roderick  
Alexander  
Ferguson,  
21st May to  
6th June,  
1951.  
Cross-exam-  
ination—  
*continued.*

I wrote the letter to Mrs. Horne.

Mrs. Horne did say to me that she would not deliver her deeds to Messrs. Hallett and Whitney. I knew from the commencement that Mrs. Horne did not want the deeds drawn by Messrs. Hallett and Whitney but there was no refusal on the part of Mrs. Horne to allow the deeds to go to Hallett and Whitney at the date of Ex. "A.1."

I had seen Mrs. Horne on two occasions before June 18th.

A lawyer's name was mentioned who was to draw up the deed of transfer. She insisted on Mr. Richards, I objected and to my partner said Messrs. Hallett and Whitney.

Mr. Leseur was present on the first two occasions.

Leseur was not present on the 18th June, 1949.

This dispute was not settled prior to June 18th, the date of Ex. "A.1," but on that day it was settled. Mrs. Horne and I were present. I being satisfied on this paid over £500 to Mrs. Horne.

As to the phrase, "certain conditions of sale" in Ex. "C," I interpret as a memo I sent to Mr. Richards in which I insisted that the deed of conveyance be drawn by Hallett and Whitney.

It was not true for Mr. Richards to suggest that I had receded from my position. I had agreed to Mr. Richards drawing the documents and thereafter their being approved by Hallett and Whitney.

I had no further conversation with Mrs. Horne between June 18th 1949, and 1950.

I considered the last paragraph of Ex. "C" serious.

I do not read into this letter any suggestion of fault of delay ascribable to me.

The title deeds were in fact delivered to Appleby, Spurling and Kempe in March 1950. I think they were returned on October 4th. That firm of attorneys didn't proceed further because they wanted further information. Mr. Spurling told me that; shortly after he got the documents.

As regards the terms of the purchase of this land, the price I think was a fair market price. Any sense of generosity as regards the purchase price was from me.

As to the amount of the mortgage, that is to say £4,000 four-fifths of the price, the amount was suggested by Mrs. Horne, moreover that the mortgage was for ten years.

Counsel (Mr. Tucker) puts to the Witness an agreement between Leseur and Mrs. Horne, dated 24th June, 1949. (This, it was intended by Counsel for Plaintiff to put in "per medium" of the next witness, Leseur.)

It is now admitted as Ex. "H.1."

I had never heard of a transaction of this kind before. Mrs. Horne herself offered it. Leseur was present. I saw the advantage and agreed to those terms. I was not present when Ex. "H.1" was signed.

I composed Ex. "H.1."

It is not correct to suggest that Mrs. Horne so insisted that Richards was to draw the deed of conveyance otherwise the transaction would not go through.

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<p>I don't read into Ex. " C " such a meaning.</p> <p>I did not know that the property could have been sold at a better price to some-one else and I was not so informed. Cash is better to the owner than a transaction involving mortgage.</p> <p>I do not agree that the breach has been caused by Leseur or me.</p> <p>I don't know if any surveyor was suggested to me. I saw deeds in the presence of Mr. Spurling. I did not examine them.</p> <p>I had a conversation with Mr. Spurling about these deeds in March 1950. I saw Mr. Spurling often about the matter subsequently.</p> <p>10 My case is my lawyers are not satisfied with her title.</p> <p>If Hallett and Whitney had accepted title I would have accepted.</p> <p>Richards did not ask me to come and sign a deed. I do not know if he had drawn any deeds.</p> <p>Mrs. Horne appeared satisfied to hand over to Appleby, Spurling and Kempe. I sought advice of Spurling and the result was that the letter Ex. " E " was written.</p>	<p>Plaintiffs Evidence.</p> <p>—</p> <p>No. 6. Roderick Alexander Ferguson, 21st May to 6th June, 1951. Cross-exam- ination— <i>continued.</i></p>
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No. 7.

Herman Frederick Leseur.

HERMAN FREDERICK LESEUR, sworn.

<p>20 I am a merchant living in Hamilton.</p> <p>In 1949 I approached Defendant about a property on the South Shore Road. I went with Ferguson and looked it over. I had been over that property before. I had been shown the boundaries before by Mrs. Horne.</p> <p>Afterwards I went with Ferguson. We had a discussion with Mrs. Horne. The purchase price was £5,000.</p> <p>I met Mrs. Horne a second time. Price was £5,000 and the lowest deposit was to be £1,000 and £4,000 was to remain on mortgage and whatever money was to be paid should go to the principal if paid within ten years.</p> <p>I see Ex. " H.I." The terms I have given were to be embodied in</p> <p>30 this.</p> <p>I had ten years in which to pay £4,000. There was no interest.</p> <p>I met Ferguson and I made up the agreement, Ex. " H.I."</p> <p>Mrs. Horne subsequently came to see me.</p> <p>I knew that Mrs. Horne was acting as agent for Richard Fox. She never exhibited the power to me.</p> <p>She held herself out as agent of the owner of the property.</p> <p>I signed a letter to Mrs. Horne and sent by registered post. Ex. " B "</p> <p>is it.</p> <p>They didn't send me the deeds.</p>	<p>No. 7. Herman Frederick Leseur, 21st May to 6th June, 1951. Examina- tion-in- Chief.</p>
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Plaintiffs'  
Evidence.

No. 7.  
Herman  
Frederick  
Leseur,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief—  
*continued.*  
Cross-exam-  
ination.

I didn't get any reply from Richards to come in and sign the formal agreement.

I consulted Messrs. Hallett and Whitney and received certain advice. I consulted another firm of lawyers. I was present at the interview with Spurling and Ferguson. I had received a letter. I produce this, Ex. "J." This is from Richards. This is a counterpart to Ex. "C."

My attorney then caused a letter (Ex. "D") to be written to Mr. Richards. I have seen this.

They delivered the documents subsequently. There was delay; Mr. Spurling did not pass title. 10

CROSS-EXAMINATION: I approached Mrs. Horne with regard to buying this property. When I first went Ferguson was not with me. I am not certain if I was shown a plan. If I remember aright she showed me a plan on the ground and showed me a cedar tree stuck in a hole and Mrs. Horne said this was approximately the Eastern boundary. I was shown the War Department landmarks. I was able to ascertain the Northern boundary. I was shown the Western boundary. Mrs. Horne said that her Western boundary was twelve feet away from a War Department stone.

I was interested. I didn't agree then to take it. 20

My inspection was in May.

Mr. Lawrence said he was not interested. I then asked Ferguson. He was interested.

Ferguson and I looked at it in June 1949.

I asked her what the option was. She said the first who pays the deposit gets the property.

We saw her again before the 18th June.

She showed us a plan of the property and that is where we got the measurements from.

Two plans (Exs. "P.1" and "P.2"), are put to the Witness. 30

These plans were not shown to me before.

I next saw Mrs. Horne on the 24th June and I had an agreement typed out. She said she would come to town to execute my agreement. My lawyer was Hallett and Whitney. I have seen the agreement of 18th June.

Richards was to draw up an agreement. I wouldn't expect her lawyer to draw my property deeds.

I knew she had something against Dr. Hallett.

I know she insisted that Richards was to draw up the agreement.

I don't know anything about the title deeds. 40

I remember that there was some suggestion that the proposition be called off.

I recall that my lawyers retained the deeds for six months.

I have never heard her say that Richards was to draw the title deeds. I deny that she ever said anything of that sort.

The purchase price was fair. The terms of mortgage were generous. We were land speculating. I deny that Ferguson did anything to prevent the title going through. Plaintiffs' Evidence. ---

My lawyers found fault with the title. No plan of the property was ever given or handed to me. We had no dealing with Mr. Fox in this matter. No. 7. Herman Frederick Leseur,

RE-EXAMINATION: As to the Eastern boundary, Mrs. Horne said that a cottage belonging to Mr. Gibbons was within her Eastern boundary. 21st May to 6th June, 1951.

I have seen a plan or something of the land. It is not either of the two (Exs. "P.1" and "P.2"). Mr. Tucker has shown me. Re-examination.

10 Court adjourned.

Court resumed.

No. 8.

Arthur Dudley Spurling.

ARTHUR DUDLEY SPURLING, sworn.

Practising as attorney of the firm of Appleby, Spurling and Kempe, I was consulted by Plaintiffs in this action. I remember the date; 4th February, 1950. This was the first time.

Ex. "D" is put to Witness.

20 I knew of this letter from my firm of attorneys. I wrote it. It was written and dated the same day as that on which I was first consulted.

I was consulted by the Plaintiffs in connection with an agreement of sale made by them with the Defendant Horne regarding the purchase of a lot of land on the South Shore which is described in the agreement of sale.

I have seen these two agreements Exs. "A.1" and "H.1," these are the agreements I now refer to. I now say that I do not remember having seen "A.1" but saw indeed a typewritten office copy of it which is now shown to me.

This office copy is now exhibited as Ex. "J."

30 I saw also Ex. "G." With regard to Ex. "D," it is my answer to a letter, Ex. "C," written to the Plaintiff Ferguson by attorney Richards.

As to that part in Ex. "C" which refers to rescission of the contract. I wrote in my letter, Ex. "D" the third paragraph.

My letter, Ex. "D" went on further; there was a question as to boundaries as I was aware of a dispute in which the Defendants were involved as regards a boundary. In the fifth paragraph Ex. "D" I alluded to this. (Reads) . . . .

I had no reply to that letter, Ex. "D," and I wrote again to Mr. Richards.

No. 8.  
Arthur Dudley Spurling,  
21st May to 6th June 1951.  
Examination-in-Chief.



Plaintiffs'  
Evidence.

No. 8.  
Arthur  
Dudley  
Spurling,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief—  
*continued.*

The letter is put to the witness.

This is my letter signed by me, 21st February, 1950. (Ex. "K.")

Subsequently certain documents listed on the list (Ex. "L") now produced were received by me. This list is a form of receipt by me and is dated 24th March 1950. Among this list of documents there was a conveyance to Richard Cleveland Fox, dated 26th Sept. 1947. Also among them was a power of attorney from Fox to Mrs. Horne dated 28th October, 1947.

I examined the documents but was particularly concerned about the boundaries as I had knowledge that there was a dispute. 10

I did see Attorney Richards on a number of occasions in respect of this matter and told him it was impossible for me to proceed unless I was satisfied that the boundaries were correct.

It is within my experience in Bermuda Practice for one attorney to act for both Vendor and Vendee in a sale of real estate. Local Practice gives the purchaser the right to name the attorney.

The Vendor in this case was being represented by Mr. Attorney Richards.

Local practice does not unreservedly demand an abstract of title as known in England but Vendors do produce the requisite evidential 20 documents to establish title and such other replies to requisitions as the purchaser may put forward.

Vendor must produce all relative documents and supply requisitioned evidence to establish his title.

Ex. "K" is repetition of my original request covered in Ex. "D."

I see a letter dated 7th December, 1950. I wrote this and addressed to Mr. Richards. (Ex "M.")

Letter is read.

The only documents in writing I received from the Defendants or their attorney, Richards, were those listed in the receipt, Ex. "L." There 30 was in this list none which met my requirements.

On these documents I refused to pass title and I now give my two reasons :—

*Firstly* : The question of boundaries : I was not satisfied that the alleged owner Fox did in fact own the lots of land described in the agreement of sale. Subsequently recently I have examined Court Records and discovered an Action against Horne and Viera by Gibbons and found that a Judgment in that action affected this particular lot and which Mrs. Horne has subsequently admitted to me to have formed a portion of that promised to be sold to the Plaintiffs. 40

I now produce a certified copy of that Judgment. (Ex. "N.")

*Second* reason why I was not satisfied. I was in grave doubt of the application of the Alien Act, 1926, Vol. 2, p. 942. In particular Sect. 7.

A tract of land of which this parcel, the subject of the agreement for sale, was originally owned by Adrastus Henry Astwood and was willed by him to his several children. A portion of this land came into the possession

of Edward Astwood who was, I understand, a citizen of the U.S.A. He apparently conveyed property to Richard Cleveland Fox, the 2nd Defendant, and by reason of certain information I had I doubted whether the conveyance was a legal conveyance and did not constitute a violation of Section 7 of the Alien Act, 1926.

Plaintiffs' Evidence.

No. 8.  
Arthur Dudley Spurling,  
21st May to 6th June, 1951.  
Examination-in-Chief—  
*continued.*

As I recalled my immediate concern was as to the boundary, and I do not remember bringing up the second question.

I have not received any satisfactory replies to my requisitions.

Ex. " E " is put to Witness.

10 This was written by me on 18th December, 1950. This was written subsequently to an interview I had with Richards and Mrs. Horne in my own office. I called this meeting.

At the conclusion Mrs. Horne, in my presence, dispensed with the service of Mr. Richards.

My clients were at all times desirous to complete the sale, there is a reference in paragraph 5 to that fact and pointing out certain damage my clients felt they had suffered already.

Ex. " F " is put to the Witness.

This is the reply to my letter, Ex. " E."

20 The terms of her letter were not satisfactory. She rejected the offer and even rejected contemplation of sale.

The documents listed were returned eventually to Mr. Richards during my absence abroad.

Before going abroad on 28th August, 1950, I requested my associate, Mr. Kempe, to write to Mr. Richards on my behalf. On my return I saw a copy of this letter.

The original is produced and shown to the Witness.

This is the letter—4th October, 1950. (Ex. " O.")

30 When these listed documents came to me there were some plans attached to the title deeds.

The Defendants claimed more land than they owned.

I was not satisfied by any document or plan I saw among the listed documents that the Defendants owned the land described in Exs. " A.1 " and " H.1."

CROSS-EXAMINATION : I recall the interview between Mrs. Horne and Edward Astwood and myself in December, 1950. Mrs. Horne had several documents which she showed me. She wanted me to act for her. I refused.

Cross-examination.

40 A receipt from a firm of attorneys, Hallett and Whitney, is put to the witness.

Question : Have you seen this ?\*

Answer : No. Even had I seen this before this moment I would still give refuge to doubt about the validity of the conveyance to Fox in the light of the Aliens' Act, 1926.

The conveyance I questioned was a subsequent conveyance from Mr. Astwood to Mr. Fox.

\*Note :  
Whatever this document was, it was not put in as an exhibit.

Plaintiffs' Evidence.

No. 8.

Arthur Dudley Spurling, 21st May to 6th June, 1951.

Cross-examination—*continued.*

The effect of Section 7 is to prohibit the holding of land for the benefit of an Alien except with sanction of Governor-in-Council.

I had nothing to do with this before the 4th February, 1950.

I understood there was dispute as to the choice of attorneys. I told my clients of their rights.

I do know of instances where the vendors have insisted on the appointment of their attorney. I add I do not approve that practice.

The documents given me listed in Ex. " L " were not only given to me for examination but for use were I satisfied to draw up a deed of conveyance.

10

Astwood and Mrs. Horne did have an interview with me. Then there was a second conference at which Mrs. Horne and Richards and myself were present. At this latter interview this matter was discussed. I have known of this since 4th February, 1950. I was shown the letter of Mr. Richards, Ex. " C," and my letter " D " was written as a result.

I had intimation of a boundary dispute before 4th February, 1950.

In my reply, Ex. " D," I said I didn't approve the title. Mrs. Horne is perfectly aware of the difficulty of the Alien Act through other sources irrespective of me.

My clients are much more interested in completing the sale than the 20 return of their money.

I am not aware of the fact that Mrs. Horne approached the two Plaintiffs with a view to obtaining a release from the terms of the agreements entered into by her. (Exs. " A.1 " and " H.I.")

I believe that I have seen some reference in writing to this. (Tucker refers to paragraph 5 in Defence.) That may be where I saw it.

Ex. " H.1 " is put to the Witness.

I would say purchase price seems to me fair.

With reference to the mortgage terms ; these are not usual.

Re-examination.

RE-EXAMINATION : No questions.

30

*Close of Case for Plaintiffs.*

Court adjourns.

Court resumed.

TUCKER opens for Defence.

The condition of sale was that Richards was to draw up the conveyance. The list gives the specific purpose of examining title and no more. In that the Defendant insisted but the Plaintiffs refused to proceed.

## DEFENDANTS' EVIDENCE.

## No. 9.

Edward Trenton Richards.

Defendants'  
Evidence.

No. 9.  
Edward  
Trenton  
Richards,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief.

EDWARD TRENTON RICHARDS, sworn.

I am a Barrister-at-Law. Am also a practising attorney. I was attending to the affairs of Mrs. Horne. I saw Ferguson and Mr. Leseur together some time in 1949 in my chambers. When I saw them about this matter they had already seen Mrs. Horne. Preliminary arrangements had long before been made.

10 When Mrs. Horne came to me she told me that an agreement had been made between her and Leseur and Ferguson for sale of property on the South Shore and instructed me to draw the conveyance of sale.

The interview I refer to between Leseur, Ferguson and myself was not very long after the date appearing in Exs. "G" and "H.I," that is, the 24th June, 1949.

I wrote Exs. "C" and "I."

Before I had written them I had seen Mrs. Horne and she told me that she had seen Ferguson and Leseur and as a result it was decided, as I understood from her, by the three parties, Leseur, Ferguson and Horne,  
20 that I was to draw the conveyance and that it was to be submitted to the attorney of Leseur and Ferguson for approval.

Furthermore, a doubt as to the boundaries of the property was to be cleared up by a Surveyor or Surveyors chosen by the Plaintiffs. The position as I knew it was that the plan of the property described in Exs. "A.I" and "H.I" to be conveyed was not quite satisfactory to the purchasers Leseur and Ferguson. In order to remove any doubt they were to have their own surveyor.

Two plans are put to the Witness.

30 One of these plans, marked Ex. "P.1," is a plan of the whole estate of Samuel Josephus Astwood. It shows the property as divided into two parts by the intersecting of the Government South Shore Road. The land, the subject of the action, is that on the southern side of the road.

A part of this plan "P.1" is shaded in red indicating the land so shaded as being the property of the War Department.

The unshaded part to the south, going down to the sea, is the property the subject of this action.

I now turn to the second plan, admitted "P.2."

This plan encloses in a red boundary the land the subject of this action.

40 Both plans were prepared by Mr. Surveyor Stovell.

I showed "P.2" to one of the Plaintiffs; I can't remember whom.

I wrote Exs. "C" and "I."

Witness reads the two letters.

Defendants' Evidence.  
 No. 9.  
 Edward Trenton Richards,  
 21st May to 6th June, 1951.  
 Examination-in-Chief—  
*continued.*

I had a reply from Messrs. Appleby, Spurling and Kempe to these two letters. They indicated that they were acting for Plaintiffs. This reply is Ex. "D," dated 4th February, 1950.

This indicated that Appleby, Spurling and Kempe were asking for delivery of title documents so that they could proceed.

This letter seemed to me to do no more than to attempt to shift the onus of having the boundaries clarified.

It was apparent that they were not satisfied with the Stovell survey.

They wanted the deeds to draw the conveyance but this was contrary to my instructions.

Mr. Spurling and I had several conversations, I told him I had definite instructions not to pass the deeds to him. However I told him I had no objection to his examining the deeds as to the property provided I had Mrs. Horne's approval.

I took them myself. I got my instructions from Mrs. Horne. I was surprised to learn that Messrs. Appleby, Spurling and Kempe were attorneys for Plaintiffs. I thought Hallett and Whitney were representing them.

Mrs. Horne and I could not see eye to eye and I was not further required.

I left the deeds with Mr. Spurling. The matter was lying in abeyance until another matter came before the Supreme Court. I approached Spurling for the deeds. Spurling was away. Kempe let me have them back.

No requisition was made on me for better particulars after the 24th March—the day I handed the deeds to Spurling.

I can't say with certainty whether or no I received any further communication from Appleby, Spurling and Kempe as to further particulars.

Cross-examination.

CROSS-EXAMINATION: Ex. "O" is put to the Witness.

I acknowledge having received this letter. As to paragraph 3 in this letter I had already given to Mr. Spurling all the deeds and documents available to me.

Witness is referred to Ex. "M" and the following question is put:—

*Question:* Did not that letter require of you further information in writing to satisfy the attorney for Plaintiffs as to the title?

In my opinion it did not and for the following reason: At the time I took these documents listed Ex. "L" to Mr. Spurling I told him that in my view that was a complete list and sufficient to disclose a valid title to the property in question.

Ex. "D" is put to the Witness.

Counsel refers to paragraph 5.

Witness replies: But I did take all the deeds to Mr. Spurling some time after I received this letter.

I did not answer this letter, Ex. "D," in writing; my answer was to take all the documents I had, with my client's permission, to Mr. Spurling. This was March 24th. I did not answer Ex. "D" as I was continually meeting Spurling. He seemed to know as much as I did.

10

20

30

40

Ex. " C " is put to the Witness.

The conditions of sale were altered that I was to draw the conveyance which was to be signed in my chambers. Another alteration was that my draft was to be approved by Hallett and Whitney.

Ex. " A.1 " indicates I was to draw agreement for sale. I saw this long after. I have seen Ex. " A.1 " only today. I have seen a copy of it ; it is Ex. " J. "

Ex. " G " is the only document dealing with the agreement that I have ever seen.

10 I agree that to have a summary it is unnecessary to have the title documents. I understood that the two Plaintiffs had seen Ex. " P.2. "

I have understood that the two Plaintiffs and Mrs. Horne have " walked " the boundaries.

I ceased acting for Mrs. Horne in December, 1950, after an interview between her, myself and Spurling.

I considered the matter re-opened when I received Ex. " D " on the 4th February.

RE-EXAMINATION : I cannot remember whether the deeds I handed over to Mr. Spurling, listed in Ex. " L, " had survey plans.

20 When I turned the deeds over to Mr. Spurling I had consulted Mrs' Horne and prevailed upon her to do so. I always understood that I was to draw the conveyance.

I am satisfied that any conveyance I would have drawn would have been given on paper and by bounds the land described in Ex. " A.1. " I was satisfied that the land described was there.

Court adjourns.

Court resumed.

Defendants' Evidence.

No. 9.

Edward Trenton Richards, 21st May to 6th June, 1951.

Cross-examination—*continued.*

Re-examination.

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No. 10.

Margaret Young Horne.

30 MARGARET YOUNG HORNE, sworn.

Defence continuing.

I am one of the Defendants in this action. I reside at Warwick Villa. My brother is Edward Astwood. He lives with me at Warwick Villa.

I have a Power of Attorney to act on behalf of my brother Edward. Edward is the grandson of Adrastus Henry Astwood who owned property in Warwick. He made a Will of date May 18th, 1890, disposing of his property.

I produce a certificate of the Registrar attached to a copy of the Will of Adrastrus Henry Astwood, marked Ex. " Q. " I refer to Clause 3 of

No. 10.

Margaret Young Horne, 21st May, 1951.

Examination-in-Chief.

Defendants' Evidence. the Will under which Samuel Josephus Astwood is a beneficiary. Samuel Josephus Astwood is the father of my brother Edward and he is my father. (Witness reads the Clause.) I have identified the land as described in this Will.

No. 10.  
Margaret  
Young  
Horne,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief—  
*continued.*

Samuel Josephus Astwood died in March 1933 having made a Will dated Feb. 6th, 1929. That Will was probated in this Court in April 1933. Dr. Hallett (attorney) was acting for me.

I produce a certified copy under the hand of the Registrar of this Will—Ex. "R."

I refer to Clause 4 in this Will which amounts to a devise of the same parcel of land which was devised in Clause 3 of the Will of Adrastrus Henry Astwood. (Ex. "Q.") 10

My brother thus inheriting this parcel of land has disposed of some of it.

It is a fact that the Plaintiffs desire to purchase a part of the land formerly owned by my brother.

My brother sold a portion of the land he inherited to one Richard Cleveland Fox. I acted on behalf of my brother as his lawful attorney in this dealing with Cleveland Fox.

I produce the Power—Ex. "S"—dated 8th May, 1947.

Under the authority reposing in me by this Power I negotiated the sale of two acres of my brother's land to Richard Cleveland Fox. He lives in Warwick and is a gardener and fisherman. 20

I was approached by Mr. Leseur, one of the Plaintiffs, on June 10th 1949, desiring to buy the same land that Fox had bought from my brother.

I had also a Power of Attorney to act on behalf of Fox. I produce this Power dated 28th Oct. 1947. (Ex. "T.")

I negotiated the sale to Leseur. He came to me and I believed him to be the only purchaser. He came on June 10th, 1949, at 9 a.m. as the result of an advertisement of mine placed in the Royal Gazette of the 10th June, 1949. 30

He came again at 11 a.m. bringing with him Mr. Lines. I understood that Lines was "going in" with Mr. Leseur in this negotiation.

On June 13th I knew Lines was no longer interested but that a Mr. Ferguson would be coming to see me.

I showed the boundaries of this particular two acres, the sale of which I was negotiating, to Leseur and Ferguson on June 16th, 1949, I had in my possession a plan of this two acres which described the boundaries. I produce this plan. (Note: It is already in evidence as Ex. "P.1.") I gave this plan to Mr. Ferguson. It was returned to me by Mr. Richards my attorney at that time. 40

The plan described the land as approximately 2 acres, 0 roods, and 17 perches.

An agreement of sale was drawn up by Ferguson on June 18th. I signed it.

Ex. "A.1" is put to the Witness.

This is the agreement. It was accompanied by a deposit of £500—being half the amount of the deposit.

On June 24th Mr. Leseur entered into an agreement with me. He deposited £500. I signed. This is the agreement, Ex. "H.1." He Defendants' Evidence.

I had had a conversation with Mr. Richards, my then attorney, on June 18th, he advising me to accept the offer of Mr. Ferguson. No. 10.

I had already told Leseur when first meeting him that Richards was my attorney and would draw the conveyance. On June 16th I had already told Ferguson the same thing. Margaret Young Horne, 21st May to 6th June, 1951.

My attorney does my work and I considered it correct that he should draw the conveyance. I was most emphatic in this. Examination-in-Chief—

10 I was insisting when I first met the two Plaintiffs before even they had made their respective deposits. continued.

I had an opportunity of selling very shortly after this negotiating with Plaintiffs, Leseur and Ferguson. The price then offered was £6,000 cash.

On Sept. 15th, 1949, I informed both Plaintiffs that I had an opportunity to sell for a higher price. I asked them to release me on payment back of their deposits.

I see Ex. "H.1" again.

Purchase £5,000. £1,000 down—£4,000 to remain on mortgage.

20 My interpretation of Ex. "H.1" is that any interest paid on the mortgage of £4,000 was to be deducted from that amount if the amount was paid to me by the end of ten years.

I was under the impression they were building their own houses and accordingly agreed to these very liberal terms. I had referred to Mr. Fox about this.

Court adjourns.

Court resumed.

EXAMINATION-IN-CHIEF *continuing*: Witness on her former oath: When I asked the two Plaintiffs to release me on September 15th, 1949, they refused. They said they wanted the land.

30 I instructed Mr. Richards to draw the conveyance and I know that he did so. I did not execute the conveyance.

I left the matter with Richards to get into touch with the Plaintiffs.

Neither Leseur nor Ferguson called for the conveyance. Had they called I would have been in Richards' chambers to attend to the execution of the conveyance.

I had a conversation with Richards in which I learned that they took no notice of his request to them to come to his chambers.

The next thing that happened was that Mr. Richards, on my instructions, wrote a letter to the two Plaintiffs.

40 Exs. "C" and "F" are put to the Witness.

These letters which are in identical language were written, with my knowledge, to the Plaintiffs.

There was a time limit invented of three weeks.

It was written because they would not "pick up" their agreement.

On February 4th, 1950, I knew that Richards received a letter in reply.



Defendants'  
Evidence.

No. 10.  
Margaret  
Young  
Horne,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief—  
*continued.*

Ex. " D " is put to the Witness.

I have seen this before.

The terms of this letter, Ex. " D," are incorrect in respect particularly of the fourth paragraph.

As to the handing over of my title deeds to Messrs. Hallett and Whitney, this is the first that I came to know of such an arrangement.

I had never agreed to such an arrangement. I had no such agreement (with reference to the third paragraph) to hand over my documents for examination by the attorneys of the Plaintiffs.

There was no such agreement between the two Plaintiffs and myself 10 as to the handing over of my documents for examination by their attorneys.

I refused to allow Mr. Richards to hand them over but I agreed that the Plaintiffs' attorneys could come to Mr. Richards and view and examine them in his chambers.

Witness reads the fifth paragraph of Ex. " D."

I say there is no dispute between the owner of this property and the adjoining land-owner and the boundaries as described in Exs. " A.1 " and " H.1. " are correct.

I agree that the vendor has to prove title. I was in a position to do so.

It is not a fact that there has been a dispute about the eastern boundary 20 of this land, the subject of the agreements.

I agree that there was a case lately in this Court between Maurice Gibbons, Plaintiff, and myself and Edward Viera as Defendants.

Witness is referred to plans, Exs. " P.1 " and " P.2."

I see that the owner of the land adjoining the eastern boundary of the land of Cleveland Fox is Edward Astwood. It is described as the land of the estate of Henry Adrastus Astwood. This is in my estimation the same man as Adrastus Henry Astwood. There is a right of way from the south coast main road across intervening land of the War Department to the property of Cleveland Fox. 30

As a result of the receipt of Ex. " D " Richards called me to his chambers and I went. I gave Richards permission to take the title deeds, the number of which I cannot remember.

I see Ex. " L "; I agree that this is the list of those documents. They were to be left for perusal but I didn't give him permission to leave them with Appleby, Spurling and Kempe.

Ex. " K " is put to the Witness.

I know nothing about Ex. " K "; I have not seen it before this.

Ex " M " is put to the Witness.

This is dated 7th December from Messrs. Appleby, Spurling and 40 Kempe, I have never seen this letter before.

Ex. " E " is put to the Witness.

I remember receiving this letter dated 18th December 1950, from Messrs. Appleby, Spurling and Kempe. As to the first paragraph I disagree ; I did not terminate Mr. Richards' services.

As to paragraph 2 the first part is incorrect. I have never said anything to anyone about my financial position.

In reply to Ex. " E " I wrote Ex. " F."

I went to Spurling originally on a totally different matter as attorney for my brother Edward Astwood and I learnt at that interview that the only Power of Attorney in which Mr. Spurling was interested was the Power of Attorney emanating from Astwood and for this reason I signed this letter (Ex. " F " ) as attorney for Astwood—for no other reason.

When the Plaintiffs came to see the property in June, 1949, I did not tell them anything about Gibbons. I knew nothing about him.

I deny ever having told Leseur at any time that the boundary of the land I was selling him went through the Gibbons house.

10 As to the manner in which the purchase arrangement was arrived at, I required 50 per cent. purchase price down in cash as a first deposit. They said they could not go as far as that and they proposed that they only had to put down £500 each. I considered this £500 twice over as a deposit from them.

I do not know anything about the usual 10 per cent. deposit. I had never had experience before in land dealing.

Court adjourned.

Court resumed.

20 EXAMINATION *proceeding* : I was most emphatic that my attorney was to draw up the conveyance. This was of paramount importance to me.

I mean by " helping them out," an expression I used, that I would make the terms as reasonable as I could.

I was in Court on Monday and Tuesday last week I heard the two Plaintiffs give their evidence. I do not recall their saying that on their part it was a condition precedent that the attorney appointed by them should draw the conveyance. I do recall that they said that they had expressed a desire to have the deed drawn by their attorneys. Further, I heard Mr. Ferguson say that it was definitely his impression that the deed was to be drawn by his attorney.

30 By " Final agreement " in Ex. " A.1 " I mean the deed of conveyance and mortgage.

CROSS-EXAMINATION : Witness is referred to Ex. " Q "—the Will of Adrastus Henry Astwood—referred to Clause 3 particularly.

Witness continuing : I read on the seventh line the words " on the east by other land of my own next hereinafter devised." This land to the east was devised to the other children in Clause 4.

I deny that the part of land referred to in Clause 3 as " on the east by other land of my own . . . devised," is land presently owned by Maurice Gibbons. I deny this.

40 I admit it was adjudged in a recent case of *M. A. Gibbons v. Horne and Viera* that the land referred to on the east has devolved to one Maurice Gibbons.

Witness is referred to Ex. " P.1 " and in particular to the representation of a cottage just to the north of the South Shore Road.

Defendants' Evidence.

No. 10.  
Margaret Young Horne,  
21st May to 6th June, 1951.  
Examination-in-Chief—*continued.*

Cross-examination.

Defendants' Evidence.

No. 10.  
Margaret Young Home,  
21st May to 6th June, 1951.  
Cross-examination—  
*continued.*

I admit that this cottage has been adjudged in a recent case in this Court as the property of Maurice Gibbons.

I see in Ex. " P.1 " the indication of a boundary running approximately North and South to the westward of the cottage.

I have sold land to a Mr. Viera. I admit that there was a boundary dispute between Gibbons and Viera.

I do not admit ever having gone to a conference at which I admitted to Mr. Spurling that any amendment of the boundary between the land of Maurice Gibbons and the land of Viera would of necessity affect the boundary of the Leseur and Ferguson option. 10

Ex. " E " is put to Witness—she explains her position.

The interview lasted only three minutes.

I recognize nothing in Clause 3 read out to me as being my instruction or offer to Mr. Spurling.

I showed the boundaries of the land under option to Leseur and Ferguson, both of them being present with a plan of which this land formed a portion. Ex. " P.1 " is that identical plan. Ex. " P.2 " was prepared especially for the conveyance of the land to Ferguson and Leseur.

I first showed the boundary on 10th June to Mr. Leseur who appeared to me to have come out post haste on seeing my advertisement. I insist 20 that I showed the boundary also to Ferguson on 16th June, Thursday.

I admit that I have said that I didn't know that there were more than two acres.

After looking at Ex. " A.1 " I admit that I must have known that there were more than two acres.

Witness is referred to her statement in respect of paragraph 4 of Ex. " D " : " that she knew nothing about turning over her deeds to " Messrs. Hallett and Whitney "—(See p. 241 of this note-book)—and to Ex. " B. "

Witness continues : Ex. " B " I regard as a request. Ex. " D " 30 I regard as a demand.

NOTE.—At this stage I tell the Witness she is prevaricating.

When I received Ex. " B, " the letter from Leseur, I took it immediately to Mr. Richards.

The deeds were not handed over to Messrs. Hallett and Whitney. This was my decision that they were not to go to Messrs. Hallett and Whitney, and I deny that my reason was that that firm had already rejected to approve the title of this land.

I deny that they ever rejected the title.

Mrs. Mabel Blackburn Cooper did at one time try to buy this land. 40 Her attorneys were Messrs. Hallett and Whitney.

Mrs. Cooper did approach me to sell this same plot. It was part of the agreement that the deeds should be turned over to Hallett and Whitney. I was told that Hallett and Whitney " O. K. ed " the title.

I have a Power of Attorney from Cleveland Fox. He can read and write. He, Fox, has a real interest in this land. He gave me a Power of Attorney. I consulted with Fox about the terms of the land. Fox bought

the land. He paid in a mortgage. I was acting as the attorney of my brother in selling the land to Fox. When he got the land I got a Power of Attorney from him. (Fox.)

I was intent on letting Leseur and Ferguson have the land on such liberal terms in order that they should build their own houses.

I say that Richards was to draw the deeds. I told Leseur and Ferguson that some one else wanted to buy.

I did not know if Richards told the Plaintiffs that I had told him to draw the deed.

10 I permitted Richards personally to take the deeds and papers mentioned in Ex. " L " to Mr. Spurling. On their return these papers were to remain with Richards.

I did not know that these deeds mentioned in Ex. " L " had been left in Mr. Spurling's office for six months.

The Plaintiffs have not carried out their agreement because they did not pick up their conveyances. I had not signed them—that is to say the conveyances.

As to Ex. " E," I deny the purport of the letter.

I deny having more than ten words with Mr. Spurling.

20 My brother Edward approached Spurling in an effort to secure his services in another matter. That is in the instituting of a suit against M. A. Gibbons in pursuance of this I accompanied my brother to Spurling's office.

He (Spurling) did not act for my brother Edward Astwood.

Ex. " K." 21st Feb. 1950, and Ex. " M," 7th Dec. 1950, are put to the Witness.

Mr. Richards did not bring the contents of Ex. " M " to my notice.

Richards brought to my attention Ex. " D."

30 As to Ex. " D," I never knew of any dispute of boundary in relation to this land with an adjoining land-owner. Mr. M. A. Gibbons is not an adjoining land-owner of the land in question.

Richards read me Ex. " D," paragraphs 3, 4 and 5.

RE-EXAMINATION : I say that by 4th February there was no dispute between me and any adjoining land-owner.

The land to the east of the piece I was dealing in is owned by Edward Astwood. This plan, Ex. " P.1 " does not show the eastern boundary of Edward Astwood's land.

I am a novice at real estate dealings. The two Powers I hold are generally inclusive.

40 Counsel refers Witness to Ex. " P.1 " and draws attention to a boundary line running from the Khyber Pass Road down to the water. It is noted in the middle as being 740 feet.

Witness answers : Mr. Wycliffe Stovell, who is a surveyor, put this boundary line in. It was put in on my instructions.

I do not know that it had been adjudged in the Supreme Court that M. A. Gibbons was the owner of property to the westward of this line.

Defendants' Evidence.

No. 10.  
Margaret Young Horne,  
21st May to 6th June, 1951.  
Cross-examination—  
*continued.*

Re-examination.

Defendants'  
Evidence.

No. 10.  
Margaret  
Young  
Horne,  
21st May to  
6th June,  
1951.  
Re-exam-  
ination—  
*continued.*

I have an interest in the land north of the south coast longitudinal public road as attorney for Edward Astwood, my brother. It was by my instructions that this boundary line was put in.

I see a cottage immediately to the east of this boundary line for selling purposes. My brother Edward would not sell this cottage. It belonged to him.

Court adjourned.

Court resumed.

RE-EXAMINATION : Margaret Young Horne : Before the last adjournment I said that I had had the eastern boundary laid down for selling purposes only. I explain "for selling purposes only" because my brother, Edward Astwood, wanted to sell a portion of his land but did not wish to include the cottage. 10

Witness is referred to Ex. "P.1."—or a copy guaranteed by Counsel to be a copy of Ex. "P.1."

The line marked with figures 740 feet and 1002 feet is the line.

I went on the southern portion of this land, that is the land the subject of this action, with the Plaintiffs on Thursday, 16th June, 1949, and I walked this boundary with them indicating its exact course from the south coast longitudinal road to the sea-shore. 20

I indicated to the Plaintiffs the extent of this property the sale of which I was negotiating.

Refers to Ex. "A.1."

I gave Mr. Ferguson the plan, Ex. "P.1," on June 16th after I walked the boundaries with him. He took this away with him. Ultimately I received Ex. "P.1" back from Mr. Richards.

I know as a fact that Ferguson got the measurements appearing in Ex. "A.1" from this plan and also from the measurements on the plan attached to Fox's Conveyance. I showed him this Conveyance.

NOTE : The measurements differ. 30

*Question* (Through the Court) : Is the cottage the cottage to the north of the longitudinal road ?

*Answer* : The cottage is immediately to the east of the boundary line, 740—1002.

*Question* : Is that not the same cottage adjudged to belong to M. A. Gibbons in the action *Gibbons v. Viera and Horne* ?

*Answer* : Yes.

BY COURT : Stovell struck the boundary line so as to include most of the planting land. Put in by my orders as attorney for Edward Astwood who on June 6th 1943, owned the land north and south of the south coast longitudinal road. Edward Astwood is a son of Samuel Josephus Astwood and was born in Bermuda and is my brother. He went to the United States I know but I don't know when. I know as a fact that he took out Citizenship papers in the United States in 1914. 40

He succeeded to this land by devise in Clause 4 of the Will of Samuel Josephus Astwood. He is described in the Will as Samuel Edward Astwood. He dropped this Samuel when he took out United States papers. He still holds himself out as an American Citizen.

Nine and a half acres of this land, the devise in the Samuel Josephus Astwood Will, was conveyed to Fox because my brother could not handle it—he being an alien.

The tract described in Clause 3 of the Adrastus Henry Astwood Will as supposed to contain about 12 acres did in fact contain 12 acres.

10 Mr. Stovell surveyed the entire 24 acres of the estate.

My father showed me the boundary and walked the bounds with me on Xmas Day, 1931.

My brother wanted to sell most of the planting land and not the cottage. The cottage is about six feet from the boundary.

This boundary mark gives 11 acres. He claims that cottage was his. He did not want to sell it but wanted to sell most of the planting land. He was thrown out by Gibbons in June, 1950. The land remaining to my brother was 1002 feet long and 50 feet wide.

*Question* by Counsel for Plaintiff put through the Court.

20 The eastern boundary is fifty feet to the east of this boundary, Ex. "P.1."

It was adjudged in *Gibbons v. Viera and Horne* that the western boundary of Gibbons goes fifty feet in from the boundary I claim.

I refused permission for my papers to be handed over to Plaintiffs' Solicitors because Richards was doing all my work.

I have heard only from Mr. Spurling giving evidence that the deeds were in fact left with him.

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No. 11.

Wycliffe Stovell.

30 WYCLIFFE STOVELL, sworn.

I am an architect. I am also a surveyor and have been practising as a surveyor for nine years in Bermuda. I have no practice outside Bermuda.

I became a surveyor by study. I have no degree. I have never taken any examination.

I drew up a plan of a property purporting to be that of the estate of the late Adrastus Henry Astwood.

I mean I made a plan of the land. I surveyed the land and it amounted to 19.9 acres. This was the land I understood was owned by 40 Adrastus Henry Astwood. I have not that plan with me.

Defendants' Evidence.

No. 10.  
Margaret Young Horne,  
21st May to 6th June, 1951.  
Re-examination—  
*continued.*

No. 11.  
Wycliffe Stovell,  
21st May to 6th June, 1951.  
Examination-in-Chief.

Defendants'  
Evidence.

No. 11.  
Wycliffe  
Stovell,  
21st May to  
6th June,  
1951.  
Examina-  
tion-in-  
Chief—  
*continued.*

This 19.9 acres is not the whole estate of Adrastus Henry Astwood, there was another piece of land to the east of the eastern boundary of this land I surveyed.

I received instructions from Mrs. Horne, the Defendant.

The 19.9 acres had as its northern boundary the public road leading from Khyber Pass to Camp Hill Road.

On the western side there is an old wall—a boundary wall—which did not run the whole length. There were no marks on the water side to show the boundary.

The southern boundary is bounded by the Atlantic Ocean. 10

I see Ex. "P.1." This is a machine made copy of a part of the original. I was instructed to lay out 12 acres by Mrs. Horne. I laid out 12 acres but this amount included one acre and ten perches of War Department property. I found out afterwards that I should not have included this.

I was given the original Will of Adrastus Henry Astwood. I note the division of the property in this Will :

Clause 3 : About 12 acres.

Clause 4 : About 4 acres.

Clause 5 : About 8 acres. 20

In the portion I surveyed I found twenty acres.

The eastern boundary on Ex. "P.1" repeats the extent of a piece of land allegedly owned by Edward Astwood who I know returned to Bermuda in 1947.

I received the instructions in 1947 to draw up a plan of the part Mrs. Horne wanted to sell. I did so and Ex. "P.1" is the result. Ex. "P.1" does not show the entire land allegedly owned by Edward Astwood.

The north, west and south boundaries are defined.

The eastern boundary I put in by laying out by instrumental survey 12 acres of land based on fixed northern western and southern boundaries. 30  
There was no mark or sign of boundary to the east to guide me.

I was influenced in this by Clause 3 of the Adrastus Henry Astwood Will (Ex. "Q") but having laid my line I found I had not taken into consideration the War Department ownership of one acre and ten perches.

The land enclosed belonging to Edward Astwood is but eleven acres more or less.

On 10th June, 1949, I was on the land shewing the land to someone—Leseur and Lines. I had a copy of Ex. "P.1" with me. I walked over the boundaries. I showed them the eastern boundary. At the intersection of the beach there was a cedar post. 40

Leseur was negotiating the purchase of the piece of land south of the War Department property amounting in my survey to 2 acres 0 roods and 17 perches.

At that time there was no dispute on the eastern boundary.

I do know that the land to the south of the longitudinal road was the subject of an action in this Court.

The land, subject of the action *Gibbons v. Viera and Horne*, does not touch the land subject of this action nor was that land enclosed within the boundary I have laid out in Ex. " P.1."

When I resurveyed it I found an error of 5 feet.

The estate of Samuel Josephus Astwood owned this property.

Court adjourned.

Court resumed.

CROSS-EXAMINATION : Wycliffe Stovel on his former oath : I was shown the Will of Adrastus Henry Astwood and took it and attempted to survey  
10 the land devised in the Will.

I did not survey the whole of that portion of the estate devised in Clause 5 described as supposed to contain about 8 acres.

The amount of land included in my survey amounted to 20 acres more or less.

If one adds up the various amounts in this Will one arrives at the figure of " about 24 acres."

I obtained information from the Parish Vestry Clerk that there were other lands to the east amounting to 4 acres but this turned out to be 8 acres.

There was no mark to designate 8 acres.

20 I have seen the survey of Surveyor Clarke in another Court Case.

It was put to me in that case that my eastern boundary line was not correct and that the true boundary line was 150 feet west of my boundary line.

Having my fixed boundaries north by the road, west by a well-defined boundary and south by the sea I adjusted my eastern boundary in order to include in the enclosed land 12 acres.

The line I drew was drawn arbitrarily ; there were no stones or walls or old marks in the line of this boundary.

30 I did not know that at the date of the hearing of the action *Gibbons v. Viera and Horne* that Mr. M. A. Gibbons owned land to the south of the longitudinal road.

I see the boundary line identified by the figures 740 feet and 1002 feet.

I did consult Mr. Frederick Gunnison Astwood whom I knew was the owner of the land immediately in the east.

I did not hear Frederick Gunnison Astwood say that his western boundary was determined by a mark of three cuts in the rock on the cliff and in conformity with the survey of Clark.

40 I agree that accepting the judgment in the case *Gibbons v. Viera and Horne* that the western boundary of this land lying between the longitudinal road and the military road shown in Ex. " P.1 " would be 150 feet to the westwards of my boundary.

The eastern boundary I have fixed in Ex. " P.1 " lies 50 feet to the west of the eastward boundary of the land devised in Clause 3 of the Adrastus Henry Astwood Will, Ex. " Q," as I fixed that boundary.

My line runs approximately parallel with Surveyor Clarke's line.

Defendants' Evidence.

No. 11.  
Wycliffe Stovell,  
21st May to 6th June, 1951.  
Examination-in-Chief—*continued.*  
Cross-examination.



Defendants' Evidence.

No. 11.  
Wycliffe Stovell,  
21st May to 6th June, 1951.

Cross-examination—  
*continued.*

Re-examination.

I would consequently agree that Clarke's western boundary of the land devised in Clauses 4 and 5 runs 100 feet to the west of the boundary line I have arbitrarily placed on Ex. " P.1."

If Clarke's survey is correct I agree that as to the land the subject of this action, Mrs. Horne had less land to sell than she said she had.

Briefly I agree I acted on instructions of Mrs. Horne to include an exact area of 12 acres in order to fulfil the devise.

RE-EXAMINATION : When I was laying the boundary I did not have any conversation with Frederick Gunnison Astwood. He did not show me his western boundary. He ordered me off his land and gave no reason. 10

I gave evidence in the *Gibbons v. Viera and Horne* case. No question arose about any property to the south of the longitudinal road.

My eastern boundary did not touch the land of Mr. Gibbons.

BY COURT : I recognize an erasure below my name. I always sign my surveys. I signed the original of which Ex. " P.1 " is a copy. I have not signed this. This is not my erasure. The purple ink date " 6th June, 1945 " represents the date appearing in the plan of my original survey.

This is my writing. On Ex. " P.1 " I see an erasure ; this is my erasure but I cannot say why it was done. As to Ex. " P.2," I made it in my office. 20

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No. 12.

Richard Cleveland Fox.

No. 12.  
Richard Cleveland Fox,  
Cross-examination.

RICHARD CLEVELAND FOX is tendered for cross-examination, sworn.

CROSS-EXAMINATION : I bought a large tract of land from Edward Astwood. I paid £1,200 for nine and a half acres which included the two acres the subject of this action and also I sold some of this land to Viera.

When I bought this land I was granted a mortgage to an equivalent amount of £1,200. In effect I paid no money at all.

I sold a portion of the nine and a half acres to Viera for £7,000 and a portion of the land was to be sold to the Plaintiffs, Ferguson and Leseur, 30 for £5,000.

I received none of the purchase money of the £7,000 and none of the deposit of £1,000 by Leseur and Ferguson.

Re-examination.

RE-EXAMINATION : Land values have appreciably increased in late years.

Medical Certificate handed in of Edward Astwood.

*Close of Case for Defendants.*

*Curia advisari vult.*

Court adjourns, Wednesday, 6th June, 1951.

C. B. F.

40

1951 No. 7.

Between

RODERICK ALEXANDER FERGUSON and HERMAN LESEUR ... *Plaintiffs*  
andMARGARET YOUNG HORNE and RICHARD CLEVELAND FOX ... *Defendants.*

W. R. KEMPE, Esq. for the Plaintiffs.

D. TUCKER, Esq. for the Defendants.

10 Before : THE HONOURABLE THE CHIEF JUSTICE.

This is an action in which the Plaintiffs Roderick Alexander Ferguson and Herman Leseur claim from the Defendants, Mrs. Margaret Horne and Richard Cleveland Fox the return of £1,000, being the deposit paid by the Plaintiffs as part of the purchase price of £5,000, for a parcel of land in Warwick Parish, the sale of which was negotiated by Mrs. Horne under a power of attorney from Fox. The Plaintiffs claim included a demand for damages for non-completion of the contract of sale, and a lien on the property in aid of judgment. The Defendants counterclaimed for damages for breach of agreement, and the right to hold a deposit. The trial commenced on the 21st of May and continued through the 22nd and 28th days of May and the 6th of June. Mr. Kempe appeared for the Plaintiffs and Mr. Tucker for the Defendants.

The determination of the case depended on the simple question whether or not Mrs. Horne had the land she was contracting to sell ; but this involved the tedious process of the solution of a controversy regarding a boundary. Generally speaking disputes of this nature are fraught with much complexity, interweaved in some instances by long standing family feud, and in that respect this case is typical. In order therefore to obtain a proper perspective of the altercation it is necessary to go back to the date of the will of one Adrastus Henry Astwood, who died in 1901, leaving a comparatively large parcel of land to be divided among his surviving children. By the third clause of his will he devised half of his real estate being in the western portion thereof to his eldest son Samuel Josephus Astwood. The area of this portion was described as " supposed to contain about 12 acres." The eastern half, the testator subdivided into two parts, the larger of which he described as " supposed to contain about eight acres," and the smaller " supposed to contain about 4 acres " : so that in all the testator " supposed " that he had " about " twenty-four acres.

In 1933, Samuel Josephus Astwood died and in his turn devised the parcel of land inherited from his father to his eldest son Samuel Edward

No. 13.  
Judgment,  
22nd June,  
1951—  
*continued.*

Astwood, brother of Mrs. Horne. The devise gave no further or better description than "the parcel of land devised to me by my father by the " third clause of his will."

Samuel Edward Astwood (now better known as Edward Astwood) is Bermudian born, but left the Colony in 1914 for the United States, and continuing to reside there became an American citizen.

In the course of time the estate of Adrastus Henry Astwood passed down and in one way or another became vested in his grandchildren. With the increase in value of real estate in recent years, this land has appreciated considerably, and the third generation of Astwoods are 10 benefiting accordingly.

The Defendant Horne is executrix of the will of her father Samuel Josephus and a devisee thereunder and indeed his residuary beneficiary. Accordingly, taking an interest in her brother's realty in 1945 she engaged the services of Mr. Surveyor Stovell to make a survey of the whole estate devised by Adrastus Astwood. Mr. Stovell carried out his survey in the light of the testator's will and prepared a plan entitled "A plan of the " property purporting to be that of Adrastus Henry Astwood." It is unfortunate, but for some reason this plan was not produced in evidence.

Mr. Stovell, who gave evidence says that on completion of his survey, 20 he found that the undivided area (that is to say the aggregate of the three devises) within the boundaries delineated in the will, which boundaries he was able to identify, amounted to no more than 19.9 acres. Mr. Stovell added, though speaking somewhat indefinitely, "that this was not the " whole estate of Adrastus Astwood because there was another piece to " the east of the eastern boundary of the land I surveyed." This statement was amplified in cross-examination by an explanation that he obtained the information from the Parish Vestry clerk "that there were other lands " to the east amounting to 4 acres but which later turned out to have " increased to eight acres, but he saw no mark designating this eight acres." 30 However in the light of his instructions and having regard to the title he gave to his plan, his observation is not very helpful; but be that so as it may, the conclusion I have come to is that after survey the area of the estate which was the subject of the three devises in the Adrastus will, was under 20 acres, and no where near the " supposed " 24 acres.

Mr. Stovell went on to say that in connection with his survey he was instructed by Mrs. Horne to lay down as an eastern boundary, a subdividing line to produce an enclosure in benefit of Edward Astwood, of the full measure of the devise in clause 3 of the Adrastus will—that is to say a full twelve acres. The difficulty in doing this must have been 40 apparent to Mr. Stovell by reason of the indefinite delineation of the eastern boundary in that clause, the terms of which were well known to him. The northern, western and southern boundaries were well defined (and were said to be easily indentifiable), but the delineation of the eastern boundary was worded thus: "bounded on the east by other land of my own next " hereinafter devised." Now this "other land" had been devised in clauses 4 and 5 of the same will to others of Adrastus Astwood's children

and the larger part of the eastern half had eventually, by inheritance and purchase, come into the possession in fee simple of one Frederick Gunnison Astwood, one of the grandchildren of Adrastus and a cousin of Mrs. Horne and of her brother Edward.

No. 13.  
Judgment,  
22nd June,  
1951—  
*continued.*

It is obvious therefore that any definition of the common boundary between these three properties had either to be fixed exactly, by some old-standing and well known features, or by common agreement between the respective owners ; for it must be recalled that intruding in this difficulty was the discovery on survey that the original property was actually short  
10 by 4 acres, indicating the possibility of an abatement, *pro tanto*, in the area of each of the three portions. However according to the surveyor, no such thing was done. What was done, was this. Having the undisputed and well fixed boundaries northerly, westerly and southerly he "adjusted" his eastern boundary in accordance with his instructions so as to include the full 12 acres, and in accomplishing this drew his eastern boundary "arbitrarily." He said "there were no stones, no walls nor any old  
20 "marks to guide him" in the trail of this line. Whilst on this part of his survey he came into conflict with Frederick Gunnison Astwood who ordered him off the land ; and I cannot but presume that Stovell mentioned the fact to his principal. Mrs. Horne has denied any knowledge of a dispute with the adjoining landowner, but the maxim "knowledge of the agent  
"is knowledge of the principal" must in this case prevail.

At this point it may be mentioned that Mrs. Horne stated that her father Samuel Josephus "walked" this very boundary line on Christmas Day, 1931, when he specifically pointed it out to her. My observation on this *ipse dixit* is that I find great difficulty in attributing any weight to it.

In 1947 Edward Astwood returned to Bermuda and maintaining his status as an American citizen was, *per se*, an alien in his native country. In May of that year Edward gave a power of attorney to Mrs. Horne and thus  
30 transferred into her care full management of his affairs, with power to deal with his real estate. This having been done, it would appear that Mrs. Horne proposed now to sell some of Edward's estate, and instructed her surveyor to make yet another survey for "the purpose of sale" as she described the operation. This survey was limited more particularly to the planting area "as her brother did not want to sell the cottage" situated close to his eastern boundary. In cross-examination, Mrs. Horne admitted that this cottage is the same cottage adjudged in the case *Gibbons v. Horne and Viera*, to belong to the successor in title of Frederick Gunnison Astwood. Accord-  
40 ingly after she had defined the new boundary, Surveyor Stovell drew up a plan, "for selling purposes" as he says. This plan was produced as an exhibit, and it is observed that for some curious reason, yet retains the date 6th June, 1945, the date of the first survey.

Mr. Stovell under cross-examination said that the new boundary he fixed lies 50 feet to the west of the easterly boundary of the land surveyed to accord with clause 3 of the Adrastus Astwood Will, and that the western boundary of the land devised in clauses 4 and 5 of that will as surveyed by Mr. Clarke (another surveyor but not called as a witness) runs 100 feet to

No. 13.  
Judgment,  
22nd June,  
1951—  
*continued.*

the west of this new boundary which he had but arbitrarily fixed in accordance with his instructions. He also agreed that if Clarke's survey is correct Mrs. Horne had less land to sell than she pretended.

On the 26th September, 1947, Mrs. Horne sold "a part" of her brother's land to one Richard Cleveland Fox, the Co-Defendant, whom she described as a fisherman and gardener. This sale to Fox was explained by her as necessary, because her brother as an alien "could not handle" the business of his land. Fox in alluding to his purchase says he bought  $9\frac{1}{2}$  acres from Edward Astwood, paying £1,200 for his bargain. He admits that no money passed but the full purchase price was secured by a mortgage to Mrs. Horne. 10  
Fox went on to say that subsequently a portion of the area was sold to one Viera for £7,000, and the other portion was to have been sold to the Plaintiffs, Ferguson and Leseur, for £5,000. Quite candidly he admitted that up to the moment he himself had not received anything from the transaction, yet had hope for the future. On October 28th Mrs. Horne secured from Fox in his turn, a power of attorney, also with full authority. Having indulged herself in these questionable transactions and laid the ground, she was now in a position to carry out her proposed dealings in her brother's estate. Accordingly on some unmentioned date in 1949, quite possibly in June, she published an advertisement of sale, as a result of which 20  
the Plaintiffs appeared on the scene, obviously both intent on a deal in real estate.

In partnership the Plaintiffs commenced negotiations with Mrs. Horne, as agent of Fox, for the purchase of a parcel of land said to contain about 2 acres and 17 perches. Individually they had both had interviews with Mrs. Horne and on June 18th, the Plaintiff Ferguson composed an agreement in rough form which in my view amounted to little more than a receipt for £500, his share of the deposit which he had paid over by cheque.

This paper writing signed by Mrs. Horne was worded as follows :—

July 18th, 1949. 30

" Received from R. A. Ferguson the sum of £500 pounds sterling as  
" part payment of deposit on purchase of a strip of land on the south shore  
" in the Parish of Warwick, Bermuda, belonging to Richard Cleveland Fox  
" said to consist of two acres and seventeen perches. Measuring as follows.  
" 550 feet on the north, 120 feet on the east, 532 feet on the south and 180 feet  
" on the west.

" The total purchase price to be £5,000, balance of £4,000 to remain on  
" mortgage for ten years or less.

" It is also understood that the strip of land be purchased jointly by  
" Messrs. Herman F. Leseur and R. A. Ferguson.

" Final agreement to be made by Mr. E. T. Richards. 40

" (Signed) MARGARET Y. HORNE."

On June 24th the Plaintiff Leseur presented Mrs. Horne with another document, in this case typewritten and more formal in appearance. It was

in duplicate, and repeated the terms of Ferguson's composition. This also was signed by Mrs. Horne and was worded as follows :—

June 24th, 1949.

No. 13.  
Judgment,  
22nd June,  
1951—

*continued.*

“ Received from Herman F. Leseur the sum of £500 pounds sterling  
“ as part payment on the purchase of a certain lot of land on the south  
“ shore, in the Parish of Warwick, Bermuda ; belonging to Richard  
“ Cleveland Fox and consisting of 2 acres and 17 perches measuring as  
“ follows : 550 feet on the north, 120 feet on the east, 532 feet on the south,  
“ and 180 feet on the west.

10 “ The total purchase price to be £5,000 sterling, balance of £4,000 to  
“ remain on mortgage for a period of ten years or less at buyers option : it  
“ is also agreed that all interests paid during the abovementioned period is  
“ to be deducted from the purchase price, providing final settlement is  
“ made within the ten year period, which date is to commence from the date  
“ of the mortgage.

“ If the owner or owners cannot give a clear title to the above property  
“ or proper rights of way then this contract is cancelled and all deposits and  
“ expenses are to be refunded to the purchasers. It is also understood that  
“ this lot of land is to be purchased jointly by Messrs. R. A. Ferguson, Jr.,  
20 “ and Herman F. Leseur.

“ (Signed) MARGARET Y. HORNE.”

LUCY E. A. BARNES.  
MARJORY C. SMITH.

There is a serious and fundamental conflict in evidence as regards the drawing up of the conveyance of sale. Mrs. Horne states emphatically that she told Ferguson on the 16th June, and Leseur, when she first met him, that Mr. Richards her then attorney, was to draw the conveyance : adding that he did her work and she considered it correct that he should so act. On the other hand both Plaintiffs equally emphatically swear that they had each  
30 insisted on their conveyance being drawn by their Attorneys Messrs. Hallett & Whitney. However, whatever the terms of the conversation between them it is curious to find that included in Ferguson's paper writing, as if by way of addendum, the words “ Final agreement to be made by Mr. E. R. Richards.” These words are immediately above Mrs. Horne's signature.

Mrs. Horne, in cross-examination was asked to explain this phrase, and replied that it meant the conveyance and mortgage. I find it difficult to accept this. Mrs. Horne has shown herself to be not only intelligent, but astute in these affairs, and surely must have known the meaning of  
40 “ conveyance and mortgage,” and that it would be far fetched to describe them under the term “ agreement,” final or otherwise. Ferguson and Leseur, as has been stated, were emphatic that their conveyance was to be drawn by their lawyers, and such a claim was but natural in any circumstances. Unfortunately Ferguson was not asked to explain what meaning he set on the phrase, and it is but mere conjecture to suppose that since there had been discussion on formalities, in the light of the very

No. 13.  
Judgment,  
22nd June,  
1951—  
*continued.*

informal appearance of his composition, inclusion of the phrase was a concession that if a more formal contract of sale was required, he agreed to its draft by Richards.

Some weeks after the signing of these informal papers the Plaintiff Leseur on August 10th, wrote requesting Mrs. Horne to "turn over the "necessary documents to Messrs. Hallett & Whitney before the end of the "month so that they may proceed with the transfer." Apparently no notice was taken of this request and, except for some indefinite evidence about conversations between the parties, nothing further seems to have happened until 27th January, 1950, when the Plaintiffs each received a letter in identical terms from Mr. Richards. In this letter it was indicated that Mr. Richards understood that the condition of sale had been altered to the extent that the Plaintiffs were now agreeable to the conveyance being drawn by him and thereafter to be approved by Messrs. Hallett & Whitney. Parenthetically, Mr. Richards stated in evidence that he obtained this information from Mrs. Horne. Now here is an indication coming from the Defendant that something was being altered: that something was the original demand of the Plaintiffs that the conveyance was to be drawn by their lawyers. This is confirmation of the Plaintiffs' evidence on this point. Both Plaintiffs deny that any such consent was given, and I believe this statement in denial. This letter also required the Plaintiffs to see to the survey, and a three weeks' ultimatum was inserted. 10

This letter was replied to on the 4th February, 1950, by Messrs. Appleby & Spurling & Kempe, who were now acting for the Plaintiffs and contained another request for delivery of title documents for examination and for the purpose of the preparation of the deed of conveyance. The letter went on to say that it was within the knowledge of the writer (Mr. Spurling) that there was a boundary dispute between Mrs. Horne and an adjoining landowner. No reply having been received, yet another communication from Mr. Spurling dated 21st February, 1950, was addressed to Mr. Richards asking for expeditious attention to his former correspondence. Neither was there any reply to this second letter; but on 24th March certain deeds and documents, of which a list was given were handed over to Mr. Spurling. 20

Mr. Spurling in evidence said that he examined these documents but was particularly concerned about the boundaries, as he had knowledge of a dispute and there was no document among those given him which relieved his uneasiness. He added that he had seen Mr. Richards frequently on the matter and told him that it was impossible for him (Mr. Spurling) to proceed unless assured that the boundaries were correct. 30

In the result Mr. Spurling refused to pass title and gave his reasons. He had grave doubt whether Fox in fact owned the land described in the agreement signed by Mrs. Horne. In confirmation of this suspicion he had at a subsequent date examined the Court records and discovered that a judgment recently delivered in a case *Gibbons v. Horne and Viera* might very well prejudice the particular lot, the subject of his examination. Mr. Spurling added that Mrs. Horne had admitted this possibility to him. 40

Mrs. Horne very emphatically denies this but I prefer to believe Mr. Spurling. His second reason was his doubt concerning the transfer to Fox by reason of the application of Section 7 of the Aliens Act, 1926.

No. 13.  
Judgment,  
22nd June,  
1951—  
*continued.*

The deeds and documents remained with Messrs. Appleby, Spurling & Kempe for the next few months apparently awaiting reply to further requisitions and so the matter continued to stand until 7th December, 1950, when a third letter was sent to Mr. Richards intimating that unless Mrs. Horne could satisfy the Plaintiffs Attorneys and reach a decision to do so immediately, they were instructed to bring an action for the repayment of  
10 the deposit. No reply was received but it would appear that very shortly afterwards Mrs. Horne went to the chambers of Mr. Spurling and in the course of an interview notified him that she had dispensed with Mr. Richards services. This intimation was followed by a letter from Mr. Spurling addressed in this case directly to Mrs. Horne. This letter is important for it was written shortly after the interview, and records at length the discussion purporting to have taken place. It contained a note of certain admissions and proposals allegedly made by Mrs. Horne, and counter proposals by the Plaintiffs for the solution of the difficulty between the parties. The proposals to Mrs. Horne appeared in the circumstances quite  
20 reasonable. To this letter Mrs. Horne replied in a presumptuous and vulgar manner.

Mr. Spurling speaking on the subject of conveyancing said that it was within his experience in Bermuda for one attorney sometimes to act for both vendor and purchaser, but local practice gives the purchaser the right to name his own attorneys. In this respect local practice follows usual and old established procedure anywhere else, and any normally minded person concerned in a real estate transaction would, I imagine, readily concede the reasonableness of such a safeguard.

It is the duty of a vendor of real estate to show good title to the property  
30 offered for sale; and this involves the production to the purchaser of all deeds and documents, the identification of the property agreed to be sold with the property comprised in the several documents, and additionally the proof by proper evidence of all matters of fact forming links in the chain of title. The letters written by Mr. Spurling indicated firstly, that the Plaintiffs were exercising their right to examination by their own Attorneys, and secondly that no more than the usual information required for this purpose was being requisitioned.

Unfortunately Mrs. Horne was unable to see the position in this way, and continued to maintain throughout an obstinate and unyielding attitude,  
40 she went so far as to forbid her lawyer from allowing her documents out of his possession, and pursued this course until March 24th 1950, when at last she gave Mr. Richards permission to leave her papers with Mr. Spurling, but only for perusal. Mr. Spurling says these documents were left with him not only for perusal but for use. Mrs. Horne appeared very surprised to hear this.

I cannot condemn sufficiently the conduct of this lady throughout this sorry affair for she has been most intractable and overbearing in unruly



No. 13.  
Judgment,  
22nd June,  
1951—  
*continued.*

persistence. Behaviour of this nature necessarily leads to grave suspicion that on the part of any such offending party, his dealings are charged with insincerity, even perhaps dishonesty; and I confess that this is how I regard Mrs. Horne. The questionable character of her actions in 1947, and the drawing of arbitrary boundaries create a feeling of uncertainty as to her integrity when negotiating with the Plaintiffs. Neither have I valued her as a straightforward witness.

My findings are—

1. That the Defendant Horne knew in 1945 that the eastern boundary of Edward Astwood's estate was in dispute, and was well aware that until the dispute was settled, his title was uncertain. 10
2. That the conveyance to Richard Cleveland Fox was a stratagem, and in no manner removing existing uncertainty.
3. That the Defendant Horne withheld knowledge of this dispute, and uncertainty of title from the Plaintiffs.
4. That at the date of the negotiations the title to the land, the subject of the agreement with the Plaintiffs, was defective.

Accordingly I declare that the two deposits of £500 (in all amounting to £1,000) shall be returned to the Plaintiffs with interest at the rate of 5 per cent. from June 24th 1949 until the date of payment; and that the Plaintiffs shall have judgment against the Defendants jointly and severally in respect thereof. 20

As to the question of damages for loss of bargain I quote the following passage from *Prideaux's Precedents on Conveyancing*, 23rd Edition p. 135 :—

“ The general rule of law that where a person makes a contract and breaks it he must pay the whole damage sustained in consequence, does not apply to contracts for the sale of real estate. For real estate a special rule has been established, viz. 30  
“ that on a breach of contract of this nature arising from want of title, the purchaser can only recover by way of damages the expense of investigating the title and is not entitled to compensation for loss of bargain *Flureau v. Thornbill* (1766) 2 Wm. Bl. p. 1078. This is so even though the vendor may be aware of his want of title when he enters into the contract. *Bain v. Fothergill* (1874) 7h. l. p. 158.”

Regretfully I hold that this case falls within the rule of *Bain v. Fothergill*.

It follows therefore, and very fortunately for Mrs. Horne, that I am unable to order the payment of damages beyond the amount expended 40 by the Plaintiffs in the investigation of the title. The sum has not been mentioned, but I will leave it to my Registrar to tax and the result will be incorporated in this judgment.

I dismiss the counterclaim of the Defendants.

Costs are awarded against the Defendants jointly and severally.

As regards the claim for lien in aid of satisfaction of the Plaintiffs' judgment it would seem just that this should be declared, for a purchaser immediately upon paying his deposit acquires an inchoate right of lien for it. In any event it would seem to me that the matter is covered by Section 16 (1) of the Supreme Court Act 1905.

I therefore declare that the Plaintiffs should have jointly a lien on the property contracted to be sold against the return of their deposit, payment of damages and costs.

C. BROOKE FRANCIS,  
*Chief Justice.*

10

No. 13.  
Judgment,  
22nd June,  
1951—  
*continued.*

No. 14.

Notice of Motion for leave to Appeal to His Majesty in Council.

1951.—No. 7

Between

RODERICK ALEXANDER FERGUSON and HERMAN LESEUR ... *Plaintiffs*

and

MARGARET YOUNG HORNE and RICHARD CLEVELAND FOX ... *Defendants.*

No. 14.  
Notice of  
Motion for  
leave to  
Appeal to  
His  
Majesty in  
Council,  
11th July,  
1951.

20 TAKE NOTICE that the Court will be moved on the 21st day of July, 1951, at 10.30 o'clock in the forenoon, or so soon thereafter as Counsel can be heard, by Mr. David Tucker, of Counsel for the above-named Defendants for an order (1) granting conditional leave to appeal to His Majesty in Council from the Judgment and Order of the Court made in the above entitled cause on the 22nd day of June 1951, whereby a Judgment was delivered in favour of the above named Plaintiffs and a lien given against the property and (2) staying all further proceedings upon the aforesaid judgment of the Court pending the hearing of the Appeal therefrom

AND FURTHER TAKE NOTICE that the grounds upon which the motion will be made are :—

- 30 (1) That the verdict was against the weight of evidence.  
(2) That the verdict was wrong in law in that the breach of contract was made by the Plaintiffs who failed to carry out the terms, both written and verbal, agreed upon between the Plaintiffs and the Defendant, Margaret Young Horne, as agent for the Defendant Richard Cleveland Fox.  
(3) That the title to the property was not in dispute in 1945 and the Defendants did not withhold any knowledge of uncertainty of title from the Plaintiffs.  
(4) That the sale of the property concerned in this cause was a legal transaction made in good faith and passed on a proper title to the property.

No. 14.  
Notice of  
Motion for  
leave to  
Appeal to  
His  
Majesty in  
Council,  
11th July,  
1951—  
*continued.*

(5) That because of the breach in contract made by the Plaintiffs themselves, the Defendant is entitled to retain the two deposits amounting in all to One thousand pounds (£1,000).

Dated this 11th day of July 1951.

(Sgd.) DAVID TUCKER,  
*Attorney for the Defendants.*

To Messrs. Appleby, Spurling & Kempe,  
Barristers-at-Law, Reid Street, Hamilton,  
Attorneys for the Plaintiff.

No. 15.  
Chief  
Justice's  
Notes on  
hearing of  
Motion,  
21st July,  
1951.

No. 15.

10

### Chief Justice's Notes on hearing of Motion.

Application by motion for conditional leave to appeal to His Majesty in Council from the Judgment of this Court, dated 22nd June, 1951.

DAVID TUCKER Esq. for Motion (Defendants).

W. R. KEMPE Esq. for Plaintiffs.

TUCKER addresses :

Filed motion.

Under the Appeals Act, 1911, Sections 2, 3 and 4, applies for conditional leave to appeal. 20

Kempe calls attention to grounds (3) and (4) and submits that these grounds are without foundation in the light of evidence adduced and the Judgment of the Court.

Tucker does not desire to say anything as to the submission of Kempe. I observe that the inclusion of "Grounds" is within the responsibility of Appellants' Counsel.

Motion granted subject to the following conditions :—

1.—The Appellant shall enter into security in the sum of five hundred pounds against the contingencies referred to in sub-section (1) of Section (5). Bond to be filed within one month. 30

2.—I set the period of 3 months within which the record must be ready for transmission to England.

3.—Under Section (6) I direct that the Judgment of this Court shall be carried into execution and Respondent shall enter into security for the due performance of such order as His Majesty in Council shall enter.

Further, I direct that the Judgment shall be carried into effect within 30 days.

4.—That a deposit shall be made to the Registrar of £50 against the cost of preparation of the record and that the deposit shall be paid before the 31st July, 1951.

Costs of the application to abide the event.

C. B. F.

No. 15.  
Chief  
Justice's  
Notes on  
hearing of  
Motion.  
21st July,  
1951—  
*continued.*

No. 16.

Order granting leave to Appeal to His Majesty in Council.

10

1951.—No. 7

Between

RODERICK ALEXANDER FERGUSON and HERMAN LESEUR  
(*Plaintiffs*) *Respondents*

and

MARGARET YOUNG HORNE and RICHARD CLEVELAND FOX  
(*Defendants*) *Appellants*

No. 16.  
Order  
granting  
leave to  
Appeal to  
His  
Majesty in  
Council,  
21st July,  
1951.

Application by motion for conditional leave to appeal to His Majesty in Council from the Judgment of this Court, dated 22nd June, 1951.

20 Before THE HONOURABLE SIR C. G. BROOKE FRANCIS, Chief  
Justice.

On the 21st day of July, 1951.

Upon hearing Counsel for the two parties IT IS ORDERED that :—

1.—The Defendants (*Appellants*) shall enter into security in the sum of Five Hundred pounds for the due prosecution of the Appeal and contingencies referred to in sub-section (1) of Section (5) of the Appeals Act, 1911. Bond to be filed within one month.

2.—Record to be prepared within three months for transmission to England.

30 3.—Judgment of this Court to be carried into execution within thirty days and the Plaintiffs (*Respondents*) shall enter into security for the due performance of such Order as His Majesty in Council shall think fit to make thereon.

4.—That a deposit of £50. 0. 0 shall be made by the *Appellants* to the Registrar against the cost of the preparation of the Record, such deposit to be paid before the 31st July, 1951.

Dated the 21st day of July, 1951.

W. NORMAN PARKER,  
*Registrar.*

EXHIBITS.

Exhibits.

“ Q. ”  
 Certified  
 Copy Will  
 of Adrastus  
 Henry  
 Astwood,  
 30th  
 November,  
 1943.

“ Q. ”—Certified Copy Will of Adrastus Henry Astwood dated 18th May 1890.

R.S.C. No.

THE REGISTRY OF THE SUPREME COURT, BERMUDA.

Bermuda,  
 Alias  
 Somers' Islands } By the Registrar of the Supreme Court of Bermuda.

I DO HEREBY CERTIFY that the instrument in writing hereto annexed marked “ A ” and initialled by me is an examined and correct copy of the last will and testament of ADRASTUS HENRY ASTWOOD late of WARWICK parish in the said Islands, deceased, which said will has been duly admitted to probate in common form by the Supreme Court of Bermuda and has been duly deposited in the Registry of the said Court for record pursuant to the laws of these Islands. 10

IN WITNESS WHEREOF I, the Registrar aforesaid, have hereto set my hand this 30th day of November, one thousand nine hundred and forty-three.

(Signed) W. NORMAN PARKER,  
*Registrar.*

“ A ” • W.N.P. 20

I, ADRASTUS HENRY ASTWOOD, of Warwick Parish, in the Islands of Bermuda, planter, hereby revoke all wills and testamentary dispositions heretofore made by me and declare this to be my last will.

1. I give to my wife all my furniture, household effects, and live and dead stock, and all other my effects whatsoever.

2. I give to my said wife during her life the use of my present dwelling house and its appurtenances, as long as she shall continue personally to occupy the same, and the use of all my pasture and planting land.

3. I devise to my eldest son Samuel Josephus Astwood, subject to the estate in the pasture and planting land hereinbefore given to my wife, a tract of land in Warwick Parish supposed to contain about twelve acres, bounded on the North by a Public Road separating it from land formerly of Dr. John Frith, now or late in the possession of Walter Riddell Graham Smith and his brothers on the South by the Ocean, on the East by other land of my own next hereinafter devised, and on the West by land in the possession of James Blaithwait Lindley, which land hereby devised is intersected by a Military Road. 30

4. I devise to my son Frederick Brownlow Astwood, subject to the estate in the pasture and planting land hereinbefore given to my wife, a parcel of land in Warwick Parish supposed to contain about four acres, bounded on the North by land formerly of Benjamin Lusher deceased, and there now partly bounded and partly intersected by a public road, on the South by the South Longitudinal Road, on the East by land formerly of Benjamin Dickinson Harvey and now in the possession of the heirs or devisees of Joseph John Outerbridge, and on the West by the land hereinbefore devised to Samuel Josephine Astwood, together with the dwelling  
 10 house and other buildings thereon and the appurtenances ; subject nevertheless to the right of my daughter Margaret George Astwood to have the use of a bedchamber in the said dwelling house with all necessary convenience while she shall continue to occupy it, but upon condition that if she shall marry the said Frederick Brownlow Astwood shall have a right to purchase her said right of occupancy for forty pounds to be paid to her to her separate use, within one year after her marriage, on her surrendering and releasing her said right to him by a proper deed ; and if she shall refuse to sell and release her said right to him on these terms the same shall be forfeited to him.

Exhibits.  
 " Q. "  
 Certified  
 Copy Will  
 of Adrastus  
 Henry  
 Astwood,  
 30th  
 November,  
 1943—  
*continued.*

5. I devise to my children John Henry Astwood, Charles Erastus  
 20 Astwood, Elizabeth Anna White, Frederick Brownlow Astwood, Margaret George Astwood and Joseph Benjamin Astwood, or such of them as shall survive me, equally between them, subject to my wife's estate in the pasture and planting land hereinbefore given to her, a parcel of land in Warwick Parish, supposed to contain about eight acres, bounded on the North by the South Longitudinal Road, on the South by the ocean, on the East by land formerly of Benjamin Dickinson Harvey, now in the possession of Daniel Dunscomb, and on the West by other land of my own, together with the dwelling house thereon and the appurtenances, upon condition that if  
 30 either of them shall sell or dispose of his or her share therein or any part thereof except to the others, or some others or other of them, if he she or they shall be willing and able to buy on the terms hereinafter to be mentioned, without the consent of the others of them then surviving, the part or share to be sold or disposed of shall be forfeited to the survivors or survivor of them, if more than one equally between them, to be held by him, her or them on the like condition, as far as the same is capable of taking effect, at a price to be agreed on between the seller and buyer, or in case they cannot agree at a valuation by two indifferent persons to be mutually agreed on by them ; and if either of my said children shall die without issue, and without having disposed of his or her share the same shall go  
 40 to the Survivors or Survivor of them, if more than one equally between them, to be held on the like condition as far as the same is capable of taking effect.

6. All the rest and residue of my Estate real and personal I give devise and bequeath to my children Charles Erastus Astwood, Frederick Brownlow

Exhibits. Astwood, Margaret George Astwood, and Joseph Benjamin Astwood,  
 or the survivors of them equally between them.

“ Q. ”  
 Certified  
 Copy Will  
 of Adrastus  
 Henry  
 Astwood,  
 30th  
 November,  
 1943—  
*continued.*

7. I appoint my sons Samuel Josephus Astwood and Charles Erastus Astwood executors of this my will.

On witness whereof I the said Adrastus Henry Astwood have to this my will set my hand the eighteenth day of May one thousand eight hundred and ninety.

(Sgd.) ADRASTUS HENRY ASTWOOD.

Signed and acknowledged by the above named Adrastus Henry Astwood as and for his last will and testament in the presence of us, present at the same time, who in his presence, and in the presence of each other, have hereto set our hands as witnesses (one word having been cancelled on the fourteenth line of the second page). 10

(Sgd.) T. C. DUNSCOMB.  
 JOHN T. WHITE.

Recorded: 7th September, 1901.

(Sgd.) EYRE HUTSON,  
*Colonial Secretary.*

“ R. ”—Certified Copy Will of Samuel Josephus Astwood dated 6th February, 1929.

“ R. ”  
 Certified  
 Copy Will  
 of Samuel  
 Josephus  
 Astwood,  
 20th  
 November,  
 1946.

R.S.C. No. 20

THE REGISTRY OF THE SUPREME COURT, BERMUDA.

Bermuda,  
 Alias  
 Somers' Islands } By the Registrar of the Supreme Court of Bermuda.

I DO HEREBY CERTIFY that the instrument in writing hereto annexed marked “ A ” and initialled by me is an examined and correct copy of the last will and testament of SAMUEL JOSEPHUS ASTWOOD, late of WARWICK parish in the said Islands, deceased, which said will has been duly admitted to probate in common form by the Supreme Court of Bermuda and has been duly deposited in the Registry of the said Court for record pursuant to the laws of these Islands. IN WITNESS WHEREOF I, the Registrar aforesaid, have hereto set my hand this 20th day of November, one thousand nine hundred and forty-six. 30

(Signed) W. NORMAN PARKER,  
*Registrar.*

" A " M.Y.H.

Exhibits.

" R. "

Certified  
Copy Will  
of Samuel  
Josephus  
Astwood,  
20th  
November,  
1946—  
*continued.*

THIS IS THE LAST WILL AND TESTAMENT of me, SAMUEL JOSEPHUS  
ASTWOOD of Warwick Parish in the Islands of Bermuda, Planter (1) I  
HEREBY REVOKE all wills and testamentary dispositions heretofore made  
or executed by me AND I DECLARE this to be my last will and testament  
(2) I HEREBY appoint my daughter Margaret Young Horne to be the sole  
executrix of this my last will and testament (3) I DEVISE all those Two  
parcels of land situate and being in Warwick Parish aforesaid purchased by  
me from Edward Benjamin Dunscomb and Catherine Dunscomb his wife  
10 under two Indentures dated the Twentieth day of August One thousand  
eight hundred and seventy-five and the First day of August One thousand  
eight hundred and seventy-seven respectively unto and to the use of my  
daughter Margaret Young Horne her heirs and assigns forever (4) I  
DEVISE the parcel of land situate in Warwick Parish aforesaid devised to me  
by my father the late Adrastus Henry Astwood by the Third Clause of his  
will unto and to the use of my eldest son Samuel Edward Astwood his  
heirs and assigns forever (5) I DEVISE the residue of the real estate of or  
to which I shall be entitled at the time of my decease unto and to the use  
of my said daughter Margaret Young Horne her heirs and assigns forever  
20 (6) I BEQUEATH all the personal estate of or to which I shall be entitled at  
the time of my decease to my said daughter Margaret Young Horne  
absolutely IN WITNESS WHEREOF I have hereunder set my hand to this  
my last will and testament dated this Sixth day of February One thousand  
nine hundred and twenty-nine.

S. J. ASTWOOD.

Signed by the above-named Samuel Josephus Astwood of Warwick  
Parish in the Islands of Bermuda, Planter, as his last will and testament in  
the presence of us present at the same time who at his request in his sight  
and presence and in the presence of each other have subscribed our names  
30 as attesting witnesses.

R. C. HOLLIS HALLETT.  
M. A. YOUNG.

Recorded 25th April, 1933.

(Signed) W. NORMAN PARKER,  
*Registrar General.*

" S. "—Power of Attorney, Edward Astwood to Margaret Young Horne.

KNOW ALL MEN BY THESE PRESENTS that I EDWARD  
ASTWOOD of Warwick Parish in the Islands of Bermuda do hereby appoint  
MARGARET YOUNG HORNE of Warwick Parish aforesaid to be my true and  
40 lawful Attorney for me and in my name to accept service of any writ  
summons or other legal process and to appear and my person to represent  
in any court and before all magistrates or judicial or other officers whatsoever  
as by the attorney shall be thought advisable and for me and in my name

" S. "  
Power of  
Attorney  
Edward  
Astwood to  
Margaret a  
Young  
Horne,  
8th May,  
1947.



Exhibits. " S. " Power of Attorney Edward Astwood to Margaret Young Horne, 8th May, 1947— continued.

or otherwise to commence any action or other proceeding in any court of justice for the recovery of any debt sum of money right title interest property matter or thing whatsoever now due or payable or to become due or payable or in anywise belonging to me by any means or on any account whatsoever and the same action or proceeding to prosecute or discontinue or become nonsuit therein if she the attorney shall see cause And also to take such other lawful ways and means for the recovering or getting in any such sum of money or other thing whatsoever which shall by the attorney be conceived to be due owing belonging or payable to me by any person whomsoever and also to appoint any solicitor to prosecute or defend in the premises aforesaid or any of them as occasion may require either in my name or in the name of her the attorney And also for me and on my behalf and in my name to sell at such time as my said Attorney shall think fit my interest in the property situate at Warwick Parish aforesaid and so that any sale of the said property under the power hereby conferred may be either by Public auction or private contract and either together or in lots subject to any special conditions relative to title or otherwise AND also to enter into make sign seal execute deliver and perform any contract agreement deed writing or thing that may in the opinion of my said Attorney be necessary or proper to be entered into made signed sealed executed delivered or performed for effectuating the purpose aforesaid or and for the purpose of these presents to use the name of me the said Edward Astwood AND I agree to ratify and confirm all and whatsoever the said Margaret Young Horne shall lawfully do or cause to be done by virtue of these presents IN WITNESS WHEREOF I have hereto set my hand and seal this Eighth day of May One thousand nine hundred and forty seven.

Postage Stamp Value 5/-

(Signed) EDWARD ASTWOOD. (L.S.)

Signed Sealed and Delivered by the above named Edward Astwood in the presence of :—

Witnesses : GRACE L. BARNES. RICHARD C. FOX.

" T. " Power of Attorney Richard Cleveland Fox to Margaret Young Horne, 28th October, 1947.

" T. "—Power of Attorney, Richard Cleveland Fox to Margaret Young Horne.

KNOW ALL MEN BY THESE PRESENTS that I RICHARD CLEVELAND FOX of Warwick Parish in the Islands of Bermuda do hereby appoint MARGARET YOUNG HORNE of Warwick Parish aforesaid to be my true and lawful Attorney for me and in my name to accept service of any writ summons or other legal process and to appear and my person to represent in any Court and before all magistrates or judicial or other officers whatsoever as by the attorney shall be thought advisable and for us and in my name or otherwise to commence any action or other proceeding in any court of justice for the recovery of any debt sum of money right title

interest property matter or thing whatsoever now due or payable or to become due or payable or in anywise belonging to me by any means or on any account whatsoever and the same action or proceeding to prosecute or discontinue or become nonsuit therein if she the attorney shall see cause AND also to take such other lawful ways and means for the recovering or getting in any such sum of money or other thing whatsoever which shall by the attorney be conceived to be due owing belonging or payable to me by any person whomsoever and also to appoint any solicitor to prosecute or defend in the premises aforesaid or any of them as occasion may require  
 10 either in my name or in the name of her the Attorney AND also for me and on my behalf and in my name sell at such time or times as my said Attorney shall think fit my interest in the property situate in Warwick Parish aforesaid and so that any sale of the said property under the power conferred may be either by Public auction or private contract and either together or in lots subject to any special conditions relative to title or otherwise AND also to enter into make sign seal execute deliver and perform any contract agreement deed writing or thing that may in the opinion of my said Attorney be necessary or proper to be entered into made signed sealed executed delivered or performed for effectuating  
 20 the purpose aforesaid or and for the purpose of these presents to use my name the said Richard Cleveland Fox AND I agree to ratify and confirm all and whatsoever the said Margaret Young Horne shall lawfully do or cause to be done by virtue of these presents AND IT IS HEREBY ALSO AGREED AND DECLARED this power shall not be revoked for and during the period of Ten years either by anything done by the donor of the power without the concurrence of the donee of the power or by the death marriage lunacy unsoundness of mind or bankruptcy of the donor of the power and any act done within that fixed time of Ten years by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor  
 30 of the power without the concurrence of the donee of the power or the death marriage lunacy unsoundness of mind or bankruptcy of the donor of the power had not been done or happened and neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice either during or after that fixed time of ten years of anything done by the donor of the power during that fixed time of ten year aforesaid without the concurrence of the donee of the power or of the death marriage lunacy unsoundness of mind or bankruptcy of the donor of the power within that fixed time IN WITNESS WHEREOF I have hereunto set my hand and seal this Twenty-eighth day of October One thousand nine hundred and forty-seven.

Exhibits.  
 " T. "  
 Power of Attorney  
 Richard Cleveland Fox to Margaret Young Horne,  
 28th October, 1947—  
*continued.*

40

Signed Sealed and Delivered by the }  
 above named Richard Cleveland }  
 Fox in the presence of :—

RICHARD CLEVELAND FOX.  
 (L.S.)

DAVID TUCKER.  
 ELVIRA WARNER.

Witnesses

Postage Stamp  
 Value 5/-

Exhibits.

## " A.2."—Cheque for £500, Ferguson to Horne.

" A.2."  
Cheque for  
£500  
Ferguson to  
Horne,  
18th June,  
1949.

Hamilton, Bermuda.

June 18th, 1949.

The Bank of N. T. Butterfield &amp; Son, Limited.

Pay M. Y. Horne or Order

Five Hundred Pounds only

£500 0 0.

Stamp  
One  
Penny

(Signed) R. A. FERGUSON, JR.

10

" G."

## " G."—Receipt, Margaret Y. Horne to Herman F. Leseur.

Receipt,  
Margaret  
Y. Horne to  
Herman F.  
Leseur,  
24th June,  
1949.

No. 764

June 24th, 1949.

Received from Herman F. Leseur the sum of Five Hundred Pounds Sterling as part payment on the purchase of a certain lot of land on the South Shore in the Parish of Warwick, Bermuda, belonging to Richard Cleveland Fox and consisting of Two acres and Seventeen perches, measuring as follows: Five hundred and fifty feet on the North, One hundred and twenty feet on the East, Five hundred and thirty-two feet on the South, and One hundred and eighty feet on the West.

The total purchase price to be Five Thousand Pounds Sterling, balance of £4,000 to remain on mortgage for a period of ten years or less at Buyers' option. It is also agreed that all interests paid during the above mentioned period is to be deducted from the purchase price, providing final settlement is made within the ten year period, which date is to commence from the date of the mortgage. 20

If the Owner or Owners cannot give a clear title to the above property or proper rights of way then this contract is cancelled and all deposits and expenses are to be refunded to the purchasers. It is also understood that this lot of land is to be purchased jointly by Messrs. R. A. Ferguson, Jr., and Herman F. Leseur. 30

(Signed) MARGARET Y. HORNE.

Postage Stamp  
Value Sixpence.

LUCY E. M. BARNES.

MARJORY C. SMITH.

“ H.1.”—Contract for Sale, Horne to Leseur.

June 24th, 1949.

Exhibits.  
 “ H.1.”  
 Contract for  
 Sale  
 Horne to  
 Leseur,  
 24th June,  
 1949.

Received from Herman F. Leseur the sum of Five Hundred Pounds Sterling as part payment on the purchase of a certain lot of land on the South Shore, in the Parish of Warwick, Bermuda ; belonging to Richard Cleveland Fox and consisting of Two acres and Seventeen perches, measuring as follows : Five Hundred and Fifty feet on the North, One Hundred and Twenty feet on the East, Five Hundred and Thirty-two feet on the South and One Hundred and Eighty feet on the West.

10 The total purchase price to be Five Thousand pounds Sterling, balance of £4,000 to remain on mortgage for a period of Ten years or less at Buyers' option : it is also agreed that all interests paid during the above mentioned period is to be deducted from the purchase price, providing final settlement is made within the Ten year period, which date is to commence from the date of the mortgage.

If the Owner or Owners cannot give a clear title to the above property or proper rights of way then this contract is cancelled and all deposits and expenses are to be refunded to the purchasers. It is also understood that this lot of land is to be purchased jointly by Messrs. R. A. Ferguson, Jr., and

20 Herman F. Leseur.

(Signed) MARGARET Y. HORNE.

Postage Stamp  
 Value Sixpence.

LUCY E. A. BARNES.  
 MARJORY C. SMITH.

“ H.2.”—Cheque, Leseur to Horne.

No.

Hamilton, Bermuda.

June 24th, 1949.

“ H.2.”  
 Cheque,  
 Leseur to  
 Horne for  
 £500,  
 24th June,  
 1949.

30 The Bank of N. T. Butterfield & Son, Limited.

Pay Margaret Y. Horne	or Order	Stamp
Five hundred pounds—————		One
£500 0 0.		Penny

(Signed) HERMAN F. LESEUR.

Exhibits.

**“ A.1.”—Contract for Sale, Horne to Ferguson.**

“ A.1.”  
Contract  
for Sale  
Horne to  
Ferguson,  
18th July,  
1949.

Received from R. A. Ferguson the sum of Five Hundred Pounds Sterling as Part Payment of deposit on Purchase of a Strip of land on the South Shore in the Parish of Warwick, Bermuda, belonging to Richard Cleveland Fox said to consist of Two Acres and Seventeen Perches. Measuring as follows: 550 Feet on the North, 120 Feet on the East, 532 Feet on the South and 180 Feet on the West.

The Total Purchase Price to be Five Thousand Pounds: Balance of Four Thousand Pounds to Remain on Mortgage for Ten years or less.

It is also understood that this Strip of land is to be Purchased jointly 10 by Messrs. Herman F. Leseur and R. A. Ferguson, Jr.

Final Agreement to be made by Mr. E. T. Richards.

(Signed) MARGARET Y. HORNE.

Postage Stamp  
Value Sixpence.

“ J.”

**“ J.”—Contract for Sale, Horne to Ferguson.**

Contract  
for Sale  
Horne to  
Ferguson,  
18th July,  
1949.

Copy

18th July, 1949.

Received from R. A. Ferguson, Jr., the sum of Five Hundred 20 pounds Sterling as part payment of deposit on purchase of a strip of land on the South Shore in the Parish of Warwick, Bermuda, belonging to Richard Cleveland Fox said to consist of two acres and seventeen perches, measuring as follows:

550 ft. on the North  
120 ft. on the East  
532 ft. on the South  
180 ft. on the West

The total purchase price to be Five Thousand pounds.

Balance of Four Thousand Pounds to remain on mortgage for ten 30 years or less.

It is also understood that this strip of land is to be purchased jointly by Messrs. Herman F. Leseur and R. A. Ferguson, Jr. Final agreement to be made by Mr. E. T. Richards.

(Signed) MARGARET Y. HORNE.

“ B.”—Letter, Herman F. Leseur to Mrs. Horne.

Exhibits.

“ B ”

Hamilton, Bermuda.

August 10th, 1949.

Mrs. Margaret Y. Horne,  
Warwick East.

Letter,  
Herman F.  
Leseur to  
Mrs. Horne,  
10th  
August,  
1949.

Dear Mrs. Horne,

With reference to the agreement made between the writer, R. A. Ferguson, Jr., and yourself pertaining to the purchase of a certain piece of waterfront property situated on the South Shore of Warwick, we are anxious to finalise this transaction, and we would appreciate your turning  
10 over the necessary documents to Messrs. Hallett & Whitney before the end of the month, so that they may proceed with the transfer.

Thanking you for your co-operation, we remain

Yours very truly,

(Signed) HERMAN F. LESEUR.

raf.

CC : for R. A. Ferguson, Jr.

“ C.”—Letter, E. T. Richards to Roderick A. Ferguson.

“ C ”

E. T. Richards,  
Barrister and Attorney.

Parliament Street,  
Hamilton, Bermuda.

Cable Address :

20 “ Ardwill,” Bermuda.

Telephone 1198.

Roderick A. Ferguson, Esq.,  
c/o W. S. Purvis & Co., Ltd.,  
Burnaby Street,  
Hamilton.

27th January, 1950.

Letter,  
E. T.  
Richards to  
Roderick A.  
Ferguson,  
27th  
January,  
1950.

Dear Sir,

I have been instructed by Mrs. Margaret Y. Horne that as a result of a conversation between yourself, Mr. Herman Leseur and my client, certain conditions of sale which you forwarded to me were altered and that you had  
30 approved of the documents being drawn by me and approved of by Messrs. Hallett & Whitney. However, there remains the question of the boundaries to be certified by a surveyor and to be approved by you. I would be pleased if you can let me know whether the surveyor chosen by you had approved of the boundaries. I have also been instructed to state that if this matter cannot be cleared up within THREE WEEKS from date, my client will consider the contract rescinded.

Faithfully yours,

(Signed) E. T. RICHARDS.

Ra

c.c. Herman Leseur, Esq.

Exhibits.

" I."—Letter, E. T. Richards to Herman Leseur.

" I."  
Letter,  
E. T.  
Richards to  
Herman  
Leseur,  
27th  
January,  
1950.

E. T. Richards,  
Barrister and Attorney.

Parliament Street,  
Hamilton, Bermuda.

Herman Leseur, Esq.,  
c/o Leseur Brothers,  
Reid Street,  
Hamilton.

27th January, 1950.

Dear Sir,

10

I have been instructed by Mrs. Margaret Y. Horne that as a result of a conversation between yourself, Mr. Roderick A. Ferguson and my client, certain conditions of sale which you forwarded to me were altered and that you had approved of the documents being drawn by me and approved of by Messrs. Hallett & Whitney. However, there remains the question of the boundaries to be certified by a surveyor and to be approved by you. I would be pleased if you can let me know whether the surveyor chosen by you had approved of the boundaries. I have also been instructed to state that if this matter cannot be cleared up within THREE WEEKS from date, my client will consider the contract rescinded.

20

Faithfully yours,

(Signed) E. T. RICHARDS.

Ra

c. c. Roderick A. Ferguson, Esq.

" D."  
Letter,  
Appleby,  
Spurling &  
Kempe to  
E. T.  
Richards,  
Esq.,  
4th  
February,  
1950.

" D."—Letter, Appleby, Spurling & Kempe to E. T. Richards, Esq.

Appleby, Spurling & Kempe,  
Barristers at Law.

Cable Address  
Appleby, Bermuda.

Hamilton,  
Bermuda.

30

E. T. Richards, Esq.,  
Barrister-at-Law,  
Hamilton.

4th February, 1950.

Dear Sir,

We have been consulted to-day by Messrs. Herman F. Leseur and R. A. Ferguson, Junior, concerning an agreement to purchase premises on the South Shore of Warwick Parish belonging to Richard Cleveland Fox and containing two acres and seventeen perches.

We have been shown your letter of the 27th ultimo addressed to Mr. Ferguson and relating to this matter.

We have been instructed to advise you that our clients wish us to act on their behalf in this matter, and we would, therefore, request delivery to us of the title documents to the premises in order that we may examine the title and prepare the deed of conveyance if the title is good and the boundaries are correct. As you are aware, the purchaser is fully entitled to name his attorneys for the purpose of drawing a deed of conveyance, and it would be appreciated if you would deliver these documents to us immediately.

We do not desire at this stage to deal with the history of this matter save and except to refer to the written agreements for sale in which the area and measurements of the premises are stated as well as other matters, and to say that we understand the delay has been caused by your client's refusal in the first instance to hand over the title documents to Messrs. Hallett & Whitney who were instructed then by our clients to act on their behalf.

We are instructed to advise you that our clients are perfectly prepared to complete this transaction provided that good title to these premises can be given to them and that the boundaries of the premises are correct. We understand that at the present time there is some boundary dispute between your client and an adjoining landowner, although we are not aware of the details of this matter. In the event that the boundaries stated are not correct or that good title cannot be given, the sum of One thousand pounds paid by our clients to your client must be refunded in accordance with the agreement. In conclusion, we would state that the burden of proving a good title to the premises and the responsibility for accurately designating the correct area and boundaries of the premises is that of your client, and, therefore, we would request that all relevant information be submitted by you to us with the title documents.

Yours faithfully,

APPLEBY, SPURLING & KEMPE.

30 "K."—Letter, Appleby, Spurling & Kempe to E. T. Richards.

Appleby, Spurling & Kempe,  
Barristers-at-Law.

Hamilton,  
Bermuda.  
21st February, 1950.

E. T. Richards, Esq.,  
Barristers-at-Law,  
Hamilton.

Exhibits.  
"D."  
Letter,  
Appleby,  
Spurling &  
Kempe to  
E. T.  
Richards,  
Esq.,  
4th  
February,  
1950—  
*continued.*

"K."  
Letter,  
Appleby,  
Spurling &  
Kempe, to  
E. T.  
Richards  
21st  
February,  
1950.

Dear Mr. Richards,

40 We beg to refer to our letter of the 4th instant in which we requested delivery of the documents of title to premises in Paget for our examination.



Exhibits. To date we have not received any reply from you to this letter, nor have we received the title documents.  
 " K. " We desire to point out that this delay on your part is causing further delay in this matter which cannot be attributed in any way to our client.  
 Letter, Appleby, Spurling & Kempe, 21st February, 1950—  
*continued.* We, therefore, request that you will communicate with us in the immediate future.

Yours faithfully,

APPLEBY, SPURLING & KEMPE.

ADS : aec

" L. " " L. "—Receipt for Documents, Appleby, Spurling & Kempe to E. T. Richards. 10  
 Receipt for Documents Appleby, Spurling & Kempe to E. T. Richards, 24th March, 1950.

Received from E. T. Richards the following Documents :—

1. Release, dated the 31st day of December, 1866, Nathaniel Edward Dunscomb to Adrastus Astwood.
2. Copy of Indenture dated the 3rd day of February, 1871, Adrastus Henry Astwood & Wife and H.M. Secretary of State of War.
3. Release dated the 22nd day of September, 1871, William Obadiah Dunscombe to Adrastus Henry Astwood.
4. Power of Attorney, dated the 8th day of May, 1947, Edward Astwood to Margaret Young Horne.
5. Power of Attorney, dated the 28th day of October, 1947, Richard 20 Cleveland Fox to Margaret Young Horne.
6. Conveyance (To Uses), dated the 26th day of September, 1947, Edward Astwood to Richard Cleveland Fox.
7. Mortgage (By App't) dated the 29th day of September, 1947, Richard Cleveland Fox to Margaret Young Horne. Bond and Warrant for Judgment for same.
8. Reconveyance (To Uses), dated the 30th day of July, 1949, Margaret Young Horne to Richard Cleveland Fox.
9. Certified Copy of Will of Samuel Josephus Astwood.
10. Certified Copy of Will of Adrastus Henry Astwood. 30

Dated this 24th day of March, 1950.

APPLEBY, SPURLING & KEMPE,  
 per N. Evans.

“ O.”—Letter, Appleby, Spurling & Kempe to C. T. Richards.

Appleby, Spurling & Kempe,  
Barristers-at-Law.

E. T. Richards, Esq.,  
Barrister-at-Law,  
Hamilton.

Hamilton, Bermuda.  
4th October, 1950.

Exhibits.

“ O.”  
Letter,  
Appleby,  
Spurling &  
Kempe to  
E. T.  
Richards,  
4th  
October,  
1950.

Dear Sir,

10 We are acting on behalf of Mr. Roderick A. Ferguson, Junior, and  
Mr. Herman F. Leseur.

Our clients agreed to purchase a lot of land from your client,  
Mrs. Margaret Huntingdon Horne, by an agreement dated 24th June, 1949.

Our Mr. Spurling has started to look into this matter, but in the interim  
has gone on holiday, and meanwhile we would be obliged if you would forward,  
to us all necessary documents of title to give our client a clear title to the  
property referred to in the agreement of sale.

We understand that some of these documents will be required by you  
in the oncoming Assizes, and we will make them immediately available to  
you as necessary.

20

Yours faithfully,

APPLEBY, SPURLING & KEMPE.

WRK/mtg.

“ M.”—Letter, Appleby, Spurling & Kempe to E. T. Richards.

Appleby, Spurling & Kempe,  
Barristers-at-Law.

E. T. Richards, Esq.,  
Barrister-at-Law,  
Hamilton.

Hamilton,  
Bermuda.  
7th December, 1950.

“ M.”  
Letter,  
Appleby,  
Spurling &  
Kempe,  
to E. T.  
Richards,  
7th  
December,  
1950.

30

Dear Sir,

We beg to refer to the telephone conversation between yourself and  
our Mr. Spurling on Tuesday last when our Mr. Spurling informed you  
that the transaction between your client, Mrs. Horne and our clients,  
Messrs. R. A. Ferguson and H. F. Leseur, must be concluded in the  
immediate future and that if your client could reach no decision by Saturday  
9th instant, we were instructed to issue a writ of summons on Monday

Exhibits.

“ M.”

Letter,  
Appleby,  
Spurling &  
Kempe to  
E. T.  
Richards,  
7th  
December,  
1950.

next. We confirm this in writing. It is hoped that no legal proceeding will be necessary as we cannot see that the matter represents any difficulty.

The position is simply this, namely :

- (1) If your client can satisfy us of her title to the premises which were the subject matter of the agreement between your client and our clients, then and in such case our clients are prepared to complete the sale immediately.
- (2) If your client cannot make good title to such premises to our satisfaction, then our clients are prepared to accept repayment of the sum paid by them to your client as a deposit in full settlement of the matter. 10

As we have stated to you, we do not believe that your client can make good title to these premises. If, in your opinion, such be not the case, will you be good enough to provide us in writing your reasons therefor so that we may conclude this matter without further delay.

It would be appreciated if you would treat this matter as urgent, and provide us with an answer on or before Saturday 9th instant.

Yours faithfully,

APPLEBY, SPURLING & KEMPE.

ADS/mtg

20

“ E.”  
Letter,  
Appleby,  
Spurling &  
Kempe to  
Mrs.  
Margaret  
Y. Horne,  
18th  
December,  
1950.

“ E.”—Letter, Appleby, Spurling & Kempe to Mrs. Margaret Y. Horne.

Appleby, Spurling & Kempe,  
Barristers-at-Law.

Mrs. Margaret Y. Horne,  
Warwick East.

Hamilton,  
Bermuda.

18th December, 1950.

Registered Letter Post.

Dear Madam,

We are writing this letter to you as it is our understanding that Mr. E. T. Richards no longer represents you in this matter as you recently terminated his services at an interview in our office. 30

2. We have again consulted our clients, Mr. R. A. Ferguson, Jnr., and Mr. Herman Leseur, and informed them that you advised us that you were unable at this time to repay the sum of ONE THOUSAND POUNDS (with interest thereon at 5 per cent. per annum) paid by them to you on the 24th June, 1949, as a deposit in respect of the purchase of certain premises in Warwick Parish described in a paper writing dated 24th June, 1949, as

you did not have in your possession sufficient moneys so to do, and were, therefore, unable to accept their offer to settle this matter in the manner proposed by them.

Exhibits.

“ E.”

Letter,  
Appleby,  
Spurling &  
Kemp to  
Mrs.  
Margaret  
Y. Horne,  
18th  
December,  
1950—  
*continued.*

3. We further informed them of your offer of settlement, namely :

(1) That as it had not been possible, and is not now possible, to give good title to the said premises, you would be willing to execute an agreement with them.

(2) That the said sum of One thousand pounds should be retained temporarily by you.

10 (3) That the agreement should provide :

(a) that you will undertake such legal proceedings as may be necessary in order to have this matter of title and boundaries determined before the 31st December, 1951 ;

(b) that if you are able on or before 31st December, 1951, to give good title to and convey the said premises as described, then they would be bound to complete at the purchase price of Five thousand pounds.

20

(c) that if it appeared on determination of the said dispute that the measurements and area of the said premises described in the said paper writing dated 24th June, 1949, were reduced but not substantially so and a good title could be given thereto, then and in such event the purchasers should complete at a purchase price to be reduced proportionally ;

30

(d) that if it was not possible to convey the said premises with good title to the purchasers on or before 31st December, 1951, then and in such event the agreement for sale would be terminated and you would immediately repay to the purchaser, the sum of One thousand pounds with interest thereon at the rate of 5 per cent. per annum reckoned from the 24th June, 1949, to the date of payment of the said sum of One thousand pounds.

4.—We have been instructed by our clients to advise you that they are not prepared to accept this offer, but that they are prepared to accept one of the following alternatives as settlement, namely :

40 Either : (1) That you repay immediately to them the said principal sum of One thousand pounds together with interest thereon at the rate of 5 per cent. per annum reckoned from the 24th June, 1949, to date of payment, in which case all rights and liabilities arising out of the agreement for sale will be terminated. This would mean that you would then be at liberty to dispose of the premises as you saw fit without any restraint on the part of our clients ;

Exhibits. Or :  
 " E "  
 Letter,  
 Appleby,  
 Spurling &  
 Kempe to  
 Mrs.  
 Margaret  
 Y. Horne,  
 18th  
 December,  
 1950—  
*continued.*

- (2) That you pay immediately to our clients the said principal sum of One thousand pounds together with interest thereon at the rate of 5 per cent. per annum reckoned from the 24th June, 1949, to date of such payment and that you enter into a written agreement with our clients containing the following provisions, namely :
- (a) that you will immediately take such legal proceedings as may be necessary to determine the title to and boundaries and measurements of the said premises at your expense ;
  - (b) that if you are able on or before 31st December, 1951, to give good title and convey the said premises as described in the paper writing dated 24th June, 1951, together with a proper and convenient right of way therefrom to the Public Road, then and in such event our clients will have the option to complete the said transaction at the purchase price of Five thousand pounds ;
  - (c) that if such proceedings should show that you can give good title but only to a parcel of land smaller than the said premises described as aforesaid, then and in such event our clients will have the option to complete the said transaction at a purchase price reduced proportionately ;
  - (d) that in the event of our clients exercising the option under either (b) or (c), you will at your own expense produce a proper accurate plan of the said premises prepared by a surveyor approved by our clients for annexing to the deed of conveyance ;
  - (e) that if good title cannot be given to the said premises on or before 31st December, 1951, or if the purchasers decide not to exercise their option under this agreement, then and in either of such events this agreement shall be terminated and our clients released from any obligations thereunder.

If you accept either of these two offers, our clients are prepared to pay their own legal expenses to date, and are also prepared to give you until December 31st, 1950, to secure the necessary funds for such payment. This, however, is subject to your acceptance in writing of either offer as hereinafter mentioned.

5.—We have informed you, as well as Mr. E. T. Richards, that our clients have always been and are now desirous of completing the said purchase if good title can be given to them of the said premises. This has not been possible due to no fault on the part of our clients. As a result, our clients have been unable to carry out building operations, etc., which they had intended to do, and this has prejudiced their position in view of the increase in building costs and also the present world situation, which might

easily result in preventing them developing the said premises if the transaction can be completed. They feel, therefore, that both offers they are now making are very fair to you in the circumstances of the case.

6.—We request that we be advised in writing of your decision in this matter on or before Friday, 22nd instant, failing which our clients will have no alternative than to commence legal proceedings to recover these moneys as they are not prepared to tolerate further delay ; we trust this will not be necessary.

Yours faithfully,

A. D. SPURLING.

10 ADS/mtg.

Exhibits.  
" E "  
Letter,  
Appleby,  
Spurling &  
Kempe to  
Mrs.  
Margaret  
Y. Horne,  
18th  
December,  
1950—  
*continued.*

" F."—Letter, Margaret Y. Horne to Appleby, Spurling & Kempe.

Warwick Villa,  
Warwick East,  
Bermuda.

To Appleby, Spurling & Kempe,  
Hamilton—Bda.

Attention Mr. Spurling.

Jan. 19th, 1951.

" F."  
Letter,  
Margaret  
Y. Horne to  
Appleby,  
Spurling &  
Kempe,  
19th  
January,  
1951.

20 Dear Sir,

Replying to your letter of Dec. 18th I am surprised at all the palaver my words to you were final—I am not prepared to accept your condition or even contemplate making a sale to your clients—I immediately informed Mr. Leseur when I returned home from your office.

I am indeed sorry that Leseur and Ferguson have been placed in such an unfortunate situation but I think a lot of trouble has been caused both by you and by Mr. Richards.

I came to your office to complete transactions for my brother's suit against Gibbons, and it was embarrassing to say the least to find that  
30 Richards was in your office.

As regards the title to the property referred to in your letter—any FORGED deeds do not affect the same. In fact they clarify the entire acreage.

I am,

Yours sincerely,

(Signed) MARGARET Y. HORNE.  
*Attorney for Edward Astwood.*

Exhibits. " N."—**Judgment in the Supreme Court of Bermuda in Gibbons v. Vieira & Horne.**

" N."

Judgment  
in the  
Supreme  
Court of  
Bermuda in  
Gibbons v.  
Vieira &  
Horne,  
6th April,  
1951.

IN THE SUPREME COURT OF BERMUDA.

I, Wilfred Norman Parker, Registrar of the Supreme Court, Hereby Certify that on the 6th day of April, 1951, Judgment was given in the cause 1950 : No. 41, Between

MORRIS ALVIN GIBBONS ... .. Plaintiff

and

ADMON GABRIEL VIEIRA and MARGARET YOUNG HORNE Defendants.

as follows :—

10

“ Judgment for the Plaintiff, who holds a secure title to the property. “ An injunction against the Defendants is granted. Damages in the sum of £440 and Costs against the Defendants awarded jointly and severally.”

Given under my hand this 19th day of May, 1951.

(Signed) W. NORMAN PARKER,  
*Registrar.*

# In the Privy Council.

No. 42 of 1951.

ON APPEAL FROM THE SUPREME COURT OF  
BERMUDA.

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BETWEEN

MARGARET YOUNG HORNE and  
RICHARD CLEVELAND FOX  
*(Defendants) Appellants*

AND

RODERICK ALEXANDER FERGUSON  
(the Younger) and HERMAN  
FREDERICK LESEUR  
*(Plaintiffs) Respondents.*

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RECORD OF PROCEEDINGS

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WALMSLEY & STANSBURY,  
6 New Square,  
Lincoln's Inn, W.C.2,  
*Solicitors for the Appellants.*

CULROSS & TRELAWNY,  
65 Duke Street,  
Grosvenor Square, W.1,  
*Solicitors for the Respondents.*



25, 1953

No. 42 of 1951.

MARGARET YOUNG HORNE  
and  
RICHARD CLEVELAND FOX  
v.  
RODERICK ALEXANDER FERGUSON  
(The younger)  
and  
HERMAN FREDERICK LESEUR

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**Plan Exhibit "P.1"**

25, 1953

No. 42 of 1951.

**MARGARET YOUNG HORNE**  
and  
**RICHARD CLEVELAND FOX**  
v.  
**RODERICK ALEXANDER FERGUSON**  
(The younger)  
and  
**HERMAN FREDERICK LESEUR**

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**Plan Exhibit "P.2"**

EXHIBIT "P2"

PLAN OF A PORTION OF THE ESTATE

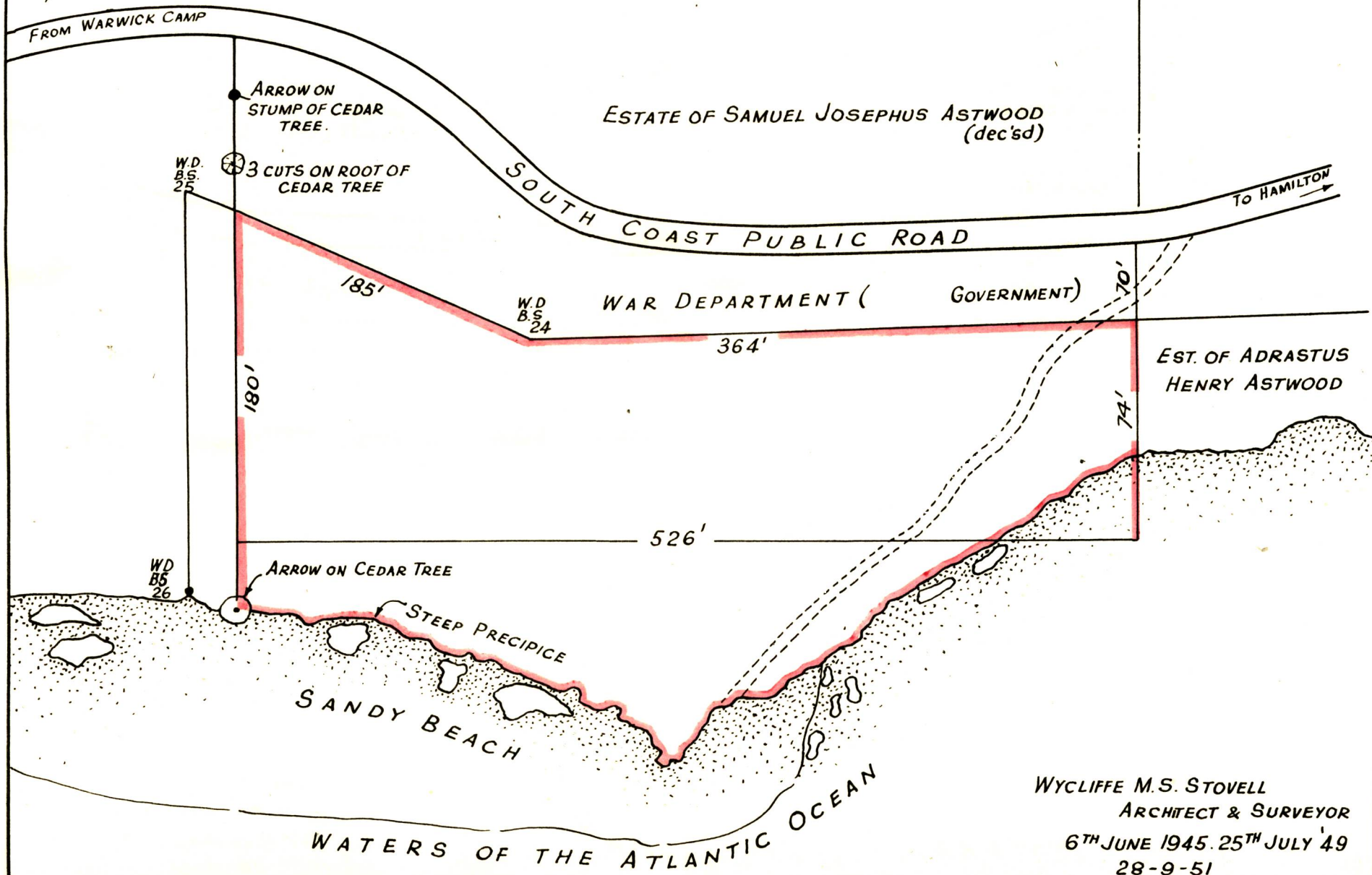
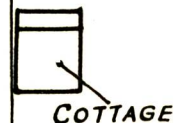
FORMERLY OF SAMUEL JOSEPHUS ASTWOOD (des'cd)

SITUATE ON THE SOUTH SIDE OF W.D. PROPERTY

WARWICK PARISH, BERMUDA.

SCALE: 30 FEET TO ONE INCH.

PLAN REFERRED TO IN THE ANNEXED INDENTURE.



WYCLIFFE M.S. STOVELL  
ARCHITECT & SURVEYOR  
6<sup>TH</sup> JUNE 1945. 25<sup>TH</sup> JULY '49  
28-9-51



PLAN OF PROPERTY THE ESTATE OF SAMUEL JOSEPHUS ASTWOOD deceased

SITUATE ON THE SOUTH SIDE OF WARWICK PARISH COMPRISING (BY WILL) OF APPROXIMATELY 12 ACRES INCLUSIVE OF STRIP OF LAND NOW IN THE POSSESSION OF THE WAR DEPARTMENT

SCALE: 80 FT. TO ONE INCH.

WYCLIFFE M.S. STOVELL ARCHT & SURVYR PARLIAMENT STREET. HAMILTON 6TH JUNE 1945 BERMUDA.

