

~~CND. 91~~

(30), 1963

IN THE PRIVY COUNCIL

No. 43 of 1961

ON APPEAL  
FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N

GEORGE ALEXANDER SELKIRK

Appellant

- and -

ROMAR INVESTMENTS LIMITED

Respondents

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

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

19 JUN 1964

25 RUSSELL SQUARE  
LONDON, W.C.1.

74060

BULCRAIG & DAVIS,  
Amberley House,  
Norfolk Street,  
Strand, W.C.2.  
Solicitors for the Appellant.

LOVELL, WHITE & KING,  
1, Sergeant's Inn,  
Fleet Street, E.C.4.  
Solicitors for the Respondents.

i.

IN THE PRIVY COUNCIL

No. 43 of 1961

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B E T W E E N

GEORGE ALEXANDER SELKIRK                      Appellant

- and -

ROMAR INVESTMENTS LIMITED                      Respondents

RECORD OF PROCEEDINGS

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E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
"A"	Agreement for Sale (Contract) between the parties	6th January 1959	40
"B"	Agreed correspondence - sixteen letters  (1) Letter, Appellant's Solicitor to Respond- ents' Solicitor  (2) Letter, Appellant's Solicitor to Respondents' Solicitor  (3) Letter, Respondents' Solicitor to Appellant's Solicitor  (4) Letter, Appellant's Solicitor to Respondents' Solicitor  (5) Letter, Appellant's Solicitor to Respondents' Solicitor  (6) Letter, Appellant's Solicitor to Respondents' Solicitor  (7) Letter, Respondents' Solicitor to Appellant's Solicitor  (8) Letter, Appellant's Solicitor to Respondents' Solicitor  (9) Letter, Respondents' Solicitor to Appellant's Solicitor  (10) Letter, Appellant's Counsel to Respondents' Solicitor	   28th January 1959  29th January 1959  11th February 1959  12th February 1959  23rd February 1959  1st April 1959  3rd April 1959  6th April 1959  4th July 1959  21st July 1959	   52  53  55  56  57  58  61  62  63  65

Exhibit Mark	Description of Document	Date	Page
"B"	(11) Letter, Respondents' Solicitor to Appellant's Counsel	10th August 1959	66
	(12) Letter, Appellant's Counsel to Respondents' Solicitor	15th August 1959	68
	(13) Letter, Respondents' Solicitor to Appellant's Counsel	24th August 1959	69
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	(16) Letter, Appellant's Counsel to Respondents' Solicitor	22nd September 1959	74
"C"	(4) Conveyance, Maximo Edward Kemp to Hon. Harold George Christie	16th March 1939	75
	(5) Crown Grant to Concepcion C. Kemp. With plan attached	12th July 1881	76
"D"	Affidavit of Maude Malcolm McDonald	17th September 1958	80
"E"	Affidavit of the Hon. Richard William Sawyer	19th March 1959	80
"F"	Affidavit of William Ewart Gladstone Pritchard	25th March 1959	81
"G"	Affidavit of Maude Malcolm McDonald	11th February 1959	82
"H"	Certified copy of Conveyance, Concepcion C. Kemp and Osborne Wilson	8th June 1916	83

Exhibit Mark	Description of Document	Date	Page
"I"	Certified Copy of Conveyance, Concepcion C. Kemp and George Wilfred Armbrister	1st December 1919	84
"J"	Certified Copy of Conveyance, Concepcion C. Kemp to Thomas Harvey Thompson	21st June 1920	86
"K"	Certified Copy of Conveyance, Concepcion C. Kemp to George W. Armbrister	25th May 1920	88

## LIST OF DOCUMENTS NOT TRANSMITTED TO THE PRIVY COUNCIL

No.	Description of Document	Date
1	Summons for Directions	2nd June 1960
2	Order	17th June 1960
3	Notice of Trial	10th April 1961
4	Notice of Motion for Leave to Appeal	15th May 1961
5	Notice of Intention to prosecute Appeal and of readiness to give Security	15th May 1961
6	Affidavit of Service of Notice of Intention to Appeal	25th May 1961

EXHIBITS TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT PRINTED

Exhibit Mark	Description of Exhibit	Date
C	(1) Conveyance from The Harrisville Company to Romar Investments Ltd.	27th February 1959

Exhibit Mark	Description of Exhibit	Date
C	(2) Certificate of Probate Court with copy of Will of Austin T. Levy attached	31st December 1951
"	(3) Conveyance from Hon. Harold George Christie to Austin Theodore Levy	5th July 1946
"	(6) Conveyance from June Rockwell Levy to The Harrisville Company	4th March 1955
"	(7) Release of Dower from June Rockwell Levy to The Harrisville Company	4th March 1955

1.

IN THE PRIVY COUNCIL

No. 43 of 1961

ON APPEAL  
FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N

GEORGE ALEXANDER SELKIRK Appellant

- and -

ROMAR INVESTMENTS LIMITED Respondents

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

In the Supreme  
Court of the  
Bahama Islands

10

IN THE SUPREME COURT

1959 No. 221

No. 1

EQUITY SIDE

Writ of  
Summons.

BETWEEN

3rd September,  
1959.

GEORGE ALEXANDER SELKIRK Plaintiff

- and -

ROMAR INVESTMENTS, LIMITED Defendant

ELIZABETH, The Second, by the Grace of God, of the  
United Kingdom of Great Britain and Northern  
Ireland and of Our other realms and territories  
Queen, Head of the Commonwealth, Defender of  
the Faith.

20

TO Romar Investments, Limited  
Building No.330 Bay Street,  
City of Nassau.

WE COMMAND YOU, that within fourteen 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 George  
Alexander Selkirk. And take notice that in default

In the Supreme  
Court of the  
Bahama Islands

No. 1

Writ of  
Summons.

3rd September,  
1959

- continued.

of your so doing the Plaintiff may proceed therein,  
and judgment may be given in your absence.

WITNESS, the Honourable K.G.L. Isaacs Our Acting  
Chief Justice of Our Bahama Islands, the 3rd day  
of September in the year of Our Lord One thousand  
Nine hundred and Fifty-nine.

INDORSEMENT

The Plaintiff's claim is :

- 1. For a declaration that the notice in writing  
dated the 1st September 1959 was and is in-  
effectual to rescind the Agreement for Sale  
made between the Defendant of the one part  
and the Plaintiff of the other part dated the  
6th day of January 1959 for the sale by the  
Defendant to the Plaintiff of certain freehold  
tracts of land described in the Schedule  
thereto. 10
- 2. For a declaration that the Defendant was and  
is not entitled to rescind the said Agreement  
for Sale. 20
- 3. To have the said Agreement for Sale speci-  
fically performed.
- 4. Further or alternatively damages for breach  
of the said Agreement for Sale.
- 5. Such further or other relief as is just.
- 6. Costs.

(Sgd.) P.L. ADDERLEY

Attorney for the Plaintiff.

This writ was issued by P.L. Adderley of and whose  
address for services is No.41 Frederick Street,  
Nassau, Bahamas, attorney for the said plaintiff,  
who resides at 42 Glen Elm, Toronto 7, Canada. 30



STATEMENT OF CLAIM

In the Supreme  
Court of the  
Bahama Islands

BAHAMA ISLANDS

No. 2

IN THE SUPREME COURT

1959 No. 221

Statement of  
Claim.

3rd November,  
1959.

Equity Side

BETWEEN

GEORGE ALEXANDER SELKIRK

Plaintiff,

- and -

ROMAR INVESTMENTS, LIMITED

Defendant.

10

STATEMENT OF CLAIM

1. By an agreement dated the 6th day of January 1959 and made between the Defendant of the one part and the Plaintiff of the other part it was agreed that the Defendant should sell and the Plaintiff should purchase certain freehold tracts of land situated in the Southern District of the Island of New Providence and described in the Schedule there-  
to to which the Plaintiff will at the trial refer for its full terms and effect.

20

2. It was provided by Clause 2 of the said agree-  
ment that the Plaintiff should purchase the said tracts of land at a price of \$1,000.00 (Canadian) at an agreed rate of exchange of \$2.72 $\frac{1}{4}$  to the Pound sterling producing £367. 6.2. for every \$1,000.00 (Canadian) per acre for such acreage which should be determined by survey as provided for in the said agreement.

30

3. It was provided by sub-clause (1) of Clause 2 of the said agreement that the Plaintiff should pay the sum of \$40,500.00 (Canadian) to the Defendant to be applied as a payment on account of the purchase price and the receipt thereof by the Defendant was duly acknowledged therein.

4. It was provided by sub-clause (2) of Clause 3 of the said agreement that the Plaintiff might deliver requisitions and objections in respect of the title or description of the said tracts of land.

In the Supreme  
Court of the  
Bahama Islands

-----  
No. 2

Statement of  
Claim.

3rd November,  
1959

- continued.

5. It was provided by sub-clause (3) of Clause 3 of the said agreement that should any objection or requisition be insisted on which the Defendant should be unwilling or unable to satisfy or comply with the Defendant might (notwithstanding any attempt to remove or satisfy the same or any negotiation or litigation in respect thereof) by notice in writing to the Plaintiff or his solicitor rescind the said agreement.

6. Upon the investigation of the Defendant's title to the said tracts of land the Plaintiff by his Attorney made certain requisitions and objections to the title thereto. 10

7. By letter dated the 3rd April 1959 the Defendant by its Attorney requested the Plaintiff to withdraw certain requisitions and objections to the title to the tracts of land containing approximately 330 acres being a part of the tracts of land comprised in the said agreement.

8. By letter dated the 6th April 1959 the Plaintiff by his Attorney withdrew the said requisitions and objections to the title to the said tracts of land containing approximately 330 acres. 20

9. By letters dated the 10th and 24th August 1959 the Defendant by its Attorney requested the Plaintiff to withdraw the requisitions and objections to the title to the tracts of land containing approximately 75 acres being a part of the tracts of land comprised in the said agreement.

10. By letters dated the 15th and 31st August 1959 the Plaintiff by his Attorney refused to withdraw in accordance with the request to do so referred to in paragraph 9 hereof the requisitions and objections to the title to the said tracts of land containing approximately 75 acres. 30

11. By letters dated the 10th August and 1st September 1959 the Defendant declined to satisfy or make further efforts to satisfy the requisitions and objections to the title to the said tracts of land containing approximately 75 acres and still refuses to do so and by its Attorney purported to rescind the contract in accordance with the provisions of the said agreement and tendered a cheque for the sum of £14,876.0.7. being the sterling equivalent of the sum of \$40,500.00 referred to in 40

paragraph 3 hereof to the Plaintiff. The Plaintiff by his Attorney refused to accept the same and returned the said cheque to the Defendant's Attorney.

In the Supreme  
Court of the  
Bahama Islands

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No. 2

Statement of  
Claim.

3rd November,  
1959

- continued.

10 12. The Plaintiff claims that the requisitions and objections to the title to the said tracts of land containing approximately 75 acres should be complied with by the Defendant and that the Defendant has acted arbitrarily or capriciously and unreasonably by not doing so and is thereby not entitled to rescind the said agreement under the terms of sub-clause (3) of Clause 3 thereof.

13. The Plaintiff has at all material times been and is now ready and willing to perform his obligations under the said agreement.

AND the Plaintiff claims:

- 20 (1) A declaration that the Defendant is not entitled to rescind the said agreement.
- (2) Specific performance of the said agreement.
- (3) Further or alternatively damages for breach of the said agreement.
- (4) Further or other relief as may be just.
- (5) Costs.

(Sgd.) P.L. ADDERLEY

Attorney for the Plaintiff.

Delivered the Third day of November A.D. 1959 by  
Paul Lawrence Adderley of Chambers, No.41 Frederick  
Street, Nassau, Bahamas, Attorney for the Plaintiff.

---

In the Supreme  
Court of the  
Bahama Islands

No. 3

D E F E N C E

No. 3

BAHAMA ISLANDS

Defence.

IN THE SUPREME COURT

1959 No. 221

9th February,  
1960.

Equity Side

BETWEEN

GEORGE ALEXANDER SELKIRK

Plaintiff

- and -

ROMAR INVESTMENTS, LIMITED

Defendant

D E F E N C E

10

1. The Defendant Company admits the contract and facts as pleaded in paragraphs 1 to 11 inclusive of the Statement of Claim.
2. The Defendant Company denies that the requisitions and objections referred to in paragraph 12 of the Statement of Claim should be complied with and/or that the Defendant Company has acted arbitrarily or capriciously and unreasonably by not so doing. The Defendant Company says that it is entitled to rescind the said Agreement under the terms of sub-  
clause (3) of Clause 3 thereof.
3. The Defendant Company has been and now is ready and willing to return the said deposit.

20

(Sgd.) W.E.A. CALLENDER  
Attorney for the Defendant

Delivered the Ninth day of February, A.D.1960 by  
W.E.A. Callender of Chambers, Bayparl Building,  
Parliament Street, Nassau, N.P., Bahamas, Attorney  
for the Defendant.



NOTES OF EVIDENCE BEFORE MR. JUSTICE SCARR

In the Supreme  
Court of the  
Bahama Islands

BAHAMA ISLANDS

No. 4

IN THE SUPREME COURT

Equity  
No.221/59

Notes of  
Evidence  
before Mr.  
Justice Scarr.

GEORGE ALEXANDER SELKIRK

Vs.

11th April,  
1961.

ROMAR INVESTMENTS, LIMITED

JUDGE'S NOTES:-

10 MR. ADDERLEY opens and calls:-

FOSTER CLARKE duly sworn. Eastern District. Counsel and Attorney Nassau. I acted for the purchaser Selkirk when he bought. I prepared the agreement. (tendered. No objection. Admitted as Ex. A.) (Counsel hands in a bundle of 16 copy agreed letters to the Court, the same marked Exhibit B.)

20 I received a bundle of 6 title deeds and a certified copy of a Probate of Austin V. Levy. They were handed to me by Mr. Harry Sands for the Vendor. There was no Abstract of Title. This was to enable me to investigate title. It is the usual conveyancing practice in Nassau to submit the deeds without an abstract. (Deeds and documents tendered collectively. No objection. Marked collectively Ex.C)

30 (Witness refers to page 2, 3 and 4 of the correspondence. Reads them. Maximo Edward Kemp by deed dated 16/3/39 claimed to be the only son and heir of Conception. I now tender the affidavit referred to in the last paragraph of page 2. (No objection. Ex. D.) I did not accept that affidavit. It was vague and doubtful.

I felt that Maximo could have been contacted. He was alive in 1939. (Witness refers to page 6 of the correspondence and refers to paragraph 3(b). Witness refers to page 7. Reads same. Paragraph 3 refers to the 75 acre tract.)

40 I now tender in evidence a further affidavit of R.W. Sawyer. (No objection. Ex.E.) It is referred to in that letter and also the affidavit of W.E.G. Pritchard. (Ex. F.)

In the Supreme Court of the Bahama Islands

-----

No. 4

Notes of Evidence before Mr. Justice Scarr. 11th April, 1961  
- continued.

(Witness refers to page 3 of the correspondence paragraph 2. Reads same. Produces affidavit. No objection. Marked Ex. G. Refers and reads paragraph 2 of page 10 of correspondence.) The land "eastwardly" is the 75 acre plot.

Per curiam. I was still dissatisfied with the further affidavits. They were in my opinion not satisfactory evidence. (Reads page 11 correspondence, third paragraph. Refers and reads page 13. Ditto p. 14 para. 3, ditto p.15) (Witness then tenders 5 certified conveyances.

10

MR. CALLENDER objects. Not evidence this case. Not discovered till a short time ago. Well after issue of writ. No evidence that the Conception in these documents is the Conception in the 1939 deed.

MR ADDERLEY. They are documents of record.

COURT. They came to light after this action commenced?

ADDERLEY. Yes. But I may want them for cross-examination later and wish to put them in now.

20

CALLENDER. No objection as long as they are not admitted now as evidence in this case.

COURT. I will mark them now as Exs. H, I, J & K for convenience. (Question of admissibility can be dealt with later)

The only documents of title I got from vendors were the title deeds in Ex. C and the 4 affidavits D to G. I was still not satisfied of the proof of Conception's death prior to 1914 or that Maximo was the heir. No death certificate was produced. No letters of administration were produced and the personal estate ought to have been administered.

30

Per curiam. I made no searches myself in the Registry prior to rescission. I considered this duty was on the vendor to make title.

Cross-examination.

I first came across the Exs. H, I, J, K today. I was not aware of them during the correspondence. I know Maude McDonald slightly. I know the 4 deponents to the affidavits. I believe they are

40

persons of integrity. I am not impugning their honesty.

(Referred to para. 1 of page 2 of correspondence.)

10 Agree I had Ex. G. (affidavit) in my possession then. I thought it was a bare statement. No particular of place or city. Did not regard it as sufficient evidence of death. Agree I was supplied with Ex. G. thereafter but again deponent merely relying on her memory. Agree I myself have drawn  
 20 such affidavit but I felt it was my duty in this case to get the best evidence. A death certificate or a Court order of death before 1914. Agree I have in my practice made searches and found nothing in Nassau. Agree that sometimes searches for death certificates in Registry are not successful in Nassau. Agree I never made any suggestions she may have died out of the Bahamas. I didn't know where she died. Agree that after page 6(2) of the correspondence I had two further affidavits. Pritchard  
 30 and Sawyer. But not satisfied. I wanted corroborative evidence. I also wanted a Court order. Agree I never referred to a death certificate specifically in the correspondence. I am not so sure on this now and would have to go through the correspondence to see. Agree that in addition to the correspondence we had telephone conversations. I had the idea that Conception might have died abroad. (Witness refers to the conveyance dated 16/3/39. Kemp to Christie to the address of the vendor.) My view was  
 40 that questions of law should be raised on a Vendor and Purchaser Summons. It was the usual practice. There was no Quieting of Titles Act in existence then. The fact that subsequent purchasers to Christie accepted the title, does not make it good. Agree I prepared the contract in this case in collaboration with Sands. There was no particular object in putting in clause 3(3) of the agreement (Ex.A.). By April I felt the further affidavits were sufficient to go to Court. Agree I was adamant  
 50 that we went to Court. By corroborative evidence on page 6 of the correspondence I meant to exclude a death certificate. i.e. if a death certificate had been produced it might have not been necessary to go to Court on that particular point. But as to the heir at law yes it would have still been necessary. I wanted 3 points settled

- (i) death of Conception;
- (ii) date of that death i.e. whether before or after 1914 and whether intested or otherwise;

In the Supreme  
Court of the  
Bahama Islands

No. 4

Notes of  
Evidence  
before Mr.  
Justice Scarr.

11th April,  
1961  
- continued.

In the Supreme  
Court of the  
Bahama Islands

(iii) the Maximo relationship;

or in the alternative of course production of a probate.

No. 4

No re-examination.

Notes of  
Evidence  
before Mr.  
Justice Scarr.

11th April,  
1961

- continued.

Per curiam. During this correspondence I was not aware of any information to show the vendor possessed any knowledge or information they were not disclosing on the relevant points. I felt they were not making enough effort. There was no question of other purchasers in the offing. I felt that although they were not hiding anything they were not making enough efforts. They were not producing satisfactory results. I felt that not sufficient efforts were being made to answer the requisitions.

10

No further questions by either Counsel.

Close of Plaintiff's case.

Defence.

MR. CALLENDER calls:-

D.W.I.

ARNOLD WILLIAM ALBURY duly sworn.

20

I am the son of the late Ronald Albury sometimes called Ronald A. Albury. Live in Nassau. He was president and director of the defendant company and was alive in January, 1959. He died 26/2/59. It was a family company. Thereafter I carried on the negotiations in this sale on behalf of the company and of the family. My attorney was Harry B. Sands. I saw the requisitions put in by the purchasers. I knew of the Notices to Rescind. I gave the attorney instructions to rescind. I felt that my father had accepted the title and I felt we had done all we could to meet the requisitions. I am an executor of my father's estate and the defendant company, as I say, is a family company. I was acting on their behalf in these negotiations. I had no offers from elsewhere at the time to buy this land.

30

Cross-examined.

The other members of my family are shareholders in this company. I am not a lawyer. When I say I had done all I could I agree that is my

40



personal opinion. Agree that is what I was advised. I cannot say whether efforts were made to trace Maximo in Montreal. I would have to ask my lawyer. I cannot say whether any effort was made to get a death certificate of Conception in Canada. Or Letters of Administration to her estate. I know that searches were made in Nassau. At least I was told so by my lawyer Mr. Harry B. Sands. (Not admissible.)

In the Supreme  
Court of the  
Bahama Islands

                      
No. 4

Notes of  
Evidence  
before Mr.  
Justice Scarr.

11th April,  
1961

- continued.

10 No re-examination.

Adjourned to 2.15 p.m.

Resumed 2.15 p.m. All present as before.

D.W.2. HARRY BRACON SANDS duly sworn.

Counsel and attorney. Nassau. Early 1959 I represented the defendant company in the purchase and sale to them of these properties from Harrisville Company Ltd., who were represented in turn by Messrs. Higgs & Johnson. I dealt with Mr. Geoffrey Johnstone. I made requisitions on title to the vendor.

20

(MR. ADDERLEY objects that this evidence is not relevant.)

Witness stood down.

MR. CALLENDER. Mr. Clarke said this morning he felt that more effort could have been made to ascertain the facts. The evidence I seek to adduce now is to show that efforts were made on a previous occasion on these matters. In fact while the Romar Company were awaiting the completion of their purchase from the Harrisville Company they sold to Mr. Selkirk. Mr. Sands acted on both the purchase and the sale.

30

RULING:

This evidence may well be relevant to the issues. It may go to show what knowledge of the title Mr. Sands had, and perhaps of other relevant circumstances, at the date of the rescission. As a matter of convenience I propose to hear the evidence at this stage and to give a ruling as to its admissibility later.)

40

Witness recalled

I was acting for the purchase (Romar Ltd.) on this

In the Supreme  
Court of the  
Bahama Islands

—————  
No. 4

Notes of  
Evidence  
before Mr.  
Justice Scarr.  
11th April,  
1961  
- continued.

sale by the Harrisville Company. Efforts were made to ascertain whether Conception died in Canada by Mr. Johnstone at my request. I was satisfied from the enquiries that had been made that Conception had died prior to 1914, and that Maximo was her heir at law.

Exhibit D was furnished to me by Harrisville in response to my requisitions. In turn I gave Ex.D to Mr. Clarke. Then I gave him Ex. G. As a result of Mr. Clarke's requisitions of the 29th Jan. (p. Ex. B) I sent it at p. of Ex. B. (Refers to p. thereof) as a result thereof I sent affidavits E & F under cover of page 7 of correspondence. Having done this, and got affidavits from responsible members of the community, and from what I already knew and the affidavits corroborating one another I felt there was nothing more I could reasonably do.

10

In para 3(b) of page Mr. Clarke asked for corroboration. I gave this corroboration in page

20

Thereafter Mr. Clarke never suggested how i.e. in what manner I could further comply with the requisitions.

I can't swear that the search was made by my firm in Nassau Registry for Conception's death. I personally did not so search but it is the usual practice of my office to so search. I don't remember now whether it was done or not. I advised my clients to rescind a long time after this. Mr. Clarke and I spoke repeatedly about these matters. Mr. Clarke was aware of the endeavours made to ascertain the precise situation as regards the Canuta Kemp family generally.

30

Cross-examined.

Mr. Clarke was aware at the date of the contract that we had not yet got title to the 75 acres. My clients were satisfied with the Harrisville title to the 75 acres. Agree the title I accepted from Harrisville was based on the Crown Grant and the Maximo conveyance and the affidavit - Ex. D. If a title is supported by affidavit the client is given an opportunity of considering the matter and of being told whether it is the best evidence that can be obtained. In the Bahamas Colony evidence by affidavit is very prevalent in conveyancing and the practice of lawyers is to

40

accept title with affidavits. Where there is no death certificate an affidavit is often the best that one can expect. I agree that a certain amount of risk is attached. The evidence that I relied on that Maximo was the heir at law was

- (1) a statement in the 1939 deed which was almost 20 years old;
- (2) the affidavit marked D.

10 Agree the affidavit D does not give the place of death. My clients were satisfied with the title. I believed further enquiries had been made by Mr. G. Johnstone. As a result of these conversations I had with him I was satisfied Maximo was the heir.

Per curiam: Agree there was nothing in writing but I was satisfied that there was nothing further I could do.

20 Per counsel. Mr. G. Johnstone obtained the affidavits E, F & G. I was then more satisfied as to the date of death of Conception and her relationship with Maximo.

30 In Ex. G. agree the name is Edward Maximo and that in the 1939 deed it is Maximo Edward but such transpositions of names often happen. They are not uncommon in the Bahamas and I myself did not notice the discrepancy. I caused enquiries to be made in Canada. This is when I was buying from Harrisville. I did this because Maximo was described as of Montreal. The Harrisville Co. offered to make enquiries in Canada as to whereabouts of Maximo. As far as I know they did make enquiries in Canada. On one occasion Mr. Selkirk in the presence of Mr. Clarke and my clients offered to make enquiries about Maximo himself. Mr. Selkirk himself came from Toronto. I agree that I was aware that the responsibility was mine. I gave Mr. Geoffrey Johnstone the name of a man named Mr. Thompson in Canada in Toronto. I knew he had lived in Canada since 1927 and I suggested that Johnstone should contact him to make Canadian enquiries as to Maximo. I think that Mr. 40 Johnstone contacted him. I made searches in Nassau re the other plots i.e. for the entirety of the land.

(Exhibits H, I, J & K put to witness.)

I was not aware of the existence of these conveyances until today. I agree the conveyances are dated

In the Supreme  
Court of the  
Bahama Islands

\_\_\_\_\_  
No. 4

Notes of  
Evidence  
before Mr.  
Justice Scarr.

11th April,  
1961  
- continued.

In the Supreme  
Court of the  
Bahama Islands

-----  
No. 4

Notes of  
Evidence  
before Mr.  
Justice Scarr.

11th April,  
1961.

- continued.

1916, 1919, 1920 & 1920 respectively. I agree that if I had been aware of these documents at the time it would have affected my opinion as to the date of the death of Conception being prior to 1914 and I would have made further enquiries. I notice the husband's name includes "Chisholm". We would have tried to find an Edward Chisholm Kemp. I agree that names transpose easily in Nassau but I do not agree that it is not common to find a middle name missing.

10

Per curiam. I agree that these documents would have come as rather a nasty shock. But there was no Edward Chisholm Kemp: appearing on my title to the 75 acres.

(MR ADDERLEY applies to recall Mr. Clarke at a later stage.

MR. CALLENDER. No objection.)

Mr. Clarke was aware that enquiries had been made or were being made in Canada. He would have been told by me. We kept nothing from him. I say that a Vendor and Purchaser Summons would not have helped. It would not have changed the facts. I do not now agree it would have been reasonable. It would not have altered the plaintiff's position. Any conclusions would only have been inter partes. I had the affidavits D & G at the date that the Harrisville Co. conveyed to me i.e. completed with me. A Vendor and Purchaser Summons meant more time and cost.

20

Per curiam. I still say I cannot swear whether a search was made by my office in the Nassau Registry for Conception's death. It was however the usual office routine but I cannot now recall since it is going back several years. I cannot now clearly recollect what happened. I agree that the affidavits D & G are vague but this was of necessity. The place of her death was not known. I myself made enquiries of the deponents before taking these affidavits. I understood from Mr. G. Johnstone that searches had been made in Montreal and I was prepared to accept it that no traces of this good lady or her son could be found. I think Mr. Clarke was aware of this. I agree there was nothing in writing to Selkirk from me to say it was not worthwhile doing anything further. The contract was prepared by the plaintiff's attorney. I myself made the following enquiries as to

30

40

Conception's family. I saw the Hon. Mr. Sawyer prior to his making his affidavit. I saw him because of his knowledge of the old families in Nassau. The Hon. Sawyer was a general source of reference to old families.

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10 I saw Mr. Pritchard for the same reason. Members of the Bar frequently resorted to him and to Mr. Sawyer for their local knowledge. They were a usual source of reference. I myself spoke to both of these gentlemen. I could get no information from them beyond that set out in their affidavits. Mr. Johnstone actually obtained the affidavits. I made a number of enquiries from Miss McDonald. One of the reasons leading to the notice to rescind was the insistence on a Vendor and Purchaser Summons but another reason was the fact that my clients felt that matters had dragged on long enough. We felt the requisitions had been answered. We felt the purchasers might be stalling for time. Further  
20 in view of the information I had I felt there was nothing further I could usefully do.

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MR. ADDERLEY. No questions.

Per MR. CALLENDER. The first notice to rescind was on the 10th August.

Adjourned to 10.30 a.m. 13/4/61

13/4/61 10.30 a.m. Hearing Resumed.

13th April,  
1961.

All present as before.

MR. CALLENDER calls:-

D.W.3. GEOFFREY A. DINWIDDY JOHNSTONE. D/s.

30 Counsel and Attorney, Nassau. Partner in Messrs. Higgs & Johnson. Late in 1958 and early 1959 I was acting for the Harrisville Co. They agreed to sell the 75 acre tract in Baillou Hill Road to Romar, Limited (the defendants), and I had the conduct of the sale. Mr. Harry B. Sands was acting for the purchaser.

40 Requisitions on title were made by Mr. Sands with respect to the death of Conception Canuta Kemp. As a result I made investigations as to her death. The important point was to establish whether Conception died prior to 1914. I searched the records

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in the Registry to try and find the Death Certificate. My full notes of those searches are not available. But I confined my searches to this century. I can say I searched prior to 1909 and also forwards past the year 1914. But I cannot say with precision how far I went although I went beyond the period in which I thought there was any reasonable chance of Conception being alive. I did not, however, go up to say 1958 although I went into the 1940's. I found no record of death. I know that my firm caused searches to be made in Montreal for this century up to the year 1957. There was no success in finding traces of the death of Conception. The searches were made in Canada as a result of information received in the course of this sale.

10

Mr. Sands put the requisitions as to date of death. I was unable to find a death certificate and accordingly gave him Exs. D, E, F & G. (Witness identifies these affidavits.)

20

The deponents swore these affidavits before me after enquiries had been made by me of these deponents. I told Mr. Sands of the enquiries I had made and that for two years I had been trying - (at this stage Mr. Adderley objects to what the witness said to Mr. Sands.

COURT. It is the same question as before. If it is relevant to decide whether or not Mr. Sands was capricious, arbitrary or unreasonable in not complying with your requisitions I think it is admissible but as I have said before I will give a ruling later.)

30

I told him I had made exhaustive enquiries on this subject and that what I produced was the best I could produce. I told him of the searches I had made and of the searches made by me or my firm.

Cross-examination.

I did not know at this time that Romar, Limited was selling to Selkirk. I only found that out yesterday.

40

Q. But the affidavits E & F are dated after the Harrisville completion, 19th March and 25th March?

A. The delivery of the conveyance was I am fairly sure made after the 27th February. The conveyance had to be sent to Boston for execution. Delivery was sometime after.

Per curiam: I am certain I was unaware of the sale to Selkirk in March. I only knew of it yesterday. I was searching for the death of Edward Kemp, the husband of Conception as well. I think, but cannot swear, that I searched for marriage certificate for Conception in Nassau. But I am certain I searched for a birth certificate for Maximo.

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10 Per counsel. I cannot remember my conversation with Mr. Clarke over any matter of Selkirk. All that I knew of any purchaser was that Mr. Sands said there was a possibility of a future sale. I was quite unaware of Selkirk. All this information I had mentioned I gave to Mr. Sands. (Exs. H, I, J & K put to the witness.)

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I see that these exhibits were lodged for record in 1916, 1919 and 1920. This is the first time I had been aware of these documents. The affidavits were prepared by me.

20 Q. None of them state the place of death?  
A. I enquired into this. Maude McDonald told me Conception had died in Nassau. That is why it is omitted.  
None of the deponents knew of her having gone to Canada, but only of Maximo having gone.

Per curiam: I was not directing my mind at that time to where she had died but when and that is why I did not insert Nassau in the affidavit.

30 Per counsel. In Montreal we were trying to locate Maximo. We were worried as to Dower. I know that enquiries were made as to the death of Conception and of her husband and as to the whereabouts of Maximo in 1957. I cannot say whether Probate was specifically searched for in Montreal, without reference to my files. Some considerable time before the sale my firm had been attempting to put this title in order. A firm of lawyers and barristers, Messrs. Dixon, Senecal, Turnbull, Michell, Steers, Culvert & Kiernams were the firm employed through our Boston attorneys for the Harrisville Company to make searches in Montreal. I now say 40 there was search for the Probate of a possible will of Conception. I did not read these searches out to Mr. Sands but I did tell him I had caused searches to be made in Canada by reliable people and that they were fruitless. I agree that if I had been aware of "H to K" my view of the date of

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Conception's death would have been considerably shaken. I would have gone into the question as to whether there were two Conceptions. That is quite a reasonable possibility.

No re-examination

Percuriam. I told Mr. Sands, as to whether or not Maximo was the heir of Conception that the 1939 deed had a description of this fact and that a few days after he had completed it would be a "recital" in a deed 20 years old.

10

Exs. F & G were provided by me at the insistence of Mr. Sands.

Close of Defence

P.W.1. Mr. Clarke recalled on former oath (by consent of both counsel)

I did not know Mr. G. Johnstone in this matter at all. I was dealing directly with Mr. Sands. I cannot recall Mr. Sands telling me he had asked Mr. Johnstone to make searches in Canada concerning the death of Conception and the status of Maximo. There is nothing in the correspondence to support such an inference. Agree it could possibly have been related to me but I can't say I knew that any enquiries had been made in Canada. If it was made by phone it did not impress me. I cannot say it was not made but I cannot recall any official information being given to me. It should have been in more concrete form. I am sure I suggested myself searches in Canada but I had nothing in writing to say this had been done. I don't recollect anyone advising me of this. I would not swear it was not mentioned.

20

30

Cross-examination.

I think it was up to the vendor to satisfy me on the record that efforts had been made. Agree numerous phone calls and conversations were made. If Canadian searches were mentioned by Mr. Sands I was not satisfied. I can't answer whether Mr. Sands or others did make searches.

No re-examination.

40



MR. ADDERLEY addresses the Court re the admissibility of Mr. Johnstone's evidence;

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Submits:-

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The vendor must be limited to facts he knew and was aware of at the time he rescinded.

What took place between Johnstone and Sands is irrelevant.

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10 Mr. Sands had a dual position. The two positions should be watertight the one from the other. His position as purchaser's solicitor and as Vendor's solicitor should be distinguished. Otherwise the purchaser is put in an impossible position and has no protection against the vendor.

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- continued.

The vendor may be absolved from giving reasons but he must disclose facts. Refers to Williams (21st Edition) page 509.

(COURT refers Halsbury Vol. 34 page 248 Note (t) 3rd Edition)

20 Counsel refers Turpin v. Chambers (1861) page 567, 54 E.R. 566. Vendor should answer the requisitions to the best of his ability. He should have disclosed to us what he has said now in Court. He did not make full disclosure then so he is precluded now from submitting such evidence. And it is not relevant. Refers Smith v. Wallace (1895) 1 Ch. D. p.385 at page 393. Submit the evidence is inadmissible. If it were admitted purchaser has never any protection against a vendor.

MR. CALLENDER:

30 The Issue is whether the vendor acted bona fide and for good reason in rescinding. He is therefore entitled to adduce evidence to show what his knowledge and state of mind was at the time of rescission.

Affidavits were supplied in answer to the requisitions i.e. further affidavits.

Foster Clarke never himself mentioned or raised Canadian issue.

40 Mr. Clarke will not or has not said he would swear he was not told about Canada.

Mr. Sands did answer the requisitions. He is not barred from adducing this evidence.

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Mr. Sands did produce title to the best of his ability. He offered all he could offer as in Turpin's case. It was the best he could do.

MR. ADDERLEY (in reply)

The vendor's state of mind is not relevant. It is not the criteria. The criteria is what is reasonable in the eyes of the vendor and purchaser. The vendor not bound to disclose reasons for rescission but he is bound to disclose the facts. He did not disclose the facts and is now precluded.

10

Ruling adjourned to 2.30 p.m.

(Sgd.) J.G.F.S.

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Ruling of Mr. Justice Scarr.

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RULING OF MR. JUSTICE SCARR

2.30 p.m. Resumed. All present in Court as before.

Court delivers following Ruling.

RULING:

The plaintiff submits that the evidence of Mr. Johnstone is irrelevant to this case and inadmissible. This evidence was admitted earlier as a matter of convenience and on the understanding that a ruling as to its admissibility would be given later.

20

It will be remembered that whilst the defendants' attorney, Mr. Sands, was acting on the sale to the plaintiff, he was also acting for the defendants on the purchase from the Harrisville Company i.e. he was therefore acting in a dual capacity. Whilst acting on the purchase from the Harrisville Company it appears from his evidence and the evidence of Mr. Johnstone that he (Mr. Sands) became aware of the extensive efforts already made by Mr. Johnstone and his firm to obtain answers to the very questions now being put to Mr. Sands by the plaintiff's attorney, Mr. Clarke; and he has intimated that when he rescinded one of the reasons was his opinion that in view of all the

30

information he already had about this title there was nothing further he could reasonably do. In paragraph 12 of the Statement of Claim the plaintiff alleges that the defendants acted arbitrarily, capriciously and unreasonably in not answering the plaintiff's requisition and in rescinding.

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10 In my view therefore, whatever circumstances may have influenced Mr. Sands in rescinding are most pertinent and relevant to the issues before me i.e. in order to decide whether or not the vendor did rescind in the manner alleged. Any evidence relevant to the reasons for rescinding is therefore plainly admissible. In my view the extent of Mr. Sands' knowledge of and about, and about the past history of, the items referred to in the purchaser's requisitions is the most relevant factor for the purpose of assessing his motives at the date of rescission and for deciding whether he was acting reasonably or otherwise. Such a factor may not, of course, be the complete answer but it is, in my mind, at least one of the factors to be considered by the Court and I accordingly rule that so much of the evidence of Mr. Johnstone as tends to show Mr. Sands' knowledge of the items raised by the requisitions at the date of the rescission is admissible. In arguing against admission counsel for the purchaser mentioned the difficulty of a purchaser in a case like this namely that unless the vendor explains to the purchaser his reasons for rescission the purchaser may well remain in ignorance of what might be very good reasons until he actually brings the matter to Court. But there is no duty of disclosure in law upon the vendor Re Glenton & Saunders to Haden (1885) 53 L.T. 434 C.A., and as was said in that case any difficulty in which this may place the purchaser is due to his own fault in entering into a contract of this nature.

20

30

40 I accordingly reject the submission that the vendor is estopped now from leading evidence to show what his knowledge of this title was at the time of the rescission.

This is also a convenient time to deal with the question of the admissibility of the Exhibits H to K which was, as a matter of convenience, left to be dealt with at a later stage. Mr. Callender has submitted that they are inadmissible as they only came to light after the issue of the writ and further he says there is no evidence to connect the Conception in these cases with the Crown Grantee.

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Upon consideration I am of the opinion that these documents are, for what they are worth, admissible in evidence. The plaintiffs say that the documents speak for themselves and the assumption to be drawn is that the grantor is the Crown Grantee - and if this be so the documents have a bearing as to the date upon which the Crown Grantee died. This latter point is, of course, one which has been raised in the purchaser's requisitions. Accordingly I am of the view that it was perfectly proper for these documents to be put in and also used in cross-examination of the defendants' witnesses. It is true that there is no allegation of bad faith made against the defendants but such cross-examination might have possibly revealed other matters favourable to the plaintiff's case.

10

In the event, however, it transpires that no one was aware of these documents until long after this action commenced. I have not been told how the documents came to light nor has it been suggested that Mr. Sands ought to have discovered them. What has been suggested is that they are documents of record and Mr. Sands must be presumed to have had notice of them at all relevant times. I am afraid I cannot go so far as to say that in deciding whether or not Mr. Sands acted reasonably in this case I must assume that he was aware of the contents of all documents registered in the Registry of Records at Nassau at that date. That would be going much too far.

20

I shall therefore allow these documents in as evidence in this case, but the weight that is to be attached to their discovery is another matter. The circumstances I shall have to consider in this case in order to decide whether the rescission was reasonable or not are those leading up to and surrounding the act of rescission itself.

30

MR. CALLENDER: Final address to the Court.

MR. ADDERLEY: Final address to the Court.

Judgment reserved.

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ORDER. Adjourn sine die.

(Sgd.) J.G.F.S.

Restored 28th April, 1961.

Present: Mr. Paul Adderley of Counsel.  
Mr. Callender of Counsel.

No. 6

ORAL JUDGMENT OF MR. JUSTICE SCARRIn the Supreme  
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No. 6

IN THE SUPREME COURTEquity Side1959 No. 221BETWEEN

GEORGE ALEXANDER SELKIRK

Plaintiff,

- and -

ROMAR INVESTMENTS, LIMITEDDefendantsOral Judgment  
of Mr. Justice  
Scarr.28th April,  
1961.

10 For the Plaintiff - Paul Adderley of Counsel.

For the Defendants - W.E.A. Callender of Counsel.

Reserved Judgment - 28th April, 1961.

SCARR J:- This is a claim by a purchaser of land first for a declaration that an act of rescission of the contract by the Vendor is invalid (i.e., is contrary to the terms of the contract) and secondly for specific performance. The defence is that the rescission was justifiable and was within the terms of the agreement.

20 The main facts are as follows:- On the 26th November, 1958, a company called the Harrisville Company (which is not party to these proceedings) entered into a contract to sell to the defendant company, Romar Investments, Limited, certain land in the vicinity of Carmichael Road in New Providence. Prior to the completion of that contract however, which occurred in February, 1959, the defendants subsold to the plaintiff, Mr. George A. Selkirk, by a contract dated the 6th January, 1959, this being the contract in dispute in this action.

30 (Exhibit A.) In this contract the defendant company agreed to sell to the plaintiff some 405 acres at a price of £367.6.2 per acre; the total purchase price being therefore in the region of £149,000. Provisions were included for the incorporation of a company within the Colony to take the conveyance, and various other provisions were made as to the

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-- continued.

apportionment of the purchase price, share capital, the taking up of subscriptions for shares and so on. I understand from counsel that this company was in fact incorporated and there are no issues before me at the moment on this aspect of the matter. By clause 3(3) the vendor was empowered to rescind the agreement. This provision, despite frequent criticism by the Courts, has now long been common form and reads as follows:-

"Should any objection or requisition whatsoever be insisted on which the Vendor shall be unable or unwilling to satisfy or comply with he may (notwithstanding any attempt to remove or satisfy the same or any negotiation or litigation in respect thereof) by notice in writing to the Purchaser or his Solicitor rescind the contract upon the terms hereinafter mentioned in sub-clause (7) of this clause and the Purchaser shall thereupon return to the Vendor all papers belonging to the Vendor in his possession in connection with the sale. If the Purchaser within Six days after receiving notice to rescind withdraws the objection or requisition the notice to rescind shall be withdrawn also." 10 20

In due course the purchaser (represented at this time by his Attorney, Mr. Foster Clarke) put in certain requisitions on title (not it may be noted as to conveyance but as to title) and the vendor company, represented by their Attorney, Mr. Harry Sands, being unwilling to comply therewith purported to rescind under the clause I have just referred to. 30

Upon the face of it the position appears quite clear and the action of the vendor justified. Thus there is no dispute as to whether or not the literal terms of the clause were satisfied; the purchaser had insisted on compliance with his requisitions and the vendor was unwilling to comply; there had it is true been attempts to remove or satisfy them by the vendor, and negotiations to this end, but this point is amply covered by the wording of the clause; and the serving of due notice and so on had been complied with. Nevertheless, this type of clause no longer means what it literally says and Equity has long since substantially restricted the literal meaning and application of such clauses. 40

It will, I think, be convenient at this stage

10 first, to examine the law on the subject and then to turn to the more detailed facts of the case in order to see whether the defendants fall within or without the law. Numerous cases have been cited by counsel, some of which I shall refer to later; but putting it simply the law, which is now well established, is this: A vendor of land stands in a special relationship to his purchaser. He has an obligation to do his reasonable best to ensure that the purchaser gets title according to the contract; and if he fails in that duty he may well be precluded from taking advantage of rescission clauses such as the one now before the Court.

20 The position has been put in differing ways, but on the authorities it is clear that a vendor must not exercise his power of rescission capriciously, arbitrarily or unreasonably, or in bad faith; nor must he act recklessly, that is to say without reasonable regard to the rights of the purchaser to obtain title. Some of the authorities in support of this proposition are:- Re Dames and Wood (1885) 29 Ch.D.626, C.A., at p. 630. Re Starr Bowkett Building Society and Sibuns Contract (1889) 42 Ch.D., 375 C.A. Re Des Reaux and Setchfield's Contract (1926) Ch. 178 (mentioning and commenting upon. Re Jackson and Haden's Contract (1906) 1 Ch. 412 C.A., and Duddell v. Simpson (1866) 2 Ch. App. 102 Merrett v. Schuster (1920) 2 Ch. 240 and Baines v. Tweddle (1959) 2 All E.R. 724.

30 It will be seen therefore that a vendor cannot avail himself of rescission clauses lightly and his overriding duty is to make title if he can reasonably do so. On the other hand I would emphasise that the law does not impose a standard of absolute perfection on the vendor. He is bound only to take whatever reasonable steps he can to fulfil his contract; and what is reasonable will depend upon the circumstances of each particular case. There is further authority that clauses like these should be  
40 construed strictly against the vendor and that is so, but in applying that principle I should point out that in the present case the contract, for some reason or another, was drafted and prepared by the purchaser's solicitors and not the vendor (although of course it was done in collaboration with Mr. Sands) and the evidence discloses that there was no one specific object in mind which the vendor wished to guard against by the inclusion of this clause; it was in fact inserted merely as a matter of common  
50 form.

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One more point as to the law. Although the vendor must have some good reasons for rescission he is under no duty to impart those reasons to the purchaser when exercising his power to rescind Re Glenton and Saunders to Haden (1885) 53 L.T. 434 C.A.: the difficulties in which this may place a purchaser in deciding whether or not to fight a purported rescission are said to be due to his own fault in entering into such a contract (*ibid*), and see also Woolcott v. Peggie (1889) 15 App. Cas. 42 P.C. 10

Turning now to the facts in more detail: The contract embraced four tracts of land, and upon receipt of certain title deeds and documents (I would say here and now it is quite a usual practice in this Colony not to submit abstracts of title but to submit and allow examination of title deeds in lieu) the purchaser's attorney, Mr. Foster Clarke put in certain requisitions; ultimately these requisitions so far as they affect the first three tracts were withdrawn and are not now in issue, but the requisitions relating to the fourth tract, which contains some 75 acres, were persisted in and form the basis of the present dispute. It is, therefore, necessary to see what the title to this plot consisted of. I would say from the outset that at the date of contract the defendants did not have a perfect title. The root was a Crown Grant dated 12th July, 1881 made in favour of one Conception Canuta Kemp her heirs and assigns, subject to certain reservations which are irrelevant to these proceedings. The next title deed in chronological order was a conveyance made some fifty-eight years later on the 16th March, 1939, whereby one Maximo Edward Kemp conveyed to the Hon. H.G. Christie. The subsequent title is not in dispute but for the sake of completeness it may be noted that in due course the Hon. H.G. Christie conveyed to one Austin T. Levy who then died testate and whose executrix sold to the Harrisville Company, widow's dower being released, who then conveyed to the defendant company. 20 30 40

The 1939 conveyance describes Maximo as "the only son and heir-at-law of Conception Canuta Kemp, deceased". On the face of it this was a sufficient prima facie link with the Crown Grantee but, at the date of the contract this deed was unfortunately not yet twenty years old and the plaintiff could not therefore take the benefit of section 3(3) of the Conveyancing Law Property Act (Ch.184) That section provides that: 50



"Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions."

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10 However amongst the title deeds was an affidavit  
by Maud H. McDonald sworn on the 17th day of Sep-  
tember, 1958 (Exhibit D.) to the effect that  
Concepcion and her husband Edward Kemp had died  
prior to 1909; but at the date of the contract,  
i.e., on the 6th January, 1959, and apart from the  
description in the 1939 deed, this affidavit was  
the only documentary evidence as to the fact and  
date of Concepcion's death, and there was no docu-  
mentary evidence at all, save the description in  
20 the 1939 deed, to link Maximo with Concepcion. On  
the other hand and from the defendants' point of  
view this 1939 deed would, in the course of the  
next few weeks, that is to say long before the  
anticipated completion of the contract, have become  
twenty years old; and the benefit of section 3(3)  
of the Conveyancing Act would have accrued to the  
purchaser for any future dispositions which he  
might have wished to make.

30 Furthermore this affidavit was a sketchy one;  
e.g., it gave no details of the period during which  
the deponent had known Concepcion and so on, al-  
though on the other hand the honesty and integrity  
of the deponent have not been in dispute. It is, I  
think, common knowledge that a considerable number  
of titles in this Colony are imperfect in many ways  
and the use of affidavits to close gaps in cases  
similar to present is quite common. The Quieting  
Titles Act 1959, which was passed to deal with  
some of these difficulties, was not available to  
the vendor at this time and, of course, the English  
40 Statutory Declarations Act is not applicable in  
this territory hence the use of affidavits.

After perusing the deeds and documents in  
question, Mr. Foster Clarke on the 29th January,  
1959, put in the following requisitions (page 2 of  
the agreed correspondence):

"There is a gap in the chain of title between

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the grantee who took title on the 12th July, 1881, and Maximo Edward Kemp, who conveyed on the 16th March, 1939, to the Hon, Harold George Christie. It will be necessary to obtain the following:-

- (a) evidence of the death of Concepcion Canuta Kemp;
- (b) if Concepcion Canuta Kemp died intestate before 1913, then evidence that Maximo Edward Kemp is the only son and heir-at-law as claimed in the deed dated the 16th March, 1939;
- (c) if C.C. Kemp died intestate, production of the will or a certified copy thereof;
- (d) if C.C. Kemp died after the 22nd June, 1914, evidence of administration or probate of her estate and a deed of assent vesting title in the heir-at-law or persons beneficially entitled thereto."

10

The requisition was a very proper one. As I have said before, apart from the statements in the 1939 deed, there was no evidence that Maximo was the heir. Moreover, it was desirable to establish with reasonable certainty whether Concepcion had died before or after the 22nd June, 1914, i.e., the date the Real Estate Devolution Act (Ch.219) came into force. If the death had occurred before that time, the land would have vested directly in the heir on an intestacy or directly in the devisee in the case of a will, whereas on a death after the Act the land would have vested in the personal representative upon the making of the appropriate grant pending which it would have vested in the heir in the case of an intestacy. See *John v John* (1898) 2 Ch. 573 and *Re Griggs* (1914) 2 Ch.547 C.A.

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It was also pertinent to ask and clearly have it on record (since the 1939 deed was not as yet evidence) whether or not Concepcion had died intestate.

In answer to the requisitions the vendor on the 11th February, 1959, wrote and submitted a further affidavit by Maud M. McDonald. (Exhibit "G" and of the correspondence page 3.) This affidavit repeated that Concepcion had died prior to 1909 and now deposed to the further fact that Concepcion had only one son, viz, Edward Maximo Kemp. Somewhat unfortunately the vendor to the 1939 conveyance was described as Maximo Edward Kemp

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instead of Edward Maximo Kemp but I do not consider a great deal of weight attaches to this point. In my experience of conveyancing in this Colony such transpositions occur very frequently. In addition to this affidavit the vendor wrote as follows:-

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10 "In answer to requisitions (a) (b) and (d) of your letter of the 29th ultimo I would refer you to the Affidavits of Maud Malcolm McDonald enclosed herewith. In this connection I would also draw your attention to the fact that on March 16th of this year the statement in the Conveyance by Maximo Edward Kemp that he was the only son and heir-at-law of Concepcion Canuta Kemp will be twenty years old and hence 'sufficient evidence of the truth . . . .'

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- continued.

20 "In answer to your requisition (c) I can only say that to the best of my knowledge no Will in the name of Concepcion Canuta Kemp has been offered for or admitted to Probate. I know of no basis for a suggestion that the deceased died testate. Some assistance is perhaps derived from the dictum of Lord Esher in Re Harrison, Turner v. Hellard (1885), 30Ch. D. 390, C.A. at page 393: 'There is one rule of construction, which to my mind is a golden rule, viz., that when a testator has executed a will in solemn form, you must assume that he did not intend to make it a solemn farce, that he did not intend to die intestate when he has gone through the form of making a will.' I submit that when it is shown that no will has been advanced the assumption must be in favour of intestacy, particularly in view of the lapse of time since the death of Concepcion Canuta Kemp."

40 At this stage therefore the Vendor was making some reasonable efforts to meet the requisitions and there was certainly no sign of any intransigence on his part. In reply the purchaser's attorney on the 12th February stated (page 4 of the agreed correspondence) that he could not accept the title and was referring the matter to his client. He obtained instructions and on the 23rd February wrote (page 5 of the correspondence) - to the effect that the plaintiff was prepared to give a reasonable time to enable the defendant to perfect title. Whether or not there were then any intervening conversations I cannot say, but on the 1st April Mr. Foster Clarke

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wrote again. Now this is a most important letter in this case (page 6 of agreed bundle) and I would refer to the relevant part (which is contained in paragraph 3 of that letter) in full.

"Re. Parcel No.3: 75 acres: Concepcion C.Kemp:  
Eastern side of Blue Hill Road.

In reply to your letter of the 11th February 1959, I submit as follows:-

(a) The Conveyance dated 16th March 1939 between Maximo Edward Kemp and the Hon. Harold George Christie can not be regarded as a good root of title until after 16th March 1969. 10

(b) The Affidavit by Maud M. McDonald to the effect (i) that Concepcion Canuta Kemp died before 1909 and (ii) that Maximo Edward Kemp is the only son of the said Concepcion Canute Kemp is not sufficient evidence to support the contention that the said Maximo Edward Kemp is the heir-at-law of the said Concepcion Canuta Kemp. If corroborating evidence on these two points can be obtained from other sources and a declaration of the Court can be obtained to the effect that the said Maximo Kemp is the heir-at-law of the late Concepcion Canuta Kemp and was entitled to convey the said land, then my client will be prepared to accept title." 20 30

As will be seen he says two things, (a) that the 1939 conveyance is not a good root of title and (b) that the affidavit of Maude M. McDonald (Exhibit G) is not sufficient proof of Maximo's heirship, and then he goes on - and these are the important words:-

"If corroborating evidence on these two points can be obtained from other sources and a declaration of the Court can be obtained to the effect that the said Maximo Kemp is the heir-at-law of the late Concepcion Canuta Kemp and was entitled to convey the said land, then my client will be prepared to accept title." 40

As to paragraph (a) of that comment Mr. Sands

had, of course, never put forward the 1939 deed as the root of title. The root of title was the Crown Grant of 1881, moreover the 1939 deed was now, i.e., by the date of this letter, already twenty years old and the plaintiff himself would have had the benefit of section 3 of The Conveyancing Act on future dispositions him. Nevertheless the statement in paragraph (a) so far as it goes is true. Secondly, and as to paragraph (b) of the letter, the purchaser alleges that the affidavit by Maude M. McDonald (Exhibit G) is not sufficient evidence that Maximo was the heir or as to the date of Concepcion's death and he goes on to make two demands:- First there must be further corroborative evidence on these two points "from other sources"; and secondly, a declaration of the Court is required to the effect that Maximo was the heir of Concepcion and was entitled to convey in 1939. If these two demands are met then, says Mr. Clarke, "my client will be prepared to accept title."

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Pausing there for a moment - I do not consider this two-fold demand was, on the face of it, a reasonable one. For example, if further corroborative evidence had in fact been obtained by Mr. Sands an application to the Court (presumably on a Vendor and Purchaser summons) might well have been unnecessary. It was quite possible so far as the purchasers knew at this stage that further efforts by Mr. Sands might well have produced conclusive evidence of the two points in question; notwithstanding this the requisition, on the face of it, still required a declaration of the Court. That is the plain meaning of the words used. Mr. Clarke has testified that if, for example, a death certificate of Concepcion had been produced he would have accepted such a document as sufficient evidence of the death without any further sanction from the Court and that, of course, is a matter of common sense. There has been, however, no evidence at all that the defendants were informed even of this attitude, and the requisitions go far wider than the mere date of Concepcion's death.

The requisition expressly requires that application should be made to the court in addition to the obtaining of further corroborative evidence. Indeed in evidence and under cross-examination Mr. Clarke admitted he was quite firm in wanting an application to the Court. This is a point which the defendants have stressed throughout their case.

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In paragraph (5) of his letter Mr. Clarke requested that completion should be extended to enable the vendor to perfect title and that having perfected title the purchaser should be given not less than thirty days to accept or refuse it. Was this meant to apply even if a Court had come down in favour of the defendants? The point was not dealt with during the hearing nor have I had any evidence on it.

It appears that subsequent to this there was a telephone conversation between the respective attorneys (see page 7 of the correspondence) but I have no evidence as to what transpired. Indeed, one of the difficulties of this case has been the lapse of time in bringing the matter to Court; both Mr. Clarke and Mr. Sands had difficulty, and sometimes even inability, in recalling the various conversations they had. It does appear, however, from the subsequent correspondence that the plaintiff was still willing to negotiate on the requisitions since two days later, on the 3rd April Mr. Sands replied submitting two further affidavits as to the date of Concepcion's death and the heirship of Maximo. (See Exhibits E and F and page 7 of the correspondence.)

At this stage it is relevant to consider what other knowledge the vendor company had through their attorney in respect of this title apart from that contained in the title deeds and the first affidavit of Mrs. McDonald.

We have seen that at the date the defendants entered into their contract with the plaintiff they were themselves engaged in purchasing from the Harrisville Company. A Mr. Geoffrey Johnstone an attorney of the firm of Messrs. Higgs and Johnson had the conduct of that sale for the Harrisville Company. I find that during the course of that sale Mr. Johnstone informed Mr. Sands of the considerable efforts his firm had made both in 1957 and later to try and perfect this title. I find that Mr. Johnstone searched the Registry of Records in Nassau for a death certificate in respect of Concepcion Canuta Kemp from the year 1900 to the 1940's without success, and that he also searched for the birth certificate of Maximo and a death certificate for Concepcion's husband. Further, and because there was a possibility of Concepcion's death in Canada (the clue to this is contained in

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the Montreal address in the 1939 deed) he had caused further searches to be made in Montreal for this century up to the year 1957 but without success. It was because of this failure that he, Mr. Johnstone, had procured the first affidavit of Mrs. McDonald and then, after a request from Mr. Sands and after making enquiries from these deponents both as to the date of Concepcion's death and her relationship with Maximo, the later affidavits.

10 The important and material point in this case however is that Mr. Johnstone informed Mr. Sands of these matters. Mr. Sands' memory was unsatisfactory as to the exact nature of the conversations he had at this time with Mr. Johnstone, and indeed as to what searches he had made himself, putting it down to the fact, that he could not remember now exactly what had happened in 1959; but Mr. Johnstone's memory was quite clear. The position therefore when Mr. Clarke made his two-fold requisition

20 on the 1st April was that Mr. Sands was already aware of the extensive searching carried out by Mr. Johnstone, or Mr. Johnstone's firm, and that such searching had been fruitless. Furthermore, he himself had interviewed the deponents to the two new affidavits he now submitted to the purchaser. These deponents were the Hon. Mr. Sawyer and Mr. Pritchard (Exhibits E and F) whose repute and integrity has not been in dispute, and I accept it that they were well known in Nassau as possessing

30 fairly extensive knowledge of local family histories in the Bahamas, and that it was for this reason that Mr. Sands had sought them out and got Mr. Johnstone to obtain their affidavits.

Turning again to the progress of events in this matter. In his letter of the 3rd April, Mr. Sands submitted that these further affidavits together with the existing affidavits answered the requisitions, (save that as regards the allegation of the 1939 conveyance not being a good root of

40 title) he refrained from comment, perhaps wisely, in view of the other matters outlined in his letter.

Having regard to the foregoing circumstances and the knowledge of the title then possessed by Mr. Sands I hardly think it can be said that up to this stage he was acting unreasonably. He knew of the defects in title and was taking quite considerable steps to try and overcome them and to comply with the requisitions; and there was still no sign of any intransigence or arbitrariness.

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The purchaser acknowledged Mr. Sands' letter of the 3rd April saying that he would be glad to discuss the matter. (See page 8 of the correspondence.) Patently discussions took place: thus the correspondence at page 9 refers to 'our subsequent conversations'. Unfortunately, however and for the same reasons as before, I have no evidence as to their exact nature. It does appear, however, from the subsequent exchange of letters at pages 10 and 11 of the agreed correspondence, and from the rather scanty oral evidence adduced on the point that there were continuing negotiations to try and settle the differences between the parties. But these failed and the vendors ultimately decided to stand by their original contract of the 6th January. The plaintiff, however, still insisted that he could not accept the title and in his letter of the 10th August (at page 11) Mr. Sands accordingly served his first notice to rescind; that is to say some seven months after contract. By this time the purchaser was instructing Mr. Paul Adderley as his attorney. 10 20

Replying on the 15th August to the first notice the purchaser, asked inter alia for a deferment of the notice. The vendor complied and ten days later, on the 24th August (page 13 of the correspondence) Mr. Sands withdrew his first notice and served a second intimating that if the requisitions were withdrawn a fresh completion date would be given in which time would be made of the essence. The purchaser, however, was not agreeable to this and on the 31st August (at page 14 of the correspondence) wrote that he would not withdraw the requisitions but would complete within 60 days if, first the requisition and objections were satisfied, or a court order could be obtained that the title was one he ought to accept. 30

It will be seen therefore that at this stage there was a change of ground, and an application to the court is put forward, for the first time so far as disclosed by the evidence, as an alternative to the obtaining of further corroboration from other sources. But it is clear from this letter that the purchaser is still adamant in having his requisitions met one way or the other. Mr. Adderley clearly says he is instructed not to withdraw outstanding objections and requisitions. 40

The vendor declined to accept these conditions and pursuant to his second notice of rescission duly treated the contract as rescinded and returned the deposit. (The plaintiff has submitted that there were in fact three notices of rescission but 50



it is clear in my judgment that there were in fact two only.)

We have now at long last reached the point where the disputed notice of rescission in this case has been given, and the question I have to decide is whether in all the circumstances of the case the vendor was entitled so to act. It is true that in answer to the second notice the purchaser whilst stating that he would not withdraw the requisitions modified his demands, but the terms of clause 3(3) clearly state that notice to rescind shall only be withdrawn when the requisitions themselves are withdrawn. The modification suggested by the purchaser was in no way a withdrawal, in fact it was expressly to the contrary; however, I will deal with any effect that this modification might have had in a moment.

Now the position of the vendor at the date of this second notice was as follows:- He had completed his own purchase from the Harrisville Company; he had been informed and knew of the extensive searching and enquiries which had been made by Mr. Johnstone, and his firm, both here in Nassau and in Quebec to try and improve the title; he had made attempts which I have found to be reasonable to comply with the plaintiff's requisitions in the earlier stages; he had, after contract, interviewed deponents and obtained three further affidavits in addition to that included with the original title deeds; in other words he had made some reasonable efforts to find out more about the Kemp family. He also knew from the practical point of view that the 1939 deed was now already twenty years old, and the purchaser would in the future have the benefit of section 3 of the Conveyancing Act. Furthermore there was nothing to show that the deponents to the affidavits were other than reputable and honest people, and that their evidence was other than true and accurate; indeed the 1939 deed tended to confirm this accuracy. Again and looking at the matter from the practical point of view the title had been through two other hands since 1939. The purchaser had demanded corroboration from "other sources", but there was no indication of what these sources might be; and there is no evidence that Mr. Sands on behalf of the defendant knew of any other sources; if he had known I feel convinced he would have resorted to them. Some seven months had since the date of the contract and had the vendor attempted

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to comply with the requisitions any further that is to say to make further enquiries, it could not be said with any certainty what further time would elapse or expense be incurred. There had already been some differences on other aspects of the contract such as the apportionment of the purchase price and so on (I would refer to the letter of the 21st July.) The demand for both further corroboration and an application to the Court was, I have already said, unreasonable. It is difficult in any event to see what further enquiries Mr. Sands could have carried out from "other sources" save perhaps embarking on a large scale enquiry akin to that usually directed in the Chancery Division on an inquiry for next of kin in an administration action with all the attendant cost, possibly advertising, and loss of time which would be involved. Lastly he had deferred his first notice for some weeks at the request of the plaintiffs.

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The case is not without difficulty but considering all these points and the evidence as a whole I am quite certain that when the vendor served his second notice, did not act capriciously or arbitrarily, nor in bad faith (bad faith has in fact never been alleged), nor can I hold that he acted without reasonable cause or recklessly without due regard to the rights of the purchaser. To so hold would in my judgment completely emasculate clause 3.

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Mr. Sands may not have acted perfectly but the standard imposed on him, as I have said before, is not one of absolute perfection, otherwise such clauses would become meaningless. There were difficulties at the outset which he never attempted to avoid; he had been able to improve the position but he was not able to comply fully with the demands made by the purchaser without the possibility at this late stage, of delay and expense which could not be reasonably estimated or anticipated. He had not therefore in my judgment, fallen so short of his duties as to disqualify him from applying this clause.

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One final point remains. Does the fact that the plaintiff modified his requisitions in answer to the defendant's second notice alter the position?

It will be remembered that when the purchaser received the first notice of rescission he modified his original requisitions by suggesting an approach

to the Court as an alternative to the vendor making further enquiries, and not as additional thereto. For the reasons already mentioned such a modification in my judgment did not amount to a withdrawal of the requisitions to which the vendor objected, and did not therefore in my view invalidate the second notice. In the alternative, and assuming that the vendors were in law bound to consider the modified requisitions before proceeding to complete the rescission I am still of the opinion that they were entitled to rescind. My reasons on this footing are as follows:- In the first place it is of course true that mere unwillingness to resort to the Court on a Vendor and Purchaser summons may not be sufficient to justify a vendor applying a rescission clause; thus in Hardman v. Child (1885) 2 Ch. 712 cited by the plaintiff it was said that the matter in dispute could have been settled "by means of a simple summons under the Vendor and Purchaser Court", and so it could on the facts of that case; but they were vastly different to the present. In that case the objection was a simple one, merely as to the form of conveyance and I would refer to the comments made upon it by Cotton L.J. in Re Glenton and Saunders Contract 53 L.T. p.436 where he says:-

"Hardman v. Child, a decision of Pearson, J., has been cited to us as an authority on the subject of conditions as to requisitions on title. But it was a case relating to conditions as to requisitions on the conveyance. If the remarks in that case had been intended to apply to conditions as to requisitions on title, I could not agree with them; it is unnecessary that I should say whether I agree with that case, so far as it relates to requisitions on the conveyance but the remarks made by the learned judge do not apply to requisitions on title."

In the present case a variety of points would have to have been put to the Court all going to title. Furthermore, as Mr. Sands said in evidence the facts of the case already existed. There were really no difficulties of construction and it was merely a case of whether or not the Court would have accepted and believed the evidence before it.

A decision on a Vendor and Purchaser summons would only have been effective inter partes and, of

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- continued.

In the Supreme Court of the Bahama Islands

course by this time the plaintiff had the benefit of section 3 of the Conveyancing Act for future dispositions.

No. 6

Oral Judgment of Mr. Justice Scarr.

28th April, 1961.

-- continued.

In the first place, therefore, I find that the plaintiff's letter of the 31st August, 1959, was not a withdrawal of the requisitions within the meaning of the contract and secondly, that if my construction of that clause be inaccurate, I find that it was not unreasonable of Mr. Sands at that very late hour to refuse to accept the modification having regard to the scope of the matters to be put before the Court, and that further delay and expenses might well follow.

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The case has been a difficult one, but having considered the matter most carefully, I have come to the conclusion that the claim is not made out and I accordingly find for the defendants and give judgment accordingly.

Signed: J.G. FEARNLEY SCARR.  
Judge.

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28/5/61.

Mr. Callender: and costs please.

COURT. Judgment for the defendants with costs to be taxed unless agreed.

No. 7

Judgment of the Court.

28th April, 1961.

No. 7

JUDGMENT OF THE COURT  
28th April 1961

BAHAMA ISLANDS  
IN THE SUPREME COURT

Equity Side

1959 No.221

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BETWEEN

GEORGE ALEXANDER SELKIRK

Plaintiff

- and -

ROMAR INVESTMENTS, LIMITED

Defendant

J U D G M E N T

Dated the 28th day of April, A.D. 1961.

This action having on the 11th and 13th days

of April, A.D. 1961, been tried before His Lordship Mr. Justice Scarr, in the Supreme Court and His Lordship on the 28th day of April, A.D.1961 having Ordered that Judgment be entered for the Defendant with Costs to be taxed, unless agreed,

In the Supreme Court of the Bahama Islands

No. 7

IT IS THIS DAY ADJUDGED that there by Judgment for the Defendant with Costs to be taxed, unless agreed.

Judgment of the Court.

Filed this 25th day of October, A.D.1961.

28th April, 1961

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BY ORDER OF THE COURT  
(Sgd.) N.C. ROBERTS  
Ag. REGISTRAR (L.S.)

- continued.

No. 8

ORDER GRANTING LEAVE TO APPEAL

No. 8

Order Granting Leave to Appeal.

BAHAMA ISLANDS  
IN THE SUPREME COURT

27th May, 1961.

Equity Side. 1959 No.221

BETWEEN

GEORGE ALEXANDER SELKIRK Plaintiff

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-- and --

ROMAR INVESTMENTS, LIMITED Defendant

O R D E R

UPON MOTION this day made unto this Honourable Court AND UPON HEARING Counsel for the Plaintiff and for the Defendant

IT IS ORDERED that leave to appeal to the Privy Council be granted upon the conditions following:

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1. The Appellant within two months hereof to pay the sum of £500.0.0 into Court as security for the due prosecution of the Appeal and otherwise as mentioned in Rule 4(a) of the Privy Council Appeal Rules 1912

2. The Appellant within the like period take the necessary steps for procuring the preparation of the Record and its dispatch thereof to England

3. Costs to be costs in the Appeal.

DATED the 27th day of May A.D. 1961

BY ORDER OF THE COURT:  
(Sgd.) N.C. ROBERTS  
Ag. REGISTRAR.

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ExhibitsE X H I B I T S

"A"

EXHIBIT "A" - AGREEMENT FOR SALE

Agreement for  
Sale.

6th January,  
1959.

BAHAMA ISLANDS  
New Providence.

THIS AGREEMENT made the Sixth day of January in the year One thousand Nine hundred and Fifty-nine BETWEEN ROMAR INVESTMENTS LIMITED a Company incorporated under the Laws of the Bahama Islands and having its Registered Office and carrying on business in the City of Nassau in the Island of New Providence one of the Bahama Islands (hereinafter called the Vendor) of the one part And GEORGE ALEXANDER SELKIRK of the City of Toronto in the Province of Ontario in the Dominion of Canada (hereinafter called the Purchaser) of the other part WHEREBY IT IS AGREED as follows:-

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1. The Purchaser hereby covenants with the Vendor as follows:-

(1) That subject to obtaining the permission of the Exchange Control of the said Bahama Islands so to do he or his nominees will within Ninety days from the date of these presents cause to be incorporated under the laws of the said Bahama Islands a company limited by shares (hereinafter called "the Company") having an authorized share capital of Thirty-eight Thousand and Seven Hundred Pounds divided into Thirty-eight Thousand and Seven Hundred shares of the par value of One Pound each.

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(2) That within Fifteen days after the incorporation of the Company the Purchaser or his nominees will subscribe for or will procure subscribers for at least Fourteen Thousand and Nine Hundred One Pound paid-up shares in the Company at par.

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(3) That subject to the Vendor producing good marketable title thereto to the satisfaction of the Purchaser's Solicitor as hereinafter provided he or his nominees will cause the Company to purchase the hereditaments hereinafter approximately described in the Schedule hereto (hereinafter referred to as "the said hereditaments") on the terms and conditions hereinafter set forth.

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2. The Vendor hereby covenants with the Purchaser that the Vendor will sell and convey the

said hereditaments in unincumbered fee simple together with the appurtenances thereunto belonging unto the Company at a price per acre of One Thousand Dollars Canadian Currency at an agreed rate of exchange of  $\$2.72\frac{1}{4}$  to  $\pounds 1.0.0$  sterling (producing  $\pounds 367.6.2$  for every  $\$1000.00$  Canadian Currency hereinafter referred to as "the agreed rate of exchange") the total acreage to be determined by survey as hereinafter in these presents provided and payable as follows:-

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(1) The sum of Forty thousand and Five hundred Dollars at the agreed rate of exchange paid by the Purchaser to the Vendor on or before the execution of these presents (the receipt whereof the Vendor hereby acknowledges) which sum on completion of the purchase of the said hereditaments by the Company will apply as a payment by the Company to the Vendor

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(2) The sum of Sixty-four thousand and Five hundred Dollars at the agreed rate of exchange on completion of the purchase of the said hereditaments by the Company

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(3) By the execution and delivery by the Company to the Vendor of a mortgage of pieces parcels or lots of land being portions of the said hereditaments containing approximately Three Hundred and Fifty-five (355) acres in the aggregate but more if it is established, by survey that the said hereditaments contain more than 405 acres of land provided such pieces parcels or lots of land shall include (inter alia) all portions of the said hereditaments situate to the east of Blue Hill Road for an amount equivalent to the balance of the purchase price at the agreed price per acre and as determined by the said survey for a term or period of Five (5) years from the completion of the sale with interest thereon at the rate of Six (6) per cent per annum payable semi-annually in arrears (such mortgage to be along the lines of the draft mortgage annexed to these presents as Exhibit "A" and to contain the specific provisions contained therein) on completion as aforesaid

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3. It is hereby mutually agreed as follows:-

(1) The Vendor or its Solicitor shall submit the documents of title to the said hereditament to the Purchaser or his Solicitor within Seven days from the date hereof

Exhibits

"A"

Agreement for Sale.

6th January, 1959

- continued.

Exhibits

"A"

Agreement for  
Sale.6th January,  
1959

- continued.

(2) Requisitions and objections (if any) in respect of the title or description of the said hereditaments or otherwise arising out of the sale shall be delivered to the Vendor's Solicitor within Thirty days from the delivery of the title deeds and any further requisitions or objections arising upon any reply to a former requisition or objection shall be so delivered within Fifteen days from the delivery of such reply and every requisition or objection not so delivered shall be deemed to be waived and subject only to requisitions and objections so delivered the title shall be considered accepted.

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(3) Should any objection or requisition whatsoever be insisted on which the Vendor shall be unable or unwilling to satisfy or comply with he may (notwithstanding any attempt to remove or satisfy the same or any negotiation or litigation in respect thereof) by notice in writing to the Purchaser or his Solicitor rescind the contract upon the terms hereinafter mentioned in sub-clause (7) of this clause and the Purchaser shall thereupon return to the Vendor all papers belonging to the Vendor in his possession in connection with the sale. If the Purchaser within Six days after receiving notice to rescind withdraws the objection or requisition the notice to rescind shall be withdrawn also.

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(4) The examination of the title of the Vendor to the said hereditaments by the Purchaser or his Solicitor shall be completed within Fifty-two days from the date of these presents and if upon completion of such examination the Purchaser or his Solicitor shall notify the Vendor in writing that the Purchaser or his Solicitor is satisfied that the Vendor has good marketable title to the said hereditaments the Vendor will proceed forthwith to survey the said hereditaments at his expense such survey to be completed within Sixty days after such written notification by the Purchaser or his Solicitor to the Vendor as aforesaid

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(5) The completion of the purchase and the payment of the balance of the purchase price shall take place after examination of the title of the Vendor to the said hereditaments by the Purchaser or his Solicitor and after completion of the survey of the said hereditaments by the Vendor One hundred and Eighty-two days from the date hereof or on such earlier date as may be mutually agreed upon (hereinafter referred to as "the completion date") at the



office at the Fifth Floor, Trade Winds Building,  
Bay Street in the City of Nassau of Mr. Foster  
Clarke, the Purchaser's Solicitor.

Exhibits

"A"

(6) On completion the Vendor will execute and  
deliver a proper assurance to the Company of the  
said hereditaments such assurance to be prepared  
perfected and stamped by and at the expense of the  
Vendor after approval thereof by the Purchaser's  
Solicitor and such assurance to have attached  
thereto a proper survey plan of the said heredita-  
ments prepared by and at the expense of the Vendor

Agreement for  
Sale.

6th January,  
1959

- continued.

(7) If the Vendor shall fail to produce a good  
marketable title to the said hereditaments approved  
of by the Purchaser's Solicitor or shall rescind  
the sale pursuant to the provisions of sub-clause  
(3) of this clause on or before the completion date  
the Vendor shall refund to the Purchaser the said  
deposit of the equivalent in Pounds Sterling of the  
sum of Forty thousand and Five hundred Dollars in  
the currency aforesaid hereinbefore referred to AND  
thereupon this Agreement shall be cancelled and the  
Purchaser relieved from all covenants on his part  
herein contained

(8) That if the Vendor shall produce a good  
marketable title to the said hereditaments approved  
of by the Purchaser's Solicitor on or before the  
completion date and the Company shall nevertheless  
fail to complete the purchase the said deposit of  
the equivalent in Pounds Sterling of the sum of  
Forty thousand and Five hundred Dollars in the  
currency aforesaid hereinbefore referred to shall  
be forfeited to the Vendor and thereupon this  
Agreement shall be cancelled and the Purchaser  
shall be relieved from all covenants on his part  
herein contained

(9) Subject to the acceptance of title the  
Purchaser or persons appointed by him may enter  
into or upon the said hereditaments on the signing  
of this contract and the Purchaser or persons  
appointed by him shall be entitled to enter or re-  
enter into or upon the said hereditaments without  
payment of rent until the completion date and shall  
during that period be entitled to make engineering  
and land surveys lay out stakes drill test wells  
for water and examine the substrata to determine  
the quality and density of the rock in the said  
hereditaments and the Vendor shall on the signing  
of this contract make available to the Purchaser

Exhibits

"A"

Agreement for  
Sale.6th January,  
1959

- continued.

and/or the Company all plans surveys contour maps and all other engineering data relating to the said hereditaments

(10) The Purchaser and/or the Company may submit to the proper authorities for approval and filing or registration a plan or plans of subdivision to be laid out within the said hereditaments provided that at the time of such filing the Purchaser or the Company has previously accepted the title of the Vendor to the said hereditaments.

10

(11) Provided the plan or plans of subdivision referred to in sub-clause (10) of this clause is or are (as the case may be) approved by the Vendor the Purchaser and/or the Company may construct roads on an area of not more than Fifty (50) acres of land within the said hereditaments the exact location of which shall be at the discretion of the Purchaser and/or the Company (hereinafter referred to as "the area of land released") and provided also that the area of land released shall be in one parcel situate on any portion or portions of the lands described in parts One (1) Two (2) and Three (3) of the Schedule hereto and that if the area of land released shall have Carmichael Road as its proposed boundary on one side the overall length of such boundary on Carmichael Road shall not exceed Two Thousand (2000) running feet and provided also that the Purchaser or the Company shall at his or its expense submit proper survey plans of the area of land released.

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(12) On completion of the purchase as described in sub-clause (5) of this clause the area of land released shall be retained and held by the Company or its nominees and the Company shall at its expense submit proper survey plans of the area of land within the said hereditaments which at that time shall be mortgaged to the Vendor as described in sub-clause (3) of clause 2 hereof

(13) If public water mains and electricity cables have not been laid along that portion of Carmichael Road bounding the said hereditaments and if it is impossible for the Purchaser or the Company to obtain supplies of water and electricity from the Government of the Bahamas and the Bahamas Electricity Corporation for proposed consumers on the said subdivision then and in such case the interest of Six (6) per cent reserved to be paid on

40

the mortgage from the Company to the Vendor as described in sub-clause (3) of clause 2 hereof shall be waived by the Vendor and no interest shall be demanded by the Vendor for a period of up to Three (3) months from the date of such mortgage

Exhibits

"A"

Agreement for Sale.

6th January, 1959

- continued.

THE SCHEDULE hereinbefore referred to

1. ALL that parcel of land situate near the Fourth and Fifth Mile Posts on the Carmichael Road in the Western District of the Island of New Providence aforesaid containing One hundred and Ninety-seven (197) acres (exclusive of the reservation for a Public Road Twenty (20) feet wide passing through the said parcel of land) which said parcel of land is a portion of the tract of land containing Two hundred and Ninety-seven (297) acres bounded on the North by the said Carmichael Road on the East partly by Crown Land and partly by land formerly the property of Wilmore J. Henry on the South by land formerly the property of James Howe and on the West by land formerly the property of Mercedes Henry but now owned by Defence and Company Limited the said parcel of land including the Public Road Twenty (20) feet wide having such position boundaries marks shape and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the Twenty-sixth day of July, A.D., 1941 and made between Howard Nelson Chipman of the one part and Austin Theodore Levy of the other part and now of record in the Registry of Records in the said City of Nassau in Book A.15 at pages 504 to 506 and is delineated on that part which is coloured Pink on the said diagram or plan.

2. ALL that parcel of land situate near the Fourth and Fifth Mile Posts on the Carmichael Road in the Western District of the said Island of New Providence to the South of the Blue Hills containing Ninety-two and Six tenths acres (exclusive of the reservation for a Public Road Twenty (20) feet wide passing through the said parcel of land) which said parcel of land is a portion of the tract of land One hundred and Thirty-two (132) acres granted by the Crown to Wilmore John Henry by a Crown Grant dated the Fifteenth day of May, A.D., 1890 and recorded in the said Registry in Book M.9 at page 121 and in the Crown Lands Office in Book A. 1 at page 116 and which said parcel of land is bounded on the North by the said Carmichael Road on the East partly by land formerly the property of E.P. Marsh

Exhibits

"A"

Agreement for  
Sale.6th January,  
1959

- continued.

but now or formerly the property of Thomas Roker and partly by land the property of Harrisville Company on the South partly by land formerly the property of J. Brice but now the property of George Manson and partly by land formerly the property of Elsie May Key and on the West partly by land formerly the property of Mercedes Henry but now the property of Harrisville Company and partly by Crown Land the said parcel of land including the Public Road Twenty (20) feet wide having such position boundaries marks shape and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the Twenty-sixth day of July, A.D., 1941 and made between Elsie May Key of the one part and Austin Theodore Levy of the other part and now of record in the said Registry of Records in Book B.15 at pages 190 to 192 and is delineated on that part which is coloured Pink on the said diagram or plan. 10

3. ALL that piece or parcel of land situate in the said Island of New Providence to the South of the Blue Hills containing Forty (40) acres (exclusive of the reservation for a Public Road Twenty (20) feet wide passing through the said piece or parcel of land) which said piece or parcel of land is a portion of the tract of land of One hundred and Thirty-two (132) acres granted by the Crown to Wilmore John Henry by a Crown Grant dated the Fifteenth day of May, A.D., 1890 and now of record in the said Registry of Records in Book M.19 at page 121 and in the said Crown Lands Office in Book A.1 at page 116 which said piece or parcel of land is bounded on the Northwest by the Carmichael Road on the East partly by the Blue Hill Road continued and partly by land originally granted to E.P. Marsh and now owned by T. Roker and on the South partly by the said land originally granted to E.P. Marsh and now owned by T. Roker and partly by the other portion of the said tract of land originally granted Wilmore John Henry now the property of Harrisville Company which said piece or parcel of land has such position boundaries shape and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the Twelfth day of December, A.D., 1940 and made between Elsie May Key of the one part and Austin Theodore Levy of the other part and now of record in the said Registry of Records in Book T. 14 at pages 253 to 255 and is delineated on that part which is coloured Pink on the said diagram or plan. 20  
30  
40  
50

4. ALL that tract of land containing Seventy-five (75) acres situate in the said Island of New Providence to the East of the Blue Hill Road and South of the Blue Hills the said tract of land being bounded Northeastwardly by a Public Road Eastwardly by land granted Isaac Baillou Southeastwardly by land granted Michael Malcolm and Westwardly by the Blue Hill Road (Nanga or Saunders Road passing through the said tract of land as shown in the diagram or plan hereinafter referred to) the said tract of land having been granted to Concepcion Canuta Kemp by Grant dated the Twelfth day of July, A.D., 1881 and now of record in the said Registry of Records in Book I. 8 at page 96 and in the said Crown Lands Office in Book A.1 at page 90 which said tract of land has such position shape boundaries marks and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the Fifth day of August, A.D., 1946 and made between the Honourable Harold George Christie of the one part and Austin Theodore Levy of the other part and now of record in the said Registry of Records in Book N.16 at pages 259 to 261 and is delineated on that part which is coloured Pink on the said diagram or plan

IN WITNESS whereof Romar Investments Limited has caused its Common Seal to be hereunto affixed

(Sgd.) RONALD A. ALBURY  
President

The Common Seal of Romar Investments Limited was affixed hereto by Ronald A. Albury the President of the said Company and the said Ronald A. Albury affixed his signature hereto on the Sixth day of January in the year One thousand Nine hundred and Fifty-nine in the presence of :-

(Sgd.) H.E. Munro.

IN WITNESS WHEREOF George Alexander Selkirk has hereunto set his hand and seal.

(Sgd.) GEORGE ALEXANDER SELKIRK

SIGNED SEALED AND DELIVERED by the said George Alexander Selkirk on the Sixth day of January in the year One thousand Nine hundred and Fifty-nine in the presence of:-

(Sgd.) Foster Clarke

Exhibits

"A"

Agreement for Sale.

6th January, 1959

- continued.

Exhibits

Exhibit "A"

"A"

BAHAMA ISLANDS  
New Providence

Agreement for  
Sale.

6th January,  
1959

- continued.

THIS INDENTURE made the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord One thousand Nine hundred and Fifty-nine BETWEEN) Name of Company to be incorporated by George Alexander Selkirk) a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony (hereinafter called the Borrowers which expression where the context so admits shall include their assigns) of the one part And Romar Investments Limited a company also incorporated under the laws of the said Bahama Islands and carrying on business within the Colony (hereinafter called the Lenders which expression where the context so admits shall include their assigns) of the other part WHEREAS:-

10

(A) The Borrowers are seised in unincumbered fee simple in possession of the hereditaments hereinafter described in the Schedule hereto (hereinafter referred to as "the said hereditaments"); and

20

(B) The Borrowers have requested the Lenders to lend to them the sum of (Note: an amount in pounds sterling being the equivalent of the balance of the purchase price at the agreed price per acre and as determined by the said survey) which the Lenders have agreed to do upon having the repayment of the same with interest secured in the manner hereinafter appearing;

NOW THIS INDENTURE WITNESSETH as follows:-

30

1. In pursuance of the said agreement and in consideration of the said sum of (Note: the same as in paragraph (B) hereof) paid to the Borrowers by the Lenders on or before the execution of these presents (the receipt whereof the Borrowers hereby acknowledge) the Borrowers hereby covenant with the Lenders to pay to the Lenders the said sum of (Note: the same as in paragraph (B) hereof) on the day of \_\_\_\_\_ A.D. 1964 together with interest thereon in the meantime at the rate of Six pounds per centum per annum payable semi-annually by equal semi-annual payments on the day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ in each and every year AND ALSO so long after the \_\_\_\_\_ day of \_\_\_\_\_

40

A.D. 1964 as any principal remains due under these presents to pay to the Lenders interest thereon (or on so much thereof as shall from time to time remain unpaid) at the same rate by equal semi-annual payments on the                      day of                      and the                      day of                      in each and every year.

Exhibits

"A"

Agreement for Sale.

6th January, 1959

- continued.

10                      2. For the consideration aforesaid the Borrowers as Beneficial Owners hereby grant and convey unto the Lenders ALL the said hereditaments which are hereinafter described in the Schedule hereto together with the appurtenances thereunto belonging TO HOLD the same unto and to the use of the Lenders and their assigns in fee simple subject to the proviso for redemption hereinafter contained

3. PROVIDED ALWAYS and it is hereby expressly declared as follows:-

20                      (1) That if the Borrowers shall pay the principal sum of (Note: the same as in paragraph (B) hereof) hereby secured with interest thereon at the rate and on the dates hereinbefore covenanted to be paid on the                      day of                      A.D. 1964 in accordance with their foregoing covenant in that behalf then the said hereditaments shall at the request and cost of the Borrowers be reconveyed to the Borrowers or their assigns or as they may direct

30                      (2) That notwithstanding the covenant for the payment of the principal sum hereby secured on the                      day of                      A.D. 1964 it shall be lawful for the Borrowers to repay the whole or any portion of the said principal sum hereby secured with all interest due up to the date of such repayment at any time during the continuance of this security without notice or bonus.

40                      (3) The powers of leasing conferred on mortgators by Section 20 of The Conveyancing and Law of Property Act shall not be exerciseable by the Borrowers without the consent in writing of the Lenders

(4) The Lenders shall not be answerable for any involuntary loss happening in or about the exercise or execution of any power conferred on the Lenders by these presents or by statute or of any trust connected therewith

Exhibits

"A"

Agreement for  
Sale.

6th January,  
1959

- continued.

4. The Lenders hereby covenant with the Borrowers that the Lenders will at the request and cost of the Borrowers release from this mortgage and the security hereby created and without delay execute and deliver the necessary assurance or assurances of any part or parts of the said hereditaments hereinafter described in the Schedule hereto provided the Lenders shall receive from the Borrowers the sum of Seven hundred and Thirty-four pounds twelve shillings and four pence (£734.12.4) per acre for each and every acre so released AND all payments made by the Borrowers to the Lenders under the provisions of this clause shall be applied in reduction of the principal sum to be paid by the Borrowers to the Lenders in respect of these presents

10

THE SCHEDULE hereinbefore referred to

(The description of the parcels of land comprising approximately 355 acres (more or less and depending on the survey) which will be conveyed by Romar Investments Limited to the Borrowers and mortgaged back to Romar Investments Limited)

20

IN WITNESS whereof, etc.

(Signatures and Common Seals  
of both parties to be affixed  
hereto).

BAHAMA ISLANDS  
New Providence

I,  
of the Island of New Providence,  
of Romar Investments Limited make oath and say  
that I was present on the Sixth day of January in  
the year One thousand Nine hundred and Fifty nine  
and saw the Common Seal of Romar Investments  
Limited affixed to the annexed Indenture by Ronald  
A. Albury President of the said Company and that I  
saw the said Ronald A. Albury sign, execute and  
deliver the said Indenture as and for the act and  
deed of the said Company and for the purposes men-  
tioned in the said Indenture and that I subscribed  
my name as the witness to the due execution thereof  
and further that the seal affixed and impressed at  
the foot or end of the said Indenture is the Common

30

40



Seal of Romar Investments Limited and was affixed and impressed thereto by the said Ronald A. Albury by the order and with the authority of the Board of Directors of the said Company and in conformity with the Articles of Association of the said Company.

Exhibits

"A"

Agreement for Sale.

6th January, 1959

- continued.

SWORN to this day of A.D.1959 }

Before me,

10

NOTARY PUBLIC.

BAHAMA ISLANDS  
New Providence

I, FOSTER CLARKE of the Island of New Providence Attorney-at-law make oath and say that I was present and saw George Alexander Selkirk of the City of Toronto in the Province of Ontario in the Dominion of Canada sign seal and as and for his Act and Deed execute and deliver the foregoing Indenture dated the Sixth day of January in the year One thousand Nine hundred and Fifty-nine for the purposes therein mentioned; and that I subscribed my name as the Witness to the due execution thereof

20

SWORN to this 25th day of July, A.D. 1959 } (Sgd.) FOSTER CLARKE

Before me,

(Sgd.) A.F. Mitcham (?)

NOTARY PUBLIC.

Exhibits

EXHIBIT "B"(1) - LETTER, Appellant's Solicitor to Respondents' Solicitor.

"B" (1)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

Chambers  
Nassau  
Bahamas.

28th January,  
1959.

28th January 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau.

Re: Romar Investments Limited and  
Mr. George A. Selkirk:  
Parcel No.1: 132 acres more  
or less: Corner Carmichael  
Road and Blue Hill Road.

10

Dear Mr. Sands:

Subject to searching title at the Registry and ascertaining whether there are any incumbrances on the land referred to above, I submit herewith the following requisitions:-

1. There is a gap in the chain of title between Hercules Pinder who took title on the 1st. September 1898 and Rachel Ann Collins who conveyed title on the 30th April 1913. It will be necessary to obtain an Order of the Court on a Vendor and Purchaser Summons that the document from Collins to C.C.H. Lightbourn dated 30th April 1913 is a good root of title for the land described therein.

20

2. In the document dated 25th July 1925 from C.C.H. Lightbourn to Elsie Mae Key, in addition to the 132 acres owned by Hercules Pinder, C.C.H. Lightbourn conveyed One-half acre on Carmichael Road recognized by Hercules Pinder as being in the occupation of one Peter Stamp. It will be necessary to obtain an Order of the Court on a Vendor and Purchaser Summons that the Conveyance from C.C.H. Lightbourn dated 25th July 1925 is a good root of title.

30

3. No evidence has been produced of the following:-

- (a) Will of Austin Theodore Levy
- (b) Date of death of Austin T. Levy

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- (c) Probate of his Will
- (d) Conveyance from June Rockwell Levy to Harrisville Company
- (e) Release of Dower from June Rockwell Levy to Harrisville Company.

Exhibits

"B"(1)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

These documents are referred to in the Abstract of Higgs & Johnson.

28th January,  
1959

- continued.

10 I return herewith 13 documents of title, 1 lot of papers and 1 Abstract of Title by Higgs & Johnson relating to the above-mentioned tract. I have made notes on the Abstract of Title and would like this document returned to me with the original documents if title is finally accepted.

Yours sincerely,

(Sgd.) FOSTER CLARKE

FC/s

FOSTER CLARKE.

EXHIBIT "B" (2) - LETTER, Appellant's Solicitor to Respondents' Solicitor

"B"(2)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

29th January,  
1959.

20 Chambers  
Nassau  
Bahamas.

29th January 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau.

Re: Romar Investments Limited and  
Mr. George A. Selkirk: Parcel  
No.3: 75 acres: Concepcion  
C. Kemp: Eastern side of  
Blue Hill Road.

30

Dear Mr. Sands:

Subject to searching title at the Registry and ascertaining whether there are any incumbrances on the land referred to above, I submit herewith the following requisitions:-

Exhibits

"B"(2)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

29th January,  
1959

- continued.

1. There is a gap in the chain of title between the grantee who took title on the 12th July 1881 and Maximo Edward Kemp who conveyed on the 16th March 1939 to The Hon. Harold George Christie. It will be necessary to obtain the following:-

- (a) Evidence of the death of Concepcion Canuta Kemp'
- (b) If C.C. Kemp died intestate before 1913, then evidence that Maximo Edward Kemp is the only son and heir-at-law (as claimed in the deed dated 16th March 1939).
- (c) If C.C. Kemp died testate, production of the Will or certified copy thereof.
- (d) If C.C. Kemp died after the 22nd June 1914, evidence of Administration or Probate of her Estate and a Deed of Assent vesting title in the heir-at-law or persons beneficially entitled thereto.

10

2. Same as paragraph 3 of my letter dated 28th January 1959.

20

I return herewith 3 documents of title, one death certificate and one affidavit relating to the above-mentioned tract.

Yours sincerely,

(Sgd.) FOSTER CLARKE

FC/s.

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EXHIBIT "B" (3) - LETTER, Respondents' Solicitor  
to Appellant's Solicitor

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Exhibits  
"B"(3)

Chambers,  
Nassau,  
Bahamas.

11th February, 1959.

Foster Clarke, Esq., M.H.A.,  
Chambers,  
Nassau.

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Solicitor.  
11th February,  
1959.

10 Re: Proposed Sale Romar Investments, Limited  
to George A. Selkirk - 75 acres East of  
Blue Hill Road.

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Dear Sir:

I have to acknowledge with thanks the receipt  
of your letter of the 29th ultimo.

20 Enclosed herewith please find the three docu-  
ments of title, death certificate and Affidavit  
returned to me with your letter now under reply. I  
also enclose a fresh Affidavit by Maude Malcolm  
McDonald of today's date.

30 In answer to requisitions (a) (b) and (d) of  
your letter of the 29th ultimo I would refer you to  
the Affidavits of Maude Malcolm McDonald enclosed  
herewith. In this connection I would also draw  
your attention to the fact that on March 16th of  
this year the statement in the Conveyance by Maximo  
Edward Kemp that he was the only son and heir-at-  
law of Concepcion Canuta Kemp will be twenty years  
old and hence "sufficient evidence of the truth ..."  
(Section 3 (3) of The Conveyancing and Law of  
Property Act.)

In answer to your requisition (c) I can only  
say that to the best of my knowledge ~~no~~ Will in the  
name of Concepcion Canuta Kemp has been offered for  
or admitted to Probate. I know of no basis for a  
suggestion that the deceased died testate. Some  
assistance is perhaps derived from the dictum of  
Lord Esher in Re Harrison, Turner v. Hellard (1885),  
30 Ch. D. 390, C.A. at page 393: "There is one rule  
of construction, which to my mind is a golden rule,  
viz., that when a testator has executed a will in

Exhibits

"B"(3)

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Solicitor.

11th February,  
1959

-- continued.

solemn form, you must assume that he did not intend to make it a solemn force, -- that he did not intend to die intestate when he has gone through the form of making a will." I submit that when it is shown that no will has been advanced the assumption must be in favour of intestacy, particularly in view of the lapse of time since the death of Concepcion Canuta Kemp.

Your various requisitions in connection with the Will, Probate, etc. of the late Mr. Levy have been complied with (see my letter to you of the 5th instant with reference to the 197 acre tract).

10

Subject to your searching this title in the Registry of Records I should appreciate hearing at your earliest convenience if you have any further requisitions in respect of this title.

Yours faithfully,

(Sgd.) HARRY B. SANDS

HBS:rs  
Encs.

20

"B"(4)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

12th February,  
1959.

EXHIBIT "B" (4) - LETTER, Appellant's Solicitor to Respondents' Solicitor.

Chambers  
Nassau  
Bahamas.

12th February 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau.

Re: Proposed sale: Romar Investments  
Limited to George A. Selkirk:  
75 acres East of Blue Hill Road.

30

Dear Mr. Sands:

In reply to your letter of the 11th instant relating to the above-mentioned tract I regret to inform you that I can not accept title in this instance. I must now refer this matter to my client.

Yours sincerely,

(Sgd.) FOSTER CLARKE.

40

FC/s  
cc. Mr. George A. Selkirk.

EXHIBIT "B" (5) - LETTER, Appellant's Solicitor  
to Respondents' Solicitor

Exhibits

"B" (5)

Chambers  
Nassau  
Bahamas

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

23rd February, 1959

23rd February,  
1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau.

10

Re: Romar Investments Limited  
and Mr. George A. Selkirk.

Dear Mr. Sands:

I am instructed by my client Mr. George A. Selkirk to say that he is prepared to extend the date set for the completion of examination of title to the property in question as set out in paragraph 3 (4) of the Agreement dated 6th January 1959. I am further instructed to inform you that my client is prepared to give your clients a reasonable time in which to perfect title.

20

The above course of action can only be taken by agreement between the parties and I would therefore appreciate hearing from you as soon as possible.

Yours sincerely,

(Sgd.) FOSTER CLARKE

FC/s

c.c. George A. Selkirk Esq.,

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Exhibits

EXHIBIT "B" (6) - LETTER, Appellant's Solicitor  
to Respondents' Solicitor.

"B"(6)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

Chambers

Nassau

Bahamas.

1st April 1959

1st April, 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau.

Re: Romar Investments Ltd. and  
Mr. George A. Selkirk.

10

Dear Mr. Sands:

Further to my letter of the 23rd February 1959,  
I am now instructed by my client Mr. George A.  
Selkirk to make the following proposals:-

1. Re. Parcel No. 1: 132 acres more or less:  
Corner Carmichael Road  
and Blue Hill Road

Parcel No. 2: 197 acres: South side of  
Carmichael Road.

20

Subject to searching title at the Registry and  
ascertaining whether there are any incumbrances on  
the land referred to above, my client is prepared  
to accept title to these parcels of land provided  
an Order of the Court can be obtained on a Vendor  
and Purchaser Summons as follows:-

(a) that the Conveyance dated 30th April 1913  
between Ann Collins and C.C.H. Lightbourn  
is a good root of title for the land  
described therein.

30

(b) that the Conveyance dated 25th July 1925  
between C.C.H. Lightbourn and Elsie May  
Key is a good root of title for the land  
described therein.

(c) that the Conveyance dated 4th August 1925  
between Mercedes Henry and Laura Delia  
McPherson and Elsie May Key is a good  
root for the land described therein.





Exhibits

"B"(6)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.  
1st April, 1959  
- continued.

above on the terms and conditions set out in the said Agreement. Under clause 2 of the Agreement the balance of the purchase price for parcels 1 and 2 can be determined after the survey. The cash payments provided for in sub-clauses 1 and 2 of clause 2 should be prorated to the acreage as determined by the survey and the Mortgage as provided for in sub-clause 3 of clause 2 should be secured by parcels 1 and 2 referred to above less the area to be released to the Purchaser under sub-clause 11 of clause 3 of the said Agreement. 10

5. With regard to parcel 3 referred to above I submit that the completion date should be extended until such time as the Vendor is able to perfect title and that having perfected the title the Vendor should then serve notice of the same on the Purchaser or his Solicitor and that the Purchaser be given a period of not less than Thirty (30) days from the date of such notice either to accept or refuse such title. If the title is accepted the Vendor should then proceed to survey parcel number 3 and on completion of the survey the prorated portion of the cash payment referred to in sub-clauses 1 and 2 of clause 2 of the Agreement for this parcel should then be paid and a Mortgage for the remainder of the purchase price should then be given to the Vendor secured by the said parcel of land on the same terms and conditions as set out in sub-clause 3 of clause 2 of the said Agreement. 20

My client is now in Nassau but intends to return to Canada within the next two or three days and I would therefore appreciate an early reply. 30

Yours sincerely,

(Sgd.) FOSTER CLARKE.

FC/s

c.c. Mr. George A. Selkirk.

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EXHIBIT "B" (7) - LETTER, Respondents' Solicitor  
to Appellant's Solicitor

Exhibits

"B"(7)

Chambers,  
Nassau,  
Bahamas.

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Solicitor.

3rd April, 1959.

3rd April, 1959.

Foster Clarke, Esq., M.H.A.,  
Chambers,  
Nassau.

10 Re: Romar Investments, Limited and Mr. George  
A. Selkirk.

Dear Sir:

20 I have to acknowledge with thanks the receipt  
of your letter of the 1st instant. Further to your  
letter and our telephone conversation this morning  
it is now understood that Mr. Selkirk is agreeable  
to purchasing the 329 acres more or less referred  
to in paragraph 1 of your letter subject to the  
requisitions set out under the headings of parcel  
one and parcel two. To put it another way Mr.  
Selkirk is suggesting that the existing Agreement  
as regards the 329 acres be read as though the 75  
acre tract were not included therein and the amounts  
of the purchase monies and the Mortgage be pro  
rated accordingly.

30 Following our earlier conversation I saw my  
Clients as I informed you I would do and I am now  
instructed to serve notice upon you as contemplated  
under paragraph three (3) of the Agreement for Sale  
stating that my Clients are unwilling to comply  
with your requisitions in respect of the 329 acres.  
Under this same section Mr. Selkirk has six days  
within which to withdraw the requisitions and fail-  
ing such withdrawal the Agreement for Sale in its  
entirety will be terminated.

With regard to your requisitions in connection  
with the 75 acre tract I enclose herewith the  
following:-

40 (1) Affidavit of The Honourable Richard William  
Sawyer dated March 19th 1959. Not Recorded.

Exhibits

"B"(7)

(2) Affidavit of William Ewart Gladstone Pritchard dated March 25th 1959. Not Recorded.

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Solicitor.

3rd April, 1959

- continued.

In my opinion these documents together with the Affidavit of Mrs. McDonald satisfy your requisitions as set out in paragraph 3(b).

At this time I am not prepared to comment further on the requisition contained in paragraph 3(a) for I think that this point may well await Mr. Selkirk's decision to accept or reject title to the 329 acres. If he rejects the title this point is not relevant and if he accepts the title we can consider it afresh.

10

Yours faithfully,

(Sgd.) HARRY B. SANDS.

HBS:rs  
Encs.

"B"(8)

EXHIBIT "B" (8) - LETTER, Appellant's Solicitor to Respondents' Solicitor.

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

6th April, 1959.

Chambers

Nassau  
Bahamas.

10

6th April 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau.

Re: Romar Investments, Limited  
and Mr. George A. Selkirk.

Dear Mr. Sands:

Receipt is acknowledged with thanks of your letter dated the 3rd instant regarding the above-mentioned matter.

20

I am instructed by my client, Mr. George A. Selkirk to accept title to the 329 acres more or less referred to in paragraph 1 of my letter to you

dated the 1st instant and in the 2nd paragraph of your letter of the 3rd instant. The requisitions contained in my letter of the 1st instant with regard to the said 329 acres are hereby withdrawn. I must point out, however, that you have not yet submitted the Conveyance from Harrisville Company to Romar Investments, Limited which I assume is now in your possession and I must have an opportunity of inspecting this document at your earliest convenience.

10

With regard to the 75 acre tract, I acknowledge receipt of the Affidavits referred to in your letter of the 3rd instant and as suggested in your letter, I shall be glad to discuss this matter with you.

Yours sincerely,

(Sgd.) FOSTER CLARKE

FC/f

c.c. Mr. George A. Selkirk.

Exhibits

"B"(8)

Letter,  
Appellant's  
Solicitor to  
Respondents'  
Solicitor.

6th April, 1959

- continued.

20

EXHIBIT "B" (9) - LETTER, Respondents' Solicitor to Appellant's Solicitor.

"B" (9)

Chambers  
Nassau  
Bahamas.

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Solicitor.

4th July, 1959.

4th July, 1959.

Foster Clarke, Esq., M.H.A.,  
Chambers,  
"Trade Winds Building",  
Nassau, Bahamas.

30

Re: Romar Investments, Limited  
and Mr. George A. Selkirk

Dear Sir:

Following upon your letter of April 6th last and our subsequent conversations with reference to this matter enclosed herewith please find the following:-

- Exhibits
- "B"(9)
- Letter,  
Respondents'  
Solicitor to  
Appellant's  
Solicitor.  
4th July, 1959  
- continued.
- (a) 21st May, 1959 Conveyance - The Harrisville Company to Romar Investments, Limited. Not recorded.
- (b) 27th February, 1959 Conveyance - The Harrisville Company To Romar Investments, Limited. Not recorded.
- (a) above relates to 364.6 acres of land and (b) above relates to the 75 acre tract.
- (c) Survey Plan dated May, 1959 prepared by O'Brien Engineering Co., Ltd. showing the "329" acres comprising what in the past we have referred to as the "197" and "132" acre tracts. You will note however that exclusive of the road reservations passing through these tracts Mr. O'Brien has computed the acreage thereof as 330.8 acres more or less. I suggest that a fair method of ascertaining the purchase price will be to calculate the same for 330.5 acres. 10
- (d) My draft of the proposed Conveyance to your Client. After you have perused this draft kindly return it to me noting any amendments you wish made. As you have not informed me to whom this Conveyance is to be drawn I have left the Purchaser's name blank and would ask that you fill in the same. 20

At £367.6.2 per acre I calculate the purchase price of 330.5 acres at £121,395. 8. 1 and of 75 at £27,548. 2. 6. The deposit (£40,500.00) paid on this total acreage at the agreed rate of exchange was £14,875.19.9. I suggest that we deduct £2,755.19.9. from the total deposit and regard this amount as the deposit on 75 acres. In so doing the balance of the purchase price due in respect of the 330.8 acres is £109,275. 8. 1. Of this amount I suggest that £89,960. 0. 0 be secured by mortgage to Romar Investments, Limited. As far as I can determine, the amount of the purchase price of each acre to remain on mortgage is £272.3.11½. The cash balance of the purchase price therefore is £19,315. 8. 1 for the 330.8 acres. Kindly confirm these figures. 30 40

Subject to my receipt from you of a draft Mortgage for my approval I am ready to complete this transaction at your convenience.

Yours faithfully,

(Sgd.) HARRY B. SANDS.

HBS/nb  
Encs.

EXHIBIT "B" (10) - LETTER, Appellant's Counsel  
to Respondents' Solicitor.

Exhibits

"B"(10)

PAUL L. ADDERLEY  
Counsel and Attorney-at-Law  
Notary Public  
Frederick Street  
Nassau, Bahamas.

Letter,  
Appellant's  
Counsel to  
Respondents'  
Solicitor.  
21st July, 1959.

21st July, 1959.

10 Harry B. Sands, Esq.,  
Chambers,  
Nassau, Bahamas.

Re: Romar Investments Limited  
and George A. Selkirk

Dear Sir:

20 I have been instructed to reply to your letter  
of the 4th July 1959 to Foster Clarke, Esq., with  
regard to the partial completion of the purchase of  
certain tracts of land in the vicinity of the  
intersection of Carmichael Road and Blue Hill Road  
under an Agreement for Sale dated the 6th of Janu-  
ary 1959 between Romar Investments Limited and  
George A. Selkirk.

30 After consultation with Mr. Clarke and Mr.  
Selkirk, my instructions are that Romar Investments  
Limited and Mr. Selkirk had agreed in principal to  
complete the purchase under the provisions of the  
above Agreement of the tracts of land of a total  
acreage of 330.8 acres situated Westwardly from  
Blue Hill Road and that the completion date with  
regard to the tract of land situated Eastwardly of  
Blue Hill Road should be extended to such time as  
would allow Romar Investments Limited to perfect  
the title thereto. My instructions are that it has  
not been possible for Romar Investments Limited and  
Mr. Selkirk to arrive at an agreement satisfactory  
to both parties on the method and details of the  
completion of the conveyance of the tracts of land  
totalling 330.8 acres.

40 I understand that Romar Investments Limited  
and Mr. Selkirk were unable to agree on the appor-  
tionment of the actual cash payment to be made on

Exhibits

"B" (10)

Letter,  
Appellant's  
Counsel to  
Respondents'  
Solicitor.

21st July, 1959

- continued.

the balance of the purchase price due under the terms of the above Agreement and as contemplated in Mr. Clarke's letter to you of the 1st April 1959, or on the fulfilment of the terms of sub-clause 11 of clause 3 of the above Agreement, or with regard to payments under clause 4 of the Mortgage (Exhibit A) attached to the above Agreement.

Since it has not been possible for Romar Investments Limited and Mr. Selkirk to reach agreement on the points outlined above, my instructions are to request Romar Investments Limited to agree to extend the completion date on all the tracts of land covered by the above Agreement until such time as Romar Investments Limited have satisfied the requisitions in connection with the 75 acre tract situated Eastwardly of Blue Hill Road.

10

Mr. Selkirk has instructed me to inform you that he has no desire that the above Agreement for Sale be terminated, but that he wishes the completion of the purchase of all the land contemplated by it to take place as soon as Romar Investments Limited is able to satisfy the requisitions on the 75 acre tract.

20

Yours faithfully,

(Sgd.) P.L. ADDERLEY

"B" (11)

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Counsel.

10th August,  
1959.

EXHIBIT "B" (11) - LETTER, Respondents' Solicitor to Appellant's Counsel

Chambers,  
Nassau,  
Bahamas.

30

10th August, 1959.

Paul L. Adderley, Esq.,  
Chambers,  
Frederick Street,  
Nassau, Bahamas.

Re: Romar Investments, Limited  
and George A. Selkirk

Dear Sir:

I have to acknowledge with thanks the receipt of your letter of the 21st ultimo.

40



As you have pointed out in your letter under reply "My instructions are that it has not been possible for Romar Investments Limited and Mr. Selkirk to arrive at ~~an~~ agreement satisfactory to both parties on the method and details of the completion of the conveyance of the tracts of land totalling 330.8 acres". There now seems to be no alternative but to revert to the terms of the original Agreement of January 6th 1959 (Agreement).

Exhibits

"B" (11)

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Counsel.

10th August,  
1959

- continued.

10 Accordingly I am instructed now to inform you that my Clients are unwilling to satisfy or to comply with any objections or requisitions which in Mr. Selkirk's opinion have not yet been already satisfied or complied with. Further I must point out that my Clients will not answer any further requisitions or satisfy any further objections which may be made concerning the titles to the properties in question.

20 I am further instructed to serve notice and accordingly do so hereby that the Agreement is rescinded in accordance with the terms of Paragraph 3(3) thereof. If all outstanding objections and/or requisitions are not withdrawn within six days from the receipt hereof the deposit of £14,876.0.7 paid by Mr. Selkirk in respect of the purchase price will be refunded to him as provided by paragraph 3(7) of the said Agreement and the said Agreement shall thereupon be cancelled...

Yours faithfully,

30 (Sgd.) HARRY B. SANDS.

HBS/nb.

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Exhibits

"B" (12)

EXHIBIT "B" (12) - LETTER, Appellant's Counsel  
to Respondent's Solicitor.

Letter,  
Appellant's  
Counsel to  
Respondents'  
Solicitor.

15th August,  
1959.

PAUL L. ADDERLEY,

Frederick Street,

Nassau, Bahamas.

15th August, 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau, Bahamas.

Re: Romar Investments Limited  
and George A. Selkirk.

10

Dear Sir,

I have to acknowledge the receipt of your letter of the 10th August 1959 relative to the above matter.

Would you kindly let me know whether the third paragraph of your letter is intended to relate to objections or requisitions on all the tracts of land which are the subject matter of the agreement dated the 6th January 1959 between the above parties, or whether that paragraph only relates to objections or requisitions which relate to some of those tracts of land which total 330.8 acres and which were the subject matter of the projected partial completion of the agreement for sale.

20

My letter to you of the 21st July 1959 requested that your client agree to extend the completion date on all the tracts of land covered by the agreement for sale to such time as your client was able to satisfy the requisitions in connection with the 75 acre tract situated Eastwardly of Blue Hill Road. In view of the fact that you have suggested in your letter to me that "There now seems to be no alternative but to revert to the terms of the original Agreement of January 6th, 1959 (Agreement)", I must assume that your clients regard that they are still bound by the terms of that Agreement, although the original completion date has passed. In addition, in view of the fact that your clients have sought to take advantage of the terms of paragraph 3(3), I have to request that your clients defer their attempt to enforce the

30

40

terms of paragraph 3(3) until such time as your clients and my client can agree on a new date for completion. You will appreciate that at the moment there is no completion date agreed upon which can bind either party. If your clients are not prepared to agree to extend the completion date on all the tracts of land covered by the agreement until such time as they have satisfied the requisitions or objections on the 75 acre tract, would your clients please suggest an alternative date which would be agreeable to them? When the date has been fixed your clients may still wish to attempt to enforce the terms of paragraph 3(3).

10

Even if my client is prepared to withdraw all his objections or requisitions, I suggest that no attempt should be made to compel him to do so unless your clients are prepared to be bound by a new date fixed for completion.

Yours faithfully,

20

(Sgd.) P.L. ADDERLEY.

EXHIBIT "B" (13) - LETTER, Respondents' Solicitor  
to Appellant's Counsel

Chambers,  
Nassau,  
Bahamas.

24th August, 1959.

Paul L. Adderley, Esq.,  
Chambers,  
Nassau, Bahamas.

30

Re; Romar Investments, Limited and  
George A. Selkirk

Dear Sir:

I have to acknowledge with thanks the receipt on the 17th instant of your letter of the 15th instant.

In reply to the second paragraph of your

Exhibits

"B" (12)

Letter,  
Appellant's  
Counsel to  
Respondents'  
Solicitor.

15th August,  
1959

- continued.

"B" (13)

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Counsel.

24th August,  
1959.

Exhibits

"B" (13)

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Counsel.

24th August,  
1959

- continued.

letter of the 15th instant I would confirm that I was then and am now referring to the Agreement between the above-mentioned parties of January 6th last as a whole and that consequently the objections and/or requisitions are those which pertain to all the tracts of land which are the subject matter of this Agreement.

As time is not of the essence of this Agreement the completion date is irrelevant at this stage and although the completion date mentioned in the Agreement has passed rescission under paragraph 3(3) thereof is proper. 10

As you have requested in your letter under reply that action under the said paragraph 3(3) be deferred my Clients are prepared to withdraw the previous notice contained in my letter to you of the 10th instant and to serve fresh notice as hereinafter provided. However, I must point out that exercise of the powers under paragraph 3(3) is not dependent upon a completion date being fixed. 20  
If you are instructed to waive objections and requisitions and so notify me in writing within the requisite time my Clients will serve notice upon you of a completion date in respect of which time will be made of the essence.

Again I am instructed to serve notice and accordingly do so hereby that the Agreement is rescinded in accordance with the terms of paragraph 3(3) thereof. If all outstanding objections and requisitions are not withdrawn within six days from the receipt hereof the deposit paid by Mr. Selkirk in respect of the purchase price will be refunded to him as provided by paragraph 3(7) of the said Agreement and the said Agreement shall thereupon be cancelled. 30

Yours faithfully,

(Sgd.) HARRY B. SANDS

HBS/nb.

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EXHIBIT "B" (14) - LETTER, Appellant's Counsel  
to Respondents' Solicitor

Exhibits

"B" (14)

PAUL L. ADDERLEY

Frederick Street,

Nassau Bahamas.

Letter,  
Appellant's  
Counsel to  
Respondents'  
Solicitor.

31st August  
1959.

31st August, 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau, Bahamas.

10

Re: Romar Investments Limited  
and George A. Selkirk

Dear Sir:

I have to acknowledge the receipt of your  
letter of the 24th August 1959.

20

I have been instructed by my client not to  
withdraw all outstanding objections and requisitions  
which have been made to the title to all the  
tracts of land which are the subject matter of the  
agreement dated the 6th January 1959 between the  
above parties.

30

I have been instructed by my client that he  
will be prepared to complete the conveyance in  
accordance with the terms of the agreement if the  
objections and requisitions which have been made  
with regard to the 75 acre tract of land can be  
satisfied within 60 days. He has instructed me to  
inform your clients that he will be prepared to  
complete within that time if either the objections  
and requisitions with regard to the 75 acres are  
obtained to the effect that the title to the 75  
acres is one which he must accept. He has in-  
structed me to inform your clients that he is  
prepared to complete the conveyance of all the  
tracts of land, but he is reluctant to do so unless  
a title is conveyed to him which he can force on a  
purchaser. He has instructed me to inform your  
clients that he does not wish to be put in a posi-  
tion where he must choose between losing his bargain

Exhibits

"B" (14)

Letter,  
Appellant's  
Counsel to  
Respondents'  
Solicitor.

31st August,  
1959

- continued.

and being forced to accept a title which is not perfect. However, in order that he may not lose his bargain and that your clients be not embarrassed by too much further delay and to avoid legal action on this contract he will be prepared to agree to withdraw all objections and requisitions which have been made to the title to all the tracts of land at the end of 90 days and complete within that time even if all the outstanding objections and requisitions have not by such time been satisfied, if your clients are prepared to accept his conditions of completion within 60 days.

10

I have been instructed by my client to point out to you that he does not feel that your clients are acting reasonably in refusing to satisfy the objections and requisitions which have been made with regard to the 75 acre tract of land and does not feel that the terms of the contract contemplated that your clients could arbitrarily refuse to satisfy the objections and requisitions which were made in good faith. I have been instructed by my client to draw to your attention the fact that at no time have your clients offered any explanation for not satisfying the objections and requisitions which have been made with regard to the 75 acre tract of land.

20

I have also been instructed by my client to take whatever steps which may be necessary on his behalf to expedite the satisfaction of the objections and requisitions with regard to the 75 acre tract within 60 days, and to this end I am prepared to undertake any further investigation of the title to this tract which may be necessary.

30

Yours faithfully,

(Sgd.) P.L. ADDERLEY.

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EXHIBIT "B" (15) - LETTER, Respondents' Solicitor to Appellant's Counsel.

Exhibits

"B" (15)

Chambers,  
Nassau,  
Bahamas.

Letter,  
Respondents'  
Solicitor to  
Appellant's  
Counsel.

1st September, 1959.

1st September,  
1959.

Paul L. Adderley, Esq.,  
Chambers,  
Nassau, Bahamas.

10

Re: Romar Investments, Limited  
and George A. Selkirk

Dear Sir:

I have to acknowledge the receipt of your letter of the 31st ultimo.

It is noted that your Client is not prepared to withdraw the outstanding objections and requisitions in accordance with the notice contained in the final paragraph of my letter to you of the 24th ultimo.

20

Accordingly, as provided by paragraph 3(7) of the Agreement between the captioned parties, dated January 6th last, (Agreement) enclosed herewith please find cheque of Romar Investments, Limited in your favour for £14,876. 0. 7 which as you will see from the enclosed photostatic certified copy of the paying in slip was the amount received by Romar Investments, Limited when Mr. Selkirk's cheque for \$40,500.00 was deposited by my Client on January 6th last.

30

The Agreement is rescinded in accordance with paragraph 3(3) thereof. Kindly return to me forthwith all documents and papers relating to this matter which are the property of my Client.

Yours faithfully,

(Sgd.) HARRY B. SANDS

HBS/nb  
Encs:2.  
c/c Foster Clarke, Esq., M.H.A.

Exhibits

"B" (16)

EXHIBIT "B" (16) - LETTER, Appellant's Counsel  
to Respondents' Solicitor.

Letter,  
Appellant's  
Counsel to  
Respondents'  
Solicitor.

22nd September,  
1959.

PAUL L. ADDERLEY

Frederick Street,

Nassau, Bahamas.

22nd September, 1959.

Harry B. Sands, Esq.,  
Chambers,  
Nassau, Bahamas.

Re: Romar Investments, Limited  
and George A. Selkirk.

10

Dear Sir:

I have to acknowledge the receipt of your letter of the 1st September 1959, together with the enclosed cheque for the sum of Fourteen Thousand Eight Hundred and Seventy-six Pounds and Seven Pence (£14,876. 0. 7).

In view of the fact that my client does not agree that your clients are entitled to rescind the contract and has commenced an action for the Court to determine whether your clients are entitled to do so, I am herewith returning to you the above cheque.

20

Yours faithfully,

(Sgd.) PAUL L. ADDERLEY.

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EXHIBIT "C" (4) - CONVEYANCE. Maximo Edward Kemp  
to Hon. Harold George Christie

Exhibits

"C"(4)

BAHAMA ISLANDS,

New Providence.

Conveyance,  
Maximo Edward  
Kemp to Hon.  
Harold George  
Christie.

16th March,  
1939.

10 THIS INDENTURE made the Sixteenth day of March in  
the year of Our Lord One thousand Nine hundred and  
Thirty-nine BETWEEN Maximo Edward Kemp of the  
City of Montreal in the Province of Quebec in the  
Dominion of Canada but at present of the City of  
Nassau in the Island of New Providence aforesaid  
the only son and heir-at-law of Concepcion Canuta  
Kemp deceased (hereinafter called the Vendor) of  
the one part and The Honourable Harold George  
Christie of the City of Nassau in the said Island  
of New Providence Real Estate Agent (hereinafter  
called the Purchaser) of the other part WITNESSETH  
that in consideration of the sum of Two hundred and  
Fifty pounds paid to the Vendor by the Purchaser  
20 (the receipt of which sum the Vendor hereby acknow-  
ledges) the Vendor who is seised in unincumbered  
fee simple in possession of the hereditaments here-  
by assured hereby as beneficial owner conveys unto  
the Purchaser ALL the hereditaments and premises  
more particularly described and set out in the  
Schedule hereto together with the appurtenances  
thereunto belonging TO HOLD the same unto and to  
the use of the Purchaser in fee simple

THE SCHEDULE hereinbefore referred to

30 ALL that tract of land containing Seventy-five  
acres situate in the Island of New Providence  
aforesaid to the East of the Blue Hill Road and  
South of the Blue Hills the said tract of land  
being bounded Northwardly by a public road; East-  
wardly by land granted Isaac Baillou; Southwardly  
by land granted Michael Malcolm; and Westwardly by  
the Blue Hill Road; the said tract of land hereby  
conveyed or intended so to be having been granted  
to the said Concepcion Canuta Kemp by Grant dated  
40 the Twelfth day of July in the year of Our Lord One  
thousand Eight hundred and Eighty-one and now of  
record in The Registry of Records in the said City  
of Nassau in Book I 8 page 96.

IN WITNESS WHEREOF the said parties hereto

Exhibits

"C" (4)

Conveyance,  
Maximo Edward  
Kemp to Hon.  
Harold George  
Christie.

16th March,  
1939

- continued.

have hereunto set their hands and seals the day and year first hereinbefore written.

(Sgd.) M.E. KEMP

Signed, Sealed and Delivered by the said Maximo Edward Kemp in the presence of:

Rosalie Knowles  
Secretary,  
Nassau, Bahamas.

BAHAMA ISLANDS,

New Providence.

10

I, Rosalie Knowles of the Island of New Providence aforesaid Secretary make Oath and say that I was present and saw Maximo Edward Kemp of the City of Montreal in the Province of Quebec in the Dominion of Canada but at present of the City of Nassau in the Island of New Providence aforesaid the only son and heir-at-law of Concepcion Canuta Kemp deceased sign, seal and as and for his Act and Deed execute and deliver the foregoing Indenture of Conveyance dated the Sixteenth day of March, A.D.1939, for the purposes therein mentioned; and that I subscribed my name as the witness to the due execution thereof.

20

(Sgd.) ROSALIE KNOWLES

Sworn to this 10th day of  
May A.D. 1939, before me,

HARRY B. SANDS  
Notary Public.

"C" (5)

Crown Grant to  
Concepcion C.  
Kemp.  
With plan  
attached.  
12th July,  
1881.

EXHIBIT "C" (5) - CROWN GRANT to  
Concepcion C. Kemp

BAHAMA ISLANDS

30

VICTORIA: by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That we, of our special grace, certain

knowledge and mere motion, for and in consideration  
 of the sum of Eighteen Pounds fifteen shillings  
 lawful money of the Bahama Islands, to our Receiver-  
 General, in hand well and truly Conception  
 Canuta Kemp at or before the making of this our  
 present grant, the receipt whereof is acknowledged  
 in the margin, have given and and by these  
 presents, for us, our Heirs and Successors, do give  
 and grant unto the said Conception Canuta Kemp with  
 10 the reservation of the public road passing through  
 the Allotment as represented by the dotted lines in  
 the annexed diagram her Heirs and Assigns, Seventy  
 five acres of Crown Land on the Island of New  
 Providence, situate East of the Blue Hill Road and  
 South of the Hills. Bounded Northwardly by a pub-  
 lic road; Eastwardly by land granted Isaac Baillou;  
 Southwardly by land granted Michael Malcolm; and  
 Westwardly by the Blue Hill Road which said land  
 hereby granted or intended so to be hath the  
 shape and dimensions set forth and delineated .....  
 20 thereof, drawn by our said Surveyor-General bearing  
 date the twenty second day of June in the year of  
 our Lord One thousand eight hundred and eighty one,  
 and hereunto annexed, together with all and singu-  
 lar the improvements, ways, liberties, privileges,  
 easements, profits, commodities, hereditaments and  
 appurtenances whatsoever to the said land hereby  
 granted, belonging, or in anywise appertaining, or  
 with the same now or at any time heretofore held,  
 30 used, occupied or enjoyed, or intended so to be, or  
 accepted or reputed, deemed, taken or known as part,  
 parcel or member thereof, or of any part thereof, or  
 as appurtenant thereunto, with their and every of  
 their appurtenances. To have and to hold the said  
 land, and all and singular other the premises hereby  
 granted, or intended so to be granted, with their  
 and every of their appurtenances unto the said  
 Conception Canuta Kemp her Heirs and Assigns for  
 ever, yielding and paying therefor yearly and every  
 year for ever unto us, our Heirs and Successors,  
 40 the rent of one peppercorn, if the same shall be  
 lawfully demanded, saving and reserving to us and  
 our successors, for the use of the Public, any and  
 all such parts of the said land as our Governor of  
 our said Islands, for the time, may authorize to be  
 converted into Public Roads or Footpaths, and as  
 may be from time to time marked out or designated  
 by, or by the authority of our Surveyor-General of  
 Lands, as Public Roads or Footpaths as aforesaid

Exhibits

"C" (5)

Crown Grant to  
 Conception C.  
 Kemp.

With plan  
 attached.

12th July,  
 1881

- continued.

Exhibits

"C" (5)

Crown Grant to  
Concepcion C.  
Kemp.  
With plan  
attached.

12th July,  
1881

- continued.

IN TESTIMONY WHEREOF, we have caused these our letters to be made patent under Seal of our said Islands.

WITNESS our trusty and well-beloved Edward Barnett Anderson Taylor, Esquire, Administrator of the Government and Commander-in-Chief in and over the Bahama Islands, Vice-Admiral and Ordinary of the same, at Nassau, in the Island of New Providence, this Twelfth day of July in the year of our Lord One thousand eight hundred and Eighty-one.

10

By His Honor's Command,

Sgd. (illegible)

E.B.A. TAYLOR

Administrator

Acting Colonial Secretary

Stamps

1/6d

(In Margin)

I DO HEREBY CERTIFY, that the sum of eighteen Pounds, fifteen Shillings and - Pen - sterling, herein referred to, has been paid, as shewn on the diagram annexed, and by the Crown Land Ledger, Folio 185.

20

(Sgd.) ALLEN C. LOWE

Receiver-General.

Nassau, N.P., 7th July 1881.

(SEAL)

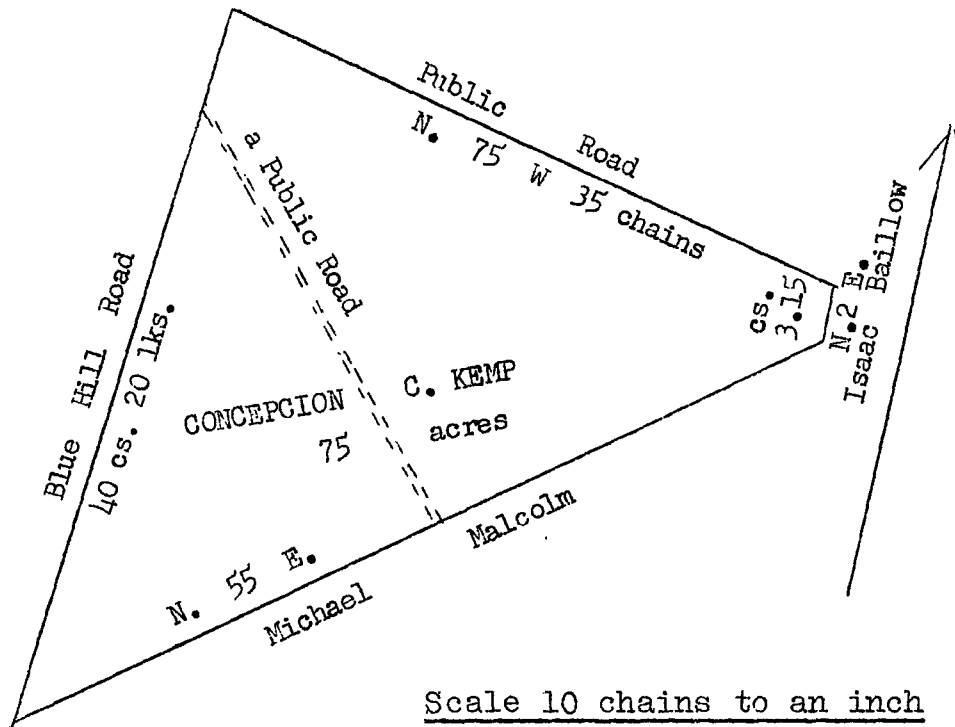
Exhibits

"C" (5)

Crown Grant to  
 Concepcion C.  
 Kemp.  
 With plan  
 attached.

12th July,  
 1881

- continued.



Price £18.15. 0

Folio <sup>2</sup>/185

5/1/81 Crn. Rev £10.0.0  
 25/6/81 " " 8.15.0

Nassau New Providence.

10 The above diagram represents Seventy five acres of Crown Land on the Island of New Providence, Situate East of the Blue Hill Road and South of the Hills, which in pursuance of an order dated 22nd December 1880 Now Meant and intended to be granted unto Concepcion Canuta Kemp, with the reservation of the Public road passing through the Allotment as represented by the dotted lines in the above diagram.

Certified this 22nd June 1881.

(Sgd.) ISAAC H. FOWLER

Recorded in Book A<sup>1</sup>  
 page 90.

Exhibits

EXHIBIT "D" - AFFIDAVIT of MAUDE MALCOLM McDONALD

"D"

Affidavit of  
Maude Malcolm  
McDonald.

17th September,  
1958.

BAHAMA ISLANDS

New Providence.

I Maude Malcolm McDonald of the City of Nassau  
in the Island of New Providence make oath and say  
as follows:-

1. I knew and was well acquainted with the  
late Concepcion Canuta Kemp the wife of Edward Kemp  
late of the said City of Nassau.

2. My father was a relative of the said Edward Kemp. 10

3. Both the said Concepcion Canuta Kemp and  
her husband Edward Kemp died before my father who  
died in the year 1909.

Sworn to this Seventeenth day ) MAUDE M. McDONALD  
of September A.D., 1958 )

Bahamas  
Duty Stamp  
2/6

Before me,  
Sgd. (illegible)  
Notary Public.

"E"

EXHIBIT "E" - AFFIDAVIT of THE HON. RICHARD  
WILLIAM SAWYER.

20

Affidavit of  
the Hon.  
Richard  
William Sawyer.

19th March,  
1959.

BAHAMA ISLANDS

New Providence.

I Richard William Sawyer of the City of  
Nassau in the Island of New Providence aforesaid a  
Member of the Legislative Council of the Bahama  
Islands make oath and say as follows:

1. I knew and was well acquainted with the  
late Concepcion Canuta Kemp the wife of the late  
Edward Kemp of the said City of Nassau. 30

2. The said Concepcion Canuta Kemp died in  
or about the year A.D., 1909. I cannot state

definitely the year in which the said Concepcion Canuta Kemp died but I know that it was before the year 1914.

Exhibits

"E"

Sworn to this Nineteenth )  
day of March A.D., 1959 ) E.W. SAWYER.

Affidavit of  
the Hon.  
Richard  
William Sawyer.

Before me,

19th March,  
1959

Sgd. (illegible)

- continued.

NOTARY PUBLIC

Bahamas  
Duty Stamp  
2/6

10 EXHIBIT "F" - AFFIDAVIT of WILLIAM EWART  
GLADSTONE PRITCHARD

"F"

BAHAMA ISLANDS

Affidavit of  
William Ewart  
Gladstone  
Pritchard.

New Providence.

25th March,  
1959.

I William Ewart Gladstone Pritchard of the Eastern District of the Island of New Providence Merchant make oath and say as follows:-

1. I am 74 years of age.

2. I knew the late Concepcion Canuta Kemp the wife of Edward Kemp who are both deceased.

20 3. The said late Concepcion Canuta Kemp had Two children only, namely Maximo Kemp and Lila Kemp.

Sworn to this Twenty-fifth )  
day of March A.D., 1959 ) W.E.G. PRITCHARD

Before me,

Stamps  
2/6

Sgd. (illegible)

NOTARY PUBLIC.

Exhibits

"G"

EXHIBIT "G" - AFFIDAVIT of MAUDE MALCOLM  
McDONALD

---

Affidavit of  
Maude Malcolm  
McDonald.

11th February,  
1959.

BAHAMA ISLANDS  
New Providence.

I Maude Malcolm McDonald of the City of  
Nassau in the Island of New Providence make oath  
and say as follows:-

1. I knew and was well acquainted with the  
late Concepcion Canuta Kemp the wife of Edward Kemp  
late of the said City of Nassau.

10

2. My father was a relative of the said  
Edward Kemp.

3. Both the said Concepcion Canuta Kemp and  
her husband Edward Kemp died before my father who  
died in the year 1909.

4. I have had produced to me a death certifi-  
cate in respect of one Charles Henry Edward Kemp  
who died in the year 1913. The said Charles Henry  
Edward Kemp was not the husband of the said  
Concepcion Canuta Kemp.

20

5. I know that the said Concepcion Canuta  
Kemp only had one son whose name was Edward Maximo  
Kemp.

Sworn to this Eleventh day )  
of February A.D., 1959 )

MAUDE M. McDONALD

Before me,

Stamps  
2/6

Sgd. (illegible)

NOTARY PUBLIC.

---



EXHIBIT "H" - CERTIFIED COPY OF CONVEYANCE  
Concepcion C. Kemp and Osborne Wilson

Exhibits

"H"

BAHAMA ISLANDS

NEW PROVIDENCE

Certified copy  
of Conveyance  
Concepcion C.  
Kemp and  
Osborne Wilson.  
8th June, 1916.

10 THIS INDENTURE made the eighth day of June in the  
year of Our Lord One Thousand Nine Hundred and  
Sixteen BETWEEN Concepcion C. Kemp formerly of  
New Providence aforesaid now of Montreal P. Q.  
Canada widow (hereinafter called the grantor) AND  
Osborne Wilson of New Providence aforesaid Mason  
(hereinafter called the grantee) WITNESSETH that  
in consideration of the sum of Eighteen pounds paid  
to her by the grantee, the receipt whereof the  
grantor hereby acknowledges, the grantor AS BENE-  
FICIAL OWNER hereby conveys to the grantee ALL  
20 THAT piece parcel or lot of land situate in the  
Southern Suburbs of the City of Nassau in the  
Island of New Providence aforesaid bounded on the  
North by land the property of Julia Jackson on the  
South by a Public Road on the East by land the  
property of Joseph Whitehead and on the West by  
property of John Holbert. TO HOLD to and to the  
use of the grantee in fee simple IN WITNESS  
WHEREOF the parties hereto have hereto set their  
hands and seals the day and year first above  
written.

Signed, Sealed and Delivered )  
by the said Concepcion C. ) CONCEPTION C. KEMP  
Kemp in the presence of ) (Seal)

30 P.J. Mahoney

(In margin)

Stamp 1/6

Lodged for Record by Osborne Wilson this 7th day of  
July A.D. 1916.

Jno. A. Bethel  
Clerk  
Nassau N.P.

R.K. Duncombe  
Registrar of Records.

Exhibits

DOMINION OF CANADA

"H"

PROVINCE OF QUEBEC.

Certified copy  
of Conveyance  
Concepcion C.  
Kemp and  
Osborne Wilson.  
8th June, 1916  
- continued.

I, Patrick Joseph Mahoney of Montreal Manager of  
Collection department of the International  
Harvester co of Canada Ltd. make Oath and say that  
I was present and saw Concepcion C. Kemp now of  
Montreal, Canada sign, seal and as and for her Act  
and Deed execute and deliver the foregoing Convey-  
ance for the purposes therein mentioned; and that  
I subscribed my name as the Witness to the due  
execution thereof.

10

P. J. Mahoney

Sworn to this 8th day of  
June A.D. 1916.

before me,

(Seal) Ed. Rhault N.P.  
Notary Public  
Province of Quebec

A true copy from the original.

2nd August 1916. F.A.C. Duncombe  
Ag. Registrar of Records.

20

"I"

EXHIBIT "I" - CERTIFIED COPY OF CONVEYANCE,  
Concepcion C. Kemp and George Wilfred  
Armbrister

Certified Copy  
of Conveyance,  
Concepcion C.  
Kemp and George  
Wilfred Arm-  
brister.  
1st December,  
1919.

Lodged for Record  
by Hon. Harcourt  
Malcolm this 2nd  
day of Dec. A.D.  
1919.

R.K. Duncombe  
Actg. Registrar  
General.

(Stamps £3-19-6)

Harcourt Malcolm  
Attorney-at-Law,  
Chambers,  
Nassau, Bahamas.

THIS INDENTURE made the First  
day of December in the year of  
Our Lord One thousand Nine  
Hundred and Nineteen BETWEEN  
Concepcion Canuta Kemp at  
present of the City of Nassau  
in the said Island of New  
Providence Widow of the late  
Edward Chisholm Kemp (herein-  
after called the Grantor) of  
the one part and George Wilfred  
Armbrister also of the City of  
Nassau in the said Island of  
New Providence Merchant (here-  
inafter called the Grantee) of  
the other part WITNESSETH that

30

40

in consideration of the sum of One thousand and Twenty Five pounds paid to her by the Grantee the receipt whereof the Grantor hereby acknowledges the Grantor as beneficial owner hereby conveys to the Grantee ALL the hereditaments and premises more particularly described and set out in the Schedule hereto together with the appurtenances thereunto belonging TO HOLD to and to the use of the Grantee in fee simple.

Exhibits

"I"

Certified Copy  
of Conveyance,  
Concepcion C.  
Kemp and George  
Wilfred Arm-  
brister.

1st December,  
1919

- continued.

10           THE SCHEDULE hereinbefore referred to

ALL that piece parcel or lot of land situate in the Eastern District of the said Island of New Providence and formerly known as "Dorsetts" and now called "Avondale" fronting to the North on a Public road and bounded on the East by land now the property of Thomas Vincent Matthews on the South by a Lake and by land belonging to the Estate of the late Honourable Thomas Williams and on the West by land belonging to Francis Maria Robins and Mary Lockhart Moon and known as "Sunnyside".

20

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

CONCEPCION CANUTA KEMP (Seal)

Signed, Sealed and Delivered by the said Concepcion Canuta Kemp in the presence of,

Harry P. Sands,  
Articled Law Student,  
Nassau, Bahamas.

## 30   BAHAMA ISLANDS

## NEW PROVIDENCE

I, Harry P. Sands of the City of Nassau in the said Island of New Providence Articled Law Student make Oath and say that I was present and saw Concepcion Canuta Kemp of the said City and Island Widow sign, seal and as and for her Act and Deed execute and deliver the foregoing Conveyance dated the First day of December A.D. 1919 for the purposes therein mentioned; and that I subscribed my name as the Witness to the due execution thereof.

40

Sworn to this Second day of December A.D. 1919 before me,

Harcourt Malcolm  
Justice of the Peace.

A true copy from the original.

R. K. Duncombe  
Actg. Registrar General.

11th Dec 1919.

Exhibits

"J"

EXHIBIT "J" - CERTIFIED COPY OF CONVEYANCE,  
Concepcion C. Kemp to Thomas Harvey Thompson

Certified Copy  
of Conveyance,  
Concepcion C.  
Kemp to Thomas  
Harvey Thompson.  
21st June, 1920.

BAHAMA ISLANDS  
NEW PROVIDENCE

Lodged for Record  
by Hon. Harcourt  
Malcolm this 25th  
day of June A.D.  
1920.

R.K. Duncombe  
Actg. Registrar  
General.

(Stamps £3.19.6)

Fred Maxwell  
Attorney-at-Law  
Chambers,  
20 Shirley Street,  
Nassau, Bahamas.

THIS INDENTURE made this twenty-first day  
of June in the year of Our Lord One  
thousand Nine hundred and Twenty BETWEEN  
Concepcion Canuta Kemp of the City of  
Nassau in the Island of New Providence  
Widow (hereinafter called the Vendor) of 10  
the one part AND Thomas Harvey Thompson  
of the said City Druggist (hereinafter  
called the Purchaser) of the other part  
WHEREAS under an Indenture dated the  
Fifth day of November in the year of Our  
Lord One thousand Nine hundred and One  
made between George Lagus Kemp and  
Edward Chisholm Kemp therein described  
of the one part and the Vendor of the 20  
other part and recorded in the office of  
the Registrar of Records in Book I.10  
pages 167 to 169 the Vendor is seised in  
fee simple in possession free from  
incumbrances of the premises herein-  
after described and intended to be  
hereby conveyed AND WHEREAS the Vendor  
has contracted with the Purchaser for  
the sale to him of the said premises at  
the price of One thousand and Twenty-  
Five pounds NOW THIS INDENTURE WITNES- 30  
SETH that in pursuance of the said  
agreement and in consideration of the  
sum of One thousand and Twenty-five  
pounds paid by the Purchaser to the  
Vendor (the receipt whereof the Vendor  
hereby acknowledges) the Vendor as  
Beneficial owner doth hereby grant and  
convey unto the Purchaser and his heirs  
ALL that piece parcel or lot of land 40  
situate in the said City of Nassau and  
bounded on the West by Market Street and  
on the North partly by land belonging or  
reputed to belong formerly to Robert  
William Henry Weech but now to John  
Alday Bethel and partly by land (being  
the land whereon is the Hotel Lucerne)  
belonging or reputed to belong formerly

to Josephine Derecourt Whittleton and Charlotte Isabel Moon but now to Roger Moore Lightbourn on the East by the last mentioned land belonging or reputed to belong to Roger Moore Lightbourn and on the South partly by land belonging or reputed to belong formerly to Susannah E. Rae but now to Anna Elliott Rae and partly by land belonging or reputed to William Joseph Menendez TO HOLD UNTO and TO THE USE OF the Purchaser in fee simple.

Exhibits

"J"

Certified Copy  
of Conveyance,  
Concepcion C.  
Kemp to Thomas  
Harvey Thompson  
21st June, 1920.  
- continued.

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

C.C. KEMP (Seal)

Signed, Sealed and Delivered by the said Concepcion Canuta Kemp in the presence of,

Harry P. Sands  
Articled Law Student,  
Nassau, Bahamas.

BAHAMA ISLANDS

20 NEW PROVIDENCE.

I, Harry P. Sands of the City of Nassau in the Island of New Providence aforesaid Articled Law Student make Oath and say that I was present and saw Concepcion Canuta Kemp of the City of Nassau in the Island of New Providence Widow Sign, seal and as and for her Act and Deed execute and deliver the fore-going Conveyance dated the Twenty-first day of June A.D. 1920, for the purposes therein mentioned; and that I subscribed my name as the Witness to the due execution thereof.

30

Sworn to this 25th day of June A.D. 1920, before me,

Harry P. Sands

R.K. Duncombe  
Actg. Registrar General.

A true copy from the original.

J.M. St. John Yates  
24th July 1920.

Exhibits

"K"

EXHIBIT "K" - CERTIFIED COPY OF CONVEYANCE,  
Concepcion C. Kemp to George W. Armbrister.

Certified Copy  
of Conveyance,  
Concepcion C.  
Kemp to George  
W. Armbrister.  
25th May, 1920.

BAHAMA ISLANDS  
NEW PROVIDENCE

Lodged for Record  
by Hon. Harcourt  
Malcolm this 27th  
day of May A.D.  
1920  
J.M.St.John Yates  
Registrar General.

(Stamps £13.7.6)

THIS INDENTURE made the twenty fifth day  
of May in the year of Our Lord One  
thousand Nine hundred and Twenty BETWEEN  
Concepcion Canuta Kemp of the City of  
Nassau in the said Island of New Provi-  
dence Widow of the late Edward Chisholm  
Kemp deceased (hereinafter called the  
grantor) of the one part AND George  
Wilfred Armbrister of the City of Nassau  
in the Island of New Providence aforesaid  
Merchant (hereinafter called the Grantee)  
of the other part WITNESSETH that in  
consideration of the sum of Three thousand  
Three hundred and Fifty pounds Ten  
shillings and Six pence paid to her by the  
Grantee the receipt whereof the Grantor  
hereby acknowledges the Grantor as bene-  
ficial owner hereby conveys to the Grantee  
All the hereditaments and premises more  
particularly described and set out in the  
Schedule hereto together with the appur-  
tenances thereunto belonging TO HOLD to  
and to the use of the Grantee in fee  
simple.

10

20

THE SCHEDULE hereinbefore referred to

Harcourt Malcolm  
Attorney-at-Law,  
Chambers,  
Nassau, Bahamas.

All that lot of land situate in the City  
of Nassau aforesaid and distinguished  
in the Plan of the said City by the  
Number Twenty-seven (No.27) fronting  
Northerly on Bay Street and running  
thereon Sixty feet more or less Bounded  
Easterly on Lot Number Twenty-eight (No.  
28) and running thereon Eighty-one feet  
Seven inches more or less Southerly on  
Lot Number Twenty-six (No.26) and running  
thereon Fifty-eight feet more or less and  
Westerly on Market Street and running  
thereon Eighty-one feet more or less.

30

40

IN WITNESS WHEREOF the said parties

hereto have hereunto set their hands and seals the day and year first hereinbefore written.

Exhibits

"K"

CONCEPCION C. KEMP (Seal)

Signed, Sealed and Delivered by the said Concepcion Canuta Kemp in the presence of,

Harry P. Sands  
Articled Law Student,  
Nassau, Bahamas.

Certified Copy  
of Conveyance,  
Concepcion C.  
Kemp to George  
W. Armbrister.

25th May, 1920

- continued.

10 BAHAMA ISLANDS

NEW PROVIDENCE

20 I, Harry P. Sands of the City of Nassau in the Island of New Providence aforesaid Articled Law Student make Oath and say that I was present and saw Concepcion Canuta Kemp of the City of Nassau in the said Island of New Providence Widow of the late Edward Chisholm Kemp deceased sign, seal and as and for her Act and Deed execute and deliver the foregoing Conveyance dated the Twenty-fifth day of May A.D. 1920, for the purposes therein mentioned; and that I subscribed my name as the Witness to the due execution thereof.

SWORN to this 27th day of )  
May A.D. 1920, before me ) Harry P. Sands.

R.K. Duncombe  
Asst. Registrar General.

A true copy from the original.

J.M.St.John Yates  
Reg-Gen.  
9/7/20.

IN THE PRIVY COUNCIL

No. 43 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

---

B E T W E E N

GEORGE ALEXANDER SELKIRK Appellant

- and -

ROMAR INVESTMENTS LIMITED Respondents

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

---

BULCRAIG & DAVIS,  
Amberley House,  
Norfolk Street,  
Strand, W.C.2.  
Solicitors for the Appellant.

LOVELL, WHITE & KING,  
1, Sergeant's Inn,  
Fleet Street, E.C.4.  
Solicitors for the Respondents.