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Judgment  
16, 1966

IN THE PRIVY COUNCIL

No. 40 of 1961

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

B E T W E E N

WEST BANK ESTATES LIMITED

Appellant

- and -

JOHN VICTOR (since deceased)  
SHAKESPEARE CORNELIUS ARTHUR  
(substituted for JOHN VICTOR  
deceased)  
ZACHARIA LAYNE and  
GIDEON LAYNE

Respondents

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

---

SIMMONS & SIMMONS,  
1, Threadneedle Street,  
London, E.C.2.  
Solicitors for the Appellants.

GARBER, VOWLES & CO.,  
37, Bedford Square,  
London, W.C.1.  
Solicitors for the Respondents.

CLASS MARK

ACCESSION NUMBER

P.C. 87168

GNS 6-2-

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

25 APR 1967

25 RUSSELL SQUARE  
LONDON, W.C.1.

i.

IN THE PRIVY COUNCIL

No. 40 of 1961

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

B E T W E E N

WEST BANK ESTATES LIMITES

Appellant

- and -

JOHN VICTOR (since deceased)  
SHAKESPEARE CORNELIUS ARTHUR  
(substituted for JOHN VICTOR  
deceased)  
ZACHARIA LAYNE and  
GIDEON LAYNE

Respondents

RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
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IN THE PRIVY COUNCIL

No. 40 of 1961

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

B E T W E E N

WEST BANK ESTATES LIMITED

Appellant

- and -

JOHN VICTOR (since deceased)  
SHAKESPEARE CORNELIUS ARTHUR  
(substituted for JOHN VICTOR  
deceased)  
ZACHARIA LAYNE and  
GIDEON LAYNE

Respondents

RECORD OF PROCEEDINGS

No. 1

In the Supreme  
Court of  
British Guiana

EX PARTE ORIGINATING SUMMONS

No. 1

1959 No. 1130 DEMERARA

Ex Parte  
Originating  
Summons.

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

27th July,  
1959.

IN THE MATTER of the Deeds Registry  
Ordinance, Chapter 32

- and -

IN THE MATTER of an application by John  
Victor of Maria's Lodge, West Bank,  
Demerara, Zacharia Layne of Supply,  
East Bank, Demerara and Gideon Layne  
of Coverden, East Bank, Demerara, for  
registration of title in their names  
of -  
"Lot 33 (thirty-three) part of Planta-  
tion Maria's Lodge, situate on the  
West Bank of the River Demerary the  
said lot number 33 (thirty-three)  
having a facade of 288 (two hundred  
and eighty-eight) feet by the whole

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In the Supreme  
Court of  
British Guiana

No. 1

Ex Parte  
Originating  
Summons.

27th July,  
1959

- continued.

depth of the said estate as laid down and defined on a diagram thereof by the Sworn Land Surveyor D. Fraser, dated 17th May, 1856, and deposited in the office of the Registrar of the Counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot number 33 (thirty-three)".

LET ALL PARTIES concerned attend the Judge in Chambers on Saturday the 1st day of August, 1959, at the hour of 9.00 o'clock in the forenoon, on the hearing of an application by John Victor of Maria's Lodge, West Bank, Demerara, Zacharia Layne of Supply, East Bank, Demerara, and Gideon Layne of Coverden, East Bank, Demerara, who claim that they are entitled to the ownership of the abovementioned property by inheritance, as set out in the affidavit in support hereof, and to be entitled to pronounce the passing of transport to themselves for the reasons set out in the said affidavit for an order under Section 36 of the said Ordinance that transport of the said property be passed to the said John Victor, Zacharia Layne and Gideon Layne, aforesaid and be registered in their names or otherwise as the Court may deem fit. 10 20

This Summons is taken out by Mr. A.O.H.R. Holder, Barrister-at-Law, acting as Solicitor, whose address for service and place of business is at his chambers at Lot 6, Croal Street, Georgetown. 30

No. 2

Affidavit in  
support of  
Summons

27th July,  
1959.

No. 2

AFFIDAVIT IN SUPPORT OF SUMMONS

WE, JOHN VICTOR of Maria's Lodge, West Bank, Demerara, ZACHARIA LAYNE of Supply, East Bank, Demerara and GIDEON LAYNE of Coverden, East Bank, Demerara, being duly sworn make oath and say as follows:-

1. That by transport number 160 of the 28th August, 1875, title was vested in our grandfather, John Cornett Graham, now deceased, in respect of lot 33, Maria's Lodge, West Bank, Demerara, with 40



all the buildings thereon. The said transport is hereto annexed and marked "A".

2. That the said John Cornett Graham, deceased was twice married, firstly to Hannah Graham who predeceased him intestate, and secondly to Christina Graham in community of property.

10 3. That the said John Cornett Graham, deceased, died on the 19th January, 1914, intestate, survived by his widow, the said Christina Graham, Mary Graham, issue of the first marriage; Catherine Graham, Antionette Graham, Barsheba Graham and Elizabeth Butler, born Graham, issue of the second marriage.

20 4. That on the 31st January, 1914, Christina Graham in her own right and on behalf of the aforesaid heirs adiated the estate of the said John Cornett Graham deceased, and title was automatically vested in her and the aforesaid heirs, in respect of the aforesaid lot 33, Maria's Lodge, West Bank, Demerara, with all the buildings thereon. The act of adiation is hereto attached and marked "B".

5. That the said Christina Graham died intestate in August 1916.

6. That Mary Graham died intestate in the month of August 1918, without issue. She was never married.

30 7. That Catherine Graham was only once married and then to James Moore in the year 1916. She died intestate in December 1930, without issue, and was predeceased by her husband in the year 1928.

8. That Antionette Graham was only once married and then to Richard Layne in February, 1912. She died intestate in December, 1933, survived by two children issue of the said marriage, Zacharia Layne and Gideon Layne, deponents herein. The said Richard Layne is alive.

40 9. That Barsheba Graham was only once married and then to James Richards in March, 1933. She died intestate in July 1936, without issue, and her husband, the said James Richards died intestate in 1954.

10. That Elizabeth Butler born Graham was

In the Supreme  
Court of  
British Guiana

No. 2

Affidavit in  
support of  
Summons.

27th July,  
1959

- continued.

In the Supreme Court of British Guiana

No. 2

Affidavit in support of Summons.

27th July, 1959

- continued.

twice married, firstly to Louis Victor in 1899, and he predeceased her in August 1914; secondly to James Butler in June 1916, who died intestate in October 1933. There is one child issue only of the first marriage, John Victor, a deponent herein. The said Elizabeth Butler died intestate in the year 1926.

11. That the said deponents have been in possession of the said property nec vi, nec clam, nec precario, since the year 1929, the thenceforth have wholly and solely maintained and upkeep the said property and the trenches and drains connected therewith.

10

12. That the buildings mentioned on the said title have since been demolished, and that there are two buildings thereon erected by John Victor, an heir and one of the deponents herein.

13. That the name John Cornett Graham, mentioned in the act of adiation and the name John Graham, mentioned on the transport, refer to one and the same person.

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14. That from the above facts we would be entitled to transport of the aforesaid property, but cannot get same, all the parties through whom we claim mediately and immediately being dead, and we apply to the Court to have title to the aforesaid property registered in our names.

SWORN to at Georgetown, Demerara, This 27th day of July, 1959,

JOHN VICTOR  
ZACHARIAH LAYNE  
GIDEON LAYNE

30

Before me,

N. Bhulai

A Commissioner of Oaths to Affidavits.

Stamps cancelled  
36¢

No. 3

Affidavit of Richard Layne in support of Summons.

28th July, 1959.

No. 3

AFFIDAVIT OF RICHARD LAYNE IN SUPPORT OF SUMMONS

I, RICHARD LAYNE, of Supply, East Bank Demerara, being duly sworn make oath and say as follows:

40

1. That I was only once married and then to

Antionette Layne born Graham, in February 1912.

2. That of this marriage there are two children Zacharia Layne and Gideon Layne the applicants herein.

3. That the said Antionette Layne born Graham is an heir of the estate of John Cornett Graham deceased, and she died intestate in December, 1933, survived by me and the aforesaid children as her only heirs.

10 4. That I renounce absolutely any right or claim whatsoever to any share of the property of my wife the said Antionette Layne born Graham, deceased, through succession or otherwise.

5. And further I say not.

SWORN to at Georgetown,  
Demerara This 28th day  
of July, 1959,

RICHARD LAYNE.

Before me,

ALBERT J. PARKES

20 A Commissioner of Oaths to Affidavits.

In the Supreme  
Court of  
British Guiana

No. 3

Affidavit of  
Richard Layne  
in support of  
Summons.

28th July,  
1959

- continued.

No. 4

ORDER OF COURT

BEFORE THE HONOURABLE MR. JUSTICE MILLER

(IN CHAMBERS)

WEDNESDAY THE 19TH DAY OF AUGUST, 1959

ENTERED THE 24TH DAY OF AUGUST, 1959

No. 4

Order of Court.

19th August,  
1959.

30 UPON the application ex parte by way of Originating Summons of John Victor, Zacharia Layne and Gideon Layne, filed herein on the 28th July, 1959, AND UPON READING the said application and the affidavits of the said Richard Layne filed on the 28th July, 1959, in support thereof; AND UPON HEARING Counsel for the applicants, IT IS ORDERED that the Registrar of Deeds of British Guiana do pass and register transport of the immovable property hereunder described to and in the names

In the Supreme  
Court of  
British Guiana

No. 4

Order of Court.

19th August,  
1959

- continued.

of John Victor, Zacharia Layne and Gideon Layne unless good cause be shown why this order should not be made absolute on Saturday the 19th September, 1959, AND IT IS FURTHER ORDERED that all persons having or claiming to have any right or title to the said immovable property shall appear and establish their claims or otherwise show good cause as aforesaid before a Judge in Chambers on the said last mentioned day, at 9.00 o'clock in the forenoon or be forever barred therefrom; AND IT IS FURTHER ORDERED that this order be published by advertisement in the 'Daily Chronicle', a Daily Newspaper circulating in this Colony on three consecutive Sundays, the first of such publication to appear on Sunday the 30th day of August, 1959.

10

BY THE COURT

H. BACCHUS

DEPUTY REGISTRAR (AG.)

S C H E D U L E

"Lot 33 (thirty-three) part of Plantation Maria's Lodge, situate on the West Bank of the River Demerary the said lot number 33 (thirty-three) having a facade of 288 (two hundred and eighty-eight) feet by the whole depth of the said estate as laid down and defined on a diagram thereof by the Sworn Land Surveyor, D. Fraser, dated 17th May, 1856 and deposited in the Office of the Registrar of the Counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot number 33 (thirty-three)."

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No. 5

WRIT OF SUMMONS

1959 No.1719 DEMERARA

In the Supreme  
Court of  
British Guiana

No. 5

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:-

JOHN VICTOR ZACHARIA LAYNE  
and GIDEON LAYNE

Plaintiffs

- and -

10 WEST BANK ESTATES LIMITED,  
a Company incorporated in  
England and carrying on  
business in this Colony at  
22 Church Street, Georgetown  
Demerara

Defendant

ELIZABETH THE SECOND by the Grace of God of the  
United Kingdom of Great Britain, Northern Ireland,  
and of Her other Realms and Territories, Queen,  
Head of the Commonwealth, Defender of the Faith.

20 To:- WEST BANK ESTATES LIMITED,  
a Company incorporated in England  
and carrying on business in this  
Colony at 22 Church Street,  
Georgetown in the county of Demerara.

30 WE COMMAND YOU, that within 10 (ten) 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 this action at the suit of JOHN  
VICTOR, ZACHARIA LAYNE and GIDEON LAYNE, and take  
notice that in default of your so doing the Plain-  
tiffs may proceed therein, and judgment may be given  
in your absence.

WITNESS THE HONOURABLE SIR FRANK WILFRED HOLDER Q.C.  
Chief Justice of British Guiana, the 30th day of  
October, in the year of Our Lord One thousand nine  
hundred and fifty-nine.

The Defendants may appear hereto by entering  
an appearance either personally or by Solicitor  
at the Registry at Georgetown.

Writ of  
Summons.

30th October,  
1959.

In the Supreme  
Court of  
British Guiana

No. 5

Writ of  
Summons.

30th October,  
1959

- continued.

INDORSEMENT OF CLAIM:

The claim of the Plaintiffs who are the legal and beneficial owners and persons in occupation and possession for upwards of 30 (thirty) years nec clam nec precario of "lot 33 (thirty-three) part of Plantation Maria's Lodge, situate on the west bank of the River Demerary the said lot number 33 (thirty-three) having a facade of 288 (two hundred and eighty-eight) feet by the whole depth of the said estate as laid down and defined on a diagram thereof by the Sworn Land Surveyor, D. Fraser, dated 17th May, 1856, and deposited in the Office of the Registrar of the Counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot number 33 (thirty-three), is for:

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(a) Possession of a portion of the aforesaid land occupied by the Defendants and their servants and agents as trespassers since the first half of this year 1959 on to the present time.

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(b) \$50,000.00 (fifty thousand dollars) damages for trespass to the said land committed by the Defendants and their servants and/or agents by wrongfully entering the Plaintiffs' said land in respect of which they were in possession and occupation prior to the said trespass and cutting trees and digging trenches and canals and building dams, and destroying the Plaintiffs' fruit trees and growing crops thereon, and otherwise trespassing on and to same and depriving the Plaintiffs of the use and enjoyment of same.

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(c) An Injunction restraining the Defendants, their servants and/or agents from committing further trespass on the said land

(d) Costs and any further or other consequential relief as in the opinion of this Honourable Court is deemed just and expedient.

40

Georgetown, Demerara  
This 30th day of  
October, 1959

C.M. Llewellyn John  
Solicitor for Plaintiffs.

This Writ is issued by CLIFTON MORTIMER LLEWELLYN

JOHN, of lot 65 Church Road & David Street, Subryanville, East Demerara, whose address for service and place of business is at his office lot 7, Croal Street, Stabroek, Georgetown, Demerara, Solicitor for the Plaintiffs herein who reside at Maria's Lodge, West Bank; Supply, East Bank; and Coverden, East Bank, respectively, all in the county of Demerara and colony of British Guiana.

In the Supreme Court of British Guiana

No. 5

Writ of Summons.

30th October, 1959

- continued.

10

C.M. Llewellyn John  
SOLICITOR FOR PLAINTIFFS.

Georgetown, Demerara  
This 30th day of October, 1959.

Authority to act in favour of the said Clifton Mortimer Llewellyn John, is filed in the Supreme Court Registry.

No. 6

APPLICATION BY WAY OF AFFIDAVIT FOR  
INTERLOCUTORY INJUNCTION

No. 6

Application by way of affidavit for Interlocutory Injunction

30th October, 1959.

20

WE, JOHN VICTOR, of Maria's Lodge, West Bank, ZACHARIA LAYNE of Supply, East Bank, and GIDEON LAYNE, of Coverden, East Bank, all in the county of Demerara and colony of British Guiana, being duly sworn make oath and say as follows:-

30

1. That this action is commenced by a writ issued out of this Honourable Court the claim being by us these deponents as legal and beneficial owners and persons in occupation and possession for upwards of 30 (thirty) years nec clam nec precario of lot 33 (thirty-three) part of Plantation Maria's Lodge, situate on the West Bank of the Demerary River, against WEST BANK ESTATES LIMITED, a Company incorporated in England and carrying on business in this colony at 22, Church Street, Georgetown, Demerara, for possession of a portion of land, \$50,000.00 (fifty thousand dollars) damages for trespass, an Injunction and costs.

2. That at all material times we were in possession of lot 33 (thirty-three) Maria's Lodge aforesaid until the earlier part of this year 1959,

In the Supreme Court of British Guiana

No. 6

Application by way of affidavit for Interlocutory Injunction.

30th October, 1959

- continued.

more particularly during the month of April, when the Defendants and their servants and/or agents unlawfully trespassed in and into a portion of the said lot 33 Maria's Lodge, that is to say, a portion commencing along the northern boundary of the said lot 33 (thirty-three) Maria's Lodge about 200 (Two hundred) rods west of the River Demerary and extending thence in a westerly direction for the remainder of the whole depth of the said estate by a facade of about 10 (ten) rods at the aforesaid point of commencement of said portion of land into which the Defendants entered and 20 (twenty) rods at the western extremity thereof.

10

3. That the Plaintiff made repeated objections to the commission of the said acts of trespass by the Defendants particularly in the months of April, May, August, September and October, but the Defendants have suspended their acts of trespass for short periods only after the several objections and have again resumed same.

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4. That the said acts of trespass consisted of entry on the portion of land aforesaid and the digging of canals, building of dams and the blocking of the drainage trench of the Plaintiffs, thereby impeding the only means of access to the backlands by boats through the said trench which the Defendants are blocking.

That further acts of trespass include the building of another dam by the Defendants to be used for the carrying out of the sugar-cane cultivation and this deprives the plaintiff of the use of the said land.

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5. That on Thursday the 22nd October, 1959, the Defendants carried in 3 (three) bull-dozers and men and other machines to carry out further works on the said dam which was made by them from excavations on the Plaintiffs' land by levelling same despite protests by the Plaintiffs.

6. That these acts constitute and of necessity cause grave and immediate and irreparable harm and injury and loss to the Plaintiffs who are being deprived of their use of the land for planting and of the access to the backlands and as a result thereby their means of livelihood are in jeopardy in-as-much as they cannot get out from the backlands the timber which they usually cut for sale and

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building of houses, or mokroo grass which is used in the making of baskets upon which the Plaintiffs depend for their livelihood.

In the Supreme Court of British Guiana

No. 6

7. The defendants have threatened and continue to threaten to carry out their unlawful acts of trespass and immediate wrong doing which cannot be adequately compensated in damages, and in contempt of the Plaintiffs' just rights, continue to inflict further wrong doing and suffering on the Plaintiffs.

Application by way of affidavit for Interlocutory Injunction.

30th October, 1959

- continued.

10 8. That the Plaintiffs therefore pray that this Honourable Court will be pleased to give relief to the Plaintiffs by the granting of an Interlocutory Injunction restraining the Defendants and their servants and/or agents from carrying out further acts of trespass until the hearing of this action.

20 9. That this affidavit is filed on behalf of the Plaintiffs herein, and is drawn by CLIFTON MORTIMER LLEWELLYN JOHN, of lot 65 Church Road and David Street, Subryanville, East Demerara, in the colony of British Guiana, whose address for service and place of business is at his Office at lot 7 Croal Street, Stabroek, Georgetown, in the county of Demerara and colony of British Guiana.

SWORN to at Georgetown, ) JOHN VICTOR  
Demerara this 30th day ) ZACHARIA LAYNE  
of October, 1959. ) GIDEON LAYNE

Before me,

ALBERT J. PARKES

30 A Commissioner of Oaths to Affidavits.

Stamps cancelled 36/

In the Supreme  
Court of  
British Guiana

No. 7

ORDER OF COURT - INTERIM INJUNCTION

No. 7

BEFORE THE HONOURABLE MR. JUSTICE GORDON  
(In Chambers)

Order of Court  
- Interim  
Injunction.

SATURDAY THE 2ND DAY OF NOVEMBER, 1959

2nd November,  
1959.

ENTERED THE 19TH DAY OF NOVEMBER, 1959

UPON HEARING Counsel for the Plaintiffs and  
UPON READING the affidavit of JOHN VICTOR, ZACHARIA  
LAYNE and GIDEON LAYNE, filed herein on the 30th  
day of October, 1959, and the Plaintiffs by their  
Counsel undertaking to abide by any order the Court  
or Judge may make as to damages in case the Court  
or a Judge should hereafter be of opinion that the  
Defendant shall have sustained any by reason of  
this Order which the Plaintiffs ought to pay IT IS  
ORDERED AND DIRECTED that the Defendants WEST BANK  
ESTATES LIMITED, a Company incorporated in England  
and carrying on business in this colony at 22 Church  
Street, Georgetown, Demerara, by themselves, their  
servants and/or agents and each and every of them be  
restrained and an injunction is hereby granted  
restraining them and their servants and agents from  
further entering on and from digging canals, build-  
ing dams and blocking the drainage trench and plant-  
ing sugar-cane and otherwise trespassing on and upon  
the property described in the schedule hereunder  
until after the hearing and determination of a  
summons to continue this injunction returnable for  
Saturday 28th day of November, 1959, at 9 a.m. AND  
IT IS FURTHER ORDERED that the Plaintiffs be at  
liberty to issue and serve a summons returnable for  
that day to continue this injunction along with the  
Writ of Summons filed herein a copy of the affidavit  
in support of the interim injunction and a certified  
copy of this Order and that the costs of this appli-  
cation be costs in the cause.

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BY THE COURT

H. BACCHUS

DEPUTY REGISTRAR (AG.)

SCHEDULE

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"Lot number 33 (thirty-three) part of Plantation  
Maria's Lodge, situate on the west bank of the

Demerary River the said lot number 33 (thirty-three) having a facade of 288 (two hundred and eighty-eight) feet by the whole depth of the said estate as laid down and defined on a diagram thereof by the Sworn Land Surveyor, D. Fraser, dated 17th May, 1856, and deposited in the Office of the Registrar of the counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot number 33 (thirty-three).

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In the Supreme Court of British Guiana

No. 7

Order of Court - Interim Injunction.

2nd November, 1959

- continued.

No. 8

SUMMONS TO CONTINUE INTERIM INJUNCTION

LET ALL PARTIES concerned attend the Judge in Chambers on SATURDAY the 28th day of NOVEMBER, 1959, at the hour of 9 o'clock a.m. in the forenoon on the hearing of an application for an Order that the Injunction granted herein on the 2nd day of November, 1959, restraining the abovenamed Defendants by themselves, their servants and/or agents and each and every of them from further entering on and from digging canals, building dams and blocking the drainage trench and planting sugar-cane and otherwise trespassing on and upon the property described as Lot number 33 (thirty-three) part of Plantation Maria's Lodge, situate on the west bank of the River Demerary, in the colony of British Guiana, be continued until after the trial of this action or until further order and that the costs of this application and of the application made on the 2nd day of November, 1959, by the Plaintiffs be costs in the cause.

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No. 8

Summons to continue Interim Injunction.

5th November, 1959.

The Grounds of this application are contained in the affidavit of the Plaintiffs filed on the 31st day of October, 1959, in support thereof.

At the hearing of the application the Plaintiffs will rely upon the Writ of Summons filed as aforesaid and the said Affidavit.

Leave to serve this summons was granted by the Order of the Court dated the 2nd day of November, 1959, and made returnable on the 28th day of November, 1959.

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In the Supreme  
Court of  
British Guiana

No. 8

Summons to  
continue  
Interim  
Injunction.  
5th November,  
1959  
- continued.

Leave to serve a copy of the Order with the  
Writ of Summons or so soon thereafter as is poss-  
ible was granted on the 2nd day of November, 1959.

Georgetown, Demerara  
This 25th day of November, 1959

C.M. Llewellyn John  
Solicitor for Plaintiffs.

This Summons was taken out by C.M. LLEWELLYN JOHN,  
Solicitor for the Plaintiffs of and whose address  
for service and place of business is at his Office,  
lot 7, Croal Street, Stabroek, Georgetown, in the  
county of Demerara and colony of British Guiana.

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C.M. Llewellyn John  
Solicitor for Plaintiffs.

To: WEST BANK ESTATES LIMITED,  
22, Church Street,  
Georgetown, Demerara.

No. 9

Affidavit of  
Raymond  
Augustine  
Wilkins filed  
on behalf of  
the Defendants.  
3rd December,  
1959.

No. 9

AFFIDAVIT OF RAYMOND AUGUSTINE WILKINS  
FILED ON BEHALF OF THE DEFENDANTS

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I, RAYMOND AUGUSTINE WILKINS, of Schoonord,  
West Bank, Demerara, being duly sworn make oath and  
say as follows:

1. I am a Sworn Land Surveyor and a Director of  
Bookers Sugar Estates Limited, Managing Agents and  
Secretaries for the Defendant Company in this  
action, and I am duly authorised by the Defendant  
Company to make this affidavit.

2. I have read the Summons dated the 25th Novem-  
ber filed herein, the affidavit of John Victor and  
others in support thereof and the Order of this  
Honourable Court.

30

3. Lot number 33 alleged by the Plaintiffs to be  
part of Maria's Lodge situated on the West Bank of  
the Demerara River is incorrectly described in the  
Schedule to the said Order. The said Lot 33 is shown

on the said plan of D. Fraser as a portion of Plantation Reynestein and does not extend the whole depth of the estate but is bounded on the west by the Public Road from whence it extends east to the Demerara River, all of which is clearly shown on the said plan, a certified copy of which is hereto annexed and marked "R.A.W.1". All the land shown on the said plan extending west of the said Public Road from Lot 20 to 33 inclusive by the whole depth of the estate is owned by the Defendant Company under Transport No.529 of 1927. The Defendant Company also owns by the same transport the land immediately to the north of the land above described to the whole depth of the estate.

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4. The Defendant Company does not admit that the Plaintiffs are the owners of lot 33 as correctly defined in paragraph 3 hereof, but lays no claim itself thereto. In the month of September, 1959, the Defendant Company opposed an application by the Plaintiffs under Originating Summons No.1130 Demerara for title under the Deeds Registry Ordinance, Chapter 32, of the said lot 33, by entering appearance thereto. Since appearance was entered the Plaintiffs have taken no further step in those proceedings. The Defendant Company opposed the said application for title because the Plaintiffs incorrectly described the said Lot 33 in the same manner in which it is described in the Order herein and if the Defendant Company had not opposed the said application it might have been deprived of a considerable area of land which it holds by transport as aforesaid.

5. The Plaintiffs have never at any time occupied any portion of the Defendant Company's land west of the road save that in recent years the Plaintiff, Victor and other persons, without the permission of the Defendant Company, trespassed and planted on the Defendant Company's land west of the road and of the said lot 33 to a depth of approximately 1900 feet only.

6. The Defendant Company's servants and agents have not, notwithstanding their ownership of Plantation Reynestein west of the Public Road, at any time entered upon the said land west of lot 33 since the filing of the Plaintiffs' application for title and it is not the Defendant Company's intention to do so until the question of disputed ownership is determined by this Honourable Court. The portion of land on which the Plaintiffs in paragraph 2 of their

In the Supreme  
Court of  
British Guiana

—————  
No. 9

Affidavit of  
Raymond  
Augustine  
Wilkins filed  
on behalf of  
the Defendants.

3rd December,  
1959

- continued.

In the Supreme  
Court of  
British Guiana

No. 9

Affidavit of  
Raymond  
Augustine  
Wilkins filed  
on behalf of  
the Defendants.

3rd December,  
1959

- continued.

affidavit complain that the Defendant Company's servants and agents trespassed does not form part of lot 33 Plantation Reynstein at all, even as wrongly defined in the Schedule to the said Order of the Court, but is part of adjoining land to the north, the property of the Defendant Company. The land to which the Plaintiffs refer is situate to the north of the continuation of a line taken from the northern boundary of Lot 33 through the whole depth of the Estate as shown on the sketch plan made by me, R.A. Wilkins, this deponent, and hereto annexed and marked "R.A.W.2". The line marked on the said plan is the line wrongly claimed by the Plaintiffs to be the boundary of the extension of the northern boundary of Lot 33 through the whole depth of the Estate, and the area shaded red on the said plan is the area on which the Defendant Company are carrying on their operations.

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7. I verily believe that the line indicated on the said plan as the true boundary line of Lot 33 is true and correct, and that the Defendant Company their servants or agents are therefore not affected by the Order of this Honourable Court, but out of respect for the said Order and from an abundant caution the Defendant Company have from the time of the service of the Order ceased to work within the area shaded red on the said plan. As is well known to the Plaintiffs, the cessation of this work has however put the Defendant Company to great loss and inconvenience as some 300 workers recruited from the ranks of the unemployed in various parts of the country have been thrown out of work. Moreover, unless the work can be resumed very soon it will be impossible to plant before the end of the year, and the consequent loss to the Defendant Company and its workers will be substantial and far-reaching, amounting to many thousands of dollars.

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8. The Plaintiffs have suffered no injury or loss whatsoever by the action of the Defendant Company, even assuming that they have any right, title or interest in and to the land in question, which is denied. To the best of my knowledge information and belief they have never at any time cut timber or grass anywhere west of Lot 33 save and except in the area described in paragraph 5 of this affidavit.

40

9. The Defendant Company has assets in excess of \$1,000,000 and is well able to compensate the

Plaintiffs for any loss they may have suffered as a result of the alleged trespass if it be proved that the Defendant Company has trespassed on their land, but to the best of my knowledge, information and belief the Plaintiffs have no means sufficient to satisfy any order which this Court may make as to damages under the said Order of the 19th November, 1959.

10. On behalf of the Defendant Company I hereby request that the Order of this Honourable Court be discharged and that the Plaintiffs be ordered to pay the Defendant Company's costs of this application, alternatively, that the costs be the Defendants' costs in the cause.

Sworn to at Georgetown,  
Demerara, this 3rd day  
of December, 1959.

R. WILKINS

J. Gonsalves  
Commissioner of Oaths.

In the Supreme  
Court of  
British Guiana

No. 9

Affidavit of  
Raymond  
Augustine  
Wilkins filed  
on behalf of  
the Defendants.  
3rd December,  
1959

- continued.

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No. 10

AFFIDAVIT OF REPLY OF PLAINTIFFS TO AFFIDAVIT  
FILED ON BEHALF OF THE DEFENDANTS

WE, JOHN VICTOR, ZACHARIA LAYNE and GIDEON LAYNE, being duly sworn make oath and say as follows:

1. That we are the plaintiffs herein.
2. That it is not competent for the Defendants to allege that lot 33 does not extend to the whole depth of the estate in as much as the description of the transport No.160 of 1875 says so, and the plan of D. Fraser shows the depth of the estate, except that lots 20-33 were not drawn to the full extremity.
3. That we are advised and verily believe and will contend as a matter of law that the term "whole depth" when used in connection with estates in British Guiana means the usual first depth of 750 (seven hundred and fifty) roods referable to all estates granted as such.

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No. 10

Affidavit of  
Reply of  
Plaintiffs to  
affidavit  
filed on  
behalf of the  
Defendants.  
9th December,  
1959.

In the Supreme  
Court of  
British Guiana

—  
No. 10

Affidavit of  
Reply of  
Plaintiffs to  
affidavit  
filed on  
behalf of the  
Defendants.

9th December,  
1959

- continued.

4. That we are advised and verily believe and will contend as a matter of law that even assuming but not admitting that the plan of D. Fraser does not in every specific detail show the full extent of 750 (seven hundred and fifty) roods the description prevails to explain ambiguities, if any in the plan.

5. That we know of our knowledge that the Defendants by their agent deponent the said Ray Wilkins during the year 1953 or thereabouts did in fact survey the said land and place paals at both the eastern and western extremities and in the middle thereof showing our northern boundary in a substantially correct position as set out in the description in Transport No. 160 of 1875; that we also know of our own knowledge that two of the said paals stamped as such are still visible and in existence on the land at the said spots at which they were placed when the Defendants made the survey in 1953 or thereabouts.

6. That the Transport No. 529 of 1927 through which the Defendants claim is subject to an exception described as "save and except that piece or parcel of land part of the said Reynestein containing 100 roods by admeasurement commencing from Plantation Maria's Lodge and extending thence northwards conveyed to the proprietors of the said Maria's Lodge on the 6th April 1836" the effect of which exception is that the entirety of Plantation Reynestein is not owned by the Defendants as incorrectly alleged in the last sentence of paragraph 3 of their affidavit. That the said exception eventually formed part of what was later known as Maria's Lodge cum annexis and the said exception has a depth of 750 roods which is the same as the whole depth of the Estate as mentioned and referred to in Transport No. 160 of 1875.

7. That in contradistinction to the survey made by the Defendants in 1953 or thereabouts which placed the plaintiffs' boundary substantially correct, the present claim of the Defendants based upon a later survey by the direction of their own managing agent and Company Secretary is part of a design to deprive the Plaintiffs of the land lawfully owned and occupied by them, and the Plaintiffs are advised and verily believe and will contend as a matter of law that the Defendants in view of the fact that they have not come to Court with clean hands are not entitled to the relief they now seek.

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8. That the Plaintiffs who were always on the land and in possession prior to the Defendants will suffer intolerable hardship as a result of the Defendants wrong and high handed action, and the Plaintiffs will contend that the Defendants whose financial position exceeds \$1,000,000 as stated in paragraph 9 of their affidavit in contradistinction to the Plaintiffs whom they have described as having no means should not be heard to say that they have the means or that third persons not parties to this action will be prejudiced in as much as the Defendants always had ample time to determine their rights but persisted in their wrong doing and high handed action despite the protests of the Plaintiffs, and apart from our claim in damages for \$50,000 for trespass to our said land an injunction is the only remedy that can correct such wrong doing.

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9. That the description of lot 33 is similar to that of all lots in Maria's Lodge from lot 1 to lot 33 conveyed at the same time whether or not these lots were completely drawn to the full extremity and shown on the plan, and this confirms that lot 33 had a depth of 750 roods similar to all the other lots 1 to 33 on Maria's Lodge.

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10. That this affidavit is drawn by Clifton Mortimer Llewellyn John, Solicitor, of lot 7, Croal Street, Stabroek, Georgetown, Demerara.

SWORN to at Georgetown, Demerara, this 9th day of December, 1959.

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GIDEON LAYNE  
ZACHARIA LAYNE  
JOHN VICTOR

Before me,

B.B.McG. Gaskin  
A Commissioner of Oaths to Affidavits.

Stamp cancelled  
36 cents.

No. 11

FURTHER AFFIDAVIT of RAYMOND AUGUSTINE WILKINS  
ON BEHALF OF THE DEFENDANTS

I, RAYMOND AUGUSTINE WILKINS, of Schoonord, West Bank, Demerara, being duly sworn make oath and say as follows:

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1. I am a Sworn Land Surveyor and a Director of

In the Supreme  
Court of  
British Guiana

No. 10

Affidavit of  
Reply of  
Plaintiffs to  
affidavit  
filed on  
behalf of the  
Defendants.

9th December,  
1959

- continued.

No. 11

Further  
affidavit of  
Raymond  
Augustine  
Wilkins on  
behalf of the  
Defendants.

17th December,  
1959.

In the Supreme  
Court of  
British Guiana

No. 11

Further  
affidavit of  
Raymond  
Augustine  
Wilkins on  
behalf of the  
Defendants.

17th December,  
1959

- continued.

Bookers Sugar Estates Limited, Managing Agents and Secretaries for the Defendant Company in this action, and I am duly authorised by the Defendant Company to make this affidavit on its behalf.

2. On the 2nd December, 1959, the Plaintiffs obtained an ex parte injunction restraining the Defendant Company and its servants and agents from entering upon the following property:

"Lot number 33 (thirty-three) part of Plantation Maria's Lodge, situated on the west bank of the Demerary river the said lot number 33 (thirty-three) having a facade of 288 (two hundred and eighty-eight) feet by the whole depth of the said estate as laid down and defined on a diagram thereof by the Sworn Land Surveyor, D. Fraser, dated 17th May, 1856, and deposited in the office of the Registrar of the counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot number 33 (thirty-three)"

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3. In paragraph 6 of an affidavit sworn in this action by the Plaintiffs on the 9th December, 1959, the Plaintiffs correctly state that in Transport No.529 of 1927 under which the Defendant Company claims Plantation Reynestein there is excepted a "parcel of land part of the said Reynestein containing 100 roods by admeasurement commencing from Plantation Maria's Lodge and extending thence northwards".

4. Lot 33 claimed by the Plaintiffs is the most northerly lot in the said parcel excepted from the Defendant Company's transport, and is stated in the said order of this Honourable Court of the 2nd December, 1959, to have a facade of 288 feet.

30

5. I swore an affidavit in this Action on the 3rd day of December, 1959 and exhibited thereon a plan dated the 17th May, 1856, by Fraser, marked "R.A.W.1" and a plan of Plantations Reynestein and Maria's Lodge, drawn by me marked "R.A.W.2".

6. In paragraph 6 of my said affidavit I described the land claimed by the Plaintiffs upon which the Defendant Company had been working as "situate to the north of the continuation of a line taken from the northern boundary of lot 33 through the whole depth of the estate".

40

7. The continuation to which I thus referred was a line drawn from the western end of that shown as the northern boundary of lot 33 on the said Fraser's plan to a point on the western boundary of Reynes-tein 100 roods north of the northern boundary of Maria's Lodge.

In the Supreme  
Court of  
British Guiana

—  
No. 11

10 8. In or about the month of October 1959, the Defendant Company completed the construction of a canal running west along the land to the north of the area surrounded by a red line on the said plan and marked "Boundaries of area cultivated by J. Victor", then running south along the land to the west of that area; and then running west again along the land to the north of the said line drawn 100 roods north of the northern boundary of Plantation Maria's Lodge to the whole depth of the estate.

Further  
affidavit of  
Raymond  
Augustine  
Wilkins on  
behalf of the  
Defendants.

17th December,  
1959

- continued.

20 9. The Defendant Company had completed the construction of this canal, and using it as a means of access, had commenced planting cane in an area of approximately 300 acres of land to the north which had already been cleared of bush and prepared for sugar cultivation when the ex parte injunction was obtained in this action.

30 10. As I explained in my former affidavit, although it would appear that the area thus used by the Defendant Company is not within the area covered by the said injunction, the Defendant Company suspended all work (which involved throwing over 300 sugar workers out of employment) in order that this matter might be first clarified by this Honourable Court. I did not, however, make it clear that it was not only work on the triangle shaded red on my said plan which was affected, but work on the entire area of approximately 300 acres to the north of that area as well, by reason of the fact that the only means of access to that area is by the said canal.

40 11. The said injunction which was granted ex parte, was made to continue only until the 28th November, 1959, but despite the fact that the Defendant Company has been prepared to meet the claim at and since that date, the said injunction has been continued from time to time and is still in force without the Defendant Company having been given an opportunity to be heard.

12. On the 7th December, 1959, a peremptory order

In the Supreme Court of British Guiana

No. 11

Further affidavit of Raymond Augustine Wilkins on behalf of the Defendants.

17th December, 1959

- continued.

for the hearing of this matter was made for the 16th December, 1959, but the matter was not then heard and I understand that the said ex parte injunction is nevertheless being continued thus indefinitely.

13. In view of the fact that the Defendant Company is no longer carrying out any works of construction or destruction on the land affected but using the same only for access and planting, and for the reasons set out in paragraphs 7, 8 and 9 of my former affidavit, I now respectfully ask this Honourable Court to discharge the said ex parte injunction either pending the hearing of the Plaintiffs' summons for an interlocutory injunction or the trial of this action. Alternatively, I ask this Honourable Court to declare that the land within the triangle coloured red on my said plan is not part of the land described in the schedule to the order of this Honourable Court made on the 2nd November, 1959.

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SWORN to at Georgetown, Demerara, this 17th day of December, 1959

R. WILKINS.

Before me

B.B. McG. GASKIN  
Commissioner for Oaths.

Stamp cancelled  
36 /

No.12

Order of Court for hearing Action No.1719 with Action No.1130.

21st December, 1959.

No. 12

ORDER OF COURT FOR HEARING ACTION No.1719 WITH ACTION No.1130

1959 No.1719 DEMERARA

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IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:

JOHN VICTOR, ZACHARIA LAYNE  
and GIDEON LAYNE

Plaintiffs

- and -

WEST BANK ESTATES LIMITED, a Company incorporated in England and carrying on business in this Colony at 22 Church Street, Georgetown, Demerara

Defendants

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BEFORE THE HONOURABLE MR. JUSTICE BOLLERS.

DATED THE 21ST DAY OF DECEMBER, 1959

ENTERED THE 5TH DAY OF JANUARY, 1963

In the Supreme  
Court of  
British Guiana

No. 12

UPON HEARING counsel for the plaintiffs and  
counsel for the defendants IT IS BY CONSENT  
ORDERED that this action be taken and heard to-  
gether with application No.1130 of 1959.

Order of Court  
for hearing  
Action No.1719  
with Action  
No.1130.

21st December,  
1959

- continued.

BY THE COURT

(Sgd.) B.B. McG. GASKIN  
DEPUTY REGISTRAR (AG.)

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No. 13

ORDER OF COURT for HEARING ACTION No.1130  
WITH ACTION No.1719

No. 13

Order of Court  
for hearing  
Action No.1130  
with Action  
No.1719.

21st December,  
1959.

1959 No.1130 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

IN THE MATTER of the Deeds Registry Ordinance,  
Chapter 32

- and -

20

IN THE MATTER of an application by John Victor  
of Maria's Lodge, West Bank, Demerara,  
Zacharia Layne of Supply, East Bank, Demerara  
and Gideon Layne of Coverden, East Bank,  
Demerara, for registration of title in their  
names of -

30

"Lot 33 (thirty-three) part of Plantation  
Maria's Lodge, situate on the West Bank  
of the River Demerary the said lot number  
33 having a facade of 288 (two hundred  
and eighty-eight) feet by the whole depth  
of the said estate as laid down and  
defined on a diagram thereof by the Sworn  
Land Surveyor D. Fraser dated 17th May,  
1856 and deposited in the office of the  
Registrar of the Counties of Demerary and  
Essequibo on the 25th June, 1856, subject  
to the keeping up of the Public Road and  
the drainage to the extent of the facade  
of the said lot number 33 (thirty-three)".

BEFORE THE HONOURABLE MR. JUSTICE BOLLERS

In the Supreme  
Court of  
British Guiana

DATED THE 21ST DAY OF DECEMBER, 1959

ENTERED THE 5TH DAY OF JANUARY, 1963

No. 12

Order of Court  
for hearing  
Action No. 1130  
with Action  
No. 1719.

21st December,  
1959

- continued.

UPON HEARING counsel for the applicants and  
counsel for the opponents IT IS BY CONSENT ORDERED  
that this application be taken and heard together  
with Action No. 1719 of 1959 Demerara between the  
said applicants as plaintiffs and West Bank Estates  
Limited as defendants.

BY THE COURT

(Sgd.) B.B. McG. GASKIN  
DEPUTY REGISTRAR (AG.)

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Plaintiffs'  
Evidence

No. 14

EVIDENCE OF FIRST WITNESS JOHN VICTOR

No. 14

Evidence of  
first witness  
John Victor.  
Examination.

JOHN VICTOR sworn states:

I am one of the Plaintiffs in this action and  
I am one of the claimants to Lot 33 Maria's Lodge  
registered in the name of John Graham by virtue of  
Transport No. 160 of 1875 which has been filed and  
laid down in these proceedings. This is the  
Transport. Tendered Admitted and Marked Exhibit  
"A".

20

This said lot 33 is shown on a plan by D.  
Fraser and is shown on the said Transport. The 3  
heirs of John Graham, who claim the said Lot 33 are  
Zacharia Layne, Gideon Layne and myself, John  
Victor. In my affidavit in support of our claim of  
registration of title, I have set out the line of  
descent. From my boyhood days I have been living  
at Maria's Lodge and my parents and grandparents  
lived there too, and at present Zachariah Layne and  
Gideon Layne and myself occupy the said lot 33.

30

Before these acts of trespass 2 paals separated  
lot 33 from the land known as part of Pln. Reynestein  
owned by the Defendant Company. These paals were  
situate - one at the Eastern extremity of the north-  
ern boundary of lot 33 - one at the Western extrem-  
ity of the same northern boundary.

The distance between the 2 paals would be 750

roods. Beside the paals there was a dam running east to west along the whole depth. There was also a trench south of the dam that ran along the whole depth which separated lot 33 from Pln. Reynestein. On the northern side of this on Pln. Reynestein there was a small trench. Part of the dam has been broken down by bull-dozers. The eastern part is broken down, the western part is still there.

In the Supreme  
Court of  
British Guiana

Plaintiffs'  
Evidence

No. 14

10 In 1950 the Defendant company carried out a survey of Pln. Reynestein. I was present. I went to see if the 2 paals were still there and I found them there. I saw one more paal and this paal was on lot 33. This paal was in the middle of a straight line drawn between the 2 paals originally placed there. This paal was on the northern boundary of lot 33. The survey was carried out by Mr. R.A. Wilkins and the paal was placed there.

Evidence of  
first witness  
John Victor.  
Examination  
- continued.

20 I also saw another paal which was at the side of the paal at the western extremity of the northern boundary. I was satisfied with the position of the paals. Lot 33 is 24 roods or 288 feet in width and 750 roods in depth. The 750 roods going west extends over the public road.

30 I and the other 2 claimants used to cultivate this lot. We worked the whole depth of the estate from time to time. I am 60 years old now and I went to lot 33 when I was 10 years old. My mother, Elizabeth Victor and her husband Lewis Victor to whom she was lawfully married took me there. We cultivated lot 33 to its whole depth and had 200 fruit trees. We cultivated the whole depth of Lot 33 from time to time. No person has ever come on to this land claiming it.

Before 1958 the Defendant Company never disturbed my possession. One Scott worked with Mr. R.A. Wilkins in 1950 when he surveyed the land. He worked with Mr. Wilkins cutting lines.

40 Scott lives at Lot 21 Maria's Lodge. One Davis also worked on this survey, and he also cuts lines. I remember a survey in 1958. This survey was done in 1958 by one Mohamed who was Sworn Land Surveyor and he made the survey at the instance of West Bank Estates Ltd., the Defendant Company. He surveyed the southern boundary of the portion of Pln. Reynestein owned by West Bank Estates Ltd. I

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Evidence

No. 14

Evidence of  
first witness  
John Victor.

Examination  
- continued.

was served with this notice of intended survey  
Tendered Admitted and Marked Exhibit "B".

Mr. Mohamed came to carry out the survey.  
Scott also worked in Mohamed Party. Scott also  
cuts lines. Mohamed started to cut a line from the  
eastern extremity of the northern boundary of Pln.  
Maria's Lodge or southern boundary of Pln.  
Reynestein. He was moving in a westerly direction.  
When he reached about 200 roods he moved south west  
in a slanting position across my land lot 33,  
Maria's Lodge. He then started to cut a line  
through some of my fruit trees. Bushes were cut  
and a path made. I stopped Mr. Mohamed when he did  
this and he said he would remove because I was  
right. He did remove and did not continue cutting  
the line. Mohamed did not work any more on the  
survey after that. Scott was then working with him.  
Scott was the same man working with R.A. Wilkins in  
1950.

10

In 1959 Mr. R.A. Wilkins carried out another  
survey and started from the western extremity of the  
northern boundary of Pln. Maria's Lodge. I was not  
served with any notice. I saw R.A. Wilkins surveying. I  
received no notice from Mr. R.A. Wilkins. Wilkins  
started from the western extremity of the northern  
boundary and went east. Wilkins started his survey  
on my land lot 33. He started from a point inside  
my land beyond the northern boundary of lot 33 and  
south of it. He started about 18 roods inside my  
land from the northern boundary. I stopped the line  
cutters when I saw them. Mr. Wilkins was not there  
at the time. They did not stop. This was around  
April 1959. I stood up and watched the proceedings  
and then consulted Mr. A. Holder, Barrister-at-Law.

20

30

About 2 weeks after this incident they stopped  
the survey. They stopped cutting the line.

They started to bulldoze this portion of lot  
33 in May 1959.

Mr. Hugh an overseer employed by Defendant  
Company came to see me and he told me that the  
manager said I must let the men proceed working. I  
must action them for all the damages. I did not  
agree to allow them to work. I stopped them again.  
They still proceeded to work.

40

I caused my lawyer to write a letter to the



company. As a result of that letter I got a reply dated 7th August, 1959. This is the letter I caused my lawyer to write. Tendered Admitted and Marked Exhibit "C". This is the reply Tendered Admitted and Marked Exhibit "C-2".

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first witness  
John Victor.

Examination  
- continued.

10 The Defendant Company continued to work on my land in September and October 1959. They bulldozed the land and broke down all my fruit trees. The trees were spice and coconut trees. At the time I made a list of the trees that were destroyed. I now use the list to refresh my memory. Two acres of yams and other provisions were destroyed and I value them at \$1,000.00.

Fifty fruit trees (cocoa and oranges) valued at \$1,000.00. Twenty-five spice trees valued \$1,250.00. One field of about 100 roods of Mookroo bush valued at \$1,300.00 per year. The supply there would have lasted for 10 years.

20 Three of us cut about \$25.00 worth of mookroo bush every week from this portion of the land.

A Canal was dug on the land within the northern boundary. It started 200 roods from the eastern paal from a distance of 500 roods. I estimate that about 20 acres of land have been destroyed by this canal. The canal is about 24 feet wide. The trench that I used is blocked up. The dam is broken down. The new canal has gone over my land. Dirt has been thrown on both sides of the canal by a drag line.

30 The whole portion of land affected by the canal and dirt on both sides is about 25 or more acres.

The value I place on the land ploughed up by the canal is \$19,000.00. On the land that has now been ploughed I will not be able to plant again. I had fish ponds on lot 33 and also timber i.e. white cedar and crabwood. I claim \$50,000 damages for these acts of trespass.

40 These acts of trespass have deprived me of the use of the land. From the time these acts have taken place I cannot work on the land. I earn my livelihood on my land. They have not gone on the front of lot 33 only the back. They have trespassed on about 3/4 of lot 33.

I have been making my living by planting

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Evidence of  
first witness  
John Victor.

Examination  
- continued.

oranges and cocoa and spices. I have not done any other kind of work.

With the mookroo grass I have made and sold baskets and also cut the grass and sold it at the rate of \$25.00 per week.

I ask the Court for an injunction to restrain the Defendant Company from carrying on their acts of trespass to Lot 33 Maria's Lodge in the same terms as the Order granted by Mr. Justice Gordon and continued by Mr. Justice Luckhoo. 10

A part of the dam forming the northern boundary of Pln. Maria's Lodge is still left standing.

I have seen the plan drawn by Mr. R.A. Wilkins marked R.A.W.2. It was shown to me by my legal adviser. I see the portion of the plan marked "Boundaries of Area cultivated by J. Victor". It is not true and I only cultivate that area. I am saying that I cultivate the whole depth.

With respect to paragraph (5) of the affidavit of R.A. Wilkins made on 3/3/59 what is stated is not true. We have always occupied both sides of the road. I have cultivated the whole depth from time to time. All the owners of the adjacent lots have occupied both sides of the road from lots 20-32. The occupiers of lot 32 south of lot 33 have cultivated the portion of land to west of the public road by planting it with coffee trees. 20

The paal at the western extremity of the northern boundary was not removed. The paal on the eastern extremity of the western boundary is still there. 30

I have seen copies of the Transports of all the lots in Maria's Lodge from 1 - 33 and all the descriptions are alike.

On the originating summons I am asking for Registration of Title.

Cross-  
examination

Cross-examined by J. Elliott:

The area of land affected by the trespass is 25 acres or more. I claim \$50,000 damages to the 25 acres. I also claim an injunction to keep Defendant Company off the 25 acres or more. 40

The damage suffered is about \$2,000 per acre. I could sell the 25 acres for about \$20,000 without the fruits.

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Uncultivated. I could sell this portion of 25 acres or more for about \$20,000.00.

Plaintiffs'  
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10 Cultivated: I could sell it for \$25,000.00. I am claiming \$50,000 which is twice as much because you have inconvenienced me. I don't know Safdar (M.E.I.) and John Murray. I do agree that 30 acres of cultivated land in Maria's Lodge in 1935 would be worth about \$60,000.00.

No. 14

Evidence of  
first witness  
John Victor.

Before 1949 I considered the northern boundary of lot 33 Maria's Lodge to be a dam and 2 paals one to the East and one to the West.

Cross-  
examination  
- continued.

20 With reference to Fraser's plan the easternmost paal was just east of the public road. The western paal on R.A.W.1 or the westernmost extremity of the northern Boundary. I claim the northern boundary of the triangle shaded red to be my northern boundary. The eastern paal is a concrete paal and not a wooden paal. The concrete paal is a circular piece of concrete about 12 inches in diameter raised about 2 inches off the ground and has a number on it but I can't tell you the number. It has no initial on it.

30 I now agree that this is a station and not a paal. The eastern paal which is a wooden paal was taken up when Mr. Wilkins started surveying in 1950. The plan marked R.A.W.2 is not a correct plan. The wooden paal was taken up but the concrete base is still there. The station is about 9 feet away from where the wooden paal used to be inside the land of Defendant Company. I am saying that the station is 9 feet to the south of the wooden paal in Maria's Lodge. The marking on the wooden paal was D.Fraser. The paal on the western extremity had the name D. Fraser on it, but it rotted away but the bottom which is wood is sound.

40 In 1950, Mr. Wilkins put down another paal on the western extremity and put his name on it. It is not true that there was no paal marked D.Fraser there. There was a paal there. They used stations to get the line running straight through to the extremity. I would not doubt that in 1950 Mr. Wilkins used stations instead of paals in order to draw a line where there was a clearing.

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first witness  
John Victor.

Cross-  
examination  
- continued.

It is not true that the trench which I say formed the northern boundary of lot 33 stopped 200 roods from the western extremity. It stopped 100 roods from the western extremity. Wilkins placed his western paal just next to D. Fraser's paal.

This paal that Wilkins put down has been bulldozed away in April, 1959. I don't know if another paal has been placed there. It is not true that he could not put a line through without cutting down bush. When I stopped Mohamed he was about 200 roods west of the road. It is not true that Mohamed was stopped 200 feet west of the road. I do agree that for the first 200 roods the canal kept to the north of my cultivation and then turned south into my land and cultivation. It then turned west and fitted the lower line as indicated in R.A.W.1.

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I do agree that early in 1959 after I stopped Mohamed a Mr. Miller came and cut a line from the cultivated area shown in R.A.W.1 to the western extremity.

20

The Defendant Company did trespass below the south line cut by Wilkins. Apart from the dirt which was then on the southern side of the canal the Defendant Company did not bulldoze south of the canal. They did clear up the land north of the canal and they left the dirt south of the land. In clearing the land north of the canal they bulldozed the land to plant sugar. They finished in October 1959.

I do agree the object in digging the canal was to have access to 300 acres north of the canal for the purpose of growing sugar.

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(Continuation of Evidence of first witness  
on 23rd December 1959:)

Cross-examined by Mr. Elliott (Contd.)

There was a paal on the eastern extremity of the northern boundary of Lot 33, it is only a concrete base one. The Company put down a station 9 feet away from this paal. They put it to the south of this wooden paal therefore it would fall on my land. I thought at one time this station was a paal, but now I am told it is not a paal.

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I did not understand the question that is why

I may have said that the station was on Pln. Reynestein. The station that Defendant Company put down is still there. The court can go and see the station.

It is not true that the station is to the north of my paal. The station is to the south of the old paal and to the west of it.

Mr. Elliott asks that a detailed plan of the area in dispute be now tendered for identification.

10 Mr. Holder objects on the ground that it is not a registered plan and has not been deposited and should be put in through Mr. Wilkins.

Overruled - Plan tendered for identification and marked "D".

Cross-examined by Mr. Elliott

20 The road was north to south. The station is to the south. The station is on the western side of the public road. The plan is wrong. I agree that plantains and cassave and yam cultivation stops about 200 roods west of the road.

It is not true to say that there was nothing beyond this cultivation. There are spice trees to the full depth of Lot 33. The bulldozers have cleared away the spice trees. There were also cocoa trees about 100 roods from the western extremity. Further west for a distance of 200 roods from the road was timber, cedar, crabwood and dalli and mookroo grass.

30 The paal on the eastern extremity of the northern boundary had the initials D.F. on it. The paal was there from 1856. I am quite sure that the paal on the east had a concrete base. The one on the west had no concrete base.

40 I don't know that Hastings, a Sworn Land Surveyor did a survey of the Crown Lands at the back lands. I don't know that the western extremity of the northern boundary of Maria's Lodge was marked by a paal laid down by Hastings. There is a dam that runs along northern boundary of Pln. Maria's Lodge throughout the whole of the estate. The western part of the dam has been broken down by Bulldozers and the eastern part of the dam remains. The trench stops about 100 roods from the

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Evidence of  
first witness  
John Victor.

Cross-  
examination  
- continued.

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first witness  
John Victor.

Cross-  
examination  
- continued.

western extremity of the whole depth. It is not true that the dam stopped half way across the depth of the estate. The height of the dam stopped half way along the depth but the dam continues. I agree that I stopped Mohamed about 60 roods from the road when he started to cut a line through my cultivation.

Another survey was started in 1959 and Mr. Wilkins started from the western extremity and walked east. I don't know that it was not a survey but a clearing of the southern boundary of the estate Pln. Reynestein. The cocoa trees were planted by my grandfather and some by me. My Grandfather, John Graham planted the spice trees. He died in 1914. They were planted long before 1914. I am sure that there was crabwood there. I do not make Income Tax Returns. It is true rice was planted at the western extremity of Maria's Lodge. The rice did not interfere with the Mookroo grass and spice trees. It is not true that there was no cultivation for a distance of 200 roods west of the public road since 1830. There was cultivation there in 1929. From 1920 we started to plant rice by the western boundary and we stopped in 1925. I don't know that the Company have laid down a concrete station about 100 roods east of the public road. My house is on the eastern side of the road and I have always lived there from boyhood. When I said that I worked the whole depth of the estate from time to time I meant that I worked in the backlands for a year or 2 years and then leave it for the bush to get high to let the land become fertile again.

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Re-examination. Re-examined by Mr. Holder:

I would leave the land for about 8 years or so and then give the land a rest. At the time when the acts of trespass took place there was no rice there but the land was there on which I had planted rice. The land could still be used to plant rice.

In October 1959 I swore to an affidavit and at that time the land was dug up and the estate had put this canal on it and there was a mound of dirt on both sides. Sometime in October they had stopped digging the canal but they did not complete the work because they were rolling the dam on my side. They finished digging the canal in October 1959. From April 1959 they would work and stop and start again. When they finished the work in October I did not know what their next move was.

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I now say I know Safdar.

The value of the land on my transport Exhibit "A" was \$400.00 in 1875. At that time the estate had no drainage.

10 In 1950 I did not see any notice of an intended survey posted on a tree near the road. In 1950 I was working in Georgetown with my uncle. I came down to Georgetown in February 1950, to work with my uncle and I used to go back every fortnight for a weekend. My wife and family were always at home. I do not understand the plan marked "D". Since the canal is dug I cannot do any work on the land which the canal occupies, which is an area of about 25 acres. The canal has taken over the trench which was there before, along the northern boundary of Lot 33.

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Plaintiffs' Evidence

No. 14

Evidence of first witness John Victor.  
Re-examination - continued.

No. 15

EVIDENCE OF SECOND WITNESS BALGOBIN RAMESHWAR

BALGOBIN RAMESHWAR sworn states:

20 I am an officer in the Conveyancing Branch of the Deeds Registry. I see certified copies of Transports No.160/28th August 1875 and No.256/27th September 1873. No.160/1875 Exhibit "A". No.256/1873 T.A.M. Exhibit "E". Witness reads description of land in Exhibit "E" I now produce the record of Transports in the Deeds Registry for 1868 No.241-246 in respect of some of the lots other than Lot 33 comprising Maria's Lodge. These transports show that the description of the lot is the same as the description in Exhibit "A" and Exhibit "B" Tendered Admitted and Marked Exhibit "F".

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No. 15

Evidence of 2nd witness Balgobin Rameshwar.  
Examination.

40 I see Lot 8 on Fraser's plan and also see Lot 33 on this plan. The description of the Transport of Lot 8 is the same as the description of the Transport of Lot 33. This is a record of Transports of the year 1927 kept in the office of Deeds Registry and I see Transport 529/1927 and I now look at the description under the heading of Twentiethly: T.A.M. Ex. "G". In the description in Exhibit "G" under twentiethly there is an amendment. It was formerly 6th April, 1836 and it has

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Evidence

No. 15

Evidence of  
2nd witness  
Balgobin  
Rameshwar.

Examination  
- continued.

Cross-  
examination.

been amended to read 8th March, 1836 No. 28.

This is a record of Letters of Decree No.70/1852 kept in the office of the Deeds Registry. This is the Letter of Decree from which all the Transports in respect of the lots of Maria's Lodge shown by the Transports in Exhibits F and E are derived.

Maria's Lodge in this description is described as Maria's Lodge cum annexis. Cum Annexis means with adjoining lands.

Cross-examined by Mr. Elliott:

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From the Record Exhibit "G" there has been a correction in the 1927 Transport. The Officer in the Conveyancing Branch has initialled the correction. He is Mr. Rockcliffe. I would say that he checked on the Transports and found that the transports were conveyed on that date and that is why he substituted March for April. If this is a mistake and the other records are genuine I think that he should change it. The date of the alteration is 7th December, 1959. This is a certified copy of the transport in Exhibit "G" - T.A.M. Exhibit G<sup>2</sup>. He certified Exhibit G<sup>2</sup> on 9/12/59 in accordance with the original transport but not in accordance with the amendment made by him. I have been 4 years as Clerk in the Deeds Registry and 2 years as Assistant Sworn Clerk.

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Mr. Fraser's plan does show the facade of 288 feet, but that does not show the depth as going beyond the public road to the full depth of the estate. I now see Transport No.28/1836 dated 8th March 1836 T.A.M. Exhibit "T". If I were asked to pass transport of lot 33 based on a depth contained in Transport No.160/1875 I don't know whether I would pass it or not.

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No. 16

No. 16

EVIDENCE OF THIRD WITNESS SYDNEY ARTHUR

Evidence of  
3rd witness  
Sydney Arthur.

SYDNEY ARTHUR sworn states:

Examination.

I am a farmer and live at Bagotville, West Bank, Demerara. I know lot 33, Maria's Lodge, West Bank, Demerara, and I know one James Smith who

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leased lot 33 Maria's Lodge in 1920 from one Richard Layne.

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Plaintiffs'  
Evidence

No. 16

Evidence of  
3rd witness  
Sydney Arthur.

Examination  
- continued.

I visited Lot 33, Maria's Lodge last week. From the River to the public road remained the same way as it was in 1920. In 1920 the lot west of the public road was cultivated. On both sides of the public road was cultivated. I have measured the lot 33 in 1920 when I worked there. The width was 24 roods. The northern boundary representing Maria's Lodge from Reynestein was a blind trench and a dam. I mean by that the Northern Boundary of Lot 33. The extent of the dam was 120 roods. I know a paal to be to the river side of Lot 33. That paal was to the northern edge of the dam. This was a wooden paal and there was writing on it but not quite visible. There is a drain dividing Lot 32 from Lot 33 and there is a paal in the centre of that drain. The drain with the paal is on the western side of the public road. The name and initials on the paal are not quite visible. The drain that divides Lot 32 from Lot 33 runs throughout the whole depth of the estate.

On the western extremity of the northern boundary of Lot 33 I saw cultivated land such as cocoa and orange trees etc. From the public road say going a distance of 200 roods there was this cultivation. At the western extremity there is a paal. The cultivation stopped about 200 roods from the western extremity. From the area occupied by the 200 roods there was timber and mookroo grass which we used to cut. We would move in about 600 roods from the public road in order to cut mookroo grass. The last time I saw the paal on the western extremity was in 1952. The first time I saw this paal was before 1920. I was 54 years old and I was back at Pln. Vreeden Styn. The land north of 33 was owned at one time by Cockfield. Up to the 1920's the Cockfields had possession of that land. They worked this land. I never saw the Cockfields working on the dam which separates Lot 33 from their land. They used to work up to the blind trench. This land was always said to belong to Lot 33. Sometime in the 1920's the Cockfields stopped work. He worked the furthest from about 400 roods west of the public road and he never reached the western extremity of the land. The dam ran in a straight line from east to west. When I was 10 years old in 1915 I know Lot 33.

The aunt of the Plaintiff, one Bitey Moore

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Evidence of  
3rd witness  
Sydney Arthur.  
Examination  
- continued.

lived on and occupied the lot. I knew the land as a boy and worked in the bushes. I have been right across the western extremity from Lot 1 - 33. From Lot 1 - 33 paals used to be there. I once met rice that had been just cut on Lot 33. This was on the savannah land on the western extremity. I worked with one Smith on Lot 33 as a Labourer. I know Smith's handwriting. I know this is his handwriting. He is now dead. Smith signed this agreement. Smith was also my grandfather. I used to spend a lot of time in his house. This is an agreement signed by Smith. T.A.M. Exhibit "K". On Lot 33 west of the public road there is at present cultivation for 200 roods. Arrowroot, cocoa, oranges, bananas and tangerines. As far as I know this land was always planted. When I went last week cultivation was less than what it usually was. When I went last week I saw part of the cultivation was destroyed by the canal that was dug by the estate and also by the bulldozing. Part time farming in spot used to be done beyond this area of Lot 33, i.e. plantains and yams used to be grown. I mean by that from time to time other certain areas used to be farmed. Beyond these areas we cut trees and mookroo grass.

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Cross-  
examination.

Cross-examined by Mr. Elliott:

I measured the lot 33 in order to get the measurement for payment. Some of the beds ran north to south so I had to measure them to get paid. I don't know if 288 feet is 24 roods. A blind trench was dug within the northern boundary of Lot 33 from Reynestein. I don't know why it is called blind. The earth from the trench forms a dam. There is a draining trench to the south of Lot 33. There is a paal on the eastern side at the side of the river, a few roods from the river. It is a wooden paal. It had no concrete base. Quite recently I see the estate put a concrete station, but in my early life I am not accustomed to that. I was used to seeing a wooden paal. I don't know why they have put stations. The paal used to be at the east of the public road about 100 roods west of the first eastern paal. I could not decipher letters on this paal. I don't remember seeing a concrete base on this second paal. Mr. Victor would have known about this better than me. I last saw the first paal to the north eastern extremity about 10 years ago. A week ago I did not look for it. The land between the road and the river has cultivation i.e. oranges. The riverside paal is on the

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10 dam and not on the cultivation. The trench south  
of the dam stopped about 250 roods south of the  
western extremity. There was still signs of the  
trench. This was in 1952. I see the plan marked  
"D". The second wooden paal to the east is by the  
Public road. The concrete station is to the north  
and west of the wooden paal. The easternmost  
wooden paal was to the North of the dam. The dam  
was to the north of the trench. The blind trench  
has now been turned into a canal, but the canal  
after giving away to dam for awhile cuts into the  
dam. The canal cuts into the trench before you  
pass the cultivation. The canal turns about 200  
roods to the south west after passing the cultivated  
area. I would not doubt that the trench south of  
the dam comes to an end about 200 roods from the  
western extremity. Rice was planted below a reef  
less than 200 roods of the western boundary. The  
reef was to the east of the rice where we cut mook-  
20 roo. The mookroo grows wild. The timber also  
grows wild. I don't know who planted the rice. I  
last saw rice there in the 1950's. This was the  
first time and last time I saw rice there. It was  
in 1952 when I first saw the concrete stations, I  
saw a wooden paal on the extreme western end. I  
cannot say if there were any markings on it. I  
don't know if there were 2 paals between 19 & 20 at  
the back. I don't know if there is a reserve  
between lots 19-20. I know that there were paals  
30 aback of Lot 33 going to Lot 1 all along I cannot  
say if you walked along the western boundary of Lot  
1 - 33 how many paals you would pass. I don't know  
how many paals I might have seen. There was a paal  
between lot 32 & 33 a few roods west of the public  
road. This paal fell in the middle of a drain.  
There are spice trees on the dam and cocoa trees in  
the trench south of the dam. There were fruit  
trees further west of the cultivated area, 200 roods  
from the public road. I saw these from the dam  
40 passing. I did not go to investigate. There was a  
track along the dam that ran east to west along the  
northern boundary of lot 33. There were spice  
trees on the dam. I cut crabwood on the land, but  
I cannot say how old the trees were. I cannot give  
you an estimate of the value of 2 acres of yam.

Re-examined by Mr. Holder:

50 The reef on lot 33 is known as Flat Hill.  
Mookroo and crabwood grow on Lot 33. I have seen  
paals situate in a line in other parts of the  
colony. I have never planted 1 whole area of yams.

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Evidence of  
3rd witness  
Sydney Arthur.

Cross-  
examination  
- continued.

Re-examination.

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No. 17

EVIDENCE OF FOURTH WITNESS SAMUEL SCOTT

Plaintiffs'  
Evidence

No. 17

Evidence of  
4th witness  
Samuel Scott.  
Examination.

SAMUEL SCOTT sworn states:

I worked as a surveyor's assistant with Mr. R.A. Wilkins, Surveyor in 1950. Mr. R.A. Wilkins was surveying on Maria's Lodge dam. During the survey there was a paal at the western extremity of Lot 33. The mark on the paal was not visible. I learnt something in connection with the paal. Mr. Wilkins put a paal immediately next to the paal on the western extremity. I cannot remember what side of this paal Mr. Wilkins put down his paal. The survey took place on Maria's Lodge dam. It starts from the river and goes in an east to west direction across the land. I regarded this dam as the Northern boundary of lot 33. I have repeatedly walked on this dam. At the Demerara River end there was a paal there. That paal was marked D.F. There was a third paal at the northern edge of the dam on the eastern side of the public road. This paal was marked D.F. There 3 paals were all in line right through the 750 roods depth of the estate. I lived and worked on Lot 32 from a boy of 16 up to now and I am now 43 years. I have traversed all the lots from 1 - 33. At the western extremity there is a dam from 1 - 33 but when you reach 19 the dam dies away and gets lower. This dam runs from north to south. There used to be paals along this dam at the western extremity that ran north to south. The land north of Lot 33 used to be owned by Cockfield Brothers before it became the property of the Defendant Company. I worked with Mr. Mohamed in 1958 as a chain man. I had to clear a path where we intended to lay down a line and after a reasonable amount of clearing we then lay down a steel tape or chain. In 1958 Mohamed began from the dam by the public road going west. This dam was the dam I regarded as the northern boundary of Lot 33. We walked west for some distance about 60 roods and then we turned into the cultivation. We started to cut orange trees and John Victor came up and stopped us. I know one Alexy Murray, who was one of the heirs of Lot 32 where I worked. All the proprietors of the Lots 1 - 33 worked west of the public road. I have and do work west of the public road on Lot 32. I have worked at the western extremity of Lot 32. I have seen other persons working on the western extremity of the various lots. When I went to

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lot 32 at the age of 16 I found John Victor and other residents on Lot 33. Time and again they would work a few acres 200 roods or 100 roods away from the public road. Then it would be abandoned and they would go further and further west and then they would come back again.

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Plaintiffs'  
Evidence

Cross-examined by Mr. Elliott:

No. 17

10 I am a farmer. Lot 33 is owned by Miss Alexy Murray. From time to time I rent 1, 2 or 3 acres of land from Miss Murray. At present I am renting 3 acres from Miss Murray and I pay \$15.00 per annum rent i.e. \$5.00 per acre. I grow cassava, plantains, yams and eddoes. I would value land growing these provisions at \$550 per acre. I would value the crop grown on one acre at \$500 - \$550. You have to wait for one year for this. I cannot value the land per acre as I have never purchased land. I don't agree that \$50.00 would be a fair price for the 3 acres.

20 The northern boundary of Lot 33 i.e. the dam is 24 roods away from the northern boundary of Lot 32. It is also 24 roods along from the western extremity. This is what I know. I see plan marked R.A.W.2. I don't understand this plan. I don't know if the Defendant Company runs this canal that lot 32 would be affected. I am not assisting Plaintiff in this action. I would not be able to point out the paal on the plan marked D as I don't understand it.

Evidence of  
4th witness  
Samuel Scott.

Examination  
- continued.

Cross-  
examination.

30 Witness is shown the public road on the plan and also the Demerara River and the dam but refuses to answer the question and to point out the paals on the plan. I don't know if J. Victor knows about the paals. It may be 750 roods is nearly 2 miles. The 3 paals were in a line according to the direction of the Surveyor, Mr. Wilkins. He directed us to go towards the paals. Mr. Wilkins was in a position to see these 3 paals. Mr. Wilkins directed operations from the road. He directed us to cut a line to the riverside and he said that we would find a paal there.

40 This line was cut east to west. There was linesman named Austin there with a flag. Wilkins told us to follow the direction of Austin. It was a direction East to West. I don't know if any person had gone ahead with a cord to locate the riverside paal and join it up with the roadside paal in order to join it up and cut a line. The line was cut from paal to paal but I knew that the riverside paal is there. I do know what a

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Evidence

No. 17

Evidence of  
4th witness  
Samuel Scott.

Cross-  
examination

station is. No station was put down by the riverside. There was a station put down on the western side of the public road. Mr. Wilkins put down another paal by the original riverside paal. There is no station to the riverside. Mr. Wilkins put down a paal to the side of the riverside paal and to the north. I can't say if the paals at the Riverside and roadside had concrete bases. On the paal to the east of the road is D.F. The line to the west of the public road was cut first and the line to the east of the public road was cut. We began at the western edge of the public road going west. We did eventually lay down a line after removing bushes and twigs. There were cocoa trees and spice trees on the dam. The dam about half way did go down lower but not to the level of the land. We cut a way right through to the western boundary. There are pairs of paals north of the boundary between Lots 19 and 20. I went to Lot 33 and measured the facade in order to show the owner of Lot 33 that the northern boundary of Lot 32 was in the right place. Lots 30-31-32 comprised 16 roods. I don't know the facade of Lots 28 & 29. The facade of Lots 30-31-32 are the same on the western boundary as on the eastern boundary. The facade of all the lots is the same on the western boundary as on the eastern boundary. I know all the lots 1 - 33 except lot 18 have the same facade on the western and eastern extremity. I don't know about Lot 18. I have not been on Lot 18.

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In 1958 we were about 60 roods from the public road in the cultivation when J. Victor came and stopped us. In 1958 we started to cut a line from the northern side of the dam. When we got to the centre of the dam we were about 30 roods off the public road. When we were 60 roods from the road we were south of the dam and in the cultivation. A couple of trees had been trimmed and cut when Victor stopped us.

Re-examination. Re-examined by Mr. Holder:

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Mr. Wilkins did not give me any specific directions. He directed us to follow Austin and we did so. The specific directions were given to Austin. I have seen paals separating the northern boundary of one lot from the southern boundary of the other lot. We worked on the northern edge of the dam. I was directed to measure lot 33 by the owner of Lot 32.

No. 18

EVIDENCE OF FIFTH WITNESS ALEXIE MURRAYALEXIE MURRAY sworn states:

I am 62 years old and I live at Rahaman's Park, E.B.D. I am a farmer. I farm at Maria's Lodge, W.B.D. I have been farming at Maria's Lodge since I was a child of 20 years. My lots were lot 31 and 32 and they belonged to me. I got them from my grandparents. I have transports for these two lots. Lot 32 is north of 31. Graham had land next to Lot 32 which is lot 33. After Lot 33 is the estate. A dam divides lot 33 from the estate. I know that there is a paal on the dam. It was there when I was a girl. The paal is south of the dam. The depth of the lots is 750 roods. I have known John Graham to be on Lot 33 from the time I went there. The dam dividing lot 33 from W.B.D. had many fruit trees. Before last year no person tried to cut across this dam separating Lot 33 from the Estate land.

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20 Cross-examined by Mr. Elliott:

I went to Lot 32 when I was 5 years old and lived there until I was 20. After I reached the age of 20 I went up the Demerara River. I went back to Lot 32 in 1953. Since 1953 I have walked up the dam to cut mookroo grass. There were fruit trees on the dam about 100 roods back from the public road. There were more fruit trees up to the western extremity of the land but not so plentiful.

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Sometime last year I asked Scott to measure the width of Lot 33. I asked him to do this to get a straight line from Lot 32. I rented some land to people and they said it was not right i.e. it encroached on lot 33 and that is why I got it measured. One Cox to whom I was renting the land raised the objection. The land was 16 roods from the western boundary and I was renting him 2 acres at \$5.00 per acre. He was going to grow plantains and cassava and yams. Cox had cut a line on Lot 33 and I told him that was not my land and that is why I got Scott to measure Lot 33. The canal is south of the dam. I am not frightened that if the estate is right and successfully claimed the land where the canal is that J. Victor would claim some of my land. The land I was renting to Cox was over 200 roods from the public road. I now say that the width of my land at the western boundary is 16 roods.

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Evidence

No. 18

Evidence of  
5th witness  
Alexie Murray.

Examination.

Cross-  
examination.

In the Supreme  
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At this stage Mr. Burnham lays over death certificate of John Graham T.A.M. EXhibit "L".

Plaintiffs'  
Evidence

No. 18

Mr. Burnham closes case Plaintiff subject to calling of an expert witness to show estimate of damage with the consent of Counsel for Defence. Counsel for Defence consents to Plaintiffs' case being closed subject to calling of expert evidence.

Evidence of  
5th witness  
Alexie Murray.  
Cross-  
examination  
- continued

Defendants'  
Evidence

No. 19

No. 19

EVIDENCE OF FIRST WITNESS RAYMOND AUGUSTINE WILKINS

RAYMOND AUGUSTINE WILKINS sworn states:

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Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.  
Examination.

I live at Schoonord W.B.D. I am a Sworn Land Surveyor and a Director of Bookers Sugar Estates Ltd. Bookers Sugar Estates Ltd., are the owners of West Bank Estates Ltd., and responsible for its management. Bookers Sugar Estates own other estates in the colony and control other subsidiary companies which own estates.

In 1949 I was engaged in a survey on the West Bank of Demerara River. That survey was part of a general cadastral survey of Wales Estate which is owned by West Bank Estate Ltd. A cadastral survey is a survey on a large scale. At the time that general survey was being carried out the lease to an area of Crown lands held by West Bank Estates Ltd., at the rear of the estates of Potosi Free-and-Easy Hermitage, Reynestein and Maria's Lodge and Vreeden Styn expired and before the lease could be renewed a new survey was necessary. The Commissioner of Lands and Mines wrote to Bookers McConnell & Co. Ltd., who were the owners at that time of West Bank Estates Ltd., and as a result I carried out a survey of the Crown Lands.

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I now produce a copy of the survey of Crown Lands made by me. A certified copy is now being prepared and this is a copy of my copy which I retained in my office. The original copy was deposited in the Lands and Mines Department. This is the copy of the plan.



Mr. Burnham agrees that this copy of the plan should be admissible de bene esse T.A.M. Ex. M.

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Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Examination  
- continued.

One of the conditions upon which I carried out the survey was that my Field Books in connection with the survey would be submitted to the Commissioner of Lands and Mines. We found some of the people who would be effected by the survey and after talking to them they agreed orally to waive notice in writing of an intended survey. It was very difficult to find others. We found nobody on Lot 33 Maria's Lodge. At that time I had no knowledge of Lot 33 other than what is shown on Fraser's plan of 1856. I did not go specifically on to Lot 33 to look for anyone, but I walked north - south on the public road looking for people on the various lots who might be affected. The 3 people who waived notice of the intended survey were Safdar, M.E.I., G. Hodge and Neptune. We also put notice up on a tree in Maria's Lodge on the boundary with Vreeden Styne and Maria's Lodge. The area had been surveyed previously by Crown Land Surveyor in 1921 known as M.P. Hastings. Two other surveyors, R.S. Kaufmann in 1932 and H.P. Christiani in 1911. These 2 surveys had some bearing on the work that I was going to do. A Plan by Klautky dated 1911 also had bearing on this survey. I found the northern boundary of Maria' Lodge and it was marked by wooden paals marked M.P.H. and there were 2 such paals. I have shown them in the plan marked R.A.W.2. From my calculations they were exactly where I expected to find them. I drove another paal immediately adjacent to those marked R.W. I worked from Hermitage towards Maria's Lodge. Hermitage is to the North of Reynestein. I fixed 2 Hastings paals on the south boundary of Hermitage but when I worked south towards the northern boundary of Maria's Lodge I found no other paal until I reached the other 2 paals I have just described. The Hastings paal on the southern boundary of Hermitage was exactly where I expected to find it by my calculations. There again I drove wooden paals adjacent to Hastings Paals with my own brand R.A.W. on them.

Maria's Lodge does go deeper into the Crown Lands than Reynestein. The 2 Hastings paals on the northern boundary of Maria's Lodge are 715 ft. apart. I then proceeded south from the most westerly paal and I found another paal by Hastings on the northern boundary of Vreeden Styn. It agreed with my calculations and again I drove my own paal beside it. I then turned west and found an iron paal

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Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Examination  
- continued.

branded E.K. approximately 250 feet west of M.P. Hastings paal. I agreed with that paal and I believe I drove my own paal beside it. I then went south along the western boundary of Vreeden Styn and there I found another paal branded E.K. (E. Klautky) and I drove my paal beside it. These 2 iron paals marked E.K. were substantial.

Having completed the survey of the Crown land my Field Books and computations and traverses were submitted to the Commissioner of Lands and Mines for approval. After approval was given my plan was accepted by Department of Lands and Mines. The paals of M.P. Hastings were very thin and you could hardly recognise them. We continued with our cadastral survey of Wales Estate and the time came to carry out work at Free-and-Easy and Hermitage and Reynestein, Maria's Lodge and Vreeden Styn. I had before me the Transport under which West Bank Estates Ltd., had Reynestein and Vreeden Styn. This is the Transport of 1927. Exhibit 'N'. I saw the description which mentioned Fraser's plan and I obtained a copy of Fraser's plan from the Lands and Mines Department. I was puzzled because I could see from Fraser's plan that there were apparently no lots west of the public road and the Transport gave me no guidance on this point. I realised that more research was needed but as it was not my purpose here to define the boundary but to prepare a plan of the physical features of the land, I decided to run a traverse up the dam on the western side of the public road which has been referred to in this court by the Plaintiffs to be the northern boundary of Lot 33, which I considered to be well within the land owned by West Bank Estates Ltd., even excluding the exception. In any case I did not feel that the exception referred to the land on the western side of the public road even though part of it was under cultivation. There were patches of cultivation along the river Estates between Free-and-Easy and Vreeden Styn on the western side of the public road. The line I cut was on the dam. I cannot recall any cultivation on the dam. The dam provided a convenient place to cut the line because the land was firmer and it was really close to what I thought would be the boundary. The bush on the dam varied between thick and thin bush. We chose the dam because it was drier. The traverse was run in order to pick up the physical details of the land and it was part of the framework for our overall survey. First the line was cleared in the most

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convenient manner and then the concrete stations were placed in the ground and after that had been done the distance between the chains were accurately measured and the bearings of the lines so formed were determined by the use of the theodolite. I put about 5 or 6 stations along the dam. The stations would not necessarily be in a straight line. As we went along the dam going west from the public road, there was cultivation on my left i.e. south and ground provisions and fruit trees and this extended for about 2,000 feet i.e. about 200 roods. On my right there was bush and beyond the cultivation on my left there was bush. The bush on my right and left were similar. After cultivation on my left I saw Cedar, dalli and meringue and many sorts of palms. I did not see crabwood. I can't remember seeing spice trees and cocoa trees. After 450 roods the dam practically disappeared into the swamp so much so that water was up to my hips. From there on I did not see any trace of the dam at all. On that occasion I continued to the western extremity and I looked for paals there. A line was also cut from the public road eastward to the river and north of the remains of an old outlet. There was a wooden paal quite close to the road and I was unable to recognise any mark on it. I can't say if it had a concrete base. I did not traverse this paal nor did I give instructions to any person to remove it. We put a concrete station on the western side of the road and slightly to the north of the wooden paal. I then went away and plotted a plan based on these measurements and then I worked out the calculations and I came to the conclusion that if the exception mentioned in the Transport was intended to refer to a strip of land 100 roods wide for the full depth of the estate then the dam along which we had worked would be most certainly to the north of such a boundary. We then drove a post in the ground at 100 roods north of the Maria's Lodge boundary. We took the paal by Hastings as the northern boundary of Maria's Lodge. I marked on this post P2. I did not then cut a line from P2 to the wooden paal which I found east of the public road. This would have been the definition of a boundary and my aim was not to define the boundaries but to continue my cadastral survey. It would have been a difficult and expensive task to cut a line along this boundary as the extreme west was swampy savannah and as one went east the bush became fairly heavy and such a line would have been of no value to us.

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No. 19

Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Examination  
- continued.

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Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Examination  
- continued.

I did not see John Victor in 1950 and no person stopped me from working. In 1957 there was a decision to cultivate Reynestein with cane and work was started on the northern part of Reynestein. Early in 1958 I was asked by the Estate where the boundary was as they wanted to be certain so I instructed Mr. Mohamed, a Sworn Land Surveyor to define the boundary. Mr. Mohamed went out to do the survey and came back and told me something. As a result of what he told me I visited the site and I saw that in defining the northern boundary of Lot 33 it would be necessary to cut a line through the cultivation and rather than do this I instructed the estate to dig their trench to the north of the dam adjacent to their cultivation until they got past it. When I went there and I found the cultivation and the fruit trees established, my intentions were not to disturb them. I was then speaking as a Director of the Company and not a surveyor.

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Early in April 1959 I asked Miller to clear a line from through the bush starting on the western boundary from P.2 or a line which would have connected with the wooden paal near to the public road and his instructions were to stop as soon as he reached Victor's cultivation. Miller did this: The estate then dug the canal along the northern side of the cultivation and when they reached the end of the cultivation they turned south and they went across the ruins of the old dam and continued west keeping north of the line which had been chained. As a result of the measurement I made in 1950 I made a sketch marked D. T.A.M. Exhibit "D".

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I produce a certified copy of M.P. Hastings plan dated 24th June, 1921. T.A.M. Exhibit "N". I also produce a certified copy of a plan dated 13th September, 1957 by R. Wilkins and deposited on that date T.A.M. Exhibit "M". I see Fraser's plan and when one scales the measurements on this plan using the scale drawn on the plan it is not possible to make the scale measurements agree with the measurements given at the side of the plan. There is a list on the side of the plan that gives the facades of the lots. When one takes the total facade of Maria's Lodge by scaling it from the plan it is not possible to get the same measurement as when one takes the total of the facades given on the written list of the plan.

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In making this comparison one has to make

allowance for the reserves shown on the plan but not given on the list of facades.

- 1 - 19 is in Maria's Lodge
- 20 - 33 is in Reynestein
- 20 - 33 do add up to 100 roods.

10 The scale measurement is 20 or 30 feet more than the 100 roods which the facades given of 20-33 total. If the lines of lots 20-33 on Fraser's plan had been carried through to the whole depth of the estate they would not have terminated in line with terminations shown for Maria's Lodge. They would have been further east according to Exhibit "M" and according to Hastings' plan Exhibit "N". This is a plan drawn by M.P.S. Hastings in 1921 T.A.M. Exhibit "N". Exhibit "N" shows western boundary of Reynestein. If the intention was to define the northern and western boundaries of the 100 roods of Reynestein by the full depth then it would have been necessary for Fraser to have placed boundary marks or paals to be shown on the plan, and in order to place these marks it would have been necessary for him to cut lines and traverse the land. In the absence of any lines or boundary marks shown on the plan I can only conclude that it was not the intention to define the northern and western boundaries.

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30 This is a sketch showing the effect of attempting to combine Fraser's plan with Hastings plan and my own survey in 1950, Exhibit "O". The western boundary in Hastings Plan of Maria's Lodge and Vreeden Styn coincide with a previous survey of Vreeden Styn by E. Klauty as shown by paals marked E.K. Hastings paal coincided with the paal of E.K. There is only one paal marked E.K. which is on the north western corner of the northern boundary of Vreeden Styn. The broken red line on this plan indicates the southern boundary of Reynestein after the Transport of 1836 of 100 roods facade to the proprietors of Maria's Lodge. The 100 roods north of the Northern boundary of Maria's Lodge I measured along the western boundary of Reynestein previously defined by Hastings' plan. This is almost at right angles to the northern boundary of Maria's Lodge. If one measures the 100 roods along the line parallel to the public road the 100 rood mark would fall south of the broken red line: i.e. .... I measured in the manner more favourable to the lots. In the absence of objections to the survey which would be entered on the plan if no

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Defendants' Evidence

No. 19

Evidence of 1st witness Raymond Augustine Wilkins

Examination - continued.

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Defendants'  
Evidence

No. 19

Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Examination.  
- continued.

objections were entered one must assume that the plan was acceptable. We did find what we thought might have been a paal and the line shown on my sketch Exhibit "O" is a line connecting that wooden paal to a post on the western boundary 100 roods north of the northern boundary of Maria's Lodge. That wooden paal is 20 or 30 feet north of the northern boundary of Lot 33 as scaled by Fraser's plan. In the case of Hastings my calculations took me to within a foot of this paal.

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Although I was working in a swamp and bush, my calculations brought me within a foot of Hastings paal in which case we would expect a higher degree of accuracy along the road. The wooden paal is 100 roods and 215 feet north of the northern boundary of Maria's Lodge as determined by Hastings and me. Hastings paal on the south western extremity of Reynestein was also confirmed by the fact that it is 420 roods south of the northern boundary of Reynestein as referred to in the Transport of the Defendant Company (1927). When the 420 roods is projected along the public road from the northern boundary of Reynestein in a southerly direction it will give the northern boundary of Maria's Lodge as referred to previously. I started off by accepting that the southern boundary of Maria's Lodge as shown by Fraser was the northern boundary of Vreeden Styn and that was confirmed by the presence of the old public road and the drains. This was confirmed by E.K's paal which was on the ground. Using the scale drawn on Fraser's plan I determined the facade of Maria's Lodge and using the measurement I drew the northern boundary of Maria's Lodge as shown on Exhibit "O" by a blue line. Using the same method by scaling the plan the western boundary was determined as shown on Exhibit "O" by a blue line. This line is approximately 20 feet west of the western boundary of Maria's Lodge as shown on a plan by Hastings and myself.

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The northern boundary on Fraser's plan as scaled at the western extremity of Maria's Lodge is approximately 55 feet north of Hastings and my paals. The distance between our paals and Fraser's northern boundary of Maria's Lodge at the western extremity of Reynestein is about 60 feet. The wooden paal at the side of public road is 100 roods and 35 feet north of the northern boundary of Maria's Lodge drawn as scaled from Fraser's plan. Accepting Fraser's plan it still shows an excess of 35 feet in favour of the plaintiffs.

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If instead of scaling Fraser's plan one adds up the facades shown in the table for Lots 20 - 33 and measures this distance from the northern boundary of Maria's Lodge fixed by Fraser the northern boundary of lot 33 would be about 40 feet south of the wooden paal.

10 The northern boundary of lot 33 on the western extremity was claimed by the plaintiffs to be an extension of the dam is 365 feet north of the point I have determined as being 100 roods north of Maria's Lodge. The wooden paal at the side of the Public road had no mark legible on it and it may have been or may not have been a paal. I saw no paal further east of the wooden paal and dam by the riverside. I am saying that if there were paals laid down by Fraser fixing the northern boundary of lot 33 they would be found to the south of the broken red line on Exhibit "O" and to the south of the wooden paal on the road, which would be 100  
20 roods north of Maria's Lodge.

Cross-examined by Mr. Burnham

I am a Director of Bookers Sugar Estates Ltd., and West Bank Estates Ltd. are a subsidiary of Bookers Sugar Estates. I have been a Sworn Land Surveyor for 11 years i.e. the whole period of my time in B.G. In 1956 I became Director of Bookers Sugar Estates Ltd.

30 The cadastral survey was completed in 1951 and it was made by me. It was made in 1949. Cadastral survey is generally accepted as meaning a survey drawn to a large scale.

40 I made another survey in 1951 in which I submitted Exhibit "M". The date on which it was deposited should appear on a stamp on the plan. It must have been deposited otherwise I could not have got a certified copy for the Department of Lands and mines. The date of deposit should be sometime subsequent to 13.9.51. I made the survey for the purpose of receiving a Crown lease. When the survey was started Bookers Sugar Estates Ltd., did not exist and I was Estates' Surveyor in the employ of Bookers, McConnell & Co. Ltd., who at the time owned West Bank Estates Ltd. Bookers McConnell & Co. Ltd. was subsequently split up into a number of subsidiary companies including Bookers Sugar Estates Ltd. Bookers McConnell & Co. Ltd., still exists as a

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Defendants'  
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Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Examination  
- continued.

Cross-  
examination.

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Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Cross-  
examination  
- continued.

parent company. When I made the survey based on Exhibit "M" my principal interest was the delineation of a parcel of Crown land to be leased to my principals. That parcel contained 2061.33 acres of land.

Messrs. Safdar, Hodge and Neptune agreed to waive notice of survey under a section of the Land Surveyor's Ordinance. I did not know then that a part of the area I so surveyed was adjacent to Lot 33. I know now that this is so if one accepts that Lot 33 extends to the western boundary of Reynestien. I have seen description on Fraser's Plan. 10

I do not admit that after reading the description, Exhibit "A" that Lot 33 formed an area of land abutting the area that I was surveying.

I found a contradiction.

I understand a whole depth of estate means whole depth. The whole depth in Exhibit "A" refers to Maria's Lodge. I have not known of plans where the full depth of estate is not shown on the plan. I do not know of any plans where the lots extend to the full depth of the estate but are not shown as so extending. If the surveyor has not traversed the whole depth then he is in no position to define the depth. There is no mention of Reynestien on Exhibit "A". 20

I am saying, however, that the whole depth of the estate would mean the whole depth of Maria's Lodge but when we go on to read as laid down on a diagram by the Sworn Land Surveyor, D. Fraser we see that Fraser's diagram shows Lot 33 as being in Reynestien so the western boundary of Lot 33 can only be on Fraser's plan which is in Reynestien. I therefore cannot decide the western boundary of Lot 33 by reading the Transport. 30

The western boundary of Lot 33 can only be considered as being the western boundary of Reynestien if one accepts the wording of the Transport given as Pln. Maria's Lodge to include Reynestien. I now know that in 1836 a portion of Reynestien was transported to proprietors of Maria's Lodge. 40

1836 if before 1856.

So in 1856 the southernmost portion of Reynestien was held by the proprietors of Maria's Lodge.



I would continue to refer to the whole depth of Maria's Lodge as the whole depth of Maria's Lodge and whole depth of Reynestein as the whole depth of Reynestein. Reynestein has a depth of 750 roods; Maria's Lodge also has a depth of 750 roods. The western extremity of Reynestein on Hastings plan is shown some distance east of the western extremity of Maria's Lodge and i.e. because the public road and river which constitutes the facades moves east. I examined the river at that point. I did check titles in so far as the northernmost section of Maria's Lodge is concerned in order to see upon whom I must give notice. Safdar may be an employee of Maria's Lodge.

The law does not require me to check everybody's title. I might have seen Graham's name. I did not check transports in Exhibit "F".

I nailed up a notice on a tree on the boundary between Lots 19 and 20. Before the survey in 1950 it was impossible to walk from one end of the public road to the other, the public road could only be seen as a track through the overgrown bush. It is necessary to get a boat to cross over.

I sent out people to look for people in the area and the only people I could find were Hodge, Neptune and Safdar. They were not on Lot 20-33.

The information on Exhibit "O" was collected between 1949 and 1951. Subsequent to 1951 I visited the disputed area in 1959. I saw the cultivation the eastern boundary adjacent to the public road in 1951 after I had completed the survey of the Crown Lands adjacent to western boundary of Maria's Lodge. The Pole P2 marking the 100 roods north of the northern boundary of Maria's Lodge was driven in in 1950. I marked it because I felt I might have to go back to it.

On the basis of what I do know now I would say that the 100 roods excepted from the 1927 Transport included Lot 33. When you see Fraser's plan he does not show any depth west of the public road so I could say that the Lot 33 was intended to extend the full depth of the estate and from that I could not say that it is to be included in the 100 roods that was to be excepted.

The 1927 Transport Exhibit "G" has no reference

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Defendants'  
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Evidence of  
1st witness  
Raymond  
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Cross-  
examination  
- continued.

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No. 19

Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Cross-  
examination  
- continued.

to Hastings Plan. It does not refer to a plan. Hastings plan was for the purpose of giving a lease of Crown Land to the predecessor in title to the Defendant Company. I would not say that Hastings plan was more concerned with boundaries with Crown Lands and estates than with boundaries between estates. I would say that they would hold equal importance. Hastings does not show the facade of Reynestein. He shows the width of the west. I would not expect it to be the same as the east. I believe the northern and southern boundaries of Reynestein to be parallel roughly. 5,030 feet would be approximately 420 roods. I agree that one could read that when the Defendant Company got transport of Reynestein it only had 320 roods in width. I would not say so that in 1921 Mr. Hastings showing the width of Reynestein as 5,030 feet was not right because it had lost 1,200 feet or 100 roods. It may be that he had the same difficulty of interpreting as I did. He must have fixed the western extremity on the assumption that 100 roods had not yet come off.

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Hastings was defining the western boundary of Reynestein and Reynestein was still Reynestein in spite of the 100 roods excepted and the wording of 1927 Transport. Hastings plan is relevant in that it defined the south western corner of Reynestein.

Since Hastings shows the western width of Reynestein to be 5,030 feet it means that the southern boundary of Reynestein shown by him is south of the northern boundary of Lot 33.

30

Yes.

When one looks at Transport Exhibit "A" the 100 roods it could be assumed as being described as Maria's Lodge. I see Letters of Decree Exhibit "H" (1854).

The particular boundary which Hastings shows between Reynestein and the area transported to Maria's Lodge is not shown as it did not have any direct bearing on his survey. From my experience the continued presence of the trench beyond the  $\frac{1}{2}$  way mark in a westerly direction would indicate the previous existence of a dam.

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The information in Exhibit "O" was obtained

when I made a private survey in 1950. We were then doing a survey of Wales Estates. The survey had nothing to do with defining boundaries. When I was doing this survey the information from which I transposed to Exhibit "O", I was not interested in defining the boundaries within the meaning of Exhibit "O" in 31/12/59. The information which I transposed in Exhibit "O" was obtained from Field Books, Traverse co-ordinates. A lot of it was prepared by me and some by my subordinates but checked by me.

10

The cultivation stopped 200 roods west of the public road. The dam which the plaintiffs regarded as the northern boundary of Lot 33 was an old dam.

The mookroo bush occurs about 100 roods from the western extremity. The mookroo bush is scattered and occurs all over the estates. In 1959 I walked along the dam and when I passed the end of Victor's cultivation I then turned south slightly behind the cultivation and continued westward.

20

I first saw transport No. 529/1927 dealing with my principal's interest in 1950. I saw this transport probably prior to Exhibit "M". I noted that 100 roods has been excepted which had been conveyed to proprietors of Pln. Maria's Lodge. I put in a greenheart post marked P2 on the western boundary in 1950. I did this because I knew if I came back I would not have to resurvey the boundary. I anticipated that some day it would be my task to establish the boundary between the Estates river. To my mind it may or may not have established the southern boundaries of Reynestein and Maria's Lodge. I have reasons to believe now after research that it does establish this boundary. It would have saved me a lot of time when I came to establish the western boundaries of these estates. I was working on the west and that is why I put the post on the west. I first did work on the east in 1950; I can't say that it was subsequent to putting the post on the west.

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Para. (3) of my affidavit of 3/12/59 reads as follows: "All the land shown on the said plan extending west of the said Public Road from Lot 20 to 33 inclusive by the whole depth of the estate is owned by the Defendant Company under Transport No. 529 of 1927".

I swore to this because I had not yet carried

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Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Cross-  
examination  
- continued.

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examination  
- continued.

out research which has since been carried out. When I swore to this I was a Sworn Land Surveyor of 11 years and a director of one of the biggest companies in B.G. When I swore to this I had already made the sketch R.A.W.2 coloured red in R.A.W.2. The portion in R.A.W.2 is to show where Defendant Company had done work and the area of which there appeared to be a dispute.

The block of land from P2 going south to the northern boundary of Maria's Lodge was not in dispute between Defendant Company and the Plaintiffs. I swore that all the land west of the public road from 20-33 belonged to my principals because of Fraser's plan and wording of 1927 Transport. I was still not sure that that block of land was not owned by the Defendant Company. When I swore to the affidavit I did not have time for further research I had to base my application on the knowledge available to me then.

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With reference to paragraph 5 I had no way of knowing how long the plaintiffs had occupied land west of the road prior to 1950.

20

Why did you swear particularly when you were not aware of the date of the occupation.

I would not say that 1,900 feet is about 200 roods. I would say that 1,900 feet is 200 roods in the context of 750 roods and the manner in which the questions were asked me.

In para. 6 when I swore "The land to which the plaintiffs refer to". I was referring to the wooden paal on the northern boundary of Lot 33 east of the road.

30

The line drawn from the wooden paal to station P2 appears to be inclined because the facade on the east is greater than 100 roods. When I looked at Fraser's plan I came to the conclusion that Lots 20-33 comprised of 100 roods. I did measure it myself on the plan and found it measured 100 roods.

I did not define the north boundary of Maria's Lodge on the ground. I did not look for and did not find a paal on the eastern side of the northern boundary of Maria's Lodge. The survey that Mohamed did was to define the northern boundary of the 100 roods. This survey was started but not completed.

40

This was to be the first survey to define the boundary within the southern boundary of Reynestein and the 100 roods. To properly define a northern or southern boundary there must be at least two points - one at the east and one at the west in this specific case. The northern and southern boundaries of all the Lots 20-33 on Fraser's plan are parallel. I have shown the 100 roods to the east only on paper.

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10           Mohamed was asked to define the southern boundary of Reynestein because we were aware of Victor's cultivation and we wished to establish where he was.

Evidence of  
1st witness  
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Wilkins.

          Exhibit "O" was prepared from my data and I checked it afterwards. The trench that the plaintiffs claimed was on the northern boundary of Lot 33. Pln. Maria's Lodge came to an end 1,600 feet approximately from the western boundary. I first saw this trench in 1950. That trench when I saw it in 1950 was not a freshly dug trench according to my contention that trench was within the southern boundary of Reynestein. That trench served no purpose to my principal's estate.

Cross-  
examination  
- continued.

          I do know of many cases where boundaries are defined by trenches and many cases where they are not.

          Dams are the usual result of digging trenches and sometimes they define boundaries. It would be accurate to say that they frequently define boundaries.

          Possibly in 1949 it was the first time I went to this area. Early in 1959 I knew of an objection to the work that was going on in Reynestein. When Victor spoke to me a line had been cut in the land in part shaded red. Victor did not object to me but he objected to others. It may or may not be true that after objections work stopped; I would not know. When I put up a notice on a tree in Lots 19 and 20 in 1950 I was aware that these lots did not belong to my principals. I knew then that Maria's Lodge did not belong to my principals.

          I did find paals by Christiani and Kaufmann. I do not agree that the paals of H.P.C., M.P.H., E.K., R.S.K., were all paals in relation to the survey of Crown lands to the west of the privately

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owned estates. E.K. was in relation to the definition of Vreedden Styn. It was supposed to mark the north western corner of Vreed Styn.

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Mohamed started his survey and when he had gone some distance he ran into Victor's cultivation. He realised that if he had gone on he would have damaged Victor's cultivation which we have no desire to do and that is why he came back and reported to me.

Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

The stations that were put down along the Maria's Lodge dam were put down in course of the cadastral survey. In Exhibit "O" they are 313-318.

10

Cross-  
examination  
- continued.

The Crown Land Survey was to define the area of Crown Lands leased to West Bank Estates Ltd.

The iron paal J.T.S. is shown in R.A.W.2.

I don't know the abandoned Estate of St. Eustatius. I contemplated at the time of my Crown Lands survey after I had seen the relevant documents the possibility of the 100 roods going to the whole depth. In doing my Crown Land survey I accepted the correctness of Hastings Plan so far as the north to south dimensions of Maria's Lodge at the western extremity were concerned. My acceptance of Hastings Plan was borne out by the physical features I found on the land i.e. remains of dams and trenches. They were shown by Hastings plan and I also found his paals. Hastings plan shows the Crown line in the centre and the 2 blue lines at the side. The Crown line is the dam and the blue line are trenches. It was probably the dam between with Maria's Lodge and Reynestein. That would be the northern boundary of the original Maria's Lodge. I am not sure if it is precisely correct to say the northern boundary of lot 19 but I believed. There is a small reserve. I did not check the original title of Maria's Lodge to see how many roods it comprised.

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I remember Samuel Scott being a member of my working party of Crown Land Survey in 1950. I had a foreman called Austin. He as foreman would supervise the clearing of the bush. If the assistants see a paal they should show them to the surveyor. On this particular survey I was there most of the time. I have seen plans where all the lines do not carry through and in cases of uncertainty the lines are shown broken as in this plan by J.T.

40

Seymour. D. Fraser does not even show any broken lines west of the public road. P.1 on Exhibit "O" is where the east to west traverse along the dam came out on the western extremity. What is marked station P2 on R.A.W.2 is marked P2 on Exhibit "O". I marked P1 with a peg.

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10 If I had found paals laid down by D. Fraser on the western extremity at P1, and one in the centre of the traverse from the paal on the east to the western extremity P1 then I would have made every effort to have preserved them and I would have shown them on my plan and I agree that it would have conflicted with Hastings' paals. If M.P. Hastings had seen a paal at P1 on Exhibit "O" along the western extremity of Reynestein he was not bound to show it on his plan but he might have done so.

Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Cross-  
examination  
- continued.

This is a certified copy of Klauty's Plan.  
T.A.M. Exhibit "p".

20 The copy of my plan Exhibit "M" in the Lands and Mines Department will not carry the date stamp on it. The copy in the Deeds Registry will carry a date stamp. Klauty's plan is anterior in date to Hastings plan. Klauty's plan does not show if he served notices of intended survey.

I know what a spice tree looks like. I can't recall seeing any spice trees in the disputed area. There were some on the northern boundary of Reynestein.

30 There was a certain amount of white cedar and Dalli and Palm and money trees in the disputed area. It was general secondary forest. The line drawn from P1 ends at the station on the east. If produced across the road it would miss the wooden paal by a foot or two. When this line was traversed I was using the dam as convenience. If the dam had continued it would have ended at P1.

40 As far as I know Pln. Reynestein was never previously surveyed apart from that portion by D. Fraser. I did not search any titles to Reynestein prior to 1927. The 1927 Transport described Reynestein as 420 roods more or less.

5030 feet is about 420 roods. It is at least 10 feet out from 420 roods. I did not rely only on Hastings Plan. If the line connecting the northern boundary of Maria's Lodge marked by Hastings to what

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Cross-  
examination  
- continued.

Hastings shows as the Hermitage Reynestein boundary you get approximately 420 roods. By addition the width of Maria's Lodge on Fraser's Plan is 1,662 feet. The width of Maria's Lodge on M.P. Hastings Plan is 1621.7. Fraser is a facade and Hastings is a western extremity. A facade is normally measured at the front of the estate and most often along the public road. To determine the width at the back of the estate it must be measured on a line parallel to the facade at the front. I use facade in its strictest sense meaning front. Facade is the width along the front. The new canal is not shown in R.A.W.2 - It is shown in Exhibit "D". The canal commenced north of the dam and cultivation in the east and then it changes its course in a south westerly direction and then proceeds in a westerly direction. The point at which it goes in a south westerly direction before proceeding west is immediately west of the cultivation but some distance east of where the dam ends. In other words it cuts across the dam. I have no idea of when that dam was put up. Reynestein was an abandoned estate like the back of the other part of Reynestein. I saw no significance in the dam. The only significance was to walk on. The dam might have been dug by the proprietors of Reynestein. I don't know one Thani who works as a labourer with my principals in cocoa walk. I did not interview any residents in the area to find out what they knew about the holdings. I did not mark off 100 roods going north from the northern boundary of Maria's Lodge going east. I now measure the distance from the northern boundary of Maria's Lodge as shown by Fraser to the wooden paal on the eastern side of the road and it measures 1270 feet which would be 35 feet in excess of 100 roods. From my northern boundary of Maria's Lodge to the wooden paal is 100 roods plus 215 feet. I got my boundary by working south on the eastern extremity from the Hermitage Reynestein boundary and marking off 420 roods. I would agree that it is more or less. The 3rd way is by building up from E. Klauty who surveyed Vreeden Styn. This would also give the distance of 1270 feet which would be 35 feet in excess of 100 roods.

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Klauty makes no mention of Fraser on his plan.

The wooden paal on the east looks like a decayed piece of greenheart. I thought it might have been a paal by Fraser. Up to now I can't say



if there is a paal by Fraser. I can't recollect seeing this paal with a concrete base.

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10 The canal is north of the red line and south  
of the mauve line. We have thrown up a dam in the  
south side of the canal. The dam is north of the  
red line. The canal is 3 roods north of the red  
line. The southern edge of the dam is on the red  
line. The dam was on my instructions thrown up on  
the red line. My instructions were not to do any-  
thing south of the red line. I assumed that the red  
line was the southern boundary of Reynestein.  
Miller cut this red line in April 1959. This was  
after Mohamed survey. Mohamed's survey was intended  
to define the boundary. Miller is a field foreman.  
He cut the line through the bush shown on my plan  
Exhibit "O" by the red line. He did this after  
Mohamed had not completed the survey. There is no  
point in sending a skilled man to cut a line through  
the bush. Mohamed's instructions were to define  
20 the boundary. The definition of the boundary would  
follow the cutting of the line. What Miller did was  
not a survey. A line was cut 6 feet wide and in-  
structions were given not to work south of the line.  
The clearing made by Miller I would not swear was  
not south of the red line. As Director I did not  
propose that Mohamed could complete his survey if  
it meant imposing on some one's cultivation. I did  
not know that we were cutting a line through any-  
one's land. I had assumed that Lot 33 was part of  
30 the 100 roods. I assumed that Lot 33 was somewhere  
south of the red line.

Evidence of  
1st witness  
Raymond  
Augustine  
Wilkins.

Cross-  
examination  
- continued.

Re-examined by Mr. Elliott:

Re-examination.

I directed Miller to cut a line from the pole  
P2 until he reached the back of Victor's cultiva-  
tion. After he cut the line I did go along to con-  
firm that he had cut the line where the red line  
is shown in my plan Exhibit "O". I found that it  
was so.

40 There are two trenches to the north and south  
of the dam on the eastern side but the trench on  
the northern side disappears half way, the other  
trench goes on until it reaches 1800 feet short of  
the western boundary.

When I was asked if the trench serves any  
purpose to the proprietors of Reynestein I believe  
that Counsel was referring to the trench on the  
southern side. That trench did serve the purpose

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Re-examination  
- continued.

of drainage to a small extent to the land to the north and to the south. The trench to the north of the dam must have at one time drained to the trench at the south of the dam. I now say that it did serve a useful purpose to the proprietors of Reynestien. In the condition in which I saw it, it served very little purpose.

As I approached the western boundary and after the dam disappeared I was up to my waist in water. The dam would protect Maria's Lodge from flooding. I have quite often found that dams have been built in directions quite different to the correct boundary. On our estates new trenches have been dug without reference to boundaries. The dam may have been started after Fraser made his plan. If it had been there he would have shown it on his plan.

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Quite often I have found one plan is more reliable than another because if the plan gives the bearing and the length of 1 corner and one uses these figures starting at one end to arrive at the other end then the accuracy of the plan will be a measure of how closely the other point can be found. I applied this test to Hastings plan and I found that it was one of the most accurate surveys I have come across in that I was able to find all his paals in the positions he has shown.

20

I would not expect to find wooden paals after a great many years. I have had paals laid down in 1854. The Crown Lands Regulations govern the manner in which surveys may be carried out by Land Surveyors of Crown Lands. I also tested Klauty's plan and found it to be accurate.

30

In respect of Fraser's plan one could only scale from the plan and place it alongside near other plans as may be available. It is very difficult to scale accurately from Fraser's plan. The scale which is given in Rhymland feet and one subdivision is meant to represent 10 Rhymland feet and each of these subdivisions is a different size. There is a space between Lots 9 and 10 and there is no statement of what it is for and one has to assume that it is a Reserve. The same thing happens again with Lots 18 and 19. There is a vacant space between 19 and 20 on the eastern side of the public road and one has to assume what it is. On the northern boundary of lot 19 there are another 2 lines to which no reference is made. There is a space on eastern side of public road north of 19 and there is no reference

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to what it is there for. On the western side of the public road and on the northern side of lot 19 there is a line and I don't know what it is there for. This is stated to be "a diagram of allotments that is laid out on Maria's Lodge and a portion of Reynestein" and there is nothing to be found in it to suggest that Lots 20-33 extended west of the road. I would not place a great deal of reliance on Fraser's plan but I would say that in the absence of anything else we would have to use it. I found Hastings plan much more reliable and I found Klauty's plan more reliable.

10

There are 12.35 English inches in a Rhymland foot. This would show that one plan or the other was more inaccurate than if the measurements approximated more closely. I would point out that in scaling the measurements from Fraser's plan before transfer to Exhibit "O" the conversion to English feet was made. I am now told that the addition of the facades in Maria's Lodge on Fraser's plan amount to 1538 Rhymland feet. When I found the 1875 Transport it was in 1951 and I had no means of finding Graham.

20

The first intimation I received of the plaintiffs' claim was in the letter of Mr. Holder in July, 1959. Exhibit "C". When I received the letter Exhibit "C" with reference to Lot 33 Maria's Lodge I referred to Fraser's plan and then I saw that it was in Reynestein. Before that I had seen J. Victor on the site and I invited him to go back with me and he started out to do so but when I got to the point at the back of his cultivation he was no longer there. He made no objection to me about anything. I had learnt he had made objections to the estate carrying out operations north of his cultivation. I was taking J. Victor to a point west of his cultivation to show him we had no intention of interfering with his cultivation.

30

In the absence of paals on Fraser's plan it would be extremely difficult if not impossible to fix any boundary with any degree of accuracy one would have to make use of such features as shown on the plan which are to be found on the paal e.g. the public road. The dam not being shown I could only rely on the public road. One could not ascertain the accuracy very well of any boundary by the sole use of the feature shown on the plan. The western boundary is shown by a single line. If one accepts

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Raymond  
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Wilkins.

Re-examination  
- continued.

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Evidence of  
1st witness  
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Wilkins.

Re-examination  
- continued.

Cross-  
examination.

No. 20

Evidence of  
2nd witness  
Ishmael Sheer  
Mohamed.

Examination.

Fraser's plan in its entirety as best one can be by scaling it the northern boundary of what is now accepted as Lot 33 would fall south of the red line shown on my plan Exhibit "O". If it were held that Fraser's plan were correct and Hastings plan, Klauty's plan and my plan were incorrect then in the future these plans would not be changed and corrected. The paals placed in the ground by Hastings, Klauty and myself would have to be left in the ground.

10

Cross-examined by Mr. Holder with consent of Court.

I am saying that where a survey has been made and the plan recorded it cannot be changed. A new survey can be made.

No. 20

EVIDENCE OF SECOND WITNESS ISHMAEL SHEER  
MOHAMED

ISHMAEL SHEER MOHAMED sworn states:

I live at 195 Charlotte Street, Lacytown, and I am a Sworn Land Surveyor. I work with Bookers Sugar Estates.

20

In 1958 I received certain instructions from Mr. R.A. Wilkins as a result of which I went to Pln. Reynestein and I went there to define the boundaries between Maria's Lodge and Reynestein. I started from the public road.

Mr. Burnham submits that the witness should not be permitted to use the sketch Exhibit "D" drawn by another witness to illustrate the latter's evidence. This is not a plan and not a sketch drawn by Mohamed to illustrate his evidence.

30

Mr. Elliott states that what he will ask the witness is, if looking at the sketch that the representation of a public road and a dam represents what he saw when he went to make a survey.

I helped prepare the sketches submitted to this

court from data obtained by Mr. Wilkins and under his supervision.

Mr. Elliott states that he is not pressing the point as he agrees with Court that it would amount to a leading question if witness looked at the sketches.

I started off between the reserve of Lot 19 and 20 and proceeded along the public road in a northerly direction for a distance of 100 roods and I made notes in my Field Book which I now use to refresh my memory. I then went in a westerly direction at a bearing 284° 9 23 seconds. I went in cutting the line for about 700 feet when John Victor objected to the alignment of the survey i.e. alignment of the western boundary i.e. what is known as the boundary between Reynestein and Maria's Lodge. I now say that is not the western boundary. He objected on the ground that I was cutting into his land i.e. Lot 33. At that stage I found myself in his cultivation. When I started to cut the line I was on the dam where there is no cultivation. As I went on I came to some orange trees. When I came on to the orange trees which were in the cultivation I had got a distance of 700 feet from the point where I started. (Nearly 60 roods.) I had cut off 1 branch off each of 2 orange trees. I had damaged no other kind of cultivation. When Victor stopped me I came across back to the dam and then I went in a westerly direction along the dam for a distance of 2,000 feet i.e. (170 roods). This took me to the end of the cultivation. I went to see the end of the cultivation, i.e. the westernmost point of the cultivation. The dam was full of bush and scattered high grass. It had no timber or orange trees. There was scattered plantain trees which I considered abandoned cultivation. As I walked along to the north the land was heavily forested. At the point where I stopped this forest continued to the north of the dam. As far as I could see to the western end of J. Victor's cultivation there was similar forest to the south of the dam. I told Victor that he could not stop me from continuing the survey the most he could do would be to object to the survey. I noted his objection. I then travelled back to Georgetown. I did not return to do any more survey.

The furthestest point I reached was 170 roods inside.

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Defendants'  
Evidence

No. 20

Evidence of  
2nd witness  
Ishmael Sheer  
Mohamed.

Examination  
- continued.

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Evidence of  
2nd witness  
Ishmael Sheer  
Mohamed.

Cross-  
examination.

Cross-examined by Mr. Burnham:

I did not traverse 750 roods west. At the point at which Victor stopped me I was south of the dam. I did not notice a trench on the northern side, I noticed a trench on the southern side. I did not pick up a paal from which I started to measure my 100 roods. I started from the northern edge of Maria's Lodge and included the reserve. The 100 roods included the reserve. I put down a temporary peg at the end of the 100 roods on the western side of the public road. 10

The forest on both sides of the dam were large trees. They were Long John trees i.e. a wild tree growing a hard wood, wild palms i.e. coconut. I know people eat coconuts. I don't know about mook-roo grass. I did see grass.

No. 21

No. 21

Evidence of  
3rd witness  
Fitz Allen  
Miller.

Examination.

EVIDENCE OF THIRD WITNESS FITZ ALLEN MILLER

FITZ ALLEN MILLER sworn states:

I live at 51, North Street, Newburg, and I am a Surveyor's assistant employed by Bookers Sugar Estates Ltd. I have been so employed for over 10 years. In March 1959 Mr. R.A. Wilkins gave me certain instructions and as a result I went to Reynestein. I went there to cut a line. I went to the north western corner and travelled by lorry and then took a boat. We walked along a dam by the Potosi area. I did not notice cultivation. Potosi is north of the place where I went to work. The estate immediately north is Hermitage, then north is Free-and-Easy and then Potosi. From Potosi we walked south about 2 miles along a track until I came to the estate where I had to look for a station marked P2. I found the station marked P2. This is the only station at all aback Reynestein. I was instructed to cut a line east on a particular bearing and my instructions were to stop before I reached any cultivation at all. We had to cut a line through heavy bush and use thick axes. It was hard work. You could have walked through if you did not cut a straight line but if you wanted a straight line you had to cut. I cut the line for 5,600 feet 20 30 40

odd i.e. 453 roods. I came to a little trench behind which was cultivation. When I got there I did not approach on the cultivation. I planted a peg there. When we began we had fern for about 600-700 feet in. It was not mookroo grass. We then had to use axes to cut our way through. It took us 13 days.

10 I did see Mr. Wilkins in course of the work and he came there and approved of what I was doing. He came more than once. The line I cut was about 6 feet. The distance of the line was 5,650 or 5,660 feet (458 roods). I can't say how far the peg I put in was from the public road. I did not come across any paal anywhere.

Cross-examined by Mr. Burnham

20 I do know what mookroo grass looks like. I saw mookroo but not in that area. I saw mookroo grass at Free-and-Easy. I did not see white cedar there. I did not see coconut palms along my line. My bearing was 115° for which I used a compass.

30 During the Xmas holidays I first knew I was going to give evidence. Since March 1959 I had cut a line at Free-and-Easy. After I was told I had to give evidence I looked at my record and it contained a description of the territory over which I cut the line. It merely had "Forest". I passed through swampy land in the beginning. Perhaps that swampy land could be useful to grow rice. Mr. Edghill, the Chief Clerk in the office told me I would be required to give evidence. I gave a statement in writing and I signed it. I did not discuss my statement.

40 I cut the line at Vreeden Styn I got mixed up with the Styns. It was north of Maria's Lodge. I had a map and I found Maria's Lodge and I went north of Maria's Lodge. I found an iron station H.P. at Free-and-Easy. I did enter in my record in my own handwriting 'forested area'. The point where there was no forest I did not put down 'not forest' I was not told I would find 'Heavy Bush'. I was told I would find 'forest land'. Mr. R. Wilkins can fire me.

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Evidence

No. 21

Evidence of  
3rd witness  
Fitz Allen  
Miller.

Examination  
- continued.

Cross-  
examination.

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No. 22

EVIDENCE OF FOURTH WITNESS WILLIAM NORMAN WILSON

Defendants'  
Evidence

No. 22

Evidence of  
4th witness  
William  
Norman Wilson.  
Examination.

WILLIAM NORMAN WILSON sworn states:

I live at Wales Estate and I am assistant Field Manager. I have been such manager from 1953. Before that I was Sectional Manager at this Estate. In all I have been at this estate for 22 years. My present duties include supervision of mechanical tillage and taking in new lands for the purpose of planting sugar cane. In 1959 I got instructions from the Administrative Manager and I started to take in new lines at Reynestein. I did at that time know Reynestein. The first time I went there was in 1943, and I frequently visited there since then. I went there to inspect farm lands and to get firewood for the factory. I had to go through the dam between Reynestein and Lot 33 which I thought would form the southern boundary. The eastern boundary would be the Demerara River and the northern boundary would be Pln. Hermitage. The western boundary would be the Kamuni water path. I don't know if the Estate owned or leased the land west of the water path. This dam was 2 roods in width and it begins from the public road and ends east to west. When I used to go there from 1943 it ran for about 500 roods. The farms I inspected was to the north of the dam. There was a drain on the southern side and it ran for about 150-200 roods and after that it was thick jungle.

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Before 1949 the dam was covered with thick bush with a narrow track down the centre about 3 feet wide. One had to walk single file on it.

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I saw farms on the northern side of the dam when I went to inspect and they continued back about 100 roods from the public road. Beyond these farms to the north was very heavy bush. Hardwood, Dalli trees and crabwood and mora. On the southern side of the dam towards the public road looking through the bush you could see that there was some attempt to cultivate that area. It was plantains, bananas and cassavas.

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I never saw J. Victor until 1958.

In January 1959 I started to make preparations to bring this area into cultivation. I first started to clear a line and my Field Assistant, Mr. Hugh was put on the job. The line was cleared and



then we started to clear the land which was cleared by April 1959. The next thing was to dig a navigation trench. I started the canal 5 roods north of the old dam and threw up a new dam 3 roods in width immediately south of the canal which left a space of 2 roods between the 2 dams. The canal followed the course of the old dam going west for about 150-200 roods. We then had to swing in following the surveyor's line. We turned south just to the west of Victor's farm. After going across 10 roods I straightened up the canal and proceeded west along the surveyor's line that had been cut. The canal then continued 5 roods north of the line which had been cut and continued to leave a new dam on the southern side making a gap of 6 feet between the dam and the northern boundary of Lot 33.

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The canal is 22 feet wide. It is 3 roods from the southern side of the canal to the southern side of the line that was cut. The dam at this point was  $2\frac{1}{2}$  roods wide. The canal was completed in August 1959. We had 5 drag lines working there. In digging a canal we usually try to finish it as quickly as possible. We had to dig the canal quickly to put our plants in. We have used 2 drag lines before to dig canals but never 5.

It is true J. Victor objected on several occasions and on each occasion we stopped work.

He was more or less issuing threats of violence and that is why we stopped. The operators got scared and refused to work. On every occasion he had people accompanying him. He told me that if we did not stop taking bulldozers in there he would meet Mr. Cahn with hot led. Cahn is the Administrative Manager. I did not see the bulldozers flatten any fruit trees or yams. Bulldozers did not go where there was cultivation.

Cross-examined by Mr. Burnham:

I have been in Wales Estate for 22 years. I used to extract firewood north of the dam proceeding west. The furthest I ever got in along the dam was 400-500 roods after that there was swamp. The back part is swampy. I was born here. I don't know if that land is suitable for rice. Swamp land is good for rice. In 1943 even though the dam was an old dam I did not see tracks on the eastern half of the dam. It is very bushy there. After reaching

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Defendants'  
Evidence

No. 22

Evidence of  
4th witness  
William  
Norman Wilson.  
Examination  
- continued.

Cross-  
examination.

In the Supreme  
Court of  
British Guiana

Defendants'  
Evidence

No. 22

Evidence of  
4th witness  
William  
Norman Wilson.

Cross-  
examination  
- continued.

aback of Victor's farm the canal cut across the dam and went in a south westerly direction and then straightened out west. The canal then continued for another 550 roods right down to the 750 roods depth. I have lived and worked in Rural areas for 22 years and I do agree that there are many occasions when a 'Company dam' makes the boundary. The Company dam is usually formed by excavations of trenches on both estates being thrown up. The canal is now being used. We proposed to grow cane right down to the western extremity of Reynestein. The work was started in January 1959. I have never known 5 drag lines to be used but it depends on the urgency. We usually plant cane and reap cane at any time of the year. We grind in the spring crop and autumn crop. It is proposed to put under cane cultivation all the land north of the northern edge of the canal. I estimate the area of the triangle caused by the notional extension of the dam to the western extremity and line that was cut to be about approximately 14 acres.

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The canal connects up with water ways so we can have easy access to our cultivation. Part of the cultivation of J. Victor's that I saw present was on the dam and part of it was south of the dam.

I did see plantain trees north of the dam going west. I did see plantain trees on the dam and south of the dam over the trench going west. This was abreast of J. Victor's cultivation. I did not see plantain trees south of the dam and west of the cultivation. I did not see any mookroo grass at all. I saw young orange trees in Victor's farm. I don't know what a spice tree looks like. I would not be able to see from south across the dam through the dense jungle and as far as I can see there were no farms. I went 10 roods in from the dam i.e. the south of the dam. There is a reef of wood about 500 roods going west and on the northern side of the dam. This reef extends south of the dam and I know that people cut and use this wood. In 1943 I did not go south of the dam.

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Re-examined.

Re-examined by Mr. Elliott:

When I reached the end of the canal it was much more than 10 roods from where the dam would have reached the boundary if it had continued. I saw no other farm south of the dam apart from Victor's cultivation and in course of clearing the disputed area we did not come across or interfered with cultivation. The cultivation, on the dam only came up in the past 3 years. It was not there in 1943. It is all along the dam now.

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No. 23

EVIDENCE OF FIFTH WITNESS ALVIN EVERETT HUGHIn the Supreme  
Court of  
British GuianaALVIN EVERETT HUGH sworn states:Defendants'  
Evidence

No. 23

10 I live at Wales and I am Field Assistant in  
charge of Mechanical Tillage. Wilson is Assistant  
Field Manager and he is under me and also in charge  
of Mechanical Tillage. I have been there since  
1/7/55. In January 1959 we started clearing the  
lands in Reynestein for planting canes. I had to  
clear away Forest and bush. We went as far as the  
middle walk dam. We started from the road and  
cleared 660 roods of land going west. It was bush  
south of the dam. At the road west of the public  
road and south of the dam there was some cultiva-  
tion. That cultivation extended about 150 roods.  
Beyond the cultivation there was a track laid out  
by Mr. Wilkins' directions. It was cut by Miller.  
We were supposed to clear the land up to this track.  
20 We did not clear the land south of this track. We  
found no trace of any cultivation south of this dam.  
There was no sign of cultivation. There was none to  
look for, just dense forest.

Evidence of  
5th witness  
Alvin Everett  
Hugh.

Examination.

Cross-examined by Mr. Burnham:Cross-  
examination.

30 From the public road going west along the  
middle walk dam there is cultivation just south of  
the dam. There is no cultivation on this dam. We  
cleared the land and then dug the canal. There was  
an old dam there. I admit saying in examination-  
in-chief that when I cleared the land I walked  
along the middle walk dam. I had to clear before I  
dug. It means that I walked along the old middle  
walk dam. I would not be able to say if the middle  
walk dam is a boundary between 2 estates. I was  
born at Uitvlugt and my family owned land.

Re-examined by Mr. Elliott

Re-examination

A middle walk dam is used for transportation  
but not so a side line dam which is for draining  
purposes. The side line dam is more likely to be  
the boundary of an estate.

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In the Supreme  
Court of  
British Guiana

No. 24

EVIDENCE OF SIXTH WITNESS HAMID KHAN

Defendants:  
Evidence

HAMID KHAN sworn states:

No. 24  
Evidence of  
6th witness  
Hamid Khan.  
Examination.

I live at Pln. Wales and I am a Field Foreman. I have been working at Pln. Wales for 14 years. I am now at M.T. Department and have been with it for 9 years. I know that Pln. Reynestein was cleared last year and Messrs. Hugh and Foo were in charge of clearing the land. I was foreman of the operations. Beginning at the public road the southernmost point of my operations was a four foot drain. South of the drain was a dam; south of the dam was cultivated orange trees and so on. The dam constituted my southern boundary for 150 roods and after 150 there was a 6 foot wide track cut through the bush. We turned 10 roods south and to the west along the track. We went 150 roods before turning south because of the cultivation. It was dense forest after the 150 roods. I did not discover any signs of any farms or cultivation. Long John trees, Dalli and Manicole and Cedar trees. I did not see Crabwood. I don't know if these trees have any value. I did not see spice trees and cocoa trees. I do know the plaintiffs in the action. I have never seen any of them in the course of my visit to Reynestein at Reynestein. J. Victor did make a protest to me when we were clearing along the 4 feet. This was 2 years ago 1958. When I used to visit Reynestein 8 or 9 years ago I did not see the plaintiffs there.

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Cross-  
examination.

Cross-examined by Mr. Burnham:

I would say that there was tropical forest there because we live in the tropics. I do know that manicole trees can be used for making houses. I am employed by W.B. Demerara Ltd. I did see plantain trees from the road to about 150 roods west and south of the dam. I did see young coconut trees on the dam. I know that we usually use dams to mark boundaries. I only cross this dam because of my instructions. From 150 roods there was no dam. After 150 roods it was almost completely lost. I looked upon the dam as a track. The estate would use the track. I had no right to cross the trench and that is why I would not cross it unless I received instructions.

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In 1958 we were clearing the trench to the north of the dam and J. Victor protested. There were trenches north and south of the dam.

EVIDENCE OF SEVENTH WITNESS VINCENT ROACH

In the Supreme Court of British Guiana

VINCENT ROACH sworn states:-

Defendants' Evidence

No. 25

10 I live at Pln. Wales and I am a drag line operator. I was born at Pln. Vie La Force 4 miles from Reynestein. I know the 3 plaintiffs in this case and I did visit Reynestein when I was a boy. My father had a farm at Reynestein which we rented from the Estate and it was about 150 roods west of the public road. There were no farms further west of his farm but there were farms between his farm and public road. It was forest to the west of my father's farm. I don't know on what lot my father's farm was situated. I have never seen any of the plaintiffs farming near my father's farm. I did take part in digging the canal. When I arrived the land was cleared. I don't know a man named John Graham. I used to go to the farm in 1950.

Evidence of 7th witness Vincent Roach. Examination.

Cross-examined by Mr. Burnham:

Cross-examination.

20 I am an employee of West Bank, Demerara Ltd. I am 25 years old. My father died in 1953. I know Free-and-Easy. My father did not farm at Free-and-Easy. Free-and-Easy is 1½ miles north of Reynestein. My father used to farm on the southern part of Reynestein. I don't know if there is a dam there. He used to plant provisions there. The farms were separated going to the western side of the road and south of my father's farm.

Re-examined by Mr. Elliott:

Re-examination.

30 I used to walk in to the farm from a track. I don't know Victor's farm. I know Victor's cultivation. These other sporadic farms which I said was south of my father's farm were north of Victor's farm.

Case for Plaintiffs.

40 Mr. Burnham states that he is not going to call any expert witness as to the estimate and value of the damage done to the land in dispute but will rely on the evidence given by the Plaintiff and his witnesses.

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No.26

WITNESS CALLED BY THE COURT

No. 26

Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Examination.

Court states under Section 88 of Chapter 25 C.T. proposes to call Commissioner of Lands and Mines Department to produce all plans of the River Estates of Pln. Reynestein, Maria's Lodge and Vreeden Styn on the left Bank of Demerara River.

EVIDENCE OF WITNESS DESMOND MONTAGUE EDGHILL

DESMOND MONTAGUE EDGHILL sworn states:

I am a Sworn Land Surveyor employed by Government in the Department of Lands and Mines. I have been a Sworn Land Surveyor for 14 years. I now produce an Official Record of a chart of the Demerara River Section 1 of Georgetown to Hyde Park on the right from Vreed-en-Hoop to Kamuni Creek on the left Bank surveyed for the use of the titles to Land Commissioners signed Frank Fowler and C.W. Anderson Government Surveyors dated August 1891. This plan shows Pln. Vreeden Styn, Maria's Lodge and Reynestein. It shows Lot 33 Pln. Maria's Lodge as shown on the plan. There are no lots in Pln. Reynestein. Lot 33 Maria's Lodge is shown as adjacent to the northern side line dam of Maria's Lodge. In other words Lot 33 goes right up to the dam as shown on this plan. There is a note that the upper portion shows the division of the lots by Duncan Fraser which diagram exactly agrees with this survey. This is a survey along the public road, just picking up the occupation of land at the time and does not extend very far inland. It shows the name of the occupier of Lot 33 as John Graham. The dam is clearly indicated in the plan. The scale is 1 inch = 600 feet. T.A.M. Exhibit "Q".

Mr. Elliott states that he would like to submit Exhibit "O" to the witness for study and consideration in order to have his opinion on whether it is correct or incorrect and whether Fraser's plan on the one hand is to be preferred to Hastings, Klauty's and Wilkins plan on the other hand.

Mr. Burnham states that it would be irregular and inadmissible for him to comment on Mr. Wilkins' sketch. Mr. Burnham's objection overruled witness will therefore proceed to study Klauty's plan,



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Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

a plan which shows paals or if you work from a plan which does not show paals. A. Yes.

Looking at Fraser's plan the small divisions on the scale could have come from repeated tracings or slightly inaccurate tracings of the original plan. The small divisions are not machine graduated and some appear smaller than others. I am not saying that the Department would certify an inaccurate plan. I did not try testing to see whether the distances shown in figures agreed with those measured against the scale. In Fraser's plan there is no indication that there is a dam. If there is a dam there possibly I would expect him to show a dam but I cannot answer the question. Today if I had to draw the plan I would show the dam. I would not say that Fraser's plan is slipshod bearing in mind the time in which he drew it. If it had been made in 1927 I would consider it a slipshod plan. 10

Between Lots 9 & 10 there is a space and no indication of what the space is. It is not very satisfactory. Between 18 and 19 and 17 and 20 there is a space. These spaces apparently indicate trenches and not a reserve. I say so because there is an outlet there between 19 and 20. The dots at the eastern end of the boundary between Lots 19 and 20 could represent a small hole on the original plan. Between Lots 9 and 10 there is a space and it is unsure to say what it really is. It would appear to be trenches rather than reserves. The plan by Fowler shows trenches. I look at Klauty's plan Exhibit "P" and I look at Fraser's plan marked R.W.1 and I would say that the boundary between Maria's Lodge and Vreeden Styn is shown on the same place on both. I do that because there is a side line mentioned on Klauty's plan. 20 30

Do you agree that the sketch Exhibit "O" accurately shows where the northern boundary of Maria's Lodge would come both according to Hastings's plan and Fraser's plan? No, not according to Hastings plan because Hastings plan never defined the northern boundary would come according to Fraser's plan. Hastings does show a portion of the northern boundary at the western extremity. On scaling on Hastings plan it would be difficult to say if the portion of the northern boundary shown by Hastings is parallel to the southern boundary of Maria's Lodge. There is a small opening of the 2 lines, they are not quite parallel. 40



The northern and southern boundary of Maria's Lodge is shown by Mr. Wilkins as being nearly parallel.

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No. 26

Did you check to see whether the eastern extremity of the northern boundary of Maria's Lodge is 420 rods south of Hermitage along the Public road? A. I did not. I could not do so on Wilkins sketch.

Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

10 Q. If you went north along the public road from the northern boundary of Maria's Lodge as shown by Fraser you would end at the place that Mr. Wilkins has shown in Exhibit "O"? A. It would be 35 feet short of the wooden paal. According to Fowler's plan it would be the same as Fraser's plan and the same place as indicated by Wilkins. The trench shown on Fowler's plan on the western side falls slightly south of the trench shown on the eastern side.

Cross-  
examination  
- continued.

20 If the boundary along the southern side of the trench on the eastern side of the road were continued across the road there would be some land between the boundary and the trench on the western side of the road. It would be a very narrow strip of land and impossible to scale it. I do agree that even accepting Fraser's plan the northern boundary of Lot 33 would be south of the red line on Wilkins sketch Exhibit "O". Lot 33 on Fraser's plan is not indicated as extending west of the public road.

30 The average depth of the whole estate is 750 rods. Fraser's plan defines Lot 33 as extending along to the public road.

40 When I looked at the Transport I see 288 feet as whole depth of the estate. In Fraser's plan Fraser does differentiate between Reynestein and Maria's Lodge, but the transport does not differentiate and says the whole depth of the said estate. According to Hastings' plan it cannot go throughout the whole depth of Maria's Lodge because it would be encroaching on Crown Land. There is a discrepancy in the Transport where it says to the full depth of the estate if it means Maria's Lodge.

I agree that Hastings and Wilkins paal should be accepted as the south western boundary of Reynestein. I agree because scaling off from Fraser's plan it is not very far off from Wilkins and

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Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

Hastings paal. Accepting Hastings and Wilkins paal I do agree that P2 is 100 roods to the north of the northern boundary of Maria's Lodge. I do agree that if the 100 roods were measured on a long line parallel to the public road then the red broken line would be to the north of a point 100 roods along the line from Maria's Lodge. I do agree that in 1856 when Fraser made his plan the facade was measured along the public road.

The broken red line in Exhibit "O" is about 100 roods and 40 feet north of Maria's Lodge measured from Wilkins and Hastings paal along a line parallel to the public road. The broken red line would then be north of the northern boundary of Lot 33 throughout its length. 10

Fraser's plan shows that 800 feet of the dam and the trench as forming the northern boundary of Lot 33. It does not show any further than 800 feet. 800 feet is about 60 or 70 roods. It would appear that that part of Fraser's plan Lot 20-33 was compiled and not surveyed. It would not surprise me to find that the 800 feet shown by Fowler as the northern boundary of Lot 33 west of the road does not accurately define that boundary. If the broken red line had connected with what Fraser shows as the northern boundary of Lot 33 instead of the wooden paal 35 feet to the north it would never have crossed the dam at all; but would have been to the south of the dam throughout its entire extent. 20

Having considered all the plans, Klauty, Hastings, Fowler and Fraser including the sketch Exhibit "O" I have come to the conclusion that the dam as shown on Wilkins sketch is to the north of the northern boundary of Lot 33 and cuts a jib off from Reynestein proper and proceeds north into Pln. Reynestein proper. 30

I see lot 18 and I see that its back boundary is narrower than the width at the road. This is not mentioned in the transport T.A.M. Exhibit "R" which gives the facade as 108 feet. In the plan it shows that the width at the back of the western extremity is narrower. According to Fraser's plan taking the width of facades at the roadside that he shows on his plan it would be 1,711 English feet. Hastings shows the whole width of Maria's Lodge as 1621.7 English feet. 40

It is indicated on Fraser's Plan that the width of Maria's Lodge is narrower at the back than at the public road.

This is a certified extract of Fowler's plan T.A.M. Exhibit "S". 50

Cross-examined by Mr. Burnham (Contd.)

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Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

10 I gave evidence on Wednesday 6th July, 1960. The Lot does not usually go right up to the dam. It goes right up to the southern edge of the dam and it does not include the trench. A side line dam is usually built by a neighbour on the one side digging a trench and throwing up a dam and the neighbour on the other side doing the same thing. I would agree that normally the boundary between the two such lots would be the centre line of the dam so formed.

20 Looking at Fowler's plan Exhibit "S" and the sketch Exhibit "O" and I would say the same dam is shown on Exhibit "O" as is shown on Exhibit "S" at the roadside. I have not compared the angle at which the dam continues west. I am a surveyor of 14 years experience. If I were to go to ascertain the boundary between Lot 33 and Reynestein and I found a dam which corresponds to Exhibit "S" I would take the dam as normally the boundary between the 2 lots. This is normally done but it is not the only check. This would be physical feature on the ground. Hastings surveyed Crown lands; Wilkins surveyed Crown lands. I agree that Hastings' plan is for the purpose of defining the eastern boundary of the Crown land lease on the western boundary of the estates. These boundaries are coincident. I would say the east to west line showing the northern and southern boundaries of the estates would not be the Prolongation of the correct boundaries although it could be the correct boundaries. This was not his purpose. With respect to Exhibit "O" I made checks on Fraser and Klauty and Hastings' plan and my checks more or less agree with Wilkins' sketch the southern edge of the dam is the northern edge of the trench. If Wilkins' sketch Exhibit "O" does not show the northern boundary of Lot 33 as being along the trench immediately south of the dam his sketch would not agree with Fowler's plan Exhibit "S".

40 I agreed with Mr. Elliott that the red line in Exhibit "O" was 40 feet to the west and 35 feet to the east, north of the northern boundary of Lot 33. I agree that this red line would fall very little south of the trench as shown by Fowler. The trench changes its angle at the road basing my evidence on the situation of the other estates on the plans supplied to me.

On the 5th January, 1959, when I gave evidence

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Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

I was in error when I said that the northern boundary of Lot 33 Maria's Lodge was the northern side line dam of Pln. Maria's Lodge. I first realised my error when I was cross-examined by Mr. Elliott. When I first gave evidence I did not have the benefit of a careful study of the plans. Normally the boundary between the 2 adjacent estates is the centre line of the side line dam.

On his plan Fowler described Lot 33 as Maria's Lodge. Looking at Fowler's plan I would expect the boundary line between Maria's Lodge and Reynestein to be the centre line shown by Fowler immediately north of Lot 33.

10

The dam shown on Wilkins' sketch Exhibit "O" is very slightly different to the angle shown on Fowler's plan by Exhibit "Q".

The angle with Fowler's plan reads 105° and Wilkins shows about 106. If the portion of Fowler's dam on which the angle was measured were produced in a westerly direction it would fall at the western boundary some distance north of Pl on Exhibit "O". Pl would show the general direction of the dam as shown by Wilkins in Exhibit "O". The line which ends at Pl follows the general direction of the dam. I would say that also follows the general direction of the dam shown by Fowler. Unless a straight line is broken it maintains a constant angle. A boundary is usually a straight line. The upper river is the part towards the source.

20

When you look at Exhibit "S" Maria's Lodge is up river from Reynestein. "The upper portion shows the division of the lots as per Diagram by Duncan Fraser which Diagram exactly agrees with this survey".

30

This statement is written across Pln. Maria's Lodge which would include Lot 33. "Upper" means the more southerly parts of Maria's Lodge. I think he means by that Lot 19 - Lot 1. It is to be assumed that he compiled 20-33 rather than recognised them on the ground. Having stated that the upper portion agrees exactly it means that the northern portion is a question of compilation. The plan indicates clearly the Lots 1 - 19 and marked individually. Lot 25-20 are numbered together and Lot 26-29 are numbered together and 30-32 numbered together and Lot 33 numbered separately. In respect

40

of lot 20-25 he puts one number; 26-29 has one owner. I do agree that when he bulks his lots together it is because he is representing one owner. It must be pointed out that he has Lots 18 to part of Lot 13 as one owner but he still has the Lots numbered individually.

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10 It is correct to assume that Fowler saw the dam north of Lot 33 when he put it in his plan. When you put down Fowler's plan to read it the upper part of the Exhibit is east of the road. Apparently Fowler had evidence of what Fraser had done.

Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

In so far as the northern boundary of Lot 33 is concerned the compilation to be preferred is Mr. Fowler's rather than Mr. Wilkins because Fowler's plan was made clearer in time to Fraser's plan and because his legend indicates that he picked up other things on the plan from Fraser's.

20 I would say that Exhibit "S" gives evidence of careful work.

The purpose of a chart is to define boundaries. A government survey is to be assumed to be important.

Fowler picks up the dam on the paal.

Any angle of the dam indicated by Fowler was taken on a short distance of the dam and could not be accepted as the correct direction of the entire dam if one existed at the time.

30 The boundaries of estates are usually straight lines. I have no reason to believe that the boundary between Lots 33 and Reynestein is not a straight line. The boundary should be a straight line. The boundaries of these estates should be a straight line.

A foot of the dam could not show the angle it makes with the road with any degree of accuracy. I would want several hundred feet to get the angle. It would depend on the state of the dam. If the dam is a perfect dam you need no more than 800-900 feet to get the angle with the road.

40 Fowler shows the rough direction of the dam but it has no bearing on the back lands of these estates. Fowler did not define boundaries; he surveyed along

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Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

the road to pick up occupation as well as to fit in the charts existence of the particular plantation. He then had Fraser's diagram. There is no difference between a chart and a diagram. The name John Graham on Exhibit "S" merely indicates roughly the position of the area that he was occupying by the road. It means that there was a front portion of a dam in 1891 which marked the boundary between Maria's Lodge and Reynestein.

The dam shown in Exhibit "S" is no indication of how the dam will extend to the back land. 10

From the angle shown on Fraser's plan of the dam to the public road if extended would fall roughly to P1 on Exhibit "O".

If the dam on Fowler's plan Exhibit "S" were extended it would end up in the vicinity of P1 in Exhibit "O" providing it comes through in a straight line.

By Elliott with leave of the Court:

When I said that I agreed that normally the boundaries between 2 lots would be the centre of a side line dam I meant the boundary between 2 plantations. According to Fowler's plan the northern boundary of Lot 33 would appear to be the southern edge of the trench to the south of the dam and not the centre of the dam itself. 20

When I said that east to west lines showing boundaries would not be the primary purpose of Hastings survey I did not mean that his east to west line would be any less accurately defined than his north to south line. If any east to west line were inaccurate it would entail that the north to south line connecting with it would be equally inaccurate. 30

The northern boundary of Lot 33 is shown by Fowler to be more or less parallel to the northern boundary of Lot 19, it is hard to say.

The northern boundary of Lot 19 as shown by Fowler appears to coincide with the northern boundary of Lot 19 as shown by Fraser. I arrive at this by reading the statement written across Maria's Lodge in Exhibit "S". I do agree that the dam shown 40

in Wilkins' sketch Exhibit "O" is not parallel to the northern boundary of Lot 19 drawn in blue representing Fraser's boundary of Lot 19 according to Wilkins' calculations with which I agree.

A chart in hydrographical survey. It is hard to tell the difference between a chart, a diagram and a plan.

10 I do agree that a plan nowadays is more used to define boundaries. This, however, was not so long ago; a chart could also be used to define boundaries.

The Exhibit "S" was not used to define boundaries. It was used for the purpose of picking up information of occupation and to correlate the transports for the benefit of the Land Commissioners.

I should have answered Mr. Burnham's question to read as follows:

20 "In so far as the northern boundary of Lot 33 is concerned the compilation to be preferred is Fowler's rather than Wilkins' because Fowler's plan was made closer in time to Fraser's plan and he might have picked up more information on the ground".

The fact that Fowler might have found Fraser's paals was the only reason why I said his compilation was to be preferred to Wilkins.

30 A compilation made by Fowler which came shortly after the survey of D. Fraser should be accepted as more accurate in relation to the public road than Mr. Wilkins.

I still agree when I said that having considered all the plans I have come to the conclusion that the broken red line as shown on Wilkins' sketch is to the north of the northern boundary of Lot 33 i.e. between 30 feet to 40 feet to the north along the line.

40 Fowler shows the northern boundary of Lot 33 east of the road slightly south of where Fraser shows it. Fraser does not show the northern boundary of Lot 33 west of the road. Fowler does show the northern boundary of Lot 33 east of the road as being

In the Supreme  
Court of  
British Guiana

No. 26

Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

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Court of  
British Guiana

                      
No. 26

Evidence of  
Desmond  
Montague  
Edghill called  
by Court.

Cross-  
examination  
- continued.

south of the southern edge of the trench west of the road.

From the records we would have to assume that Lots 20-33 are parallel and if we accept the southern edge of the trench as shown by Fowler as the northern boundary of Lot 33 a parallel should be taken from that point parallel with Lot 19 which more or less follows the red broken line in Exhibit "O" and slightly to the south of it.

We would have to assume that the trouble arises because the dam was built too far north. Fowler's plan gives a general direction but not the exact direction of the dam, he is concerned chiefly with getting information for the purposes of title. 10

The dam as shown by a mauve line goes into Reyneststein proper.

It is possible for me to describe the disputed area of land which has just been pointed out to me by the court. The triangle shaded red in Exhibit "D" in the plan shown by Wilkins if he makes another plan and lays down paals and give notices. I could not define this portion of land in relation to Fraser, Fowler, Klauty and Hastings' plans. I would define it on the basis of the sketch Exhibit "O" on Exhibit "D". I say that the northern boundary of Lot 33 could be defined and described. 20

By Burnham with consent of Court

I see R.A.W.2.

I see the triangle piece shaded red. R.A.W.2. shows the northern boundary of Lot 33, as being the southern edge of the trench. Exhibit "O" also shows the northern boundary of Lot 33 in relation to Fraser's plan on the eastern side of the public road as being slightly north of the southern edge of the trench. That does not coincide with my answer given on 5/1/60 that the northern boundary of Lot 33 was the dam. I said it was the dam because I had no time to study the plan. I don't know why I did not tell the Court that I wanted time to consider the question. Usually a lot never goes up to the dam. I have known that for a long time. I don't know why I gave an answer contrary to my usual experience. On the original plan of Exhibit "S" which is Exhibit "Q" the trench shown by Fowler takes a northerly course when it crosses the public road going west. 30 40



No. 27

DEFENDANTS' COUNSEL'S ADDRESS TO COURTIn the Supreme  
Court of  
British GuianaMr. Elliott addresses the Court.

No. 27

Two actions heard together. The earlier one is No. 1130/59 and is an application. A summons taken at Deeds Registry Ordinance asking that Transport be passed of Lot 33 Maria's Lodge. Section 36 i.e. Title held by John Graham under his Transport in 1875 - Exhibit "A". The application has been opposed by W.B. Estates Ltd., on the grounds of (1) Description.

Defendants'  
Counsel's  
Address to  
Court.

(a) Description is not accurate. Fraser's plan only defines Lot 33 east of the public road.

(b) He shows it correctly as being part of Pln. Reynestein. The depth is incorrectly stated. It should read the whole depth of the estate of Reynestein and not the whole depth of estate Maria's Lodge. The northern boundary of Lot 33 falls to the south of the dam. Subject to the correct definition of Lot 33 being given the Defendant Company would not oppose the application further and also of course subject to the description being corrected in order to indicate the northern boundary. The width of the facades of Lots 20-33 along the public road should be the same as the width of the lots at the western extremity.

Affidavit by Richard Layne saying that he is not interested and is making no claim, is it open to Court to direct Transport to be passed to 3 or 4 people beneficially in title on the fourth person renouncing.

In respect of the action 1719/1959.

See Indorsement of Claim.

If Court accepts evidence of 2 experts and both experts agree that (a) triangle shaded red is not part of Lot 33, it follows that they cannot succeed on a claim for possession of a portion of Lot 33 which we have occupied. We, the Defendant Company have not occupied any part of Lot 33.

The record claim is for damages for trespass. (b) is the same as (a) in that it is a claim for

In the Supreme  
Court of  
British Guiana

—————  
No. 27

Defendants'  
Counsel's  
Address to  
Court  
- continued.

damages for trespass for Lot 33. Plaintiffs cannot succeed because Defendants have never gone on Lot 33. It is clear from the affidavit what the case for Defendants was. The affidavit of the Plaintiff makes no reference to any land north of Lot 33.

There should be an alternative claim to the writ that they are claiming that portion of land north of the northern boundary of Lot 33 and south of a line joining the stations along the dam as laid down by Mr. Wilkins in 1951. Until that application is made there is nothing in their claim with which counsel for the Defendants can deal.

10

Court should ensure that Lot 33 is correctly defined. The only evidence before the court is by Edghill that the southern boundary should be parallel to the northern boundary.

Defendants' concern is to convince the court that the broken red line in Exhibit "O" is north i.e. 35-40 feet north of the northern boundary of Lot 33 and it marks the starting point of Defendants' operations. Two experts have given evidence and both have agreed that that is the case and no expert has been called to refute that.

20

Mr. Elliott is about to conclude his address and states that there is no claim in the writ with respect to any land north of the true northern boundary of Lot 33 and until there is an application for amendment, which he would not oppose, he cannot deal with the question of possession.

Mr. Burnham at this stage states that he wishes to make it clear that he intends to pursue the argument that if the portion of land which is the subject matter of the dispute is not part of Lot 33 as defined on Fraser's plan the plaintiffs by virtue of longi temporis praescripte are entitled to maintain an action against the defendants.

30

On the question of an amendment as at present advanced he doubts his competence to seek to amend the writ until serving that amended writ.

It is to be noted that this is not a case in which there have been pleadings. If there had been pleadings he could easily have asked for an amendment to the pleadings. It was not until the case had been in progress for sometime that the Defendant

40

Defendant Company conceded that Lot 33 extended west of the public road.

Mr. Elliott states that he will waive necessity for reservice of writ. He is not asking for an amendment of the claim, he is asking for the alternative claim to be made in a writ.

10 Mr. Elliott: Let us see about occupants and possession. Except for 2 branches of an orange tree cut by Mohamed the Defendants have not gone into the cultivation which has been described by 150-200 roods. The Plaintiff agreed that Defendants went west along the dam north of the cultivation and turned at the back of the cultivation.

Paragraph (2) of the Plaintiff's affidavit.  
No trespass on the dam.

20 The area in issue is a portion of land in the shape of an irregular quadrangle and not a triangle and the western boundary of which is 10 roods north to south running 200 roods west of the road. The northern and southern sides of which must be 450 roods and the western boundary of which would be 20 roods along the western boundary of Pln. Reynestein.

In paragraph (4) no allegation of destruction to cultivation only Defendants impeded their access to back lands and deprived them of the use of the land occupied.

30 They were deprived of Timber and Mookroo grass. Comparatively accurate and truthful affidavit and consistent with the evidence given on behalf of the Defendant Company.

From acts complained of:

(1) They have lost the use of the land. This includes the use of the land for access and for planting the back lands i.e. They have not been able to cut timber or mookroo that Defendants may have cut down. They were no longer able to use the land either for planting, for access or mookroo grass.

40 Claim for \$50,000 as led to the plaintiffs giving fancy evidence to destruction of injury to crops. Figures given are about to the value of the crops.

Rice: Victor says he stopped planting rice in 1925. Arthur says the first and last time he saw rice in the back lands was in 1950. The plaintiff Victor said he last planted rice in 1925.

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Court of  
British Guiana

No. 27

Defendants'  
Counsel's  
Address to  
Court

- continued.

In the Supreme  
Court of  
British Guiana

No. 28

APPLICATION BY PLAINTIFFS' COUNSEL FOR AMENDMENT  
OF THE INDORSEMENT OF CLAIM

No. 28

Application by  
Plaintiffs'  
Counsel for  
amendment of  
Indorsement  
of Claim.

Burnham intervenes to Court Order 33 Rule 11 and  
Section 33 Ch. 7.

At this stage Mr. Burnham makes application for  
an amendment to the indorsement of claim. That the  
following words be inserted after (thirty-three) in  
brackets.

"That the said lot 33 being bounded on the north by 10  
the northern edge of a dam between Plantations  
Reynestein and Maria's Lodge cum annexis extending  
from the Demerara River westwards across the public  
road and along the notional prolongation of the said  
dam westwards to the full depth of 750 roods of Pln.  
Reynestein and on the west by the western boundary  
of Pln. Reynestein and on the south by the northern  
boundary of Lot 32 Maria's Lodge and on the east by  
the Demerara River".

Mr. Burnham also asks that the schedule attach- 20  
ed to the summons for Registration of Title under  
Section 36 of Ch. 32 be similarly amended.

Mr. Burnham asks that the southern boundary of  
Lot 33 be not described further than by reference  
to northern boundary of Lot 32, in other words his  
clients consent to the southern boundary of Lot 33  
remaining as it is.

That (d) of the prayer be amended to read (e)  
and in substitution of (d) a declaration that the 30  
plaintiffs having occupied upwards of 30 years nec  
vi nec clam nec precario that portion of land be-  
tween Lot 33 of Pln. Maria's Lodge cum annexis as  
shown on Fraser's plan aforesaid and the northern  
edge of the dam aforesaid and the western boundary  
of Pln. Maria's Lodge cum annexis are entitled to a  
declaration of title in their favour.

Mr. Elliott says that he agrees with the second line  
of application that they get a Transport of Lot 33  
and they seek a declaration in respect of the dis-  
puted portion to the north. 40

Mr. Elliott says that while he has no objection  
to the claim being amended to include a claim for

trespass in respect of land to the north of lot 33 based on prescription he does not agree to an amendment including a declaration of title to be made in rem pertaining to the disputed portion of land north of Lot 33.

In the Supreme  
Court of  
British Guiana

\_\_\_\_\_  
No. 28

10 Mr. Elliott states: Whereas the plaintiffs would be correct in seeking a declaration of title as to the area between northern boundary of Lot 33 and the dam east of the end of the cultivation it does not seem that any claim for damages for trespass is made in respect of that area.

Application by  
Plaintiffs'  
Counsel for  
amendment of  
Indorsement  
of Claim

- continued.

Mr. Burnham concedes that the claim for trespass is in respect of the area west of the end of J. Victor's cultivation which would be 150-200 roods west of the road.

\_\_\_\_\_  
No. 29

No. 29

DEFENDANTS' COUNSEL'S ADDRESS TO COURT (Contd.)

Defendants'  
Counsel's  
Address to  
Court (Contd.)

20 Mr. Elliott states that it is quite impossible for the plaintiffs to maintain an action for trespass based on possessio longi temporis in respect of the disputed area west of the cultivation. First thing is the affidavit of Plaintiff that there has been:

- (a) a woodcutting and grass-cutting in the area:  
and
- (b) access to the back lands;
- (c) planting from time to time in certain areas.

30 Paragraph (6) in the relevant affidavit. Cutting of timber and grass using lands for access and even planting from time to time cannot amount to a dis-possession and a taking of adverse possession.

Victor's Evidence

"I worked the whole depth of estate from time to time". We had 200 fruit trees. No attempt to say this in affidavit. They bulldozed the land and cut down spice tress. No mention of fruit trees this time. He then mentioned fruit trees destroyed. This was an invention when he looked at the list to refresh his memory.

In the Supreme  
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Defendants'  
Counsel's  
Address to  
Court (Contd.)  
- continued.

J. Victor said that he planted rice up to 1925, his witness said that the first and last time he saw rice there was in 1950. The occupantsoof Lot 32 have cultivated a portion of land to the west of the public road.

Cross-examination on 23/12/59.

I agree that cultivation of yams and fruit trees were all stopped about 100 roods from the road. He agreed that he stopped Mohamed 600 roods west of the public road after he started to cut "my cultivation". This the defendants say is the only trespass done in this area. He said he had taken an area of land and planted it and then abandoned it. This it is submitted is not a holding of land in continuous adverse possession. He said he would leave the cultivated plants for 8 years to allow the bush to grow up: This is an admission that he abandoned for periods of 8 years any plants cultivated more than 200 roods west of the road.

10

Arthur's Evidence says that Defendant did the cultivation. Victor has not said this. He said part time farming was done. None of the witnesses have supported that there was cultivation on the dam itself.

20

Scott

West of the public road from time to time they would work a few acres, 200 roods and 100 roods west of the public road. Then they would abandon that and go further and further and then come back. "When we were 60 roods from the public road we got into the cultivation". "A couple of trees had been trimmed and cut".

30

Alexy Murray

No coherent explanation of what was going on. She says fruit trees on the dam. Even accepting all the Plaintiffs' evidence this does not amount to continuous adverse possession. The evidence is first of all not true. In any event the Defendants' evidence shows that it is not true even in so far as it is not self-contradictory. Unanimous evidence of the cultivation was that it was virgin bush.

40

Wilkins Evidence

At the western extremity there was no savannah grass. J. Victor behaved in a manner consistent

with the thought that he had transport up to the dam. Wilkins was not cross-examined as to evidence as to occupation what he found in 1950 and 1959. Plaintiffs would have to prove continuous adverse possession up to the date of the writ.

In the Supreme  
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No. 29

Mohamed

"When I came to cultivation I cut off 2 branches of orange trees".

Defendants'  
Counsel's  
Address to  
Court (Contd.)

- continued.

Miller

10           14 days to cut the line. Nature of forest he had to cut.

Wilson

On no occasion did their bulldozers go where there was cultivation.

Hugh

We found no traces of cultivation south of the dam at the back of Victor's cultivation.

Khan

20           There was cultivation to the south of the dam up to 150 roods after then there was dense forest.

It was never suggested to any of the witnesses for the defence that they had seen any specific area under cultivation. North and south of the dam was thick bush. The best evidence is the evidence of the people who flattened the bush.

30           If the Defendants' evidence is accepted that there was no cultivation or signs of cultivation more than 200 roods west of the road at the time of the filing of the writ or immediately before filing the writ when clearing the land then it could hardly be argued that the fact if it be so that the plaintiffs trespassed and cut timber and grass and caught fish could amount to the taking of adverse possession much less a continuous holding of adverse possession longi temporis.

Even if Plaintiffs' evidence is true that there was farming from time to time on certain plots which were then abandoned that would not be sufficient taking. If they planted rice up to 1925 that cannot

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Defendants'  
Counsel's  
Address to  
Court (Contd.)

- continued.

assist them even if that were adverse possession it ceased in 1925. 11th Edition of Clerk and Lindsell page 522 paragraph 908. "People in De facto Possession". Leigh v. Jack 1879-5 Ex. Chap. at page 264 pp.270-71 Cockburn C.J.

In this particular case the plaintiffs were not acting with a view to defeating the Defendants' title but were acting if so in the belief that they were so entitled by virtue of their transport. In the instant the Plaintiffs' acts were those of people who did not intend to be trespassers or to infringe on defendants' rights. An occupation as of right cannot be an adverse possession. Littledale v. Liverpool College (1900) 1 Ch. page 19. Even where there are gates locked at each end of the strip it has to be shown that this was done with the intention of dispossessing the owners and not merely excluding 3rd parties. Brijlall v. J.J. 1948 B.G.L.R. page 13.

10

Possession order to be adverse must be adverse possession of the whole land, it is not sufficient that a mere entry is made on some part of the land although that would be sufficient in the case of the true owner to give him possession of the entire land.

20

Page 40 in Lightwoods possession of land.

Aiken v. Buck

If the Plaintiffs had transport or title in respect of the land up to the dam then it would be considered that they had possession of it even though they never put a foot beyond 200 rods of Public road.

30

Page 435 of 32nd Vol. English and Empire Digest Limitation of Titles C & D.

What acts do or do not amount to dispossession.  
McIntyre v. Thompson C.

Occasional Acts of Cutting D.

McInnes v. Stewart.

Defendant Company has never given up possession.

Leigh v. Jack Cockburn C.J.

40



PLAINTIFFS' COUNSEL REPLY TO COURTIn the Supreme  
Court of  
British Guiana

No. 30

Mr. Burnham replies for Plaintiffs.

Adverse possession - Adams v. 1951 B.G.L.R.  
p. 93. Incorporated Trustees v. McLean, page 186.  
Heeralall v. Frank (1947) B.G.L.R., page 132  
Brijlall v. J.J. (1948) B.G.L.R. It is submitted:

Plaintiffs'  
Counsel's  
Reply to Court.

First issue in the case is "What is the northern boundary of Lot 33".

10 The Plaintiffs say northern boundary is along a dam separating Reynestein proper from Maria's Lodge cum annexis.

20 The Defendants say that the true boundary is to the south of the dam, leaving in dispute a triangular piece of land. If the court decided the boundary as the dam that is an end of the case. If the court decides that the true boundary of Lot 33 is as stated by Defendants, the further question to be decided is whether the Defendants could have re-entered the way they did or whether the plaintiffs had not acquired sufficient property in the disputed land to give them a right to bring an action in trespass against the true owners who had the legal title.

30 On the second issue: (a) Under Chp. 184 (4) Plaintiffs ask court to make a declaration if court finds that Plaintiffs are entitled to disputed area by virtue of Possessio Longi Temporis. (b) Assuming that the court cannot make the declaration yet there was sufficient possession in the plaintiffs to found an action for trespass. Whether or not 1952 Ordinance Chapter 184 does not permit a person to get a declaration of title based on 12 year occupation period provided any part thereof falls after the Ordinance was passed. Inderject Thackorie v. Port Moutant Ltd. 1954 B.G.L.R. (c) Assuming Court finds in favour of Plaintiffs in 1 or 2, what would be the question of damages: Whether they are aggravated circumstances on the basis of which  
40 punitive damages should be awarded.

(1) Ownership of Lot 33 is not disputed by the Defendant Company.

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Plaintiffs'  
Counsel's  
Reply to Court.  
- continued.

Briglall v. J.J. Dictum page 35 "lines drawn".  
Though Court may gather some assistance from the  
evidence of Wilkins' and Edghill' and Frasers' plan  
it is for the court to find what is the true bound-  
ary of Lot 33 and court can discard judicially the  
evidence of the experts. Wilkins' evidence was  
prejudiced.

In 1875 the Plaintiffs' predecessor in title  
transported to him Lot 33 by transport.

Description

10

Fraser's plan does not go west of the public  
road.

Plan is not the end all and be all of the matter.  
Description shows that the Lots go west beyond the  
public road.

1891 plan of Fowler which shows a dam between  
Lot 33 and Reynestein. Plaintiffs have explained  
the dam. The Defendants have not explained the dam.  
Dam comes out at Pl.

Lallbahadur Singh v. McPherson.

20

The line of dam is made up by throwing up earth on  
either side. This dam was always regarded as the  
boundary on the ground. Page 20 Brijlall and J.J.  
Wilson said he went no further south than the dam.

Evidence of Scott: One of Wilkins' assistants in  
1950 "paal down at the west - Wilkins put a paal in  
1950".

Court is asked to believe this witness when he says  
Wilkins put down a paal or pole next to where there  
was another paal.

30

Brijlall v. J.J. pages 21 and 23.

Ample evidence for finding that the plaintiffs'  
contention with respect to northern boundary of Lot  
33 is correct.

Coddett v. Thomas 1957 W.I.C.A.

Transport of 1875 being a prior transport even if  
1927 transport to Defendants or predecessors are  
purported to include land which was in 1875 trans-  
port the latter transport would be locutory.

Paal which Wilkins found on the eastern extremity  
and to the east of the plot of land is roughly in  
line with the dam.

40

Edghill's change of evidence.

He has since been induced to say that the northern boundary of Lot 33 is the southern edge of the trench south of the dam.

Court under no compulsion to accept evidence of Edghill.

(1) Carelessness of Edghill.

Edghill's evidence as to side line normally made of adjoining owners digging trenches and throwing up earth.

10

Lallbahadur Singh v. McPherson - 1939 page 87.

The Plaintiffs explained the existence of the dam. The Defendants have not. In rejecting Edghill's evidence Court is on safe ground. Wilkins is not a reliable witness because he is a witness subconsciously biased. No.1 he is a Director. No. 2 - he is here to justify.

People tend to see facts as they would like them to exist.

20

Prescription

Adams v. Raghabir 1951 B.G.L.R. page 90.

Present Chapter 2 Civil Law of British Guiana, Section 3(c) and (d).

Effect of these two provisions.

When we come to coincide in relation to immovables in B.G. we must seek assistance in cases of difficulty from the English Law of Personalty.

30

The effect of (c) is that English Law of Real Property can never be of assistance unless it coincides with the English Law of Personalty. If you cannot get assistance from the English Law of Personalty then you must fall back on the Roman Dutch Law which was the law in force up to 1917. If you cannot apply the English Law of Personalty you go back to what is there before the Roman Dutch Common Law.

Incorporated Trustees v. McLean - 1959 B.G.L.R. page 186 - Page 193

40

Reference to a Lawful title.  
Page 195.

There must be evidence of intention to take the land as to right and not with the permission of the lawful owner.

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No. 30

Plaintiffs'  
Counsel's  
Reply to Court.

- continued.

In the Supreme  
Court of  
British Guiana

No. 30

Plaintiffs'  
Counsel's  
Reply to Court.

- continued.

Page 492 - Ramsahoye

Cadogan v. Cadogan 1955 B.G.L.R.

You apply the English Law of Personalty where a person is in possession and not with reference to a lawful title, but in his own right in good or bad faith, the only imperfection in such a disseisor is the right of the owner to recover possession as soon as twelve year period has passed even the true owner cannot re-enter or bring an action.

Franks v. Heeralall.

10

What amounts to possession or exclusive possession according to the Law of English Personalty?

Baynes Personal Property, 2nd Ed. of 1957 Chap 4. page 47 and 48.

Court should not be interested in the rules of possession in respect of English Realty.

Tubantias 1924 Probate, page 78.

Plaintiffs in this case took such possession of this area as the nature of the land and its user permitted.

20

Sir Henry Duke's Judgment: Important possession *nec vi, nec clam, nec precario*. Evidence of Victor that the dam went right down to the Estate.

Court has evidence upon which it can come to the conclusion that for more than 12 years that dam ran throughout the whole estate.

For the purposes of the plaintiffs the dam is a sufficient device for excluding the true owner. Wilson said that he did not cut wood south of the dam. What is the type of user of which the land is capable. Graham did not die until 1914.

30

Defendants use of their land north of the dam was for cutting wood. Cutting of trees for sale and use. They are in a position to swear that from 1943 that they treated this disputed area as their property. There was such user as was normally in the circumstances.

Stoby J. Dictum in Madhoo v. Ramdass was in relation to the particular facts.

40

(1) Presence of dam.

Side line dam which on evidence is a dam made by adjoining owners to separate estates.

(2) Cutting wood throughout the whole area;

- (3) Cutting throughout the whole area;
- (4) Rotational farming for a year or two;
- (5) Rice on western extremity for five years
- (6) Cultivation in the disputed area.

In the Supreme Court of British Guiana

No. 30

Wilkins said that the area consisted of secondary forest.

Plaintiffs' Counsel's Reply to Court.

Williams Brothers v. Rafferty 1957 3 All Eng. 593 Damages.

- continued.

10 Evidence of Plaintiff as to the extent of damages that he would suffer has not been contradicted about 14 to 20 acres of land affected. Area concerned 10 roods wide and 550 roods deep. Drainage must have been affected. Case of Restoration may well be less than the diminution in the value of the land.

The criterion must be by how much has the value of the land diminished.

Rochford v. Essex County Council 1916 85 Law Journal Ch. page 281.

20 The loss of actual crops.

Certain circumstances that should aggregate damages.

Williams v. Currie 1845 1 Crown Bench 841.

After 1958 they could have come to the Court for possession and not continued in trespass.

Clerk & Lindsell on Tort 545

Wanton and persistent trespass by Wilkins.

No. 31

No. 31

DEFENDANTS' COUNSEL'S REPLY

Defendants' Counsel's Reply.

Elliott in reply 1939 Ch. 87.

30 The Dictum pre-supposes that it is known that the dam in question is a side-line dam and does not help to show that this was a side-line dam. It may have been an old middle-walk dam through the centre of Reynestein before the 100 roods was transported. There is no positive evidence that this dam is a side-line dam. The inference is legally one way or the other. C & D, B.G. Civil Law.

Mr. Burnham submission based on Section 3 of

In the Supreme Court of British Guiana

Chapter 2 or based on the assumption that the law of personal property in England was confined to the law of Pure Personalty and does not include chattels real.

No. 31

Defendants' Counsel's Reply.

- continued.

Leaseholds are personal property and one can acquire a Leaseholder's interest by adverse possession.

Law of adverse pcssession in Real Property is the same as it is in Personal Property.

Page 553 of Clerk & Lindsell.

Law of adverse possession applies to leaseholds as it is to freeholds.

10

Cadogan v. Cadogan.

No. 32

No. 32

JUDGMENT DELIVERED BY BOLLERS J. (ACTING)

Judgment of Bollers J. (Acting).  
4th April, 1960.

This is an action in which the Plaintiffs claim the sum of fifty thousand dollars (\$50,000) damages against the Defendant company for wrongful entry and trespass upon land situate at Pln. Maria's Lodge which is more fully described in the indorsement of the claim, and in the Transport on which they rely (Exhibit "A") as "Lot 33 part of Plantation Maria's Lodge, situate on the west bank of the River Demerary the said lot number 33 (thirty-three) having a facade of 288 (two hundred and eighty-eight) feet by the whole depth of the said estate as laid down and defined on a diagram thereof by the Sworn Land Surveyor, D. Fraser, dated 17th May, 1856, and deposited in the office of the Registrar of the Counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot number 33 (thirty-three)."

20

30

The Plaintiffs also claim possession of the said land occupied by the Defendant company and their servants or agents as trespassers since the early part of the year 1959, and an Injunction in the usual terms and costs.

On the 30th October, 1959, the Plaintiffs filed the Writ and on the 2nd November, 1959, they obtained an Interim Injunction against the Defendants in respect of the said land on an Order made

40

10 ex parte by a Judge in Chambers. On 7th December, 1959, by consent of both parties to the action an Order was made by a Judge in Chambers that the affidavits filed by Plaintiffs in support of the application for an interim Injunction against the Defendant and the affidavits in reply by the Defendants filed in respect of the Plaintiffs' application for an Interlocutory Injunction were to be treated as pleadings in the action and a speedy trial was then ordered.

20 During the course of the trial and after the first witness who was the first-named Plaintiff had given evidence, Counsel for the Defendant Company made application for the discharge of the ex parte Order granting the Interim Injunction on certain grounds, and after hearing arguments on both sides I made an order discharging the Interim Injunction upon the Defendant Company and the Plaintiffs giving the usual undertaking. The reasons for the discharge of the Injunction made on the ex parte Order will be later set out by me as an addendum to this Judgment.

30 Together with this action was heard by consent an application under sections 36 and 38 of the Deeds Registry Ordinance, Chapter 32, for registration of title in respect of the said Lot 33, Plantation Maria's Lodge, as already described. This application for registration of title in respect of the said property was opposed by the Defendant company after due advertisement made on Order by a Judge in Chambers.

40 At the commencement of the trial it was made clear by Counsel for the Defendant company that his clients were only opposing this application in respect of the triangular portion of land shown in the sketch of R. Wilkins marked RAW.2, filed with their affidavit and shaded red up to the western boundary of the Plaintiffs' cultivation also shown in the sketch. In so far as the remaining portion of the land which the Plaintiffs were alleging formed part of Lot 33, Maria's Lodge was concerned, there would be no opposition. In other words, the Defendants were only opposing application for registration of title in so far as the triangular portion of land shown on the sketch as shaded red was concerned.

In their affidavits the Plaintiffs say that they are the legal and beneficial owners and persons in

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occupation and possession for upwards of 30 years, nec vi, nec clam, nec precario of the said lot 33, part of Pln. Maria's Lodge. That at all material times they were in possession of the said lot until the month of April, 1959, when the Defendants, through their servants and their agents, unlawfully trespassed in a portion of the said lot 33 Maria's Lodge, i.e. a portion commencing along the northern boundary of the said lot about 200 rods west of the River Demerary and extending thence in a westerly direction of the remainder of the whole depth of the said estate by a facade of about 10 rods at the aforesaid point of commencement of the said portion of land into which the Defendants entered and 20 rods at the western extremity thereof. The Plaintiffs allege that they made repeated objections to the several acts of trespass by the Defendants in the months of April, May, August, September and October of the Year 1959, but the Defendants merely suspended their acts of trespass for short periods after the objections and resumed them again. The acts of trespass complained of are:

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Entry on the aforesaid portion of land and the digging of canals, building of dams and blocking of the drainage trench of the Plaintiffs thereby impeding the only means of access to the backlands by boats through the said trench which had been blocked by the Defendants. The Plaintiffs say further that on the 22nd October, 1959, the Defendants carried in three bulldozers and other machines to carry out further works on a dam which was made by them from excavations on the Plaintiffs' land despite protests by the Plaintiffs. The Plaintiffs finally allege that these acts of trespass caused grave, immediate and irreparable harm, injury and loss to them, as they are being deprived of their use of the land for planting, and of access to the backlands as a result of which they are unable to get timber out of the backlands for the purpose of selling and building houses, and are also unable to bring out mookroo grass which they use for making baskets, upon all of which they depend for their livelihood.

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The Defendant company in reply filed an affidavit by R.A. Wilkins who stated therein that he was a Sworn Land Surveyor and a Director of Bookers Sugar Estates Limited, Managing Agent and Secretaries for the Defendant Company. At paragraph 3 of his affidavit he states that Lot 33 alleged by the Plaintiffs to be part of Pln. Maria's Lodge situate

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on the west bank of the Demerara River is incorrectly described in the schedule to the Order granting the Interim Injunction. He alleges that the said lot 33 is shown on the said plan of D. Fraser as a portion of Pln. Reynestein and does not extend to the whole depth of the estate but is bounded on the west by the public road from whence it extends east to the Demerara River all of which is shown on a certified copy of Fraser's plan marked R.A.W.1. All the land shown on the said plan extending west of the said public road from lots 20 to 33 inclusive by the whole depth of the estate is owned by the Defendant company under Transport No. 529 of 1927. The Defendant company also owns by the same transport the land immediately to the north of the land above described to the whole depth of the estate.

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In paragraph 4 the defendant company does not admit that the Plaintiffs are owners of Lot 33 as correctly defined, but lays no claim itself thereto. In paragraph 5 he alleges that the Plaintiffs have never at any time occupied any portion of the Defendant company's land west of the road, save that in recent years the Plaintiff Victor and other persons without the permission of the Defendant company trespassed and planted on the Defendant company's land west of the road and of the said lot 33, to a depth of approximately 1,900 feet. In paragraph 6 he alleges that the portion of land on which the Plaintiffs complain that the Defendant Company's servants and agents trespassed does not form part of Lot 33, Pln. Reynestein at all even as wrongly defined in the schedule to the ex parte Order, but is part of adjoining land to the north, the property of the Defendant company. He then points out that the land to which the Plaintiffs refer is situate to the north of the continuation of a line taken from the northern boundary of lot 33, through the whole depth of the estate as shown on a sketch plan made by him and marked R.A.W.2. The line marked on the said land is the line wrongly claimed by the Plaintiffs to be the boundary of the extension of the northern boundary of lot 33, through the whole depth of the estate, and the area shaded red on the said plan is the area on which the Defendant company are carrying on their operations. Finally, Wilkins alleges that the line indicated on the said plan as the true boundary line of lot 33 is true and correct and that therefore the servants and agents of the Defendant Company have never in fact trespassed on lot 33. He then concludes by alleging that the Plaintiffs

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have suffered no injury or loss whatsoever by the action of the Defendant company, even assuming that they have any right, title or interest in and to the land in question.

In reply to this Affidavit of R.A. Wilkins, the Plaintiffs filed another affidavit in which they allege that it is not competent for the Defendants to allege that lot 33 does not extend to the whole depth of the estate, in as much as the description of the Transport on which they rely, No. 160 of 1875 (Exhibit "A") says that it does, and the plan of D. Fraser shows the depth of the estate except that lots 20 to 33 were not drawn to the full extremity. They contend as a matter of law that the term "whole depth" in this colony means the usual first depth of 750 roods. They then say that the said R.A. Wilkins in the year 1953 did in fact survey the land in question and placed paals at the eastern and western extremities and in the middle thereof, showing the northern boundary in its correct position as set out in the description of their transport. They then point out that Transport No. 529 of 1927 (Exhibit "G2") through which the Defendant company makes claim to the land in question is subject to an exception described as

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"save and except all that piece or parcel of land part of the said Plantation Reinstein containing 100 (one hundred) roods by a measurement commencing from Plantation Maria's Lodge and extending thence northwards conveyed to the proprietors of the said Plantation Maria's Lodge on the 6th day of April, 1836"

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as a result of which the whole of Plantation Reynestein is not owned by the Defendant company but subsequently became part of Pln. Maria's Lodge cum annexis which also has a depth of 750 roods similar to Pln. Reynestein. They say that the description of lot 33 is similar to that of all lots in Maria's Lodge from Lot 1 to lot 33 conveyed at the same time whether or not those lots were drawn completely to the full extremity on the plan.

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To this affidavit R.A. Wilkins swore to another affidavit in reply in which he admits for the first time the exception described in the Defendant company's transport (Exhibit "G2") and states that lot 33 claimed by the Plaintiffs is the most northerly lot in a parcel of land excepted from the Defendant

company's Transport. He clarifies the position of the land claimed by the Plaintiffs upon which the Defendant company had been working and which he had previously described as

"situate to the north of the continuation of a line drawn from the northern boundary of lot 33, through the whole depth of the estate"

10 and says that the continuation to which he referred was a line drawn from the western end of that shown as the northern boundary of lot 33 on the said Fraser's plan to a point on the western boundary of Reynestein 100 roods north of the northern boundary of Maria's Lodge. He then admits that the Defendant company constructed a canal running west along the land to the north of the area surrounded by a red line on the plan RAW.2, and marked "boundaries of area cultivated by J. Victor", then running south along the land to the west of that area and then running west again along the land to the north of 20 the said line drawn 100 roods north of the northern boundary of Pln. Maria's Lodge to the whole depth of the estate.

30 At this stage it may be convenient to express surprise at the statement in Wilkins' affidavit that all the land shown on the plan marked RAW.1 (Fraser's plan) extending west of the public road from lot 20 to 33 inclusive, by the whole depth of the estate is owned by the Defendant company under Transport No. 529 of 1927 (Exhibit "G2") and also the statement that the Plaintiffs had never at any time occupied any portion of the Defendant's company land west of the road save that in recent years the Plaintiff Victor and other persons, without the permission of the Defendant company, trespassed and planted on the Defendant company's land west of the road. Wilkins himself in his evidence stated that in 1950 when he carried out his survey, that he did not feel that the exception referred to the land on 40 the western side of the public road even though part of it was under cultivation. He later stated that when he ran a traverse along the dam going west to east he saw cultivation on his left or south i.e. ground provisions and fruit trees and this extended for about 200 roods. In 1958 when he instructed Mohamed to define the northern boundary and Mohamed was stopped by Victor in his cultivation, Wilkins admitted that he went to the site and found the cultivation and fruit trees established and he gave

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instructions that the cultivation should be bypassed. In April 1959, when he gave Miller instructions to clear a line from the bush starting from the western boundary from P2 (the point 100 roods north of the northern boundary of Maria's Lodge) his instructions were to stop when he reached Victor's cultivation.

With respect to the former statement, when one looks at Fraser's plan, even though Fraser did not project his lines to the full depth of the estate, it is obvious that lot 33 is the northernmost lot and that lots 20-33 occupy the area of the 100 roods of land excepted from the Defendant's Transport No. 529 of 1927. When one reads the description in the Plaintiff's Transport:

"Lot 33, Maria's Lodge, throughout the whole depth of the estate",

could only mean throughout the whole depth of Maria's Lodge (even though it will be seen later that the description should be throughout the whole depth of Pln. Reynestein). If Wilkins had consulted the 1836 Transport (Exhibit "J") he would have seen that the piece of land 100 roods facade by 750 roods in depth part of Pln. Reynestein commencing from the northern boundary of Maria's Lodge and extending northwards had been conveyed by one E.J. Oudkerk to the proprietors of Pln. Maria's Lodge. These two statements in Wilkins' affidavit are clearly false and it will be seen what effect, if any, this will have on his evidence.

After reading the affidavits in this action, the conclusion to be drawn therefore is that the area of land in dispute between the parties is a triangular portion shaded red in the sketch marked RAW.2 and that each party is alleging that the disputed area is covered by and falls within his respective Transport. The first question therefore that arises for determination is whether the triangular portion of land shaded red in the sketch is covered by the Transport of the Plaintiffs No.160 of 1875 (Exhibit "A") or the Transport of the Defendant company No.529 of 1927. This issue, as I see it, is clearly a question of fact, and I must approach it bearing the rule in mind in aequali jure melior est conditio possidentis.

Mr. Burnham has stressed that the Plaintiffs

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rely on Fraser's plan which was deposited in the Department of Lands and Mines in 1854, and that Transports of all the lots 1 - 33, Pln. Maria's Lodge cum annexis, had been passed from time to time since the year 1854 with reference to Fraser's plan, and relies on the maxim "omnia praesumuntur rite esse acta". The answer to this submission is easily found in the judgment of Worley C.J. in Brijlall and Anr. v. C. Jay Jay and Ors. p.20 of 1948 B.G.L.R. where he states:

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"In contending for the correctness of Chalmers' plans Mr. Stafford relied strongly upon the maxim omnia praesumuntur rite esse acta and urged that in the absence of direct evidence to the contrary the Court must presume that the survey was properly made. In Gibson v. Doeg (1857) 2 H & N 615 Pollock C.B. at p.623 said "it is a maxim of the law of England to give effect to everything which appears to be established for a considerable course of time and to presume that what has been done was done of right and not in wrong". But, as was said in Rolleston v. Sinclair (1924) 2 I.R.157, the maxim 'is to be called in aid only when there is a void to be filled up. If there is really evidence it must be acted upon'. The question therefore in this case is whether there is evidence to rebut or avoid the presumption."

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30 The presumption can therefore be rebutted by positive evidence. Again at page 35 Worley C.J. States:

"It is of course, good law that when a plan is incorporated in a conveyance as defining the land and not merely as illustrating metes and bounds given in the conveyance then the plan is the criterion of what is conveyed (see Llewellyn v. Earl of Jersey (1843) 11 M & W 183 Barton v. Dawes (1850) 10 C.B. 261 Halsbury's Laws of England 2nd Ed. Vol. 29 p.406) but it must always be a question of fact whether the plan gives "an adequate and sufficient definition with convenient certainty of what is intended to pass".

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I must now consider and analyse the evidence on both sides bearing in mind that I am perfectly free to reject the evidence of the Sworn Land

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Surveyors in answering the question of fact which arises for determination, and to see whether the presumption which arises in favour of the Plaintiffs has in fact been rebutted by the Defendants. John Victor, the first-named Plaintiff, stated:

"Two paals separated lot 33 from the land known as part of Pln. Reynestein owned by the Defendant Company. These paals were situated one at the eastern extremity of the northern boundary of lot 33 and one at the western extremity of the same northern boundary. The distance between these two paals would be 750 roods. Beside the paals there was a dam running east to west along the whole depth. There was also a trench south of this dam that ran along the whole depth which separated lot 33 from Pln. Reynestein. On the northern side of this on Pln. Reynestein there was a small trench .....

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In 1950 the Defendant Company carried out a survey of Pln. Reynestein and I was present. I went to see if the two paals were still there and I found them there. I saw one more paal and this paal was on lot 33. This paal was in the middle of a straight line drawn between the two paals originally placed there. This paal was on the northern boundary of lot 33. The survey was carried out by R.A. Wilkins and the paal was placed there. I also saw another paal which was at the side of the paal at the western extremity of the northern boundary. I was satisfied with the position of the paals. Lot 33 is 24 roods or 288 feet in width and 750 roods in depth; the 750 roods going west extends over the public road".

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The witness then stated that in 1958 a survey was done by one Mohamed and he was served with a notice of intended survey (Exhibit "B").

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"Mohamed started to cut a line from the eastern extremity of the northern boundary of Pln. Maria's Lodge or southern boundary of Pln. Reynestein. He was moving in a westerly direction when he reached about "200 roods he moved south-west in a slanting position across my land lot 33, Maria's Lodge. He then started to cut a line through some of my fruit trees. Bushes were cut and a path made. I stopped when he did this and he said he would remove because I was right .....

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"In 1959, R.A. Wilkins carried out another survey and started from the western extremity of the northern boundary of Maria's Lodge. I received no notice from Mr. Wilkins. Mr. Wilkins started from the western extremity of the northern boundary and went east. Wilkins started his survey on my land lot 33. He started from a point inside my land beyond the northern boundary of lot 33 and south of it. He started about 18 roods inside my land from the northern boundary. I stopped the line-cutter when I saw him".

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The witness went on to say that the paal at the western extremity of the northern boundary had been removed and that the paal on the eastern extremity of the northern boundary was still there. Under cross-examination the witness stated that he considered the northern boundary of lot 33, Maria's Lodge, to be a dam and two paals, one to the east and one to the west, and said that the easternmost paal was just east of the public road. He claimed the northern boundary of the triangle shaded red on RAW. 2 to be his northern boundary.

He said that the eastern paal was a concrete paal and not a wooden paal and it had no initials on it. He then went on to say that he agreed that this paal was a station and not a paal. He then claimed that the eastern paal was a wooden paal and was taken up when Mr. Wilkins started surveying in 1950, but its concrete base is still there. He stated that the station was about 9 (nine) feet from where the wooden paal used to be and inside the land of the Defendant Company. He changed this and stated that the station was nine feet away to the south of the wooden paal and in Maria's Lodge. He started out by saying that the marking on the wooden paal was D. Fraser. The paal in the western extremity had the name D. Fraser on it but it rotted away; the bottom was sound. He then denied that there was no paal there marked D. Fraser. This witness then agreed that in 1950 Wilkins may have used stations. The witness then claimed that the paal on the eastern extremity had the initials D.F. on it and that this paal was there from 1856. He was unaware of Hastings' paal on the northern boundary of Maria's Lodge. It will be seen therefore that this witness was saying that there were three paals on the northern boundary, one on the western extremity, one in the centre and one on the

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eastern extremity, but he does not appear to be sure whether they were marked D. Fraser or D.F.

The witness, Sydney Arthur, however, stated the northern boundary separating lot 33, Maria's Lodge from Reynestein, was a blind trench and a dam and that the extent of the dam was 100 roods. He knew a paal to be at the riverside of lot 33 on the Northern edge of the dam. This was a wooden paal with writing on it, but not quite visible. He went on to say that at the western extremity there was a paal and that the last time he saw it was in 1952 and the first time 1920. He stated that from Lots 1 - 33 paals used to be there. Under cross-examination he stated that there is a paal on the eastern side and a few roods away from the river, and that quite recently he has seen the estate put down concrete stations, but in his early life he was accustomed to see wooden paals. He said that the second paal used to be at the east of the public road about 100 roods west of the first eastern paal. He did not remember seeing this paal with a concrete base. He last saw the paal by the riverside 13 years ago. He insisted that the easternmost wooden paal by the side of the river was north of the dam. He was unable to say whether the wooden paal on the extreme western end had any markings on it. He did not know whether there were paals between lots 19 and 20, but he knew there were paals aback of lot 33 going to lot 1 all along. The witness Samuel Scott, who was a surveyor's assistant in Mr. Wilkins' survey of 1950, stated that he saw a paal on the western extremity of lot 33; the marks on the paal were not visible, and that Mr. Wilkins put his own paal immediately next to this paal. He stated that the survey took place on Maria's Lodge dam and went from east to west and he regarded this dam as the northern boundary of lot 33.

"At the Demerara River end there was also a paal there and that paal was marked D.F. There was a third paal at the northern edge of the dam on the eastern side of the public road; this paal was marked D.F. these three paals were all in line right through the 750 roods depth of the estate".

The witness continued to say that at the western extremity there was a dam going from north to south from lots 1 to 33 but when it reached lot 19 it got lower and that there were paals along this dam. Like the other witnesses he stated that one Cockfield, who at one time owned the land north of



Lot 33, used to work up to this dam that ran east to west which the Plaintiffs claim to be the northern boundary of lot 33.

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10 Under cross-examination he stated that the three paals were in a line according to the direction of the surveyor Mr. Wilkins. Mr. Wilkins, he declared, directed them to go towards the paals and Mr. Wilkins was in a position to see the three paals. He started off by saying that he did not know what a station was and then said that there was a station put down on the western side of the public road and that Mr. Wilkins put down another paal by the riverside paal and to the north of it. He claimed that the paal to the east of the road was marked D.F.

Alexie Murray, who appeared to be very old and not fully capable of appreciating the true nature of the proceedings stated:-

20 "A dam divide lot 33 from the estate I know that there is a paal on the dam. It was there when I was a girl. The paal is south of the dam".

It should be observed that Fraser's plan was made and deposited in 1854 before the Land Surveyor's Ordinance No. 20 of 1891 came into force, and as Worley C.J. points out in Brijlall v. Jay Jay at p.20:

30 "There was no obligation on a land surveyor when making a survey of land for the purpose of settling disputes or defining boundaries to place boundary marks or paals at corners or convenient distances along the lines, and it was the practice of many surveyors in those days to leave the lines on their plans open at the back indicating the depth, if at all, merely by a reference to the length of the First Depth."

40 It is well known that a depth of 750 roods in this Colony is known as the First Depth. If Fraser had in fact surveyed the whole of the First Depth - Lots 20 - 33 - his lines would have been carried through as in the case of lots 1 - 19. Fraser's plan does not show paals and was certainly not a survey of lots 20-33 west of the public road. He was therefore clearly under no duty to put down paals, and I do not see how paals could have been

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put down at the western extremity or the centre of the northern boundary of lot 33 when no survey of that portion of Pln. Reynestein was made by him. Wilkins admits that he saw a very thin peg just east of the public road and north of the dam which may or may not have been a paal. It seems, therefore, most likely - and I so find - that Fraser did put down two paals, one on the east of the public road north of the dam and the other at the side of the river. The evidence led by the plaintiffs that there were paals on the western extremity and in the centre forming the northern boundary of Lot 33, I do not believe and cannot be helpful in defining the northern boundary.

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In Brijlall v. Jay Jay this significant passage appears on page 22:-

"The plaintiffs have also put in a plan of Goedland made by J.P. Prass, Sworn Land Surveyor . . . This plan shows the public road and the portion of Goedland adjacent on both sides . . . Only a very small portion of the estate is shown and I see nothing in the plan which suggests that it was intended that the lots should continue to the full depth on the same bearing and I accept Mr. Crosou's opinion that in this plan and in Shank's plan the lines were only intended to show the general direction in which the lots started off".

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The northern boundary of lot 33, as shown on Fraser's plan to the east of the public road, will not then be of assistance in determining the northern boundary of the said lot on the western side of the public road. It is true that the Government Surveyor, D.M. Edghill, stated that the northern and southern boundaries must be assumed to run parallel to each other throughout the whole depth of the estate, but to my mind this would be a dangerous assumption as Fraser obviously did not survey that part of Reynestein west of the public road, and a glance at lot 18 would show that the northern and southern boundaries do not run parallel to each other but converge on the western boundary, although the Transport in relation to lot 18 (Exhibit "R") carries the same description as the Transport in relation to lot 33. The relevant portion of Wilkins' evidence reads as follows:

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" In 1949 I was engaged in a survey on the West Bank of the Demerara River. That survey

was part of a general cadastral survey of Wales Estate which is owned by West Bank Estates Ltd. A cadastral survey is a survey on a large scale. At the time that general survey was being carried out, the Lease to an area of Crown Land held by West Bank Estates Ltd., at the rear of the estates of Potosi, Free-and-Easy, Hermitage, Reynestein, Maria's Lodge and Vreede Styn expired, and before the Lease could be renewed a new survey was necessary.

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" The Commissioner of Lands and Mines wrote Booker, McConnell & Co., Ltd., who were the owners at that time of West Bank Estates Ltd., and as a result I carried out a survey of the Crown lands. I now produce a copy of the survey of Crown lands made by me ..... This is a copy of the plan (Exhibit "M"). One of the conditions upon which I carried out the survey was that my field books in connection with the survey would be submitted to the Commissioner of Lands and Mines. We found some of the people who would be affected by the survey, and after talking to them they agreed to waive notice in writing of an intended survey. It was very difficult to find others.

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" We found nobody at lot 33, Maria's Lodge. At that time I had no knowledge of lot 33 other than what was shown on Fraser's plan of 1856. I did not go specifically to lot 33 to look for anyone, but I walked north to south on the public road looking for people in the various lots who might be affected.

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" The three people who waived notice of intended survey were Safdar, Hodge and Neptune. We also put a notice up on a tree in Maria's Lodge on the boundary between Vreede Styn and Maria's Lodge."

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Under cross-examination on this point Wilkins stated that he did not know then that a part of the area he so surveyed was adjacent to lot 33, and he only knew so now if one accepted that lot 33 extended to the western boundary of Reynestein. At that time, John Graham, the man in whose name Transport for Lot 33 was, was dead. So obviously, Wilkins could not have given notice in writing of the intended survey to him. Nevertheless, under

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Section 16 (1) of the Land Surveyor's Ordinance, Chapter 171, he was under a duty to give notice of the intended survey to the persons in possession of Lot 33. This he failed to do, and it was urged that this omission on his part rendered the plan (Exhibit "M") inadmissible. This objection, however, is easily overruled by the dictum of Verity C.J. in Lacon v. Matthews (1937) B.G.L.R. at page 520 where he states:

"Lines drawn are not evidence of title or boundary but are evidence of what the witness has seen or done in relation to the land. It still remains for the Court to determine whether or not those lines are in accord with the rights or interests of the party on whose behalf they were laid down; as in the present case, for instance, whether the line drawn by the Surveyor does in fact indicate the true boundary between the plaintiff and the defendant .....

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" Such non-compliance does not affect the powers of observation of the surveyor nor his competence to make correctly an illustration of what he saw or did, nor can it preclude him from making proof thereof in accordance with the accepted principle of common law, unless clearly by the statute it is so laid down. To adapt the words of the judgment in Philipps v. D'Aguiar it would be extending the effect of the provisions of the ordinance beyond their natural effect to hold that they laid down any such restriction upon the rules of evidence".

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The plan (Exhibit "M") is therefore admissible. Wilkins in his evidence further stated:

"The area had been surveyed previously by a Crown Land Surveyor in 1921 known as M.P. Hastings. The two surveyors - R.S. Kaufman in 1932, and H.P. Christiani in 1911. These two surveys had some bearing on the work that I was going to do. A plan by E. Klautky dated 1911 also had bearing on this survey. I found the northern boundary of Maria's Lodge, and it was marked by wooden paals "MPH" and there were two paals. I have shown them on the plan marked RAW 2. From my calculations they were exactly where I expected to find them. I drove another paal immediately adjacent to them marked "RW".

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" I worked from Hermitage towards Maria's Lodge. Hermitage is to the north of Reynestein. I found two of Hastings paals on the southern boundary of Hermitage, but when I walked south towards the northern boundary of Maria's Lodge, I found no other paals until I reached the other two paals I have just described. The Hastings paal on the southern boundary of Hermitage was exactly where I expected to find it by my calculations. There again I drove wooden paals adjacent to Hastings' paals with my own brand "RAW" on them. Maria's Lodge does go deeper into the Crown Lands than Reynestein.

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" The two Hastings paals on the northern boundary of Maria's Lodge were 715 feet apart. I then proceeded south from the most westerly paal and I found another paal by Hastings on the northern boundary of Vreede Styn. It agreed with my calculations and again I drove my own paal beside it. I then turned west and found an iron paal branded "EK" approximately 250 feet west of Hastings' paal. I agreed with that paal and I believe I drove my own paal beside it.

" I then turned south along the western boundary of Vreede Styn and there I found another paal branded "EK" (E.Klautky) and I drove my paal beside it. These two iron paals marked "EK" were substantial"

Wilkins then continued with his cadastral survey of Wales Estate, and the time came for him to carry out work at Free-and-Easy, Hermitage, Maria's Lodge and Vreede Styn, and when he consulted the 1927 Transport (Exhibit "G2") and also Fraser's plan, he was puzzled because he could see from Fraser's plan that there were apparently no lots west of the public road, and the Transport gave him no guidance on this point. He did not intend to define the southern boundary of Reynestein; his purpose was to prepare a plan of the physical features of the land, and he decided to run a traverse up the dam on the western side of the public road. This is the dam which the plaintiffs claim to be the northern boundary of lot 33, and which Wilkins considered to be well within the land owned by the West Bank Estates Ltd., even excluding the exception of the 100 roods. At that time Wilkins did

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not feel that the exception referred to the land on the western side of the public road. The dam provided a convenient place to cut the line as it was firm and dry. The traverse was then run in order to pick up the physical details of the land, and it was part of the framework for the overall survey. The line was cleared, concrete stations were placed on the ground, and then the distance between the chain was measured, and the bearings of the line so formed were determined by the use of the Theodolite. The only paal that he came across was the wooden paal quite close to the road, and he then put down a concrete station on the western side of the road and slightly north of the wooden paal. His evidence continues:-

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"I then went away and plotted a plan based on these measurements and when I worked out the calculations I came to the conclusion that if the exception mentioned in the Transport was intended to refer to a strip of land 100 roods inside for the full depth of the estate, then the dam along which we had worked would be most certainly to the north of such a boundary. We then drove a post into the ground at 100 roods north of the Maria's Lodge boundary. We took the paal by Hastings as the northern boundary of Maria's Lodge. I marked on this post "P2".

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"I did not then cut a line from P2 to the wooden paal which I found east of the public road. This would have been the definition of a boundary, and my aim was not to define the boundaries but to continue the cadastral survey".

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He then pointed out that it would have been a difficult and expensive task to cut a line along the boundary as the extreme west was swampy savannahs, and as one walked towards the east the bush became heavy. In 1957 after a decision to cultivate Reynestein, Wilkins sent Mohamed, a Sworn Land Surveyor, to carry out a survey and to define the northern boundary. It was then that Mohamed was stopped by Victor in his cultivation when Mohamed was defining the southern boundary of Reynestein and cutting a line through the western extremity of Reynestein.

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In April 1959, Wilkins sent Miller to clear a line through the bush starting on the western boundary from a paal P2, which line would connect

up with a wooden paal near the eastern extremity near to the public road.

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10 It is clear from Hastings Plan (Exhibit "N") the western extremity of Maria's Lodge is 715 feet west of the western extremity of Reynestein, and that in defining the northern and southern boundaries of Reynestein, he did not mark off the 100 roods excepted from the Defendants' transport. Nevertheless, he has shown the correct width of both Reynestein and Maria's Lodge in accordance with their transports at the western extremity. Klautky's plan appears to agree with Hastings' plan as far as the southern boundary of Maria's Lodge at its western extremity is concerned. Wilkins' survey and plan (Exhibit "N") followed the survey and plans of Hastings and Klautky.

20 Mr. Burnham's argument that Hastings' plan was more concerned with a survey of Crown lands and boundaries between Crown Lands and estates than a survey of boundaries between estates, was rejected by Wilkins who claimed that in surveying the Crown lands Hastings was nevertheless called upon to define the western boundary of Reynestein and Maria's Lodge, and also the northern and southern boundaries of Maria's Lodge which, as far as can be seen, is in its correct position.

30 The western boundary in Hastings Plan of Maria's Lodge and Vreede Styn coincides with a previous survey of Vreede Styn made by Klautky. It should also be noted that Hastings' paal on the southwestern extremity of Reynestein was also confirmed by Wilkins by the fact that it was 420 roods south of the northern boundary of Reynestein as referred to in the Transport of the Defendant Company (No. 529 of 1927). When the 420 roods is projected along the public road from the northern boundary of Reynestein in a southerly direction, it gives the northern boundary of Maria's Lodge on the eastern extremity.

40 The witness Wilkins then tendered a sketch (Exhibit "O") in order to illustrate his evidence and which showed the effect of attempting to combine Fraser's plan with Hastings' plan and his own survey in 1950. Wilkins continued:-

"I started off by accepting that the southern boundary of Maria's Lodge as shown by Fraser

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was the northern boundary of Vreede Styn and that was confirmed by the presence of the old public road and the drains. This was confirmed by E.K's paal which was on the ground. Using the scale drawn on Fraser's plan, I determined facade of Maria's Lodge and using the measurement I drew the northern boundary of Maria's Lodge as shown on Exhibit "O" by a blue line. Using the same method by scaling from the plan, the western boundary was determined as shown on Exhibit "O" by a blue line. This line is approximately 20 feet west of the western boundary of Maria's Lodge as shown on a plan by Hastings and myself. 10

"The northern boundary of Fraser's plan as scaled at the western extremity of Maria's Lodge is approximately 55 feet north of Hastings's and my paal. The distance between our paals and Fraser's northern boundary of Maria's Lodge at the western extremity of Reynestein is about 60 feet. The wooden paal at the side of the public road is 100 roods and 35 feet north of the northern boundary of Maria's Lodge drawn as scaled from Fraser's plan. 20

Wilkins is there pointing out that even if Fraser's plan is accepted, then there is still an excess of 55 feet to the west and 35 feet to the east as far as the northern boundary is concerned, and he goes on to say that even this line as defined from Fraser's plan would fall south of the red broken line in Exhibit "A". Wilkins strengthens his point in the following evidence: 30

"If instead of scaling Fraser's plan one adds up the facade shown in the Table from lots 20-33, and measures this distance from the northern boundary of Maria's Lodge fixed by Fraser, the northern boundary of lot 33 would be 40 feet south of the wooden paal".

In any case, therefore, the northern boundary of lot 33 as scaled from Fraser's plan, or measuring the total of the facades of the lots mentioned in Fraser's plan, would place the northern boundary of lot 33 to the south of the broken red line in Exhibit "O". Wilkins pointed out that the distance from P2 i.e. the point 100 roods from the boundary of Maria's Lodge to the notional extension of the dam at the western extremity of Reynestein would be 40



the considerable distance of 365 feet. This, of course, would form the western extremity of the disputed area.

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10 Wilkins in his evidence stated that the wooden paal at the side of the public road was in fact 100 rods and 215 feet north of the northern boundary of Maria's Lodge, as determined by Hastings and himself, and that the line shown on his sketch, Exhibit "O" i.e. the broken red line, is a line connecting that wooden paal to the point on the western boundary 100 rods north of the northern boundary of Maria's Lodge, as fixed by Hastings and himself. This wooden paal, he points out, is 20 or 30 feet north of the northern boundary of lot 33, as scaled by Fraser's plan.

20 It is clear, therefore, that if the evidence of Wilkins is to be believed, then the broken red line on the sketch Exhibit "O" would be at an inclined position, because the distance on its eastern extremity would be greater by 215 feet than its distance at the western extremity from the northern boundary of Maria's Lodge, and also the northern boundary of lot 33 even as shown by Fraser's plan would be to the south of this broken red line by 35 feet at the eastern extremity and 55 feet at the western extremity. The Defendant company, however, is prepared to accept this broken red line as the limit of the southern boundary of Reynestein or the northern boundary of lot 33.

30 Wilkins was rigorously cross-examined on the professional evidence that he gave, but as far as I could see this part of his evidence remained untrammelled. He stated:-

40 "In doing my Crown Lands survey I accepted the correctness of Hastings's plan so far as the north to south dimension of Maria's Lodge at the western extremity were concerned. My acceptance of Hastings's plan was borne out by the physical features I found on the land, i.e. remains of dams and trenches. They were shown by Hastings's plan, and I also found his paals."

In his evidence he stated again:

"I did not rely only on Hastings's plan. If the line connecting the northern boundary of Maria's Lodge marked by Hastings to what Hastings shows as the Hermitage - Reynestein Boundary is drawn you get approximately 420 rods."

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He then points out that the width of Maria's Lodge on Fraser's plan is 1,662 feet and the width of Maria's Lodge on Hastings's plan is 1621.7 feet. Fraser's is a facade and Hastings's a western extremity.

Now the witness goes on:

"I did not mark off 100 roods going north from the northern boundary of Maria's Lodge. I now measure the distance from the northern boundary of Maria's Lodge as shown by Fraser to the wooden paal on the eastern side of the road, and it measures 1,270 feet which would be 35 feet in excess of 100 roods."

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"From my northern boundary of Maria's Lodge to the wooden paal is 100 roods plus 215 feet. I got my boundary by working south on the eastern extremity from the Hermitage-Reynestein boundary and marking off 420 roods. I would agree that it was more or less. The third way is by building up from E. Klautky who surveyed Vreede Styn. This would also give the distance of 1,270 feet which would be 35 feet in excess of 100 roods."

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In view of his relationship with the Defendant company, I considered that his evidence should be tested by the evidence of another Sworn Land Surveyor, and acting under Section 88 of the Evidence Ordinance, Chapter 25, the Court of its own motion called the witness Desmond Montague Edghill, a Sworn Land Surveyor, employed by the Government in the Department of Lands and Mines, and examined him on oath and then made him available to both sides for cross-examination.

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In answer to the Court, Edghill produced an official record of a chart of the Demerara River - Section 1, of Georgetown to Hyde Park on the right, from Vreed-en-Hoop to Kamuni Creek on the left bank, surveyed for the use of the Title to Land Commissioner signed by Frank Fowler and D. Anderson and dated August 1891. He later produced a certified extract (Exhibit "S") of a chart of the Demerara River showing Plns. Reynestein, Maria's Lodge and Vreede Styn, and stated that Lot 33 Maria's Lodge was shown as adjacent to the north sideline dam of Maria's Lodge. In other words, he said lot 33 went right up to the dam as shown on the plan. He pointed

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out that this was a survey by Fowler along the public road just picking up the occupation as found at the time, and did not extend very far inland.

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Under cross-examination, however, by Mr. Elliott after he had had a full opportunity of studying the plan, Edghill admitted that the "survey of the upper portion" which are the words written across Maria's Lodge, meant that Lots 1-19 was a survey and lots 20-33 were a compilation, and that Fowler did not survey Lots 20-33. He went on to say that after looking at Klautky's plan (Exhibit "P") and Fraser's Plan marked RAW 1, he would say that the boundary between Maria's Lodge and Vreede Styn is shown on the same place by both. He then agreed that the blue line in Exhibit "O" did show where the northern boundary of Maria's Lodge would be according to Fraser's plan.

He agreed that if you went north along the public road from the northern boundary of Maria's Lodge as shown by Fraser, you would end at the place that Wilkins has shown in Exhibit "O". It would be 35 feet short of the wooden paal. According to Fowler's plan it would be the same as Fraser's plan and the same place as indicated by Wilkins. He then stated categorically that he agreed that even accepting Fraser's plan, the northern boundary of lot 33 would be south of the red line on the sketch Exhibit "O". He agreed that Wilkins' and Hastings' paal should be accepted as the south-western boundary of Reynestein, and he agreed with this because scaling off from Fraser's plan it is not very far off from Wilkins' and Hastings' paal. Accepting Wilkins' and Hastings' paal, he agreed that P2 is 100 roods to the north of the northern boundary of Maria's Lodge.

He agreed that if the 100 roods were measured on a long line parallel to the public road, then the red broken line would be to the north of a point 100 roods along that line from Maria's Lodge. The broken red line on Exhibit "O", says Edghill, is about 100 roods and 40 feet north of Maria's Lodge measured from Wilkins' and Hastings' paal along a line parallel to the public road. The broken red line would then be north of the true northern boundary of lot 33 throughout its length. Edghill then pointed out Fowler's plan showed 800 feet of the dam and trench as fixing the northern boundary of lot 33, and it would not be surprising to find that the 800 feet of dam shown by Fowler

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as the northern boundary of lot 33 west of the road did not accurately define that boundary. The dam on the eastern side of the public road as shown by Fraser is south of the portion of the dam on the western side of the public road. The cross-examination was concluded with these words:

"If the broken red line had connected with what Fraser shows as the northern boundary of lot 33, instead of the wooden paal 35 feet to the north of it, it would never have crossed the dam at all, but would have been to the south of the dam throughout its entire extent. Having considered all the plans - Klautky, Fraser, Fowler and Hastings, including the sketch (Exhibit "O") - I have come to the conclusion that the dam as shown on Wilkins's sketch is to the north of the northern boundary of lot 33 and cuts a gib off from Reynestein proper and proceeds north into Pln. Reynestein proper".

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Under cross-examination by Mr. Burnham the witness stated that with respect to Exhibit "O", he had made checks on Fraser's, Klautky's and Hastings' plans and his checks more or less agreed with Wilkins' sketch. He went on to say that if Wilkins' sketch Exhibit "O" did not show the northern boundary of lot 33, as being along the trench immediately south of the dam, then his sketch would not agree with Fraser's plan, Exhibit "S". He then repeated his agreement with Mr. Elliott that the red line in Exhibit "O" was fifty-five feet to the west and thirty-five feet to the east north of the northern boundary of lot 33, and that this red line would fall very little south of the trench as shown by Fowler. He stated that he was in error when he first said that the northern boundary of lot 33, Maria's Lodge, was the northern sideline dam of Pln. Maria's Lodge.

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Edghill pointed out that the angle of the dam shown on Wilkins' sketch was very slightly different to the angle shown on Fowler's plan i.e. a difference of 1°. He continued:-

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"If the portion of Fowler's dam on which the angle was measured were produced in a westerly direction, it would fall at the western boundary some distance north of Pl on Exhibit "O". The line which ends at Pl follows the general direction of the dam. I would say it also

follows the general direction of the dam shown by Fowler".

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10 In answer to the Court he stated that any angle of the dam indicated by Fowler was taken on a short distance of the dam and could not be accepted as the correct direction of the entire dam if one existed at the time. He pointed out that Fowler showed the rough direction of the dam, but it had no bearing on the backlands of the estate; that the dam shown in Exhibit "S" is no indication of how it would extend to the backlands. He was at care to point out that Fowler did not define boundaries, he surveyed along the road to pick up occupation as well as to fit in the charts the existence of the particular plantation. He agreed that according to Fowler's plan the northern boundary of lot 33 would appear to be the southern edge of the trench to the south of the dam and not the centre of the dam itself.

20 It is clear, therefore, that the plaintiffs rely on Fraser's plan of 1854 and Fowler's plan of 1891, while the Defendants rely on Hastings, Klautky, Wilkins' plan and sketch. Fowler's plan was principally concerned with picking up occupation and did not define boundaries. The defects of Fraser's plan have been enumerated by Wilkins as the difficulty in scaling accurately from the plan, i.e. each of the sub-divisions in the scale is of different size. There is a space between lots 9 and 10, and there is no statement of what it is there for. There is also a vacant space between 30 lots 18 and 19 and no indication what it is. On the northern boundary of lot 19 there are two lines to which no reference is made. There is a space on the eastern side of the public road north of lot 19 and there is no reference to what it is there for. On the western side of the public road and on the northern side of lot 19 there is a line and no indication of what it is there for. Lastly, it 40 is stated to be a diagram of allotments laid out on Maria's Lodge and a portion of Reynestein, and there is nothing to be found in it to suggest that lots 20-33 extend west of the road.

After considering carefully the evidence of Wilkins in conjunction with the evidence of Edghill, the Government Surveyor, whose evidence I accept as being impartial and true, I have come to the conclusion that Wilkins' survey in 1950 was thoroughly

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done, and although it followed and coincided with the surveys of Hastings and Klautky, nevertheless he took great care to test the accuracy of the plans made by these two earlier surveyors.

The sketch, Exhibit "O", which was admitted in order to illustrate his evidence, I came to the conclusion was an accurate combination of Fraser's, Hastings' and his own plan. Although I approached his evidence with caution in view of his relationship with the Defendant company, and although I have rejected two statements made by him in his affidavits, I now accept his professional evidence and opinion, and arrive at the same conclusion as the unrebutted evidence of the two experts that the broken red line in Exhibit "O" represents a line north of the true northern boundary of lot 33, Maria's Lodge. I find as a fact, therefore, that the presumption which existed in favour of the Plaintiffs at the commencement of this issue has been rebutted by the positive evidence of the Defendants' Land Surveyor, supported as it has been by the Government Land Surveyor.

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Mr. Burnham submitted that the further question to be decided is whether or not the Plaintiffs have by possessio longi temporis acquired sufficient property in the disputed land to give them a right to bring an action in trespass against the true owners who had the legal title. Mr. Burnham quoted section 3 of Chapter 184, Title to Land (Prescription and Limitation) Ordinance, and pointed out that if the Plaintiffs could show sole and undisturbed possession, user or enjoyment, for thirty (30) years, or even 12 years, to the satisfaction of the Court, then they would be entitled to a declaration of title of the disputed area which the Court could make under Section 4, Chapter 184, provided that all the parties interested therein were before the Court or that the interest of the owners of the adjoining lots of land would not be affected in any way. It is clear to me that if the southern boundary of lot 33 were to remain as it is, the interest of the owners of the adjoining lots would not be affected in any way, and Mr. Burnham on behalf of his client has agreed that the southern boundary of lot 33 should remain as it is.

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The Court having found that the disputed area of land is covered by the Transport or legal title of the Defendant company, it follows that under

Section 23 (1), Chapter 32, Deeds Registry Ordinance, the full and absolute title to the immovable property or to the rights and interests therein is vested in them as transferees, subject of course to the statutory claim of possession of sole and undisturbed possession, user or enjoyment, for a period of 30 years and upwards under Section 3 of Chapter 184. Thus in the recent case of Coddett v. Thomas (No.11 of 1957), decided by the West Indian Court of Appeal and followed by the Federal Court in Shiveharran v. Heirallal (Vol. 1 Part 1 - Federal Cases), it was held that although a Transport confers on the transportee an indefeasible title, the quality of indefeasibility does not render the Transport unimpeachable in every circumstance, e.g. possession for the statutory period may defeat it even against an innocent purchaser. As long ago as 1939 in the case of Lall Bahabur Singh v. D.McPherson (B.G.L.R. 1939), it was settled that the Deeds Registry Ordinance, Chapter 177 (Major Edition), now Chapter 32 (Kingdon Edition), does not affect possessory rights and that a title acquired by prescription prior to 1922, is not defeated by the provisions of Section 21 of that Ordinance, now Section 23 of Chapter 32 (Kingdon Edition).

Possession, therefore, nec vi, nec clam, nec precario for a period of 30 years and upwards under Section 3 of Chapter 184 can defeat the indefeasibility of the Transport of the Defendant company. Under the proviso to Section 3 the disputed area of land not being Crown land or of the Colony, it appears that title may be acquired by sole and undisturbed possession, user or enjoyment, for a period not less than 12 years, if the Court is satisfied that the right of every other person to recover the land or interest has expired, or been barred, and the title of every such person thereto has been extinguished. This proviso to Section 3 of Chapter 184 - Title to Land (Prescription and Limitation) Ordinance (1952) was however held by Boland J. in Lindly v. Demerara Company Limited (1950) B.G.L.R. not to operate retrospectively as the provisions of the Ordinance were not merely procedural. This view of Boland J. was upheld by the Full Court of Appeal in Inderjeet Tackorie v. Port Mourant Limited (1954) B.G.L.R. and it was pointed out that the statute had introduced a new doctrine into the law of immovable property and it would be abhorrent to commonsense and would offend one's sense of natural justice if it were to be

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held that a person in adverse possession for 12 years prior to 1952 had succeeded in extinguishing the title of the true owner.

In both cases the state of the law prior to the introduction of the Title to Land (Prescription and Limitation) Ordinance, Chapter 184, was considered in deciding whether this proviso to Section 3 of the Ordinance was procedural or not. Boland J. pointed out that before the 1952 Ordinance came into force a period of 12 years occupation as of right merely barred the bringing of an action by the owner for trespass or recovering possession. It did not have the effect of terminating absolutely the interest of the legal owner of the land. If the legal owner could gain possession by some means other than by action, he was not debarred from doing so. Nor did possession for 12 years give anyone the right to assert any claim against the legal owner which a decree of prescriptive title now affords him. In other words, before the passing of that Ordinance a period of possession for 12 years was a defensive title merely as distinguished from an assertive title. Before the Ordinance of 1952 the period of prescription for a positive title was 30 years. This statement of the law was approved of by the Full Court of Appeal in Inderjeet Tackorie v. Port Mourant Limited, and Boland J., makes his point in the following words:-

"In keeping with the well-established cannon of construction of statutes none of its provisions can be given a construction in the absence of express words that it is to have an effect, which would impair or diminish any vested interest existing before it was enacted. Certainly it would be prejudicing a vested interest of the owner of the land if he is now not only barred from bringing an action against a person in possession for 12 years, but shall have his title as owner extinguished by a declaration of a possessive title on proof of 12 years possession by another."

And he concludes his argument that the proviso does not provide a new form of procedure nor is it declaratory of what the law had been prior to its passing, which is another reason for an enactment being deemed retroactive.

With these decisions I agree, and it follows, therefore, that the matter of possessio longi

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temporis is now governed at the present time by Section 3 (excluding the proviso) and Section 5 of Title to Land (Prescription and Limitation) Ordinance, Chapter 184, which was formerly Section 4(2) of the Civil Law Ordinance, Chapter 7 (Major Edition). Section 5 of Chapter 184 (Kingdon Edition) omits the words "No person shall make an entry or distress". It is submitted, however, that if an action may not be brought, then it would follow that an entry or distress could not be made. It is settled law, as stated in the judgment of Tackorie v. Port Mourant Limited, that

"Prior to 1952 the Courts of this Colony have been unanimous in deciding that adverse possession of 12 years bars the legal owner from recovering his land, but it does not extinguish his title to the land. The distinction was no mere legal conundrum for it meant that if the owner of the legal title could obtain possession of his land other than by action, the adverse possession is of no avail to the stranger."

Gondchi v. Hurril (1931-1937) L.R.B.G. (509) Frank et al v. Ali Baksh (1943) L.R.B.G. 78 Worley C.J. in Frank v. Hiralall (1947) L.R.B.G. in his judgment put it this way:-

"It is clear from the authorities that when a person in possession has acquired the 'negative right' conferred by Section 4(2) of the Civil Law Ordinance, he cannot be disturbed even by the rightful owner and a subsequent entry by the owner will not remit him to his legal rights as owner or clothe him with legal possession. (See Abdool Rohoman Khan v. Boodhan Maraj, and also Norton v. London North-West Railway Company (1879) C.A. Ch.D. 268 and Marshall v. Taylor (1895) 1 Ch. C.A. 641)

Before the 1952 Ordinance came into force, the position was governed by the Civil Law of British Guiana Ordinance, Chapter 7, No. XV of 1916, Sections 4 (1) and 4 (2). Under Section 4 (1) Title to immovable property, including immovable property of the Crown or Colony, could be acquired by sole and undisturbed possession for 30 years, if the possession was established to the satisfaction of the Supreme Court which could issue a declaration of title in regard to the property or right on a petition to the

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Supreme Court for such a Declaration of Title. There was always some doubt as to whether such a declaration could be made in an action. This, however, has been set at rest by Section 4 of Chapter 184 of Title to Land (Prescription and Limitation) Ordinance, 1952. Nevertheless, after the 1st January, 1917, when the Civil Law of British Guiana Ordinance came into force, for a party to obtain title by prescription to immovable property, a declaration had to be made by the Supreme Court, otherwise as Biland J. has pointed out in Hanoman v. Rose (1951) B.G.L.R. he could not found an action for trespass based on this period of occupation if he were out of possession at the time of the trespass. At page 157 he states:-

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"I wish to make it clear that a person who has had user as of right for the prescriptive period but has failed to get his title thereto established in keeping with the Ordinance is not debarred by the Civil Law of British Guiana, Ch.7, from setting up his prescriptive right in defence to a claim because he has not had his title declared in the manner provided by Rules of Court. (Lalbahadursingh v. Daniel McPherson (1939) B.G.L.R. 80). But though thus unrestricted in his defence to a claim, he cannot himself put forward a claim founded on a title to prescription which has not yet been the subject of a decree by the Court in pursuance of a petition presented to the Court vide judgment by Worley C.J. in Adams and Christmas v. Raghbir - No. 441 of 1946 Demerara - delivered on April 16, 1951. The position is analogous with the bar to action provided by the Statute of Limitation. A defendant is able to resist a claim to possession of land although he may be barred by the statute from getting an order for possession".

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Prior to 1917 under the Roman-Dutch Common Law he could acquire positive prescriptive title to land by possession nec vi, nec clam, nec precario for a period of a third of a century, i.e. 33 1/3 years and was under no duty as pointed out by Worley C.J. in Adams and Christmas v. Raghbir (1951 B.G.L.R. to perfect his title by obtaining a declaration under the provisions of Section 4(1) of Chapter 7 (Major Edition) after the 1st January, 1917, or before that under any other Ordinance. As Worley C.J. put it at page 94:-

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"Next it has been suggested that, even if a person had acquired ownership by prescription under the Roman-Dutch law before the 1st January, 1917, the Civil Law Ordinance imposed upon him a duty to perfect his title by obtaining a declaration under the provisions of Section 4(1) of that Ordinance, and that the plaintiff ought not to have stood by and allowed the defendant to think that the lands in dispute were his and is guilty of laches. During the Roman-Dutch period no judicial act was required to transfer the ownership in land acquired by 'acquisitive possession' and a simple affidavit was sufficient to evidence such acquisition if the owner desired to transport, but it is well settled that since the passing of the Civil Law Ordinance, positive title to land acquired by long possession can only be obtained and evidenced by a declaration under Section 3(1). But this is not to say that ownership acquired before 1st January, 1917, cannot be defended without a declaration of title, for that would nullify the saving of existing rights in Section 2. I can see no provision in the Ordinance which imposes the suggested duty and I do not accept the view that an owner who has not obtained a declaration is thereby debarred from defending his possession against a trespasser."

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I must now examine and analyse the whole of the evidence in the case and see whether the Plaintiffs have discharged the burden of proof placed upon them in showing that they were in adverse possession of the disputed area of the land nec vi, nec clam, nec precario for a period of 30 years and upwards in which case they would be entitled to a declaration of title under Section 4 (a) of Chapter 184, provided that the land could be properly described, and provided all the parties interested are before the Court; or whether they were in possession nec vi, nec clam, nec precario for a period of 33 1/3 years prior to 1st January, 1917, in which case as was laid down in Lanferman v. Bobb-Semple cited by Boland J. in Linde v. Demerara Company Limited, there would be no necessity for a declaration as they would have already acquired by prescription a good legal title by Roman-Dutch Law; or finally whether they were in possession nec vi, nec clam, nec precario for a period of twelve (12) years which would confer upon them negative rights

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and upon which they could properly found and maintain an action for trespass against the rightful owner of the land.

Worley C.J. states the kind of possession that was necessary to vest the person in possession with the ownership of the property in question in Adams and Christmas v. Raghubir (1951) B.G.L.R. p. 93:

"The effect of 'acquisitive prescription' under Roman-Dutch Law was to vest the ownership of the property in question in the possessor, so that he could vindicate it, if he subsequently lost possession, from the original owner as well as from third parties (Lee - Introduction to Roman-Dutch Law 3rd Ed. p.152-3. Abdul Rohoman Khan v. Boodhan Maraj (1930) L.R.B.G. 9 at p.15). All that was required was that the possession or quasi-possession of the person claiming by prescription should be "peaceable, open and as of right" and uninterrupted (Lee op. cit. p.151).

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For immovables the period was a third of a century and in calculating this period, the possession of the predecessor in title, if adverse to the original owner, may be reckoned without any distinction of good or bad faith in either party".

In the dictionary of English Law by Earl Jowitt at p.70 adverse possession is defined as an occupation of realty inconsistent with the right of the true owner -

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"Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than as owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title (Ward v. Carttar (1866) L.R. 1 Eq. 29) ".

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In other words, there must be a dispossession and Halsbury 2nd Edition, Volume 20, at para. 899 states:-

"Dispossession is where a person comes in and puts another out of possession; discontinuance of possession is where the person in possession goes out and another person takes possession. The true test whether a rightful owner has been dispossessed or not is whether ejectment will lie at his suit against some other person. The rightful owner is not dispossessed, so long as he had all the enjoyment of the property that is possible; and where land is not capable of use and enjoyment, there can be no dispossession by mere absence of use and enjoyment. To constitute dispossession acts must have been done inconsistent with the enjoyment of the soil by the person entitled for the purposes for which he had a right to use it."

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In other words, before time can begin to run against the rightful owner, there must be a clear case of dispossession of the true owner by the party claiming to be in possession. As Halsbury puts it at p. 689:-

"Mere going out of possession is not enough in order that the statute may operate there must be not only going out of possession on the part of the owner, but also actual exclusive possession for the statutory period by someone else to be protected".

Earl Jowitt in his dictionary of English Law puts it this way:-

"Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time, produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property (See Limitation, Prescription): and this although the true owner is ignorant of the adverse possessor being in occupation (Rains v. Buxton (1880) 14 Ch. D. 537). The period of limitation is twelve years, or thirty years in the case of Crown land, or land owned by a spiritual or eleemosynary corporation sole (Limitation Act 1939, s.4). No right of action accrues unless the land is in adverse possession."

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It follows that in 1964 the period of limitation in British Guiana will be exactly the same as it is in England in the case of Crown land or land other than Crown Land.

Mr. Burnham has quite rightly pointed out that under Sections 3 (c) & (d) of the Civil Law of British Guiana Chapter 2, the English Common Law of Real property does not apply to immovable property in this Colony and that all questions relating to immovable property should be determined as far as possible according to the principles of Common Law of England applicable to personal property, and submits that the law of adverse possessions with regard to Personalty in England should be applicable to immovable property in this Colony, and as an illustration of these principles he cited the case of *Sutton v. Buck* (1810) 2 Taunt. 302 where Sir Henry Duke P. laid down the principles that should be applied in deciding whether a party was in adverse possession of Personal Property. In his judgment he said:-

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"What are the kinds of physical control and use of which the things in question were practically capable? Could physical control be applied to the res as a whole? Was there a complete taking? Had the Plaintiffs' occupation sufficient for practical purposes to exclude strangers from interfering with the property? Was there the animus possidenti?"

He went on to say:

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"There was animus possidenti in the Plaintiffs; there was the use and occupation of which the subject matter was capable. There was power to exclude strangers from interfering if the plaintiffs did not use unlawful force. The plaintiffs did with the wreck what a purchaser would prudently have done. Unwieldy as the wreck was, they were dealing with it as a whole."

In making this submission, Mr. Burnham has overlooked the fact that whether it be Realty or Personalty the Limitation Acts still apply, and that in England the law of adverse possession with regard to Realty or Personalty is the same. As Luckhoo J. pointed out in Petition of Wason (1956) B.G.L.R. the question whether possession is adverse

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depends on what was the character of the defendant's possession as a matter of right. At p. 199 in language similar to Sir Henry Duke's he states:

"In determining sufficiency of a possession it must be considered with reference to the peculiar circumstances. The suitable and natural mode of using the property which might reasonably be expected to follow must be taken into account. Kirby v. Cowdewy (1912) 81 L.J. P.C. 222."

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The evidence on which the Plaintiffs rely to show adverse possession in the disputed area of land is:

1. Cultivation.
2. The cutting of timber, wood and grass.
3. Fishing in ponds.
4. The growing of rice.
5. The presence of the dam half-way down what they claimed to be the northern boundary of lot 33.

## 20 Cultivation

John Victor stated that from the age of 10 years - and he is now 60 years - his mother Elizabeth Victor and her lawful husband, Louis Victor, cultivated lot 33 to its whole depth, and had about 200 fruit trees. The trees were spice and coconut trees, and also that cocoa trees and orange trees were destroyed when the bulldozers came to clear the land. He maintained that he had always planted orange, cocoa and spice trees to earn his living.

30 The area of the land affected was about 25 acres and was under cultivation. He admitted that the canal that was dug for the first 200 roods from the public road ran north alongside this cultivation and therefore this part of his cultivation, which included plantains, cassava and yams, was not destroyed. Sydney Arthur stated that on the western extremity of the northern boundary of lot 33, he saw cocoa and orange trees since the year 1920. He stated that from the public road going a distance of 200

40 roods there was cultivation. The cultivation stopped about 200 roods from the western extremity. Then he went on to say that from the area occupied by the 200 roods there was timber and mookroo grass. It is obvious that this witness made a mistake and was speaking of the eastern extremity, as the 200 roods which was clearly under cultivation was

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situate towards the eastern extremity from the public road going back towards west and he has stated under cross-examination that on lot 33 west of the public road there is at present cultivation for 200 roods, and it consists of arrowroot, cocoa, oranges, lemons and tangerines. He did, however, say that there were spice trees and cocoa trees on the dam and in the trench south of the dam, and there were fruit trees further west of the cultivated area 200 roods west from the public road.

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The witness, Samuel Scott said that he took part in the 1950 survey and he worked along the dam going from east to west, and when they had walked a distance of 60 roods they turned into the cultivation and started to cut orange trees when they were stopped by John Victor. While he does mention that there were cocoa trees and spice trees on the dam, he makes no mention of any cultivation west of the 200 roods from the public road under cultivation. The several witnesses who gave evidence for the Defence made it clear that when they entered and bulldozed the disputed area of land, there was no sign of any cultivation apart from the 200 roods under cultivation with provisions immediately west of the public road.

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On this issue the weight of evidence is decidedly in favour of the Defence, and I must come to the conclusion as I do that on the dates of the alleged trespass in 1959, and in 1958 when Mohamed commenced his survey, and in 1943 when Mr. Wilson used to go on the dam, there was no cultivation on the disputed area west of the established cultivated area of 200 roods. What was the position before 1943?

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John Victor states that when he worked the whole depth of the estate from time to time, he worked in the backlands for a year or two years, and then left it for eight years for the bush to get high in order to allow the land to become fertile again.

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Sydney Arthur supports him in this and states that part-time farming in spots used to be done beyond the established area under cultivation from time to time. It follows, therefore, that the Plaintiffs are not definite as to any specific area of the backlands being cultivated by them, and certainly not for a period of twelve (12) years and



upwards. This in itself, therefore, could not be evidence of adverse possession.

2. Cutting Timber, Wood and Grass.

The evidence by the Plaintiff is that from time to time he and his predecessors in title would cut timber, wood and grass, and bring them out. The grass would be used for making baskets which they would sell, and in his affidavit the Plaintiff John Victor swears that the timber would also be sold. There is no evidence as to the exact period of time that these things were cut from the land and removed, but it could be inferred that the Plaintiffs were saying that it was done since he was a boy 10 years old. I am of the view that the cutting of timber and grass from time to time over a long period of years, and using lands for access cannot amount to a discontinuance of possession by the owners, and to such a dispossession of the land, and a taking of adverse possession in order for time to start running against the true owner. In Lightwood's "Possession of Land", 1894, at page 40, it is stated:-

"Where a man having possession of the south end of a lot, but without title, cut timber on the north end of the lot, the whole of which he contended was in his constructive possession, it was held in an American case (Aiken v. Busk quoted in Big. L.C. on Torts, 358) that he was liable to the owner in trespass"

In the two Canadian cases cited by Mr. Elliott: McIntyre v. Thompson (1901 21 C.L.T. 109 and McInnes v. Stewart (1911) 45 N.S.R. 435 - it was decided where the acts relied on in support of a claim to title by possession were that the claimant had sold the timber of the land in question, cleared it and sowed and harvested a crop of wheat; had then for some years taken hay from it and used it as pastureland, the land not being wholly enclosed, that there had not been such possession as was necessary to bar the right of the true owner, and also where the land claimed is woodland, occasional acts of cutting and cultivation by one of the parties would not suffice to give a statutory title to no more than a mere possessio pedis.

In Madhoo v. Ramdass p.191 B.G.L.R. (1954) Stoby J. held that cutting wood from time to time on land which the petitioner claimed to be in adverse possession along with other matters mentioned,

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viz., that the children of the true owners, in the belief that they owned the land, were depasturing their cattle, did not amount to an unequivocal act demonstrating that he was asserting a right to that area. Not one of these acts, therefore, in itself amounts to an unequivocal act showing that the Plaintiffs were asserting a right to that area thus dispossessing the true owner thereof.

As I see it, the acts were not inconsistent with the enjoyment of the land by the person entitled.

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3. Fishing in Ponds.

There is no evidence at all by the Plaintiffs whether these ponds were dug by them or whether they were formed by the natural declivity in the land. This could hardly be described as an act of dispossession and could not amount to a claim of adverse possession.

4. The Growing of Rice.

The evidence of the plaintiff, John Victor is that rice was grown on the western boundary of lot 33 from the year 1920 and they stopped this in 1925. Sydney Arthur, on the other hand, stated that rice was grown in the savannah land on the western extremity and less than 200 roods from the western boundary. He last saw rice there in 1950. This latter evidence of his is sufficient to throw doubt on Victor's evidence as to whether rice was ever grown at all. Nevertheless, even if the evidence of Victor is accepted on this point, it would only show occupation for a period of five years and would certainly not show possession of any part of the disputed area for a period of 12 years and upwards.

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5. The presence of the Dam

I have already found from the evidence of Edghill, the Government Surveyor, that there is no certainty that this dam is a sideline dam. Mr. Burnham relies strongly on the evidence in this case that a sideline dam is a dam which usually divides two estates, and which is formed by the neighbouring or adjoining owners of land digging trenches and throwing up dirt from each side to form a dam. In this case it is usual to find that the boundary between the two estates is a notional

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line running along the centre of the dam. Mr. Burnham also relies on the dictum of Comacho C.J. in Lall Bahadue Singh v. McPherson reported at page 87 in 1957 B.G.L.R. where he states that when the dam is complete it is owned in moieties by the adjoining land owners who constructed it. This dam is not shown in Fraser's plan of 1854, but is shown on Fowler's plan of 1891. Some time between those years this dam must have been constructed. In 1836 when the 100 roods of Reynestein was conveyed to the proprietors of Maria's Lodge, lot 33 became part of Plantation Maria's Lodge cum annexis. It could then be reasonably argued that it was a dam dividing the two estates of Reynestein and Maria's Lodge.

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There is no evidence, however, as to how this dam was constructed, who built it and for what reason it was built, and in my opinion it would be wrong and unsafe for me to find that it was in fact a sideline dam. It may very well be that the Plaintiffs always regarded this dam as the northern boundary of lot 33, and the evidence shows that the servant or agent of the Defendant Company, William Wilson, never cut wood to the south of that dam, and that Cockfield, one of the predecessors in occupation and/or title of the Defendant Company, never worked to the south of the dam, but there is no convincing evidence that it was a side-line dam dividing the two estates, and that the Plaintiffs and Defendant Company or their predecessors in title agreed that the dam should form the northern boundary of lot 33.

The presence of the dam, therefore, unlike a fence, is no evidence that the Plaintiffs reduced the land south of it into their possession, and as a result dispossessed the true owner of the land south of the dam, and that they erected the dam in order to exclude not only third parties but also the true owner.

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Mr. Burnham has invited me to find that the cumulative effect of all these acts and circumstances was sufficient to place the Plaintiffs in adverse possession of the disputed area. As far as I am aware, there is no authority for this proposition, and it is difficult to see how if a single act or circumstance does not amount to adverse possession, an accumulation of them will do so.

Mr. Elliott has cited the well-known passage

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of Wood V.C. in Thomas v. Thomas (1855) 2 K & J. 79 that possession is never considered adverse if it can be referred to a lawful title, and has pointed out that the possession of the Plaintiffs, if any, as far as the disputed area is concerned, was referable to an unlawful title, and as such the plaintiffs could have no constructive possession beyond the limits of their actual occupation. In Brijlall v. Jay Jay (1949) B.G.L.R. at page 27, this significant passage appears:

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"If her occupation was referable to a valid title the occupation of a part might be constructive occupation of the whole, but as she and her predecessors were there in my view as trespassers, they could not acquire prescriptive title to any part of the 'fan' not exclusively occupied by them".

It could not, therefore be said that the Plaintiffs were in constructive possession of the disputed area when they were in physical occupation and possession of the 200 roods of established cultivation west of the public road.

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Mr. Elliott has referred the Court to Littledale v. Liverpool College (1900) 1 Ch. 19 C.A. where the principle was laid down that in every case the possession which will cause time to run against the owner involves an animus possidenti, that is, an occupation with an intention of excluding the owner as well as other persons; and such a possession must be shown unequivocally by the petitioner. The head note in Lallbahadursingh v. McPherson (1939) B.G.L.R. at page 81 is based on a passage in Chitty's statutes which states that the effect of the provisions of Section 4(2) of Chapter 7 (Major Edition) which was re-enacted in Section 14 of Chapter 184 (Major Edition), now Section 5 of Chapter 184 (Kingdon Edition), was to put an end to all questions and discussions whether the possession of the land be adverse or not, and if one party has been in the actual possession for twelve years whether adversely or not, the claimant whose original right of entry accrued above (12) twelve years before the ejectment is barred by this provision of law. This passage has, however, been explained by Stoby J., in Cadogan v. Cadogan (1955) at page 7:-

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"The Courts of this Colony it seems, despite the existence of the Limitation Ordinance, gave to the term 'adverse possession' the same meaning that the English Courts had given to these words, prior to the enactment of the Real Property Limitation Act of 1833. After that

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Act was passed the term 'adverse possession' lost much of its meaning. The learned Editors of Carson's Real Property Statutes, Second Edition, at page 130, cites Lord St. Leonards as saying: "Adverse possession is no longer necessary in the sense in which it was formerly used. Mere possession may be and is sufficient under many circumstances to give a title adversely: although perhaps now no better expression than adverse possession can be used, yet it is not adverse in the sense in which that phrase was used before this Act was passed. After 1917 our Courts still leaned towards a stricter interpretation of adverse possession than was the case in England, probably because those sections of the 1833 Act relating to tenants at will for instance were not introduced into this Colony until 1952 by the Title to Land (Prescription and Limitation) Ordinance."

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And in the case of Incorporated Trustees of the Church in the Diocese of Guiana v. Isaac Edward McLean (1939) B.G.L.R. at page 180, it was laid down by Langley, J.:

"The right to acquire by prescription is founded on the negligence, of the owner in not protecting his interests against strangers in possession, but this foundation fails where the adverse possession is not patent to the owner and others. A person claiming prescriptive title must prove actual, undisturbed occupation of a definite area adversely to the true owner, so open that the owner would know of it."

I find that the Plaintiffs have not shown by an unequivocal act or acts that they were asserting a right to the disputed area for the statutory period and have failed to prove open, actual, undisturbed occupation of a definite area adverse to the true owner. The plea of possessio longi temporis must therefore fail. The admitted trespass by Mohamed and party in 1958 in the established cultivation - 200 roods west of the public road - is highly technical and no damages are awarded.

The action is therefore dismissed and judgment is entered for the Defendants with costs to be taxed fit for Counsel.

With respect to the application by the Plaintiffs for registration of title of the said lot 33, Maria's Lodge, the Registrar, on the instructions of the Court, has prepared a table of devolution which now forms part of the record of the proceedings. It appears from this table of devolution

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that the Plaintiffs are the persons entitled to the property as the lawful descendants of John Cornette Graham (deceased), Richard Layne having renounced absolutely any right, title or claim whatsoever to his share of the property, through his wife Antoinette Layne, born Graham.

The Court, having found that the triangular portion of land as appears shaded red on the sketch of R.A. Wilkins (Exhibit "O") and the sketch marked RAW 2 forms no part of lot 33, Pln. Maria's Lodge, it follows that the opposition entered by the Defendant company to the application for registration of title in respect of the said lot 33, Pln. Maria's Lodge, is therefore held by the Court to be bad, illegal, and not well-founded. The application for registration of title is therefore granted, and the Registrar is hereby authorised and ordered to pass to the Plaintiffs - John Victor Zacharia Layne and Gideon Layne - Transport of

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"Lot No. 33 (thirty-three) part of Plantation Maria's Lodge, situate on the West Bank of the River Demerary the said lot number 33 (thirty-three) having a facade of 288 (two hundred and eighty-eight) feet by the whole depth of the estate immediately north of it known as Reynes-tein as laid down and defined on a diagram thereof by the Sworn Land Surveyor, D. Fraser, dated 17th May, 1856, and deposited in the office of the Registrar of the Counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot No. 33 (thirty-three)."

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"The northern boundary of the said lot No. 33 to be a straight line connecting the western extremity of the said lot at a point 100 rods and 55 feet north of the northern boundary of Maria's Lodge as laid down and defined on the said diagram by the Sworn Land Surveyor, D. Fraser, to the point on the eastern extremity 100 rods and 35 feet north of the said northern boundary of Maria's Lodge."

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In respect of the application I make no Orders as to the costs.

By consent stay of execution granted for 6 weeks.

H.B.S. Bollers

Puisne Judge (Ag).

4.4.60.

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ORDER OF COURT - ACTION NO.1130 of 1959

1959 No.1130 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

IN THE MATTER of the Deeds Registry  
Ordinance, Chapter 32,

- and -

IN THE MATTER of an application by John  
Victor of Maria's Lodge, West Bank,  
Demerara, Zacharia Layne of Supply,  
East Bank, Demerara and Gideon Layne  
of Coverdan, East Bank, Demerara for  
Registration of Title in their names  
of:

"Lot 33 (thirty three) part of Planta-  
tion Maria's Lodge, situate on the  
west bank of the River Demerary the  
said lot number 33 (thirty-three)  
having a facade of 288 (two hundred  
and eighty-eight) feet by the whole  
depth of the said estate as laid down  
and defined on a diagram thereof by  
the Sworn Land Surveyor, D. Fraser,  
dated 17th May, 1856 and deposited  
in the office of the Registrar of the  
Counties of Demerary and Essequibo on  
the 25th June, 1856, subject to the  
keeping up of the Public Road and the  
drainage to the extent of the facade  
of the said lot number 33 (thirty-  
three)".

BEFORE THE HONOURABLE MR. JUSTICE BOLLERS

DATED THE 4TH DAY OF APRIL, 1960

ENTERED THE 9TH DAY OF JANUARY, 1963

UPON READING the Order Nisi dated the 19th day  
of August, 1958 and the affidavits of John Victor,  
Zacharia Layne, Gideon Layne and Richard Layne and

In the  
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of British  
Guiana

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Order of Court  
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4th April 1960

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In the  
Supreme Court  
of British  
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\_\_\_\_\_  
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Order of Court  
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continued

that of Mr. A.O.H.R. Holder proving the advertisement of the Order Nisi dated the 19th day of August, 1959 in the Sunday Chronicle newspaper of the 30th August 6th and 13th September, 1959 AND UPON HEARING counsel for the applicants and for the respondents West Bank Estates Limited, and the evidence adduced IT IS ORDERED that all persons having any right or title to the immovable property more particularly mentioned and described in the Schedule hereto be henceforth forever barred therefrom AND IT IS FURTHER ORDERED that the Registrar of Deeds of British Guiana do pass and register transport of the said immovable property now standing registered in the name of John Cornett Graham under transport No.160 of 28th August, 1875 to and in the names of John Victor, Zacharia Layne and Gideon Layne AND IT IS FURTHER ORDERED that there be no order as to costs.

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BY THE COURT  
B.B.McG.GASKIN  
DEPUTY REGISTRAR (AG).

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S C H E D U L E

"Lot No.33 (thirty-three) part of Plantation Maria's Lodge, situate on the West Bank of the River Demerary the said lot number 33 (thirty-three) having a facade of 288 (two hundred and eighty-eight) feet by the whole depth of the estate immediately north of it known as Reynes-tein as laid down and defined on a diagram thereof by the Sworn Land Surveyor, D.Fraser, dated 17th May, 1856, and deposited in the office of the Registrar of the Counties of Demerary and Essequibo on the 25th June, 1856, subject to the keeping up of the Public Road and the drainage to the extent of the facade of the said lot No.33 (thirty-three).

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"The northern boundary of the said lot No.33 to be a straight line connecting the western extremity of the said lot at a point 100 rods and 55 feet north of the northern boundary of Maria's Lodge as laid down and defined on the said diagram by the Sworn Land Surveyor, D. Fraser, to the point on the eastern extremity 100 rods and 35 feet north of the said northern boundary of Maria's Lodge."

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CERTIFIED A TRUE COPY

Assistant Sworn Clerk



No.34

ORDER OF COURT - ACTION NO.1719 of 1959

1959 No. 1719 DEMERARA

In the  
Supreme Court  
of British  
Guiana

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN :

JOHN VICTOR,  
ZACHARIA LAYNE and  
GIDEON LAYNE, Plaintiffs,

- and -

WEST BANK ESTATES LIMITED,  
a Company incorporated in  
England and carrying on  
business in this colony at  
22 Church Street, Georgetown,  
Demerara, Defendants.

Order of Court  
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4th April 1960

No.34

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BEFORE THE HONOURABLE MR. JUSTICE BOLLERS  
DATED THE 4TH DAY OF APRIL, 1960  
ENTERED THE 9TH DAY OF JANUARY, 1963.

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THIS action having come on for hearing on the 21st, 23rd, 29th and 30th days of December, 1959; the 4th, 5th, 6th, 12th, 14th, 16th, 22nd, 23rd, 29th and 30th days of January, 1960; and on this day AND UPON HEARING counsel for the plaintiffs and for the defendants and the evidence adduced and the Court having ordered that judgment be entered for the defendants with costs THEREFORE IT IS THIS DAY ADJUDGED that the plaintiffs do recover nothing against the defendants and that the defendants do recover against the plaintiffs their costs of this action to be taxed certified fit for counsel AND BY CONSENT IT IS ORDERED that there be a stay of execution for six weeks from the date hereof.

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BY THE COURT  
B.B.McG.GASKIN  
DEPUTY REGISTRAR (AG.)

A CERTIFIED TRUE COPY

ASSISTANT SWORN CLERK.

In the Federal  
Supreme Court

No.35

ORDER OF COURT GRANTING LEAVE TO APPEAL  
IN FORMA PAUPERIS

No.35

Order of Court  
granting leave  
to appeal in  
forma pauperis  
20th June 1960

BEFORE THE HONOURABLE SIR ERIC HALLINAN,  
CHIEF JUSTICE

BEFORE THE HONOURABLE SIR ALFRED RENNIE

BEFORE THE HONOURABLE MR. JUSTICE MARNAN

DATED THE 20TH DAY OF JUNE, 1960

ENTERED THIS 25TH DAY OF JUNE, 1960

On considering the ex parte application for leave to appeal in forma pauperis filed herein on the 10th day of May, 1960, and the summons issued herein on the 27th day of May, 1960, and a Judge of the Court having ordered that the said ex parte application and the said summons to be adjourned into Court and to be treated as a notice of motion and the Court UPON READING the affidavits of the appellants herein in respect of their poverty, and the Certificate of Counsel that the said appeal is proper to be heard, AND UPON HEARING Mr. L.F.S. Burnham of Counsel for the appellants and Mr. J.H.S. Elliott of Counsel for the respondents IT IS BY CONSENT ORDERED that upon Mr. Burnham giving his personal undertaking that the appellants shall not seek to dispose of their rights, titles and interests in Lot 33, Maria's Lodge during the pendency of this appeal AND UPON IT BEING UNDERSTOOD that the phrase in forma pauperis connotes that which is set out in Rule 21 (2) Order 11 of the Federal Supreme Court (Appeals from British Guiana) Rules, 1959 the appellants be at liberty to prosecute their appeal in forma pauperis AND UPON CONSIDERING the application for an extension of time to file a notice of appeal and UPON READING the affidavit of Mr. Llewellyn John, solicitor, sworn to on the 27th of May, 1960 AND UPON HEARING COUNSEL for the appellants and Counsel for the Respondents by Consent the Court doth ORDER that the time for filing notice of appeal be extended to the 27th June, 1960.

BY THE COURT  
ADITYA T. SINGH  
DEPUTY REGISTRAR  
FEDERAL SUPREME COURT.

No.36

NOTICE OF APPEAL MOTION

In the Federal  
Supreme Court

No.36

Notice of  
Appeal Motion  
27th June 1960

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TAKE NOTICE that the Plaintiffs (Appellants) being dissatisfied with that part of the decision more particularly stated in paragraph 2 hereof of the Supreme Court of British Guiana contained in the judgment of the Honourable Mr. Justice Bollers, Puisne Judge (Acting) of the Supreme Court of British Guiana in its Civil Jurisdiction dated the 4th day of April, 1960, doth hereby appeal to the Federal Supreme Court upon grounds set in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

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

THE PARTS OF THE DECISION COMPLAINED OF

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2 (a) That the action for trespass be dismissed judgment be entered for the Defendants (Respondents) with costs to be taxed - page 55, second paragraph of the said judgment.

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(b) That the northern boundary of the said lot 33 be a straight line connecting the western extremity of the said lot at a point 100 rods and 55 feet north of the northern boundary of Maria's Lodge as laid down and defined on the said Diagram by the Sworn Land Surveyor, D. Fraser, to the point on the eastern extremity 100 rods and 35 feet north of the said northern boundary of Maria's Lodge - page 56 of judgment.

(c) That there be no order as to the costs of the application for Registration of Title - page 56 of the said judgment.

3. GROUND OF APPEAL

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(i) The decision is against the weight of evidence.

In the Federal  
Supreme Court

No.36

Notice of  
Appeal Motion  
27th June 1960  
continued

- (ii) The learned trial Judge erred in law and misdirected himself in holding that on the facts accepted by him the Plaintiffs (Appellants) had not been in occupation of the disputed area nec clam, nec vi, nec prae cario.
- (iii) The learned trial Judge erred in law and misdirected himself in holding that the admitted trespass committed by the Defendants was highly technical and in refusing to award damages therefor. 10
- (iv) That the learned trial Judge erred in law in dismissing the action for trespass after acts of trespass were admitted by the Defendants (Respondents), and were so found by him, however highly technical.
- (v) The decision of the learned trial Judge was erroneous in point of law and was unreasonable having regard to the evidence when he awarded costs in favour of the Defendants (Appellants) on the claim for trespass and refused to award costs in favour of the Plaintiffs (Appellants) in the application for registration of title. 20
4. THE RELIEF SOUGHT IS:
- (a) That the decision of the learned trial Judge dismissing the action for trespass be reversed and that damages for trespass be awarded in favour of the Plaintiffs (Appellants) with costs both in this Court and in the Court below. 30
- (b) That the Plaintiffs (Appellants) be awarded costs of the application for Registration of Title both in this Court and in the Court below.
- (c) That the northern boundary of lot 33 (thirty three) referred to on page 56 of the judgment be declared to be a line running along the northern edge of the dam lying immediately north of lot 33 (thirty-three) between the River Demerary and the Public Road and continuing along the northern edge of the notional prolongation of the said dam westwards to the extent of 750 (seven hundred and fifty rods). 40

(d) ALTERNATIVELY: If the said line is not the northern boundary of the said lot 33 (thirty-three) that the Plaintiffs (Appellants) be declared to be entitled by prescription to that parcel of land lying between the said line referred to in 4 (c) above and the northern boundary as found by the learned trial judge.

In the Federal Supreme Court

No.36

Notice of Appeal Motion 27th June 1960 continued

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

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	<u>Names</u>	<u>Addresses</u>
	<u>Plaintiffs (Appellants)</u>	
1.	JOHN VICTOR ...	Maria's Lodge, West Bank, Demerara.
2.	ZACHARIA LAYNE ...	Supply, East Bank, Demerara.
3.	GIDEON LAYNE ...	Coverden, East Bank, Demerara.

The Respondent

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WEST BANK ESTATES LIMITED. A Company incorporated in England and carrying on business in this colony at 22, Church Street, Georgetown, Demerara.

Demerara C.M.Llewellyn John  
Dated this 27th day of June, 1960.  
L.F.S. Burnham Solicitor for Plaintiffs  
OF COUNSEL. (APPELLANTS).

A.O.H.R.

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No.37

No.37

NOTICE BY RESPONDENTS OF INTENTION TO  
CONTEND THAT DECISION OF BOLLERS J.  
(ACTING) BE VARIED

Notice by Respondents of intention to contend that decision of Bollers J. (Acting) be varied 30th November 1960

TAKE NOTICE that upon the hearing of the above appeal the Respondents herein intend to contend that the decision of the Honourable Mr. Justice Bollers dated the 4th April, 1960, should be varied as follows:

In the Federal  
Supreme Court

No.37

Notice by  
Respondents of  
intention to  
contend that  
decision of  
Bollers J.  
(Acting) be  
varied  
30th November  
1960  
continued

1. By setting aside the decision that the opposition entered by the Respondents to the application for registration of title be declared to be bad, illegal and not well-founded (page 244, lines 15-18 of the Record) and substituting an order that the said opposition be declared good, legal and well-founded.
  2. By varying the description of the property which the Registrar is authorised and ordered to pass transport (page 244, line 19, to page 245, line 23, of the Record) to read as follows: "Lot No.33, Plantation Reynestein on the West Bank of the Demerara River, having a facade of 288 feet by the whole depth of the estate, bounded on the north by a line parallel to and 100 rods to the north of the northern boundary of Plantation Maria's Lodge as defined on a diagram thereof by the Sworn Land Surveyor, Raymond Augustine Wilkins, tendered as Exhibit 'O' herein. 10
  3. By awarding the Respondents costs against the Appellant in respect of the said application. 20
- AND TAKE NOTICE that the grounds upon which the Respondents intend to rely are as follows:-
1. The description in the learned trial Judge's said order that the said lot 33 is "part of Plantation Maria's Lodge" is incorrect.
  2. In Transport No.28 of the 8th March, 1936, (pages 309-311 of the Record) the root of the Appellants' title, and in the exception in the Respondents Transport No.529 of the 28th May, 1927 (Pages 306-308) of the Record the land is described as part of Plantation Reynestein. 30
  3. The description in the learned trial Judge's said order states that lot 33 is "laid down and defined on a diagram thereof by the Sworn Land Surveyor, D. Fraser", but the said Fraser, though showing the said lot 33 as forming part of Plantation Reynestein, does not show it as extending west of the public road. 40

4. Notwithstanding the fact that the Respondents disclaim any interest in the land to the south of the broken red line in Exhibit 'O' no order could, alternatively, should, have been made under the Deeds Registry Ordinance, Chapter 32, that any land north of 100 roods from the northern boundary of Plantation Maria's Lodge be transported to the Appellants.

In the Federal  
Supreme Court

No.37

Notice by Respondents of intention to contend that decision of Bollers J. (Acting) be varied  
30th November 1960  
continued

10 Dated this 30th day of November, 1960

H.C.B.Humphrys  
Respondents' Solicitor.

To C.M.Llewellyn John Esq., Appellants'  
Solicitor

and

To: Registrar.

No.38

JUDGMENT OF FEDERAL SUPREME COURT

No.38

Judgment  
25th February  
1961

Mr. Justice Marnan:

20 The Respondents in this appeal are the owners of Plantation Reynestein which they cultivate as a sugar cane estate.

30 Prior to 1836 Reynestein had a facade or frontage of 420 roods, and a depth of 750 roods, but in that year the owner of Reynestein conveyed a full slice off the southern part of the plantation to the owners of the adjoining plantation, on the south, known as Maria's Lodge. The slice of land so conveyed was described by the relevant transport (Exhibit J in these proceedings) as "a piece of land of one hundred roods facade by seven hundred and fifty roods in depth . . . commencing from the northern boundary or side line of Plantation Maria's Lodge, and extending northwards". A rood is 12 feet.

The depths of Reynestein and Maria's Lodge were similar, but the back line or western

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Judgment  
25th February  
1961  
continued

boundary of Maria's Lodge lay further to the west than that of Reynestein, owing to the fact that the two plantations are bounded on the east by the natural west bank of the Demerara River, which is not, of course, a straight line. In other words the back of Maria's Lodge projected further into the Crown lands lying behind both plantations than did Reynestein. After 1836, therefore, the back line of Maria's Lodge, cum annexis, consisted of two lines which, if produced, would be roughly parallel, joined at right angles by the western end of the old northern side line of Maria's Lodge. This section of side line is 715 feet long, and is marked on the ground by two wooden paals which the learned trial judge found to have been correctly positioned by a surveyor named Hastings, in or about 1921, so as to show where the two back lines touched the old northern boundary of Maria's Lodge.

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In the year 1927 the Respondents acquired Plantation Reynestein, less of course the land alienated in 1836. The relevant transport of Reynestein (Exhibit G 2) describes the land so excepted as "containing 100 roods by admeasurement commencing from Plantation Maria's Lodge and extending thence northwards conveyed to the proprietors of the said Plantation Maria's Lodge" in 1836. It will be observed that the words "by admeasurement" are new.

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The land alienated to Maria's Lodge was subsequently divided into lots, and in 1875 one Graham, the predecessor in title of the Appellant, acquired lot 33, which is the most northerly lot, and thus the lot lying nearest to the southern boundary of the land retained by the owner of Reynestein in 1836, and eventually acquired by the Respondents. Graham's transport (Exhibit A) described Lot 33 as "part of Plantation Maria's Lodge . . . . having a facade of 288 feet by the whole depth of the said Estate as laid down and defined on a diagram thereof by the sworn land surveyor, D. Fraser dated the 17th May 1856". A copy or tracing of Fraser's plan was put in evidence as Exhibit R.A.W.1. This document is primarily a diagram of the lots. It shows the public road which still runs north and south across the

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plantations roughly parallel to the river and at a distance of about 300 yards inland. It shows the area of lot 33 on the east side of the road, but it does not show any of that part of lot 33 which admittedly lies to the west of the road and which is the only area in question in this case. Moreover, the plan has numerous defects and deficiencies which were referred to by the learned judge at page 218 of the record. These defects render it impossible to make accurate calculations by scaling from the plan, so as to relate the northern sideline of lot 33 to any other feature shown on the plan. Moreover, while the old northern sideline of Maria's Lodge is indicated on the plan, there is no evidence that it can now be located on the ground, in the vicinity of the road, and the southern side line of Reynestein is not shown at all. Thus, even if it were possible to calculate from the plan the distance from the northern sideline of lot 33 to any other point, there is no point shown on the plan which is still identifiable on the ground, so that measurements could be taken. The plan merely confirms that the frontage of lot 33 is 288 ft. along the road. It follows that the description by transport of the land conveyed by Reynestein to Maria's Lodge in 1836 is anchored to the old northern boundary of Maria's Lodge, which is identifiable at its western extremity by Hastings' paals, but the description by transport of lot 33, which refers to Fraser's plan, is not anchored to any physical feature which enables the precise position of the lot, as opposed to its area, to be fixed on the ground.

There is, however, a most important feature on the ground which is not referred to in either transport, nor shown on Fraser's plan. This consists of a bank or dam, with two flanking ditches extending westwards from the road, roughly parallel to the old Maria's Lodge sideline, and little more than 100 rods to the north of it. The Respondent's maximum estimate of the distance from old Maria's Lodge to the point where this dam meets the road was 100 rods and about 200 feet, their minimum estimate, 100 rods and about 20 feet. These figures have to be approximate because the Respondents' calculations were based on varying estimates as to the position of the

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old Maria's Lodge sideline at the road, and not upon the dam itself, but upon a peg which they found slightly to the north of the dam beside the road. The dam is about 24 feet wide, and extended to about half the depth of the plantation, though the southern flanking ditch carried on to about 200 roods from the back line. The Respondents calculated that a notional extension of the line of the dam reaches a point on the back line 100 roods and 365 feet north of the side line of Maria's Lodge as marked by Hastings' paals. East of the road there is no dam, but the southern ditch continues into the river.

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The importance of this feature lies in the fact that at all material times the Appellants treated and regarded the dam, or at least the southern ditch and its notional extension, as their northern boundary. They are, and were, small farmers, and apparently never had the manpower to bring their lot under constant or close cultivation for a distance of more than 200 roods west of the road. But where they did cultivate, they cultivated right up to the southern ditch, and there is evidence based on a plan drawn by one Fowler (Exhibit S) that lot 33 was so occupied as long ago as 1891 by John Graham, the grandfather of the Appellant Victor, and the original purchaser of lot 33.

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Prior to 1958 the Respondents made no attempt to cultivate the land immediately north of the dam. Their own evidence is that in 1949 there was the Appellants' cultivation immediately south of the dam for about 200 roods in from the road, after which the cultivation gave way to trees and bush, but north of the dam there was only forest. In 1958, however, the Respondents decided to extend their sugar cultivation as far as their southern boundary through the full depth of the estate, and set to work to clear the bush and construct the water works necessary for the transport of cane by punts, up to the line which they calculated to be their southern boundary. These operations entered on land which the Appellants claim to be part of lot 33, and led to the present proceedings.

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The Respondents' method of fixing the line of their southern boundary was as follows. Having located and checked Hastings' paals, they measured

100 roods along the back line, and having added a few extra feet as a margin of safety, they marked on the ground a point, thereafter referred to as P 2, as the western end of their boundary, according to their transport of 1927.

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With regard to the eastern end, they adopted a different procedure. Instead of attempting to locate the position of the eastern end of the 1836 Maria's Lodge boundary, and then measuring 100 roods to the north, they contented themselves with the position of the wooden peg or paal which they found just east of the road, and north of the dam, at a distance from Maria's Lodge which they calculated to be considerably more than 100 roods by any reckoning. The line which they claim to be their minimum southern boundary, to which I shall refer as the hundred rood line, is thus, they contend, well within the line to which they were strictly entitled by admeasurement, on the basis of their transport, and more so in the east than in the west.

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The reason for this apparent generosity in the east no doubt lay, to some extent, in the difficulty of locating the old Maria's Lodge sideline in the vicinity of the road. Nevertheless, it is hard to understand why the Respondents selected the peg as the eastern end of the 100 rood line unless they thought that it either marked or was related to, the southern boundary of Reynestein. The learned judge found that this peg, to which I shall refer as Fraser's paal, had been put in position by Fraser. There was a conflict of evidence as to whether it bore his initials. The significance of Fraser's paal in this case, however, lies in its close proximity to the dam, coupled with the fact that the Respondents themselves made the peg, and not even the middle of the dam, the eastern end of the 100 rood line. The Appellants also relied, though not exclusively, on the position of Fraser's paal, in regarding the line of the dam as their boundary.

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These calculations were made, in the first place in 1950 by the respondent's surveyor, Mr. Wilkins in the course of a cadastral survey. The hundred rood line was not then marked on the ground, because he was not immediately concerned

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with the Respondents southern sideline. Indeed, so little were the Respondents then interested in the land south of the dam that they did not even notify the Appellants that they were cultivating and trespassing upon land which the Respondents calculated to be their own.

In 1958, however, Mr. Wilkins sent his agents, under the direction of one Mohamed, to cut the hundred rood line, so that the Respondents bulldozer-man could recognise and keep to the north of it. There was an immediate encounter with the Appellant Victor, in the cultivation south of the dam. The agents withdrew and reported to Mr. Wilkins. From that time onwards the Respondents' policy has been one of prudence, as far as the cultivation area is concerned. They have not sought to challenge the Appellants' right to ownership of this area, they have, in effect abandoned their claim to any of the first 200 roods of the land south of the dam. But they have maintained that the 100 rood line is truly drawn, and have worked up to that line west of the cultivation, thus asserting their claim to a de facto boundary which lies north of the dam in the east, crosses the dam after 200 roods, and thence follows the 100 rood line for the remaining depth of the estate. The position is well illustrated by Mr. Wilkins' two sketches Exhibits D and O, which show the thin wedge-shaped area in dispute, and the waterworks which the Respondents have constructed in the face of the Appellants' protests.

On the 27th July, 1959, the Appellants issued an originating summons claiming registration of their Title to Lot 33. The Respondents' objection to that claim was and is limited to the description of Lot 33 which was of course, taken from the transport of 1875 upon which the Appellants relied. Their point is that Lot 33 is described as part of Plantation Maria's Lodge and the depth of the lot is described as "the whole depth of the said estate" whereas it is common ground that the backline of Lot 33 is the same as that of Reynestein, and that the backline of Maria's Lodge proper lies further to the west. It is equally common ground that the land which includes Lot 33 was conveyed to the owner's of

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Maria's Lodge in 1836 and that the Appellants are entitled to registration of their title to Lot 33. The boundary was not an issue. There was thus no dispute as to any of the facts involved in that action, which is, however, a subject of the present appeal. It will be convenient to deal with it later.

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10 The Appellants' second action, and subject of this appeal, was begun by writ dated 30th October, 1959. By the endorsement the Appellants claimed as

"the legal and beneficial owners and persons in occupation and possession for upwards of 30 years nec clam nec precario of lot 33"

Then followed description of Lot 33 contained in the 1875 transport with its reference to Fraser's plan. The Appellants claimed:

- 20 (a) possession of a portion of their land alleged to have been occupied by the Defendants as trespassers since the first half of 1959;
- (b) \$50,000 damages for trespass by entering, cutting trees, and digging trenches and canals upon that portion of the land;
- (c) an injunction restraining the Defendants from committing further trespass on the said land, and
- (d) costs and further or other relief.

30 In fact, the dispute was confined to the strip bounded on the west by the backline, on the south by the 100 rood line, on the north by the line of the dam, and on the east by a line running north to south immediately west of the Appellants' cultivation. The strip is about a mile long, and just over a hundred yards deep at its western end, tapering to a depth of about 30 yards in the east. Before it was cleared by the Respondents in 1959 it consisted, as did the land not in dispute to the south of it, largely of forest and bush, but  
40 near the back line there was an area of savannah or grass land, and there was an issue as to whether the forest also contained a number of useful

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trees such as spice, cocoa, and coconut, as well as a quantity of mookroo grass.

The Appellants obtained, ex parte, the interim injunction they asked for and an order was made on the 7th December, 1959, for a speedy trial. The affidavits which had by then been filed in connection with the injunction were ordered to stand as pleadings in the action. Both actions came on for trial on the 21st December, and on the 23rd the injunction was discharged when it was disclosed that the Respondents had already completed all the clearance and digging they intended to do on the disputed strip. Judgment in both actions was delivered on the 4th April, 1960. The learned judge found in effect that the hundred rood line truly represented the Respondents' southern boundary under their transport of 1927 and that the appellants, though in occupation of lot 33 at all material times, had failed to prove such use and occupation of the disputed strip as would give them a possessory title up to the line of the dam. He therefore dismissed the action for possession and damages for trespass with costs, but granted the Appellants application for registration of title, with no order as to costs, so amending the description of lot 33 as to make it clear that the backline was the same as that of Reynestein, and purporting to define its northern boundary.

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Both sides have appealed. I shall deal first with the action for trespass, which is the substantial matter in this case. Here there were two distinct questions. The first was whether it was possible to determine the boundary between lot 33 and Reynestein according to transport. The second was whether the Appellants could establish a prescriptive title to the land up to the line of the dam.

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On the first question, the Appellants contended for the line of the dam, while the Respondents contended for the hundred rood line. As already pointed out, the Respondents were in much the stronger position . . . The learned judge held, as I think correctly; that the Respondents successfully proved, by surveyor's evidence, that the hundred rood line was their minimum southern boundary, by virtue of their transport of 1927.

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The Respondents' attitude was that, having established their own southern boundary, they were not concerned with the precise location, by transport, of the northern side line of lot 33. Moreover, the Appellants called no expert evidence to relate the position of their northern side line to their transport of 1875. Fraser's plan did not enable them to do so, and I think that the Judge was again right in holding that Fowler's plan, on which the Appellants sought to rely, was evidence only of occupation, and not of boundaries.

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I therefore hold that the judge decided correctly that the only boundary by transport which was established by the evidence was the Respondents' southern sideline, which depended on their transport of 1927. It by no means follows that that was the same boundary as agreed upon by the parties to the conveyance of 1836. Let it be said at once that there was not enough evidence to establish what that agreement was. But I pause to consider that matter because of its relevance to the second question, that of the Appellants possessory title with which I shall deal later.

No significance was attached by anyone concerned with this case to the appearance of the new words "by admeasurement" in the transport of 1927. Their novelty is at least not inconsistent with the 1836 measurement having been made by pacing, visual estimation, or estimation that 100 roods was roughly the distance between two pre-existing features on the ground. The land west of the road was largely, if not entirely, undeveloped, and not of such value that a few yards one way or the other would be of importance to either party, the owners of large plantations. The whole of lot 33 was valued at only \$400 in 1873, and lot 33 comprised nearly a quarter of all the land alienated in 1836. The southern part of Reynestein remained largely undeveloped until 1959, though there is evidence that a little farming had been carried on in that area by one or more of the Respondents' predecessors in title. In those circumstances it seems highly probably that if a physical line or some part of it had existed on the land at about 100 roods north of Maria's Lodge the parties to the conveyance of 1836 would have

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adopted it as marking the boundary, for the purposes of the conveyance, and referred to a facade of 100 roods by estimation, merely to show their intention that the new boundary should, as is the custom, be roughly parallel to that of Maria's Lodge, and follow a straight line.

In this case, the salient feature, on the ground, is the dam, and its flanking ditches. It is agreed that such a construction often marks the boundary between two estates, and is owned in moieties, although it may have other purposes. The Respondents are correct in saying that the dam lies north of the measured hundred-rood line. The Appellants say that the dam is the obvious boundary, and argue that the position and type of the dam, as well as its proximity to Fraser's paal, are indications that it was constructed to mark the line of the new boundary as agreed in 1836, although there is no proof that it was in existence before 1891 - the date of Fowler's plan. In the absence of any evidence as to when the dam was constructed I am unable to draw so precise an inference.

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Mr. Elliott for the Respondents has suggested that the dam was in existence before the conveyance of 1836 and was probably constructed as a means of access within the old Reynestein, and not as a boundary or side line. He may well be right, but if so it seems to me incredible that the owner of Reynestein, wishing to sell part of his estate, would have alienated a strip limited by an invisible line a few yards south of a distinct agricultural feature, as opposed to adopting that feature as the new boundary. If he is wrong there can have been no purpose in subsequently constructing the dam where it is, otherwise than as a side line. I repeat, that there is not enough evidence to relate the dam to whatever was agreed as to the new boundary in 1836. But, conceding that the dam has no probative force in considering the question of the boundary by transport, I consider that its existence since, at least, 1891, must have had a most important bearing on what the occupiers of lot 33 believed it to represent, and on the likelihood of their having used as their own all the land up to the southern ditch. If the dam was not a lawyer's, or a surveyor's boundary, it was a farmer's boundary. It is not disputed that it

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was treated as such, so far as it ran, by the farmers living on either side of it for more than the first half of the present century. Nor is there any evidence that anyone ever crossed the line of the dam from either side, throughout the whole depth of the estate, until 1958, when the Respondents' agents were immediately challenged by the Appellants.

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10 I now turn to the question of the Appellant's possessory title. The learned judge reviewed the history of the law of prescription in British Guiana and it is unnecessary to do so again in this judgment. Mr. Burnham, for the Appellants, conceded that the judge held correctly that the Appellants had to show 30 years occupation to establish full title in themselves and a right to a declaration in that respect, and that 12 years occupation would give them a right to sue for trespass. Mr. Elliott did not dissent from this view of the law. It is therefore only necessary to state that the appellants base their claim to title on section 3 of Chapter 184 which provides that:

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30 "Title to land . . . may be acquired by sole and undisturbed possession, user or enjoyment for thirty years, if such possession, user or enjoyment is established to the satisfaction of the Court and was not taken or enjoyed by fraud or by some consent or agreement expressly made or given for that purpose".

The Appellants' claim to be entitled to sue in trespass is based on section 5 of the same Ordinance, which bars an owner's right of action to recover possession of land after twelve years from the date on which the right of action accrued. In respect of those alternative claims Mr. Burnham contended that the learned judge was wrong in holding that the Appellants had failed to prove that they were in possession of the disputed strip nec vi, nec clam, nec precario for thirty years, or alternatively for twelve years.

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The Respondents' first answer to this part of the Appellants' case was that the pleadings contained no claim for a declaration of prescriptive title. If that matter was not covered by the claim for further or other consequential relief, it was

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in my opinion adequately dealt with by amendment in the course of the trial. It is true that leave to amend was not formally given, but Mr. Burnham applied for the appropriate amendment, Mr. Elliott stated that he would not oppose, and the judge dealt with and decided the issues as though the amendments had been made.

The Respondents' substantial point was that even on the most favourable view of the Applicants' evidence, it failed to establish the type of occupation necessary for the acquirement of title by prescription, save in respect of the area of close cultivation. They contended firstly that such occupation must be so close and continuous as to operate in law as a dispossession of the true owners, and secondly that it must be hostile to the true owners.

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In developing these contentions, Mr. Elliott submitted that as the Appellants could not establish that their title by transport covered the disputed strip they could never have been in constructive possession of it, unlike the Respondents who, as owners of Reynestein were in constructive possession of the whole plantation. He cited Halsbury, 3rd Edition Vol.24 at page 251 (Paragraphs 481 and 482). Clark and Lindsell on Torts, 11th Edition paragraph 908, Leigh v. Jack 1879 5 Ex D 264, Littledale v. Liverpool College 1900 1 Ch. 19 and two Canadian cases which deal with the position of mere trespassers. On the basis of these authorities he argued that since the appellants could not have been in constructive possession of the disputed strip, and the acts of user they deposed to did not amount to the taking of exclusive possession of the land west of the cultivation, the Respondents had never been dispossessed of the disputed strip and no period of prescription could have run in the Appellants' favour.

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No doubt it is good law that a mere trespasser who occupies de facto one part of a defined area, does not thereby establish possession of the whole area. He may enter upon land and fence himself in, but, whatever he may covet, his possession is limited to what he can grasp. Unlike William Cowper's marooned islander, he is

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not monarch of all he surveys. His animus possidendi may be limited only by his ambition, but the extent of his physical occupation is a matter of fact, which can be measured.

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10 It seems to me however, that the principles relating to trespassers have no application to the present case. It is conceded that the Appellants were, at all material times, the owners of lot 33. They had, in law, a right to occupy the entire lot, and it is clear from the evidence that they had the same animus possidendi. They had no intention of occupying any land to which they did not believe themselves legally entitled, and having behaved accordingly, they had no trouble for over eighty years. But when they had to come to Court to attempt to establish their title they found that they were unable to prove, by reference to their transport, the precise geographical position of the land to which they were so entitled. They were thus compelled to set up, as they did by their writ and subsequent amendment, a claim to a prescriptive title to the land they purported to occupy under a claim of right. That claim was not, as Mr. Elliott would have it, confined to the disputed strip. The form of the declaration asked for is at the moment immaterial. The Appellants' claim to the disputed strip is incidental to their claim to the whole area, which they referred to as lot 33. Their occupancy, based on a bona fide belief in long standing ownership, is no more devisable than the belief in ownership on which it is based. The nature of their claim is unaffected by the fact that the Respondents concede the greater territorial part of it. The nature and extent of their occupancy and user is a question of fact, yet to be considered. But if and in so far as they took and maintained possession of the disputed strip they did so, not as conscious trespassers crossing another's boundary, but in the same way as they took possession, if at all, of the undisputed land immediately to the south, that is to say in the bona fide belief that their rights extended up to the line of the dam, and as far as the backline.

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In a recent text-book on Limitation of Actions the following passage appears:

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"There is no presumption in favour of a wrong doer that possession of part imports possession of the whole, but this has no application when it was intended that the intruder should have possession of the whole e.g. where he entered under an ineffective conveyance" (Franks on Limitation of Actions, 1959).

No doubt the intention there referred to was that of both parties, but I think the same distinction arises where the so called intruder enters 10

(a) with the intention to occupy a definite area by virtue of a claim of right based on a legal title, even if he is mistaken in the precise area which his legal title covers and

(b) without any opposition to his possessory acts within the definite area, but beyond the compass of his legal title. I think the same principle emerges from the following passage in the speech of Lord Watson in Lord Advocate v. Wemyss 1900 A.C. 48 at page 68:- 20

"There is in my apprehension, or ought to be, a practical distinction recognised between the prescriptive possession which establishes a new and adverse right in the possessor, and the prescriptive possession which the law admits, for the purpose of construing or explaining, in a question with its author the limits of an antecedent grant in conveyance. In the first case the rule obtains tantum prescription quantum possessum. In the second, it appears to me that a much more liberal effect has been given to partial acts of possession as evidencing proprietary possession of the whole, in cases where the subject of controversy has been in itself a distinct and definite tenement." 30 40

I therefore think that the position of the appellants is different from that of a

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mere trespasser, because it is plain upon the evidence that at all material times they not only believed, but had good reason to believe, that their legitimate boundaries in the north and in the west were the line of the dam, and the backline. I do not suggest that it follows they should be held to be in constructive possession of any land they did not in fact use or occupy. But there are two important matters which, in my opinion do follow. The first is that their animus possidendi extended to a well defined area on the ground, and when one comes to consider whether de facto occupation and user is sufficient to establish a prescriptive claim, the intention with which the land was so occupied is a most important element (Littledale v. Liverpool College supra). The second is that the question of dispossession cannot be approached in the same way as if the Appellants were to be regarded as deliberate trespassers. A trespasser need not necessarily be a dispossessor, because his occupation of the land may not be sufficient to put the owner out, as in Leigh v. Jack. In that case Bramwell L.J., referring to the Statute of Limitations said, at page 272:-

"Two things seem to me to be contemplated by that enactment, dispossession and discontinuance of possession. It is difficult to suppose a case where it can be doubtful whether there has been discontinuance of possession as to a house ..... but it is possible to conceive a case of discontinuance of possession as to a piece of land where the former owner does nothing to it for the space of twenty years."

Mr. Elliott submitted that there was no evidence of discontinuance of possession in the present case. But in my view the only reasonable inference to be drawn from the admitted alienation of 1836, coupled with the long existence of the dam as a visible obstacle, and the evidence that neither neighbour ever crossed it in the sense of asserting a claim of right on the other-side, is that at, or some time after the alienation of 1836, and certainly before 1891, the Respondents predecessors in title abandoned the land south of the dam. (Compare Rains v. Buxton 1880 14 Ch. D. 537). Whether they did so in

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compliance with the true agreement of 1836, or as a result of mistake as to its terms, is immaterial. It may often happen that on a division of land the parties may adopt on the ground a mutual boundary different from that provided for by the instrument of conveyance. In such cases, if rectification is not obtained, the ultimate result is usually governed by statutes of limitation, and the parties final rights depend on their occupation and user of the land for a statutory period. As Lord St. Leonards said in Dundee Harbour Trustees v. Dougall 1852 1 MACQ 317, in a passage cited in the 7th Edition of Cheshire's Real Property, at page 766:-

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"All statutes of limitation have for their object the prevention of the rearing up of claims at great distances of time when evidences are lost; and in all well regulated countries the quieting of possession is held an important point of policy"

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I think that observation is relevant to the position in this case, where no one ever thought of locating a hundred rod line on the ground until 1950, or of claiming such a line as a boundary until 1958. As already pointed out there is no evidence to show what was the true agreement as to the boundary in 1836, and even if there was, there is no evidence to relate that boundary to the Appellants' transport of 1875. Thus the Respondents' transport of 1927 entitles them to all the land north of the hundred rod line subject to possessory rights. (Lalbahadursingh v. McPherson 1939 LRBG 80). But in considering the acquisition of possessory rights I can see no reason why the claimants should be treated as dispossessors, without regard to the facts of the case.

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The learned trial judge in dealing with the question of boundaries by transport referred to the hundred rod line as "a line north of the true northern boundary of lot 33". That, in my opinion was a misconception. The true northern boundary of lot 33 could not be established by anyone. It may well be that this misconception led to the trial judge taking the

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view that the Appellants were necessarily trespassers ab initio upon the disputed strip, and that they had the onus of proving the type of user necessary to constitute dispossession. In my opinion that was the wrong view, and the wrong test. Whether the Appellants were trespassers ab initio was non-proven. Even assuming that they were mistaken as to the position of the true boundary, and consequently went beyond it, there is no evidence to show whether, as between the two neighbours, the original mistake was unilateral, or mutual. Similarly, the evidence that the owners of Reynestein abandoned the land south of the dam prior to 1891 does not show the cause of that abandonment, or when it took place. In these circumstances, I think that all the Appellants had to prove was that they had so occupied the land, both north and south of the hundred rood line as to give them a prescriptive title pursuant to Sect.3 of Cap.184. If they have so succeeded their northern boundary is established for the first time, in these proceedings, as the line of the dam. If they have failed, their northern boundary may be accepted as the hundred rood line, not because of anything they have proved, but because no one disputes their right to the land south of it.

Mr. Elliott's further point was based on the rule in Thomas v. Thomas (1855 2 K & J. 79) that possession is never adverse if it can be referred to a lawful title. He argued that the meaning of that rule is that, to be adverse, possession must be consciously intended to defeat the true owner's title, and that since the Appellants were upon the disputed strip, if at all, not with any such intention, but under a bona fide claim of right, they were not in adverse possession. He even conceded that if his proposition was correct, the law of prescription would operate in favour of a trespasser who succeeded in terrorising the true owner into taking no steps to recover his land, and against a person who was in possession in good faith. The President and Governors of Magdalen Hospital v Knott's 1879 4 App. Cas. 324 is authority to the contrary. I think the rule in Thomas v. Thomas means no more than that time will not run in favour of an occupier who is in possession by virtue of a title, such as a lease, which

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justifies his possession as between himself and the true owner. In Bridges v. Mees 1957 1 Ch. 475 the claimant by prescription had gone into possession of the disputed land under a contract for sale, and had remained in possession for the statutory period after having paid the full purchase price by instalments. It was argued on the authority of Thomas v. Thomas that his possession was not "adverse" to the legal owner. Harman J. as he then was held that the claimant had been in adverse possession from the time he paid the last instalment of the purchase money, because thereafter his possession was no longer referable to the vendor's leave and license.

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This decision well illustrates one aspect of the meaning of adverse possession. It does not controvert the principle laid down in Thomas v. Thomas. But it shows that possession based on a bona fide claim of right is something quite different from possession referable to a lawful title.

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I hold therefore that Mr. Elliott's argument on this point fails, but I am also of opinion that the concept of adverse possession does not enter into the issues in this case. It is unnecessary to go into the history of the term, which is reviewed at page 86 onwards of Preston and Newsom on Limitation of Actions 3rd Edition 1953. The concept is English, and in England an occupier's rights after the statutory period always were, and still are, merely negative, depending on the owner's right and remedy to recover the land having been extinguished. Adverse possession was thus not connected with the acquisition of rights, but with the barring of remedies. It operates merely to fix the beginning of the period of limitation. It has the same effect in British Guiana, where Sect.10 (1) of Cap. 184 reproduces Sect. 10 (1) of the Limitation Act 1939. In that connection it means no more than possession by someone other than the legal owner of a type and character which gives to the latter actual or constructive notice that his land is being occupied in a manner inconsistent with his rights. The definition of adverse possession in Halsbury, 3rd Edition, Vol. 24, is merely a paraphrase of Section 10 (1) of the Limitation Act.

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In British Guiana, however, both the old Roman-Dutch Law and Sect. 3 of Cap.184 give to the possessor longi temporis a positive right to acquire title to land, and I doubt whether the doctrine of adverse possession enters into the question whether such title has been acquired, except insofar as some of the elements of adverse possession have been imported by the words of the section itself. The words "sole and undisturbed possession user and enjoyment" convey the same principle as possession to the exclusion of, inter alia, the true owner. The words "not taken or enjoyed by . . . some consent or agreement expressly made for that purpose" embrace the rule in Thomas v. Thomas. It is to be noted that the purpose referred to is the passing of possession only. Possession taken under an agreement made for the purpose of passing ownership such as a contract of sale, is not within the exception. Similarly, if two farmers settle a dispute as to the ownership of two fields by agreeing that one shall take one field and the other the other, and proceed to do so without any formal conveyance, time will begin to run in favour of each under Section 3. No doubt possession taken under such circumstances has often been loosely referred to as adverse possession, which indeed it would be for the purposes of Section 5. But Section 3 provides for acquisition of title without reference to the extinction of any right of action for recovery of the land in question, and in applying it I think it is preferable to disregard a conception of law purely related to the barring of remedies.

What, then, is the nature of the possession which the Appellants had to prove in this case. I think the answer is to be found in the plain words of Sect. 3 of Cap. 184. The learned judge expressed the onus upon them in varying terms, other than those of Section 3, but I make no criticism in that respect. It was undisputed that the Appellants' possession, user or enjoyment was nec vi, nec clam, nec precario, and that it had continued in point of time, since 1875; and more particularly in the cultivated area since 1891. The evidence was that it was sole and undisturbed, and it was not suggested that it was taken or enjoyed by fraud, or by

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consent or agreement relating only to possession. In effect, the only issue between the parties was whether that possession, user, and enjoyment, which was not challenged in respect of the area of close cultivation, was confined to that area, or whether it extended to the full depth of the estate.

The appellants relied on acts of user or enjoyment under five headings: (a) cultivation of fruit trees (b) cutting of timber, wood, and mookroo grass (c) fishing in ponds (d) the growing of rice and (e) the presence of the dam. The last heading is not strictly a matter of use and enjoyment, but the use of the southern ditch as a means of access by water undoubtedly was.

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The Appellants' evidence went back to the beginning of the 20th century when John Victor came to live on the land at the age of ten. With regard to (a) it was to the effect that fruit trees had always been cultivated throughout the full depth of the estate, but in different places and at different times, the bush being allowed to grow up in the intervening periods to allow the land to recover fertility. The learned judge held that there were no fruit trees in the disputed strip either in 1959, when the bulldozers went in to clear it, or in 1958 when Mr. Williams' agent Mohamed began his survey, or in 1943 when a Mr. Wilson who gave evidence for the Respondents, walked along the dam. Mohamed does not seem to have gone into the disputed strip at all. Having been stopped by Victor in the cultivation, he walked further west on the dam itself. He saw some scattered plantain trees which he considered to be abandoned cultivation and he saw coconut trees and grass among the large trees in the disputed strip. Wilson's observation seems also to have been confined to a very poor view from the dam, which he himself regarded as the southern boundary of Reynestein. He was only interested in inspecting some farms to the north of it, and in collecting fire wood, also north of the dam. He did not go into the disputed strip until 1959, with the bulldozers, when he was stopped working on several occasions by the violence of Victor's protests. But he knew that there was a reef or belt of useful cutting wood south of the dam, which was in fact cut for use.

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The learned judge expressed his conclusions as follows :-

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"the Plaintiffs are not definite as to any specific area of the back lands being cultivated by them, and certainly not for a period of twelve years and upwards. This in itself therefore, could not be evidence of adverse possession".

Turning to (b) the learned judge said this:-

10           "The evidence of the Plaintiff is that  
from time to time he and his predecessors  
in title would cut timber wood and grass  
and bring them out .....There is no evi-  
dence as to the exact period of time that  
these things were cut from the land and re-  
moved, but it could be inferred that the  
Plaintiffs were saying that it was done  
since he was a boy ten years old. I am of  
the view that the cutting of timber and  
20           grass from time to time over a long period  
of years, and using lands for access, can-  
not amount to discontinuance of possession  
by the owners, and to such a dispossession  
of the land, and a taking of adverse  
possession in order for time to start runn-  
ing against the true owner".

He then went on to refer to the cases deal-  
ing with comparable acts by trespassers.

30           Pausing there, it seems to me that the  
learned judge was applying the wrong principles  
of law. The Appellants were not seeking to prove  
that they had dispossessed the Respondents,  
whether by a series of acts necessarily incon-  
sistent with the latter's ownership, or otherwise  
They were seeking to show sole and undisturbed  
user and enjoyment for thirty years during which  
the Respondents had laid no claim whatsoever to  
the land in question, that is to say, to any of  
the land south of the dam.

40           The same criticism applies to the judge's  
conclusion under heading (c). He dismissed the  
matter as follows:-

"There is no evidence at all by the Plaintiff

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whether those ponds were dug by them or whether they were formed by the natural declivity in the land. This could hardly be described as an act of dispossession and could not amount to a claim of adverse possession."

No doubt the allegation of fishing in ponds was a very minor matter, and could scarcely be put on a par with the exercise of sporting rights in England. But insofar as it was some evidence of undisturbed user, the learned judge disregarded it entirely.

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He also expressed his suspicion of the Appellants' evidence as to the growing of rice, (ā) in spite of the fact that the Respondents' own plans show the savannah land where rice was alleged to have been grown, and which is admitted to be suitable for the growing of rice. Indeed, throughout his review of the evidence as to user, the learned judge seems to have made no distinction between the evidence of men who had lived and worked south of the dam for years, and that of witnesses who were merely occasional visitors. However, he held that, taken at its best, the Appellants' evidence as to the cultivation of rice would show no more than occupation for five years. Once again the element of user, and user of a most significant area at the extreme west of the disputed strip, was overlooked.

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Finally, the learned judge said this:-

"Mr. Burnham has invited me to find that the cumulative effect of all those acts and circumstances were sufficient to place the Plaintiffs in adverse possession of the disputed area. As far as I am aware there is no authority for this proposition, and it is difficult to see how if a single act or circumstance does not amount to adverse possession, an accumulation of them will do so".

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Whatever the learned judge may have meant by adverse possession in that context, I am unable to agree with him. If one thing is clear about the concept of what is, as opposed to what is not adverse possession, it is that the manner in

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which the possessor occupies or makes use of the land must demonstrate openly that he is treating the land as his own to the exclusion of all other persons. The term 'adverse' presupposes the existence of a true owner, whether the possessor knows him or not. I cannot see how it can be decided, either by the true owner or by the Courts, whether a possessor is purporting to treat the land as his own, without regard to the cumulative effect of whatever he is doing on the land. There is abundant authority to show that isolated acts of user, or acts not necessarily incompatible with the ownership of someone other than the possessor, do not amount to the assertion of a right of exclusive ownership. Mahdoo v. Ramdass 1954 LRB.G. and Leigh v. Jack are excellent examples. Conversely, the more ways in which a possessor treats the land as his own, the more clear the inference of adverse, that is to say exclusive and proprietary, possession.

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In Lord Advocate v. Lord Blantyre 4 App. Cas. 770 the Respondent's claim was to an area of foreshore adjoining their own land, and so definable in length. The main point was whether certain alleged immemorial acts of possession exercised over a great extent of the foreshore had been sufficiently proved. Lord Blackburn said at page 791:-

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"Every act shown to have been done on any part of that tract by the barons or their agents which was not lawful unless the barons were owners of that spot on which it was done is evidence that they were in possession as owners of that spot on which it was done. No one such act is conclusive, and the weight of each act as evidence depends on the circumstances; one very important circumstance as to the weight being, whether the act was such and so done that those who were interested in disputing the ownership would be aware of it. And all that tends to prove possession as owners of parts of the tract tends to prove ownership of the whole tract; provided there is such a common character of locality as would raise a reasonable

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inference that if the barons possessed one part as owners they possessed the whole, the weight depending on the nature of the tract, what kind of possession could be had of it, and what the kind of possession proved was. This is what is very clearly explained by Lord Wensleydale (then Baron Parke) in Jones v. Williams. And as the weight of evidence depends on rules of common sense, I apprehend that this is as much the law in a Scotch as in an English Court. And the weight of the aggregate of many such pieces of evidence taken together is very much greater than the sum of the weight of each such piece of evidence taken separately".

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I therefore agree with Mr. Burnham's submission that the Appellants' conduct and user must be regarded as a whole. Act cannot be isolated from act, nor year from year. If the test is whether the Appellants' conduct with regard to the land south of the dam should have made it plain to the owners of Reynestein that their title to that land was in jeopardy, all the use made of that land in the present century must be taken into account, although only the land comprised in the disputed strip, and the period since 1929 are strictly in question. If the test is whether the Appellants have brought themselves within the terms of Sect.3 of Cap. 184 the same considerations apply. I therefore come to the conclusion that the learned judge misdirected himself in dealing with the issue of the Appellants' possession and user of the land in the following respects. He treated the Appellants as trespassers ab initio in respect of the disputed strip. He applied to the evidence of user the standards appropriate to proof of dispossession by user. He failed to give proper effect to the meaning of Sect. 3 of Cap. 184. And he declined to consider the Appellants' acts of user as a whole, both as to time and to space.

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Lastly, I return to the presence of the dam, the Appellants' heading (e). The learned judge said this:

"It may very well be that the Plaintiffs

always regarded this dam as the northern boundary of lot 33, and the evidence shows that the servant or agent of the Defendant Company, William Wilson, never cut wood to the South of the dam and that Cockfield, one of the predecessors in occupation and/or title of the Defendant Company, never worked to the south of the dam; but there is no convincing evidence that it was a side line dam dividing the two estates, and that the Plaintiffs and the Defendant Company or their predecessors in title agreed that the dam should form the northern boundary of lot 33".

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I make no criticism of the above passage, which seems to me to be entirely justified by the evidence to which it refers. The learned judge, however, continued:

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"The presence of the dam therefore, unlike a fence, is no evidence that the Plaintiffs reduced the land south of it into their possession, and as a result dispossessed the true owner of the land south of the dam, and that they erected the dam in order to exclude not only third parties but also the true owner."

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I cannot see that the dam was unlike a fence in any material respect, save one. A simple fence may be erected by one occupier, to enclose himself or keep others out, but the evidence is that in British Guiana a dam of the type in question, if adjacent to two properties, is usually constructed by co-operation between the adjoining occupiers, each one digging his own ditch and throwing up the earth between them to form the central bank. (Lalbahadursingh v. McPherson - supra). To that extent I agree with the learned judge that the form and type of the dam leads to no inference that it was constructed by the Appellants alone to keep the Respondents out.

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On the other hand I cannot agree that the presence of the dam is no evidence that the Appellants reduced the land south of it into their possession, in as much as the question here is how far their possession extended.

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The dam has now been partially destroyed by the Respondents' bulldozers, but the Appellants' evidence was that it used to extend to the back line. Mr. Wilkins swore that in 1950, after 450 rods in from the road, the dam "practically disappeared into the swamp, so much so that the water was up to my hip". Having regard to the seasonal presence of floods in British Guiana I do not think that evidence affects the matter, since it is agreed the side line of a lot must normally be assumed to be a straight line. The supposition least favourable to the Appellants is that advanced by Mr. Elliott, namely that the dam was in existence before 1836. On that supposition the predecessor in title of the Appellants found the dam on the land when he first came to lot 33. It is quite clear that the Appellants' animus possidendi embraced the whole of lot 33, and in my opinion their evidence that they carried out their intention of using the whole of their property to the best advantage, and that the land they so used included the disputed strip, is fortified by the fact that they found what appeared to be a ready-made northern side line on the land. (Compare Adams and Christmas v. Raghbir 1951 L.R.B.G. 93).

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Finally, Mr. Elliott contends that, whatever the Appellants' intentions, they did not in fact carry it out west of the cultivation. He points to the difference between the continuous close cultivation, and occasional acts of user, and relies on the authorities which deal with dispossession. Mr. Burnham's reply is that the possession, user and enjoyment required by Section 3 is merely that which is usual, having regard to the particular type of land. The Appellants, he argues, are not plantation owners. They are peasant farmers, who made all the use of the land south of the dam that would normally be expected of them. This proposition seems to me to be sound common sense, but it is also founded on authority. In Preston and Newsom's Limitation of Actions, (supra) the following passage appears at page 102.

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"Acts relied on as acts of possession must be considered relatively to the nature of the land whereon they are performed, whether they are tendered to establish a



prima facie title, or to prove displacement of that title, or to prove retaking of possession".

In Kirby v. Cowderoy 1912 A.C. 599 Lord Shaw adopted the following passage from the speech of Lord O'Hagan in Lord Advocate v. Lord Lovat 5 App. Cas. 273 :

10 "Possession must be considered in every case with reference to the peculiar circumstances ..... The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests - all these things, greatly varying as they must, under various conditions, are to be taken into account in determining the sufficiency of a possession".

20 After careful consideration of the evidence in this case I have come to the conclusion that the Appellants did succeed in discharging the true onus that lay upon them. I shall not repeat the language of Sect. 3, or the respects to which it was unchallenged that the Appellants had fulfilled its requirements. I do not presume to dissent from the learned judge's findings as to reliability of the various witnesses. But on an analysis of the evidence I  
30 think that the greater part of the Appellants' evidence as to user stands uncontradicted. Woodlands and rough country can be useful to a farmer if they afford natural products which he wishes to take from time to time leaving it to nature to replenish her own supplies. I think that the Appellants proved that they had made what was, for persons of their means and class, normal user of the land up to the line of the southern ditch, and I hold that they  
40 had, long before the commencement of either action, acquired a title to the land bounded on the north by that line, on the west by the back line, on the south by their boundary with lot 32, and on the east by the Demerara river, pursuant to Sect. 3 of Cap. 184. Since it was held, and indeed not disputed, that all the parties interested were before the Court, the

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Appellants are entitled to a declaration to that effect pursuant to Sect. 4 (a) of Cap. 184.

I would therefore allow the appeal in the action numbered 1719 of 1959, with costs in this Court and in the Court below. With regard to the relief sought by the Appellants by their notice of appeal, which embraces both actions, I would, in the first place, order a reference to the learned judge to determine the amount of damages for trespass. Before dealing with the further relief sought it is, I think, desirable to make certain observations both for the guidance of the learned judge in assessing damages, and in the hope that the parties may reach such agreement as will relieve him of that responsibility. 10

It follows from my findings that the Appellants are entitled to possession of the disputed strip, upon which the Respondents have constructed extensive water works. Nevertheless, they have not repeated their claim for possession or for an injunction in their notice of appeal, and they presented their claim for damages upon the basis that the land was lost to them. If this Court had the power to make an order confirming the Respondents in their wrongful possession of the land, and giving them title thereto, the assessment of damages would be based on the value of the land as it was before April 1959, plus an element by way of punitive damages, the land having been taken by force. However, I know of no such power. If the Appellants were to insist on recovering their land, as they are entitled to do, their claim for damages would be limited to the loss of the use of the disputed strip since April 1959, plus the diminution, if any, in its value for purposes of agriculture by reason of the waterworks now upon it, plus the punitive element; subject always to their duty to minimise damages. As against this, the Appellants have acquired in the waterworks an asset of no general value, but of great value to the Respondents, and if the Respondents were to make a reasonably generous offer to buy the disputed strip they would be in a position to urge that the Appellants would be unreasonable not to accept it in diminution or extinction of whatever damage they have suffered by the trespass. (Peyzu 20 30 40

v. Saunders 1919 2 K.B. 581; McAuley v. London Transport Executive (1957 2 Lloyd's Rep. 500).

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10 In these circumstances I think it is right  
that the parties should have the opportunity of  
reaching an agreement on the question of dam-  
ages, which an order for an assessment of  
damages will afford them. Any such agreement  
will necessarily also decide the question of  
where the future northern boundary of the Ap-  
pellants' land is to lie. It follows that in  
my opinion it would be useless for this Court  
to draw up, at the present stage, either the  
declaration in that respect asked for by the  
Appellants, or a variation in the description  
of the property ordered to be passed by trans-  
port to the Appellants and registered in their  
names. For the technical reasons to which I re-  
ferred early in this judgment I think that the  
description set out in the Appellants' originat-  
20 ing summons in Action No.1130 of 1959 is inac-  
curate. It also follows from my findings in the  
appeal that the description substituted by the  
learned judge in deciding that action in favour  
of the Appellants cannot stand. I would, there-  
fore, formally allow both the appeal and cross  
appeal in Action No.1130. I would confirm the  
judge's orders for registration of title and the  
passing of transport to the Appellants, but I  
would annul his description of the land to be so  
30 registered and transported. There must be  
liberty to both parties to apply as to the final  
form of that description; and of the declara-  
tion, if still asked for, and generally. I  
would confirm the Judge's order as to the costs  
of the action No. 1130, and I would make no ord-  
er as to the costs of the appeal and cross  
appeal in the same respect, but the costs of any  
further application and of the enquiry as to  
40 damages, if any, must lie in the discretion of  
the Court which deals with any such matters.

Dated this 25th day of February, 1961.

(Sgd) J. F. MARNAN  
Federal Justice.

The Chief Justice (Sgd) Eric Hallinan.

I concur. Federal Justice.

Mr. Justice Lewis (Sgd) A.M. LEWIS

I agree. Federal Justice.

In the Federal  
Supreme Court

No.39

ORDER OF THE FEDERAL SUPREME COURT

No.39

BEFORE

Order of  
The Federal  
Supreme Court  
25th February,  
1961

THE HONOURABLE SIR ERIC HALLINAN,  
CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE LEWIS  
AND THE HONOURABLE MR. JUSTICE MARNAN

DATED THE 25TH DAY OF FEBRUARY, 1961

ENTERED THE 4TH DAY OF JULY, 1961.

UPON READING the Notice of Appeal on behalf of the Plaintiffs dated the 27th day of June, 1960 and the Notice on behalf of the abovenamed Defendants of intention to contend that the judgment of the Supreme Court of British Guiana dated the 4th day of April, 1960 should be varied and the judgment hereinafter mentioned AND UPON READING the judge's notes herein AND UPON HEARING Mr. L.F.S. Burnham of Counsel for the Plaintiffs and Mr. J.H.S. Elliott for the Defendants AND MATURE DELIBERATION THEREUPON HAD 10 20

IT IS ORDERED that the appeal in respect of action Numbered 1719 of 1959 Demerara be allowed and that the judgment of the Honourable Mr. Justice Bollers dated the 4th day of April, 1960 be set aside

AND THE COURT DOTH DECLARE in terms of Section 4 of the Title to Land (Prescription and Limitation) Ordinance, Chapter 184 that title to the land hereinafter described be registered and transport therefor be passed in the names of the Appellants - 30

"Lot Number 33 Plantation Reynestein now called Maria's Lodge cum annexis on the West Bank of the Demerara River and including the portion of land acquired by prescription the whole of which land is described hereunder"

AND IT IS FURTHER ORDERED that the said action be referred to the trial judge or any other judge of the Supreme Court of British Guiana to determine in accordance with the decision of this Honourable Court the amount of damages.

In the Federal  
Supreme Court

                      
No.39

Order of  
the Federal  
Supreme Court  
25th February,  
1961

continued

10 AND IT IS FURTHER ORDERED that the appeal and cross-appeal in respect of action No.1130 of 1959 Demerara be allowed and that the orders of the trial judge with respect to the registration of title and the passing of transport to the Appellants be and are hereby confirmed but that the description by the trial judge of the land to be so registered and transported be and is hereby annulled and both parties be at liberty to apply to the Court as to the final form of description and UPON APPLICATION of the parties made to the Court on the 19th May, 1961  
20 THE COURT DOTH DECLARE the final description of the land shall be as hereunder described:

30 "Lot number 33 Plantation Reynestein now called Maria's Lodge cum annexis on the West Bank of the Demerara River and including a parcel of land acquired by prescription, the said lot number 33 having a northern boundary running west along the southern side of a trench and the notional prolongation of the said trench to the south of a dam to the eastern and western extremities thereof a western boundary coincident with part of the western boundary, the said Plantation Reynestein a southern boundary being the boundary between lot 32 and lot 33 and an eastern boundary being the Demerara River"

That there be no order as to costs either in this Court or in the Supreme Court of British Guiana in respect of the said action No. 1130 of 1959 Demerara.

40 That the Respondents do pay to the Appellants their costs in respect of the said action No.1719 of 1959 Demerara in the Supreme Court of British Guiana and in this Honourable Court to be taxed BY CONSENT certified fit for two Counsel.

In the Federal  
Supreme Court

No.39

Order of  
the Federal  
Supreme Court  
25th February,  
1961  
continued

AND IT IS FURTHER ORDERED that the costs of any application and of the enquiry as to damages, if any, must be in the discretion of the Court which deals with any such matter.

BY ORDER OF THE COURT

A. Chung

DEPUTY REGISTRAR (AG.)

FEDERAL SUPREME COURT.

No.40

Order Granting  
Conditional  
leave to  
appeal to  
Her Majesty  
in Council  
11th March,  
1961

NO. 40

ORDER GRANTING

CONDITIONAL LEAVE TO APPEAL TO

HER MAJESTY IN COUNCIL

10

BEFORE

THE HONOURABLE SIR ALFRED RENNIE

THE HONOURABLE MR.JUSTICE ARCHER

AND THE HONOURABLE MR.JUSTICE WYLIE

DATED THE 11TH DAY OF MARCH, 1961

ENTERED THE 30TH DAY OF JUNE 1961.

UPON THE PETITION of the abovenamed Respondents West Bank Estates Limited dated the 8th day of March, 1961, preferred unto this Court on the 11th day of March 1961, for leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of the Court comprising the Honourable Sir Eric Hallinan, the Honourable Mr. Justice Lewis and the Honourable Mr. Justice Marnan delivered herein on the 25th day of February, 1961:

20

UPON READING the said Petition and the affidavit of Hugh Cecil Benjamin Humphrys sworn to on the 8th day of March, 1961, and filed herein:

30

AND UPON HEARING Counsel for the Respondents and Counsel for the Appellants

## THE COURT DOTH ORDER

In the Federal  
Supreme Court

---

 No.40  
 Order Granting  
 Conditional  
 leave to  
 appeal to  
 Her Majesty  
 in Council  
 11th March,  
 1961  
 continued

10 THAT subject to the performance by the  
 said Respondents of the conditions herein-  
 after mentioned and subject also to the final  
 order of this Honourable Court upon due com-  
 pliance with such conditions leave to appeal  
 to Her Majesty in Her Majesty's Privy Council  
 against the said judgment of their Lordships  
 of the Federal Supreme Court (Appellate Jur-  
 isdiction) be and the same is hereby granted  
 to the Respondents.

## AND THIS COURT DOTH FURTHER ORDER

20 That the Respondents do enter into good  
 and sufficient security to the satisfaction  
 of the Deputy-Registrar of this Court in the  
 sum of \$2,400 :- in one or more sureties or  
 deposit into court the said sum of \$2,400 :-  
 for the due prosecution of the said appeal  
 and for the payment of such costs as may be-  
 come payable to the Appellants in the event  
 of the Respondents not obtaining an order  
 granting them final leave to appeal or of  
 the appeal being dismissed for non-prosecu-  
 tion or for the part of such costs as may be  
 awarded by the Judicial Committee of the  
 Privy Council to the Appellants on such  
 appeal

## AND THIS COURT DOTH FURTHER ORDER

30 That all costs of and occasioned by the  
 said appeal shall abide the event of the said  
 appeal to Her Majesty in Her Majesty's Privy  
 Council if the said appeal shall be allowed  
 or dismissed or shall abide the result of the  
 said appeal in case the said appeal shall  
 stand dismissed for want of prosecution

## AND THIS COURT DOTH FURTHER ORDER

40 That the Respondents do within 4 months  
 (exclusive of the months of July and August)  
 from the date of this order in due course  
 take out all appointments that may be neces-  
 sary for settling the transcript record in  
 such appeal to enable the Deputy Registrar  
 of this Court to certify that the said tran-  
 script record has been settled and that the

In the Federal  
Supreme Court

No.40

Order Granting  
Conditional  
leave to  
appeal to  
Her Majesty  
in Council  
11th March,  
1961  
continued

provisions of this order on the part of the  
Respondents have been complied with

AND THIS COURT DOTH FURTHER ORDER

That the Respondents be at liberty to  
apply at any time within 5 months (exclusive  
of the months of July and August when the  
Court will be in long vacation) from the date  
of this order for final leave to appeal as  
aforesaid on the production of a certificate  
under the hand of the Deputy Registrar of  
this Court of due compliance on their part  
with the conditions of this order

10

AND THIS COURT DOTH FURTHER ORDER

That the costs of and incidental to this  
application be the costs in the cause.

Liberty to the parties to apply as they  
may be advised.

BY ORDER OF THE COURT

A CHUNG

DEPUTY REGISTRAR (AG)  
FEDERAL SUPREME COURT.

20

No.41

Order Granting  
Final leave  
to appeal  
to Her  
Majesty in  
Council  
2nd September  
1961

NO.41

ORDER GRANTING  
FINAL LEAVE TO APPEAL TO HER  
MAJESTY IN COUNCIL

BEFORE

THE HONOURABLE MR. JUSTICE WYLIE  
(IN CHAMBERS)

SATURDAY 2ND DAY OF SEPTEMBER, 1961

ENTERED THE 11TH DAY OF SEPTEMBER, 1961

UPON the petition of the abovenamed

30



West Bank Estates Limited dated the 23rd day of August, 1961 preferred unto this Court on the 2nd day of September, 1961 for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court, dated the 25th day of February, 1961:

In the Federal  
Supreme Court

-----  
No.41

Order Granting  
Final leave  
to appeal  
to Her  
Majesty in  
Council  
2nd September  
1961  
continued

10 AND UPON READING the said petition and the order of this Court dated the 11th day of March, 1961:

AND UPON HEARING Counsel for the petitioners and for the Respondents and being satisfied that the terms and conditions imposed by the said Order dated the 11th day of March, 1961 have been complied with

THIS COURT DOTH ORDER that final leave be and is hereby granted to the said petitioners to appeal to Her Majesty in Her Majesty's Privy Council.

20

BY THE COURT

A. Chung

DEPUTY REGISTRAR  
FEDERAL SUPREME COURT.

---

Plaintiffs'  
Exhibit

E X H I B I T S

"A"

"A"

Transport  
No.160 of  
1875 by  
Frederick  
Vandyke to  
John Graham  
28th August  
1875

TRANSPORT

No.160 of 1875 by Frederick Vandyke  
to John Graham.

This is the document marked "A"  
referred to in the foregoing  
affidavit of J. Victor,  
Z. Layne and G. Layne  
Sworn before me this 29th  
day of July 1959

10

Commissioner for Oaths to Affidavits

B. Nauth.

BRITISH GUIANA

COUNTY OF DEMERARY.

Before His Honour John Hampden King,  
Puisne Judge of the Supreme Court of  
Civil Justice of British Guiana aforesaid.

Be it known that on this day the Twenty  
eighth of August in the year One thousand Eight  
Hundred and Seventy five - appeared Frederick  
Vandyke, as sole heir under the last Will and  
Testament of George James Kellman, otherwise  
called George James Kelman deceased Agreeably  
with said Last Will and Testament duly deposited  
in the Registrar's Office of the Counties of  
Demerary and Essequibo, on the thirtieth of  
March 1875 - - - Which appearer declared by these  
presents to Cede, Transport and in full and free  
property to make over to and in behalf of John  
Graham, his heirs and assigns Lot No.33 (thirty  
three) part of Plantation Maria's Lodge, situate  
on the West bank of the River Demerary in the  
County of Demerary the said Lot Number 33 (thirty-  
three) having a facade of 288 (two hundred and  
eighty eight) feet by the whole depth of the said  
Estate as laid down and defined on a diagram  
thereof by the Sworn Land Surveyor D. Fraser  
dated 17th May 1856 and deposited in the Regis-  
trar's Office of the Counties of Demerary and  
Essequibo on the 25th of June 1856 Subject to

20

30

40

the Keeping up of the Public Road and drainage to the extent of the facade of the said Lot number 33 (thirty three) with all the Building thereon, Being of the value of Four hundred Dollars of the current Money of British Guiana aforesaid, Transported on the 27th of September, 1873 -----

Plaintiffs' Exhibit

"A"

Transport No.160 of 1875 by Frederick Vandyke to John Graham 28th August 1875 continued

10 The appearer acknowledging to be fully paid and satisfied for the same, engaging to warrant the said property free from all claims whatever according to law.

And appeared at the same time George Anderson Forshaw authorised by Letter hereunto annexed who declared to accept of the foregoing Transport and to be satisfied therewith.

20 In testimony whereof the parties have hereunto set their hands, and I, the said Judge, together with the assistant Sworn Clerk have countersigned the same, the day and year above written.

The original of which this is a true Copy is duly signed.

Quod Attestor

M.P. Olton

? ?

Gross

Transport

of

30 Lot No.33 part of Pln. Marias Lodge by Exors Geo. J. Kelman decd in favour of John Graham.

-----

Plaintiffs'  
Exhibit

"B"

NOTICE OF INTENDED SURVEY

"B"

Section 16

Notice of  
Intended  
Survey  
5th September  
1958

BRITISH GUIANA

THE LAND SURVEYORS ORDINANCE (Chap 171)

To .....John Victor, Esq.....

of, .....Maria's Lodge, W.B.Demerara.

I hereby give you notice, that I am employed by ..... West Bank Estates Limited ..... to survey the southern boundary of the portion of Pln. Reynestein, West Bank Demerara River, as owned by West Bank Estates Ltd. situated in the county of Demerara and known by the name of portion of Pln. Reynestein ..... which adjoins lands said to belong or to be in your possession and that I shall commence to survey the same on Tuesday the 23rd day of September 1958 at 10 o'clock on that day, beginning at Reynestein/Hermitage side line and its intersection with the Public Road . . . and proceeding in a southerly direction along the Public Road, a distance of about 4,000 feet etc. at which time or place you are requested to attend by yourself or Agent as you may think fit, and in the meantime I will make such traverses as I may deem requisite.

10

20

Dated this 5th day of September 1958.

I.S. MOHAMED

Sworn Land Surveyor.

Certified to be a true copy of the original.

30

I.S. MOHAMED

Sworn Land Surveyor

5.9.58

I.S.Mohamed S.L.S.  
Bookers Sugar Estates Ltd.  
Church Street  
Georgetown.

" C 1 "

Plaintiffs'  
Exhibit

A.O.H.R.HOLDER B.A. Dip Ed. (Lond.)  
BARRISTER-AT-LAW

C 1

CHAMBERS  
6, Croal Street  
Manget Place  
Stabroek  
Georgetown

Letter from  
A.O.H.S.  
Holder to  
Administrative  
Manager of  
Wales  
20th July 1959

20th July, 1959.

10 The Administrative Manager,  
Pln. Wales,  
W.B. Demerara.

Dear Sir,

Lot 33 Maria's Lodge, W.B.D.

20

I have been consulted by my clients, John Victor, Zacharia Layne and Gideon Layne, the owners and occupiers of the abovenamed Lot who inform me that you are trespassing on the abovenamed lot and causing the same lot to be ploughed by a bulldozer.

They have instructed me to inform you, as I hereby do, to cease trespassing on their land, failing which steps will be taken to enforce their rights.

Yours faithfully,  
A.O.H.R. Holder.

"C 2"

C 2

30

CAMERON & SHEPHERD  
SOLICITORS  
PATENT & TRADE MARK AGENTS

2 High Street,  
Georgetown,  
Demerara  
British Guiana.  
7th August, 1959.

Letter from  
Cameron &  
Shepherd to  
A.O.H.R.  
Holder  
7th August  
1959

A.O.H.R.Holder Esq.,  
Barrister-at-Law,  
6, Croal Street,  
Georgetown.

40

Dear Sir,

Re: Lot 33 Maria's Lodge  
West Bank, Demerara

Your letter of 20th ulto., addressed to the

Plaintiffs'  
Exhibit

Administrative Manager of Wales Estate has been referred to us.

C 2

Letter from  
Cameron &  
Shepherd to  
A.O.H.R.  
Holder  
7th August  
1959  
continued

Our clients - the West Bank Estates Ltd. - are the Owners by transport of the land to which you refer, for there is no exception in their transport of such land. They are at present engaged in surveying some of these lands for the purpose of defining their boundaries.

If your clients are claiming to be owners of the above lot perhaps you would be so good as to inform us of the number and date of their report and the plan on which the Lot is shown.

10

Yours faithfully,

CAMERON & SHEPHERD.

"E"

"E"

Transport No. 256 of 1873  
by Anne Leacock Broadhead to George I. Kelman  
27th September 1873

TRANSPORT

No.256 of 27th September 1873 by Anne Leacock Broadhead to George I. Kelman.

BRITISH GUIANA

COUNTY OF DEMERARY

20

Before His Honor Conway Whitborne Lovesy, Puisse Judge of the Supreme Court of Civil Justice of British Guiana aforesaid.

Be it known that on this day the Twenty Seventh day of September In the Year One Thousand Eight Hundred and Seventy three appeared Anne Leacock Broadhead, an inhabitant of the County of Demerary aforesaid, spinster, in her quality as one of the joint and several Executors nominated, constituted and appointed in and by the last Will and Testament of William Bruton, deceased, agreeably with said last Will and Testament deposited in the Registrar's Office of the Counties of Demerary and Essquebo, on the eighteenth of June, 1862, which appearer declared by these presents to

30

Plaintiffs'  
Exhibit

"E"

Transport No.  
256 of 1873  
by Anne  
Leacock  
Broadhead to  
George I.  
Kelman  
27th September  
1873  
continued

10 Cede, Transport and in full and free property  
to make over to and in favour of George I.  
Kelman, his heirs and assigns ... Lot number  
33 (thirty-three) part of Plantation Maria's  
Lodge, situate on the West Bank of the River  
Demerary, in the county of Demerary, the said  
lot number 33 (thirty-three) having a facade  
of 288 (Two hundred and Eighty eight) feet by  
the whole depth of the said estate, as laid  
down and defined on a diagram thereof by the  
Sworn Land Surveyor, D. Fraser, dated 17th  
May, 1850, and deposited in the Registrar's  
Office of the counties of Demerary and Esse-  
quebo on the 25th of June, 1856, subject to  
the keeping up of the Public Road and drainage  
to the extent of the facade of the said lot  
number 33 (thirty three), being of the value of  
One hundred and forty Dollars of the current  
20 money of British Guiana aforesaid transported  
by Letters of Decree on the 10th of November,  
1854. The appearer acknowledging to be fully  
paid and satisfied for the same, engaging to  
warrant the said property free from all claims  
whatever according to law.

And appeared at the same time George Anderson  
Forshaw, authorised by letter hereunto annexed  
who declared to accept of the foregoing Trans-  
port and to be satisfied therewith.

30 In testimony whereof the parties  
have hereunto set their hands and  
I, the said Judge, together with  
the Sworn Clerk, have counter-  
signed the same, the day and year  
first above written.

A.L. Broadhead

G.A. Forshaw

C.W. Lovesy J.

In my Presence

Irving Van Koucho

40

S.C.

A true copy  
D.C. Bissessar  
ASSISTANT SWORN CLERK.

Plaintiffs'  
Exhibit

"F"

TRANSPORT RECORD BOOK

"F"

TRANSPORT No. 266 of 1868 by Daniel  
Broadhead to Quacco Lenckton.

Transport  
Record Book  
showing  
Transport  
No.266 of 1868  
by Daniel  
Broadhead to  
Quacco Lenckton  
12th December,  
1868

British Guiana  
County of Demerary.

Before His Honor Bernard Gustavus Norton  
Second Puisne Judge of the Supreme Court of  
Civil Justice of British Guiana aforesaid.

Be it known that on this day the Twelfth of  
December in the year One thousand eight hundred  
and sixty eight appeared

10

Daniel Broadhead as one of the Joint and  
Several Executors nominated constituted  
and appointed in and by the Last Will and  
Testament of William Bruton, deceased,  
agreeably with said Last Will and Testa-  
ment deposited in the Registrar's Office  
of the Counties of Demerary and Essequibo  
on the Eighteenth of June 1862

20

Which appearer declared by these presents to  
Cede, Transport and in full and free property  
to make over to and in behalf of Quacco Lenck-  
ton, his heirs and assigns; A lot of land,  
part of Plantation Maria's Lodge situate on  
the west bank of the River Demerary, in the  
County of Demerary, said lot having a facade of  
Eighty four feet, by the whole depth of the  
Estate, and known on a diagram by the Sworn  
Land Surveyor, D. Fraser, dated 17th May, 1856,  
and deposited in the Registrar's Office of the  
Counties of Demerary and Essequibo on the 25th  
June, 1856, as lot number 8 (eight) subject to  
the keeping up of the public road and drainage  
to the extent of the facade of said lot.  
Being of the value of One hundred and fifty  
four dollars of the current money of British  
Guiana transported by Letters of Decree on the  
10th day of November, 1868

30

the appearer acknowledging to be fully

40



paid and satisfied for the same, engaging to warrant the said property free from all claims whatever according to Law.

Plaintiffs'  
Exhibit

"F"

And appeared at the same time the said

Quacco Lenckton

who declared to accept of the foregoing Transport and to be satisfied therewith

Transport  
Record Book  
showing  
Transport  
No.266 of 1868  
by Daniel  
Broadhead to  
Quacco Lenckton  
12th December,  
1868  
continued

10

In testimony whereof the parties have hereunto set their hands, and I, the said Judge, together with the assistant Sworn Clerk have countersigned the same, the day and year first above written.

D. Broadhead

The mark of

x

Quacco Lenckton

B.G. NORTON J.

"F"

20

TRANSPORT of 1868 by Daniel Broadhead to Lewis Andrice

"F"

Transport  
Record Book  
Transport of  
1868 by Daniel  
Broadhead to  
Lewis Andrice  
12th December  
1868

British Guiana  
County of Demerary.

Before His Honor Bernard Gustavus Norton Second Puisne Judge of the Supreme Court of Civil Justice of British Guiana aforesaid.

Be it known that on this day the Twelfth of December in the year One thousand eight hundred and sixty eight appeared

30

Daniel Broadhead as one of the Joint and Several Executors nominated constituted and appointed in and by the last Will and Testament of William Bruton, deceased agreeably with said Last Will and Testament deposited in the Registrar's

Plaintiffs'  
Exhibit

Office of the Counties of Demerary and  
Essequibo on the Eighteenth of June,  
1862

"F"

Transport  
Record Book

Which appearer declared by these presents to  
Cede, Transport, and in full and free property  
to make over to and in behalf of

Transport of  
1868 by Daniel  
Broadhead to  
Lewis Andrice  
12th December  
1868  
continued

Lewis Andrice, his Heirs and Assigns A  
lot of land part of Plantation Maria's  
Lodge situate on the West Bank of the  
River Demerary, in the County of Demerary,  
said lot having a facade of Seventy two  
feet, by the whole depth of the Estate,  
and known on a diagram by the Sworn Land  
Surveyor, D. Fraser, dated 17th May, 1856,  
and deposited in the Registrar's Office  
of the Counties of Demerary and Essequibo  
on the 25th June, 1856 as lot number 6  
(six), subject to the keeping up of the  
Public Road and drainage to the extent of  
the facade of said lot. Being of the  
value of One hundred and thirty two  
Dollars of the current money of British  
Guiana. Transported on the Tenth of  
November, 1854, by Letters of Decree

10

20

the appearer acknowledging to be fully  
paid and satisfied for the same, en-  
gaging to warrant the said property  
free from all claims whatever according  
to Law.

And appeared at the same time the said  
Lewis Andrice

30

who declared to accept of the foregoing Trans-  
port and to be satisfied therewith

In testimony whereof the parties have  
hereunto set their hands, and I,  
the said Judge, together with the  
assistant Sworn Clerk have counter-  
signed the same, the day and year  
first above written.

D. Broadhead

40

Lewis Andrice

B.G. Norton, J.

In my presence

'F'

TRANSPORT OF 1868 by DANIEL BROADHEAD  
to THOMAS WILLIAM SAMUEL PARTRIDGE

Plaintiffs'  
Exhibit

'F'

British Guiana  
County of Demerary.

Transport of  
1868 by Daniel  
Broadhead to  
Thomas William  
Samuel Partridge  
12th December  
1868

Before His Honor Bernard Gustavus Norton  
Second Puisne Judge of the Supreme Court of  
Civil Justice of British Guiana aforesaid.

10 Be it known that on this day the Twelfth  
of December in the year One thousand Eight  
Hundred and Sixty Eight appeared

Daniel Broadhead as one of the Joint and  
Several Executors nominated constituted  
and appointed in and by the Last Will and  
Testament of William Bruton, deceased,  
agreeably with said Last Will and Testa-  
ment deposited in the Registrar's Office  
of the counties of Demerara and Essequibo  
on the Eighteenth of June, 1862

20 Which appearer declared by the presents to  
Cede, Transport, and in full and free property  
to make over to and in behalf of Thomas William  
Samuel Partridge, his Heirs and assigns. The  
Northern Half of Lot number 10 (Ten); lots  
numbers 11 (Eleven), and 12 (Twelve), and the  
southern part of lot number 13 (Thirteen),  
parts of Plantation Maria's Lodge, situate on  
the west bank of the River Demerary, in the  
County of Demerary, the said lots and parts of  
30 lots having facades respectively of ninety feet,  
One hundred and eight feet, ninety six feet,  
and nine feet, by the whole depth of the Estate,  
and laid down and defined on a diagram thereof  
by the Sworn Land Surveyor, D. Fraser, dated  
17th May, 1856, and deposited in the Registrar's  
Office of the Counties of Demerary and Esse-  
quibo on the 25th June, 1856, subject to the  
keeping up of the public road and drainage to  
the extent of the facade of said lots. Being  
40 of the value of Two hundred and twenty five  
dollars of the current money of British Guiana  
Transported by Letters of Decree on the 10th

Plaintiffs'  
Exhibit

day of November, 1862

'F'

Transport of  
1868 by Daniel  
Broadhead to  
Thomas William  
Samuel Partridge  
12th December  
1868  
continued

the appearer acknowledging to be fully paid  
and satisfied for the same, engaging to  
warrant the said property free from all  
claims whatever according to Law,

And appeared at the same time the said  
Thomas William Samuel Partridge  
who declared to accept of the foregoing Trans-  
port and to be satisfied therewith.

In testimony whereof the parties have  
hereunto set their hands, and I, the  
said Judge, together with the assistant  
Sworn Clerk have countersigned the same,  
the day and year first above written. 10

D. Broadhead

Thomas William Samuel Partridge

In my Presence B.G. Norton J.

'F'

Transport of  
1868 by Daniel  
Broadhead to  
King Reefers  
12th December  
1868

TRANSPORT OF 1868 BY DANIEL BROADHEAD  
to KING REEFERS

British Guiana 20  
County of Demerary.

Before His Honor Bernard Gustavus Norton  
Second Puisne Judge of the Supreme Court of  
Civil Justice of British Guiana aforesaid.

Be it known that on this day the Twelfth  
of December in the year One thousand Eight  
Hundred and Sixty Eight appeared

Daniel Broadhead as one of the Joint and  
Several Executors nominated constituted  
and appointed in and by the Last Will and  
Testament of William Bruton, deceased; 30  
agreeably with said last Will and Testa-  
ment deposited in the Registrar's Office  
of the Counties of Demerary and Essequibo  
on the Eighteenth of June, 1862.

Which appearer declared by these presents to  
Cede Transport, and in full and free property

to make over to and in behalf of

Plaintiffs'  
Exhibit

'F'

Transport of  
1868 by Daniel  
Broadhead to  
King Reefers  
12th December  
1868  
continued

10

King Reefers, his Heirs and assigns,  
The South Half of Lot number 10 (Ten),  
part of Plantation Maria's Lodge, situate  
on the West Bank of the River Demerary,  
in the County of Demerary, having a facade  
of ninety feet by the whole depth of  
said Estate and laid down and defined on  
a diagram thereof by the Sworn Land  
Surveyor D. Fraser, dated 17th May, 1856,  
and deposited in the Registrar's Office  
of the Counties of Demerary and Essequibo  
on the 25th June, 1836, subject to the  
keeping up of the Public Road and drainage  
to the extent of the facade of said  
lot. Being of the value of One hundred  
and sixty five Dollars of the Current money  
of British Guiana.

20

Transported by Letters of Decree on the  
10th day of November, 1854

the appearer acknowledging to be fully  
paid and satisfied for the same, engaging  
to warrant the said property free from all  
claims whatever according to Law.

And appeared at the same time the said  
King Reefers  
who declared to accept of the foregoing Transport  
and to be satisfied therewith.

30

In testimony whereof the parties have  
hereunto set their hands, and I the said  
Judge, together with the Assistant Sworn  
Clerk have countersigned the same, the day  
and year first above written.

D. Broadhead

The mark of

x

King Reefers

In my presence

B.G. Norton, J.

Plaintiffs'  
Exhibit

TRANSPORT of 1868 by DANIEL BROADHEAD  
to WILLIAM SMITH

---

"F"

British Guiana  
County of Demerary.

Transport of  
1868 by Daniel  
Broadhead to  
William Smith  
12th December  
1868

Before His Honour Bernard Gustavus Norton  
Puisne Judge of the Supreme Court of Civil  
Justice of British Guiana aforesaid.

Be it known that on this day the Twelfth  
of December in the year One Thousand Eight  
Hundred and Sixty Eight appeared 10

Daniel Broadhead as one of the Joint and  
Several Executors nominated constituted  
and appointed in and by the Last Will and  
Testament of William Bruton, deceased,  
agreeably with said Last Will and Testa-  
ment deposited in the Registrar's Office  
of the Counties of Demerary and Essequibo  
on the Eighteenth of June 1862

Which appearer declared by these presents to Cede  
Transport, and in full and free property to make 20  
over to and in behalf of William Smith, His Heirs  
and Assigns, A lot of land, part of Plantation  
Maria's Lodge situate on the West Bank of the  
River Demerary, in the County of Demerary, said  
lot having a facade of One Hundred and forty four  
feet by the whole depth of the Estate, and known  
on a diagram thereof by the Sworn Land Surveyor,  
D. Fraser, dated 17th May, 1856, and deposited  
in the Registrar's Office of the Counties of 30  
Demerary and Essequibo on the 25th June, 1856,  
as lot number 1 (one) subject to the keeping up  
of the public road and drainage to the extent of  
the facade of said lot. Being of the value of  
Two Hundred and Sixty Four Dollars of the Current  
money of British Guiana. Transported by Letters  
of Decree on the 10th day of November, 1854

the appearer acknowledging to be fully  
paid and satisfied for the same, engaging  
to warrant the said property free from all  
claims whatever according to Law. 40

And appeared at the same time the said

William Smith  
who declared to accept of the foregoing  
Transport and to be satisfied therewith.

Plaintiffs'  
Exhibit

"F"

In Testimony whereof the parties have  
hereunto set their hands, and I, the said  
Judge, together with the assistant Sworn  
Clerk have countersigned the same, the day  
and year first above written.

Transport of  
1868 by Daniel  
Broadhead to  
William Smith  
12th December  
1868  
continued

D. Broadhead

10

William Smith

In my presence

B.G. Norton, J.

TRANSPORT of 1868 by DANIEL BROADHEAD  
to JOSEPH NELSON

Transport of  
1868 by Daniel  
Broadhead to  
Joseph Nelson  
12th December  
1868

British Guiana  
County of Demerary.

Before His Honor Bernard Gustavus Norton  
Second Puisne Judge of the Supreme Court of  
Civil Justice of British Guiana aforesaid.

20

Be it known that on this day the Twelfth  
of December in the year One Thousand Eight  
Hundred and Sixty Eight appeared

Daniel Broadhead as one of the Joint and  
Several Executors nominated constituted  
and appointed in and by the Last Will and  
Testament of William Bruton, deceased,  
agreeably with said Last Will and Testa-  
ment deposited in the Registrar's Office  
of the counties of Demerary and Essequibo  
on the Eighteenth of June, 1862.

30

Which appearer declared by these presents to  
Cede Transport, and in full and free property  
to make over to and in behalf of

Joseph Nelson, his Heirs and assigns; A  
lot of land part of Plantation Maria's  
Lodge situate on the west Bank of the River  
Demerary, in the County of Demerary, said

Plaintiffs'  
Exhibit  
 "F"  
 Transport of  
 1868 by Daniel  
 Broadhead to  
 Joseph Nelson  
 12th December  
 1868  
 continued

lot having a facade of One hundred and eighty feet by the whole depth of the Estate, and known on a diagram by the Sworn Land Surveyor, D. Fraser, dated 17th May, 1856, and deposited in the Registrar's Office of the Counties of Demerary and Essequibo on the 25th June, 1856, as Lot Number 3 (Three) subject to the keeping up of the Public Road and drainage to the extent of the facade of said lot. 10  
 Being of the value of Three Hundred and Thirty Dollars of the current money of British Guiana Transported by Letters of Decree on the 10th day of November, 1854.

the appearer acknowledging to be fully paid and satisfied for the same, engaging to warrant the said property free from all claims whatever according to law.

And appeared at the same time 20  
 the said

Joseph Nelson  
 who declared to accept of the foregoing Transport and to be satisfied therewith.

In testimony whereof the parties have hereunto set their hands, and I, the said Judge, together with the Assistant Sworn Clerk have countersigned the same, the day and 30  
 year first above written.

D. Broadhead

Joseph Nelson

In my Presence

B.G. Norton, J.

---



195.

L.P.K.  
A.S.C.

Plaintiffs'  
Exhibit

Lease for 7 years (renewal) of piece of land.  
part of Pln. Patentia 9 rods E-W x 11 rods N-S.  
on East side Pub. Rd. executed on 25/3/1953  
No.50 in favour of Budhia

"G 1"

Transport  
No.529 of 1927  
Barclays Bank  
(Dominion  
Colonial and  
Overseas) to  
West Bank  
Estates Ltd.  
2nd June 1927

L.O.R.  
A.S.C.

10

Lease for 30 years commencing from 1.1.1953 in  
respect of a piece of land .0839 acre at Goed-  
Ver-Wagting part of Pln. Wales, Firstly herein  
described as shown on a plan by F.O.H.R. Pollard  
d/d 12.1.1952 dep. 15.1.1952 (D.L.M. No. 5964)  
passed in favour of the colony of B.G. on  
14/12/1953 No. 172

L.O.R.  
A.S.C.

20

Lot 'A' part of front lands of Pln. Goedverwag-  
ting part of Pln. Wales herein firstly described  
as shown on plan by I.S. Mohamed dated 17.4.1958  
dep. 16.9.1958 (3055/7) and containing .669 Eng.  
acre transported to George W. Kam on 24.12.1858 -  
2034

B.R.  
A.S.C.

30

Area "B" part of front lands of Pln. Goedverwag-  
ting part of Pln. Wales herein Firstly described  
as shown on plan by I.S.Mohamed d/d 7.10.1958 dep.  
13.1.1959 (3128/6) transported to the Colony of  
B.G. on 11.3.1959-417

B.R.  
A.S.C.

Area "A" part of Pln. Patentia herein fifthly  
described as shown on plan by I.S.Mohamed d/d  
25/7/1958 dep.24.6.1959 (3225/8) transporte. to  
Budhia on 9.9.1959-1687

B.R.  
A.S.C.

40

Area "A" part of Pln.Vriesland herein Sixthly  
described as shown on Plan by I.S.Mohamed d/d  
17.10.1959 25.3.1960 (3406) and containing 0.483  
acre transported to Joshua Foo on 30.5.1960-990

B.R.  
A.S.C.

Grosse Received  
This 4th day of July, 1927  
J.Edward deFreitas  
Solicitor.

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

"G 1"

TRANSPORT NO. 529 of 1927 by BARCLAYS  
BANK (DOMINION COLONIAL AND OVERSEAS)  
to WEST BANK ESTATES LIMITED.

28.5.27

BRITISH GUIANA  
COUNTY OF DEMERARA.

Before His Honour William James Gilchrist,  
Acting Puisne Judge of British Guiana afore-  
said.

10

Be it known that on this day the Second  
of June, in the Year One Thousand Nine Hundred  
and Twenty-Seven, appeared  
BARCLAY'S BANK (DOMINION, COLONIAL AND OVERSEAS),  
a company incorporated in England under The  
Colonial Bank Acts 1925, whose registered office  
is at 29, Gracechurch Street, London, England,  
and carrying on business in this colony at 48,  
Water Street, Georgetown, appearing herein by  
their duly constituted attorney in this colony  
Arthur Piercy Gardiner Austin, of lot 136,  
Young Street, Kingston Georgetown, agreeable  
with Power of Attorney dated 3rd September, 1926,  
and recorded in the Deeds Registry of British  
Guiana on the 28th September, 1826, in the Book  
of Records No.66, Folio 224 et sequentibus - -  
which appearer declared by these presents to  
Cede, Transport and in full and free property  
to make over to and in favour of WEST BANK  
ESTATES, LIMITED, a company incorporated in  
England, whose registered office is at 21, Minc-  
ing Lane, in the city of London, their represent-  
atives and assigns, - - - - -

20

30

FIRSTLY, Plantation Wales formerly situate in  
the Parish of St. Mark, West Bank, River  
Demerara, and the sugar Plantation Belle Vue,  
situate on the west bank of the river Demerara,  
not including a piece of land called the Con-  
cessie, the said two plantations Wales and Belle  
Vue being now carried on and worked together as  
one plantation known as and called Plantation  
Wales, cum annexis, and including two pieces or  
parcels of land coloured red on a plan by James

40

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

10 A.P. Bowhill, Sworn Land Surveyor, dated 27th  
January, 1917, and deposited in the Office of  
the Registrar of British Guiana on the 2nd  
February, 1917, with all the buildings, erec-  
tions, machinery and further appurtenances  
thereon and thereto belonging save and except  
a small one-storey cottage thereon belonging  
to G.W. Kam and also save and except a building  
used as a shop belonging to Christina Eugenia  
Ferreira, widow, and save and except all that  
piece and parcel of land part of the front  
lands of Goedverwagting forming part of Planta-  
tion Wales, cum annexis, situate on the west  
bank of the Demerara River, in the county of  
Demerara and colony of British Guiana, said  
piece of land being shown and defined with a  
border coloured red on a plan made by J.C.Allen,  
Acting Government Surveyor, dated 7th May, 1921,  
and deposited in the Department of Lands and  
20 Mines and containing .492 English acres, and  
the buildings and erections thereon, transport  
to the colony of British Guiana on the 23rd day  
of August, 1922, No.674.

SECONDLY: Plantation Beau Sejour, cum annexis,  
situate in Canal Number 2 (two), on the west  
bank of the river Demerara, no building thereon,

THIRDLY: Plantation Little Alliance, situate  
in Canal Number 2 (Two) on the west bank of the  
River Demerara, no building thereon,

30 FOURTHLY: Plantation La Resource, situate in  
Canal Number 2 (two), on the west bank of the  
River Demerara, no building thereon,

40 FIFTHLY: Plantation Patientia, cum annexis,  
situate on the west bank of the river Demerara  
between Plantation Vriesland and a line where  
the Hababoe Creek formerly was, with all the  
buildings and erections thereon, save and except  
a piece of land being 4.15 English acres in area  
as laid down and defined on a plan by J.T. Sey-  
mour, Sworn Land Surveyor, dated 29th March, 1927,  
and recorded in the Department of Lands and Mines  
on the 30th March, 1927, and also save and except  
the schoolroom and schoolmaster's house situate  
on the said piece of land,

SIXTHLY, Plantation Vriesland and Laurentia

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

Catherina, situate on the west bank of the river Demerara, with all the buildings and erections thereon,

SEVENTHLY, Plantation Vive-la-Force, cum annexis, situate on the west bank of the river Demerara, with all the buildings and erections thereon,

EIGHTHLY: Plantation Kyne-on-Rhyme, cum annexis, situate in Canal Number 2 (two), on the west bank of the river Demerara, no building thereon,

NINTHLY: Plantation The Belle, situate on the south bank of Canal Number 2 (two), on the west bank of the river Demerara, no building thereon,

10

TENTHLY: Plantation Mon Desir, also situate on the south bank of Canal Number 2 (two) on the west bank of the river Demerara, no building thereon,

ELEVENTHLY: a tract of land being 1,017.2 (one thousand and seventeen decimal two) Rhymland acres in extent situate north of the southern boundary of Numbers 1 and 2, Canal Polder, as laid down and defined on a plan by William Cunningham, Government Surveyor, dated 6th day of November, 1912, and deposited in the office of the Registrar on the 11th day of December, 1912, and which said tract of land was granted to the Colony of British Guiana, under Grant No.644, dated 7th July, 1892, and is shown on a chart of Canals 1 and 2 Polder by W.H.Hutchens, Colonial Civil Engineer, annexed to said Grant, no building thereon,

20

30

TWELFTHLY: Plantation Rosetta, cum annexis, situate in Canal Number 2 (two), on the west bank of the river Demerara, no building thereon,

THIRTEENTHLY: A tract of land 193.187 (one hundred and ninety-three decimal one eight seven) Rhymland acres in extent, situate on the Hababoe creek, and on the north of the southern boundary of Numbers 1 (one) and 2 (two) Canals Polder, as laid down and defined on a plan by William Cunningham, Government Surveyor, dated 25th day of November, 1911, and deposited in the office of the Registrar on the 26th day of January, 1912, and which said tract of 193.187 (one hundred and

40

ninety-three decimal one eight seven) Rhymland acres former part of a tract of land which was granted to the colony of British Guiana by the Crown under Grant No.644, dated 7th July, 1892, and is shown on a chart of the Canals 1 and 2 Polder by W.H. Hutchens, Colonial Civil Engineer, annexed to the said Grant, no building thereon,

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

10 FOURTEENTHLY: Plantation Potosi, situate on the west bank of the river Demerara, bounded on the north by the Plantation Vive-la-Force, and on the south by the abandoned Plantation Free and Easy and running from low water mark the whole depth of the said Plantation Potosi; with all the buildings and erections thereon, save and except a tract of land part of the north half of the said Plantation Potosi; and all the buildings and erections thereon, transported on the 1st day of July, 1882, to and in favour of the Reverend John Roberts Sturge McFarlane, Independent Pastor of Bethel Chapel, Potosi, and the Deacons of the same for the purpose of Congregational meetings in connection with the Independents there assembling;

20

30 FIFTEENTHLY: A tract of land situate, lying and being on the right bank of the Hababoe Creek, left bank of the Demerara River being at a place known as Sawari Hill, about 6 (six) miles from the mouth of the creek, and having a facade N. 5° W. 100 roods, with a mean depth s. 85° W. of 300 roods and containing 100 acres as shown on a diagram by Henry H. Bougle, Government Surveyor, dated the 13th day of September, 1900, annexed to Grant No.2,515 of the said tract of land a duplicate of which diagram together with a duplicate of the said grant is deposited in the Office of the Lands and Mines Department subject to the conditions contained in the said Grant, no building thereon,

40 SIXTEENTHLY: Plantation The Boff, in Canal Number 2 (two), situate on the west bank of the River Demerara, no building thereon,

SEVENTEENTHLY: Plantation The Commons, in Canal Number 2 (two) situate on the west bank of the river Demerara, no building thereon,

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June,1927  
continued

EIGHTEENTHLY: Plantation Endeavour, situate in Canal Number 2 (two), on the west bank of the river Demerara, no building thereon, the properties hereinbefore described from firstly to eighteenthly being laid down and described on a plan (section 2) of a portion of the left bank of the Demerara River from Plantation T'Goode Fortuin to Plantation Potosi showing also the plantations situate in Canals Numbers 1 and 2 by William Cunningham, Government Surveyor, dated the 10th day of March, 1913, a duplicate of which is on record in the Office of the Department of Lands and Mines, Georgetown, Demerara,

10

NINETEENTHLY: Lots number 1 (one), 2 (two), 3 (three), 4 (four), 5 (five) 6 (six), 7 (seven), 8 (eight), 9 (nine), 10 (ten), 11 (eleven), 12 (twelve), 13 (thirteen), 14 (fourteen), 15 (fifteen), 16 (sixteen), 17 (seventeen), 18 (eighteen), 19 (nineteen), 20 (twenty), 21 (twenty-one), and 22 (twenty-two), as laid down and defined on a plan of a portion of land, situate in the south-western corner of Canals 1 (one) and 2 (two) Polder, West Bank, Demerara River, which said land was granted to the Colony of British Guiana by the Crown under Grant No.644 dated 7th July, 1892, and as shown on a chart of the Canals 1 and 2 Polder by W.H. Hutchens, Colonial Civil Engineer, annexed to the said grant, the said lots having been surveyed and paled off into lots by M.P. Hastings, Government Surveyor, and being laid out on a plan by the said Surveyor, dated 28th September, 1907, and deposited in the Office of the Registrar of British Guiana on the 3rd day of July, 1908, no building thereon,

20

30

TWENTIETHLY: all those pieces or parcels of land containing four hundred and twenty roods in facade more or less by seven hundred and fifty roods in depth called and known as Reinstein or Hamilton's Farm, situate on the west bank of the Demerara River, in the county of Demerara, bounded on the north by Plantation Hermitage, on the south by Plantation Maria's Lodge, on the east by the Demerara River, and on the west by Crown lands, with all the buildings and erections thereon, save and except all that piece or parcel of land part of the said Plantation Reinstein containing 100 (one hundred) roods by admeasurement

40

commencing from Plantation Maria's Lodge and extending thence northwards, conveyed to the proprietors of the said Plantation Maria's Lodge on the 8th day of March, 1836,

Plaintiffs'  
Exhibit

"G 1"

TWENTY-FIRSTLY: Plantation Hermitage, situate on the west bank of the river Demerara between Plantations Free and Easy and Rhynstein with all the buildings and erections thereon,

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

10 TWENTY-SECONDLY: The provision estate or Plan-  
tation Vreede-stein, situate on the west bank of  
the Demerara river, in the county of Demerara and  
colony of British Guiana, butted and bounded as  
follows: on the north by Plantation Maria's  
Lodge, on the south by Plantation Jacob's Lust,  
on the east by the Demerara River and on the west  
by Crown lands, as laid down and defined on a  
plan made by the Sworn Land Surveyor, E.C.H.  
Klautky, dated November, 1911, and deposited in  
20 the Office of the Registrar of British Guiana on  
the 30th day of November, 1911, with all the  
buildings and erections thereon,

TWENTY-THIRDLY: Plantation Alliance situate in  
Canal Number 2 (two) on the west bank of the  
River Demerara, in the county of Demerara and  
colony of British Guiana, with all the buildings  
and erections thereon, together with the cultiva-  
tion on and belonging to all the properties here-  
inbefore described,

30 BEING OF THE VALUE of One hundred and Sixty-five  
thousand Nine hundred and Ninety-three 55/100  
Dollars of the current money of British Guiana  
aforesaid transported on the 24th day of February  
1927 No.151, and on the 24th day of February 1927  
No.152

The Appearer acknowledging to be fully paid and  
satisfied for the same.

40 And appeared at the same time Frank Alexander  
Mackey, for and on behalf of West Bank Estates  
Limited, agreeably with Power of Attorney dated  
the 3rd September, 1926, and recorded in the Deed  
Registry, who declared to accept of the foregoing  
Transport and to be satisfied therewith.

In Testimony whereof the parties have hereunto

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

set their hands and I, the said Judge, together  
with the Transport Clerk, have countersigned  
the same, the day and year first above written.

	BARCLAYS BANK (DOMINION COLONIAL & OVERSEAS)
S.J.GILCHRIST	By their Attorney
Ag.J.	A.P.G.Austin
J.B.SHARPLES	WEST BANK ESTATES LTD.,
A.S.C.	By their attorney
	F.A. MacKey.

10

CERTIFICATE OF REGISTRAR

I hereby certify that I have examined,  
checked and satisfied myself as to the suffici-  
ency of the title of the within named trans-  
portor to pass the within mentioned transport.

Dated at Georgetown this 2nd day of June, 1927.

W.A. Parker

REGISTRAR.

Received Power of Attorney dated  
3rd September 1926

20

Sch.A. 1926 No.558  
A.P.G. Austin  
2.6.1927.

Received Memorandum & Articles of Association

F.A. MacKey  
2.6.1927.

BRITISH GUIANA

COUNTY OF DEMERARA.

IN THE MATTER OF: TRANSPORT by BARCLAYS-  
BANK (Dominion, Colonial and Overseas) of  
Plantation Wales, cum annexis, in favour  
of WEST BANK ESTATES LIMITED.

30

I, REGINALD HUBERT PAYNE, of Plantation



Wales, West Bank, Demerara, Planter, make oath and say:-

Plaintiffs'  
Exhibit

1. I have been Manager of Plantation Wales since the year 1923.

"G 1"

2. From the 1st January, 1927, to 28th February, 1927, the sum of \$44,070.68 was spent in running the said estate and factory, of which sum \$30,816.96 was spent on maintaining the cultivation.

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

10 3. The spending of the said sum of \$30,816.96 did not increase the value of the said estate; it merely maintained its value and enabled the estate to be sold as a going concern.

20 4. Owing to the sale at execution on the 4th of January, 1927, and the subsequent intention of Barclays Bank (Dominion, Colonial and Overseas) to re-sell, the sugar canes growing on the said estate were not reaped in January as they should have been and accordingly deteriorated and became over ripe and as a result thereof the value of the land and cultivation thereon at the 28th February, 1927, was less than at the 1st of January, 1927. The said canes were not reaped until the month of March, 1927, and the estate will in consequence be only able to reap in March in future.

5. This affidavit was drawn by Cameron and Shepherd Legal Practitioners.

30 SWORN to at Georgetown )  
this 23rd day of May, } Reginald H. Payne.  
1927. )

Before me,

J. B. Humphreys

A.S.C.

A Commissioner of Oaths to Affidavits

Stamps cancelled

86¢

Plaintiff's  
Exhibit

"G 1"

Transport  
 No.529 of  
 1927 by  
 Barclays Bank  
 (Dominion  
 Colonial &  
 Overseas to  
 West Bank  
 Estates  
 Limited  
 2nd June, 1927  
 continued

BRITISH GUIANA

COUNTY OF DEMERARA

IN THE MATTER OF - TRANSPORT by  
 BARCLAYS BANK (Dominion, Colonial  
 and Overseas)

In favour of WEST BANK ESTATES LIMITED.

I, ROBERT STRANG, of Plantation Uitvlugt,  
 West Coast, Demerara, Planter, being duly  
 sworn make oath and say as follows :-

1. With reference to my affidavit sworn 9th day of May, 1927, in this matter in which I valued the movables situate on and belonging to Plantation Wales, cum annexis, at \$103,006.45 I further state that such value was the value of the movable property on the 28th February, 1927. 10
2. That the value of the said movables on the 31st December, 1926 was about the same value.
3. In my opinion and to the best of my knowledge and belief, the said sum of \$103,006.45 is a fair proportion of the total purchase price of \$269,000:- for the whole plantation. 20
4. The sum of \$165,993.55 representing the value of the immovable property is to the best of my knowledge a fair and true value for the same and if I were asked to value the same without the movable property thereon my valuation would not exceed the said sum.
5. This affidavit was drawn by Cameron and Shepherd, Legal Practitioners.

SWORN to at Georgetown, )  
 this 2nd day of June, 1927 ) Robert Strang. 30

Before me,

H.L. FRANCK

Commissioner of Oaths to Affidavits.

Stamps cancelled  
 86 cents.

BRITISH GUIANA

COUNTY OF DEMERARA

Plaintiffs'  
Exhibit

"G 1"

IN THE MATTER OF: TRANSPORT by BARCLAYS  
BANK (Dominion Colonial & Overseas) in  
favour of WEST BANK ESTATES, LIMITED

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

I, ROBERT STRANG, of Plantation Uitvlught,  
West Coast, Demerara, Planter being duly sworn  
make oath and say as follows:

10 1. I have been a planter for many years in  
this Colony and have considerable experience  
in the value of movable property of a sugar  
estate. I have been planting Attorney for  
Plantation Wales since 1922 and know well the  
value of the movable property situate thereon.

20 2. At the request of Messrs. Barclays Bank  
(Dominion, Colonial & Overseas) and the Agents  
of West Bank Estates Limited, I have inspected  
all the movable property situate on, and  
belonging to the said Plantation, and on  
inspection I have valued the said movable  
property at \$103,006.45 particulars wherefore  
are set out in the list hereto annexed and  
marked "A".

3. This affidavit was drawn by Cameron &  
Shepherd.

Sworn to at Georgetown, )  
this 9th day of May ) ROBERT STRANG  
1927 )

Before me,

30 J.B.HUMPHREYS

A.S.C.

Stamps cancelled

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Plaintiffs'  
Exhibit

"A"  
"WALES" MOVABLE EFFECTS

<p>"G 1"</p> <p>Transport No.529 of 1927 by Barclays Bank (Dominion Colonial &amp; Overseas to West Bank Estates Limited 2nd June, 1927 continued</p>	<p>1. Live Stock (a) 58 mules @ \$150.00 each (b) 63 cattle</p> <p>2. Carts: One @ \$25.00 Carriages: 2 Reo and one Ford Harness (this includes long Chains &amp; Collars)</p> <p>3. Cane Punts: 156 @ \$200 each</p> <p>4. Sea Punts 4 Sea Punts) 1 Large lighter )</p> <p>5. Machinery Spares</p> <p>6. Stores, Manure and Fuel</p> <p>7. Laboratory Fittings</p> <p>8. Hospital Fittings Medicines on hand in Hospital</p> <p>9. Dredger</p> <p>10. Irrigation Pumps 4 @ £400 ea</p> <p>11. Overseer's furniture (in recreation room)</p> <p>12. Fire Engines</p> <p>13. Books</p> <p>14. Manager's House Furniture) One Gramophone)</p> <p>15. Movable Trucks in buildings 3 @ \$25.00</p> <p>16. Batteaux: 6 @ \$5.00 each</p>	<p>\$8700.00 1000.00</p> <p>25.00 600.00 300.00</p> <p>31200.00</p> <p>5000.00</p> <p>36170.74</p> <p>2305.71</p> <p>100.00</p> <p>1500.00</p> <p>7200.00</p> <p>7680.00</p> <p>200.00</p> <p>720.00</p> <p>100.00</p> <p>100.00</p> <p>75.00</p> <p>30.00</p> <p><u>\$103,006.45</u></p>	<p>10</p> <p>20</p> <p>30</p>
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Robert Strang

This is the document marked "A" referred to  
in the foregoing affidavit of Robert Strang  
Sworn before me this            day of May 1927

J.B.Humphreys  
A.S.C.

Commissioner of Oaths to Affidavits.

BY: BARCLAYS BANK (Dominion, Colonial and Overseas) a company incorporated in England under The Colonial Bank Act, 1925, whose registered office is at 29, Gracechurch Street, London, England, and carrying on business in this Colony at lot 48 Water Street, Georgetown, appearing herein by their duly constituted attorney in this colony Arthur Piercy Gardiner Austin, of lot 136, Young Street, Kingston, Georgetown, agreeably with Power of Attorney, dated 3rd September, 1926, and recorded in the Deeds Registry of British Guiana on the 28th September, 1926, in the Book of Records No.66 Folio 224, et sequentibus;

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas) to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

TRANSPORT of: Firstly, Plantation Wales, formerly situate in the Parish of St. Mark, West Bank, River Demerara, and the sugar Plantation Belle Vue, situate on the west bank of the river Demerara, not including a piece of land called the Concessie, the said two Plantations Wales and Belle Vue being now carried on and worked together as one plantation known as and called Plantation Wales, cum annexis, and including two pieces or parcels of land coloured red on a plan by James A.P. Bowhill, Sworn Land Surveyor, dated 27th January, 1917, and deposited in the Office of the Registrar of British Guiana on the 2nd February, 1917, with all the buildings, erections, machinery, and further appurtenances thereon and thereto belonging save and except a small one-storey cottage thereon belonging to G.W. Kam and also save and except a building used as a shop belonging to Christina Eugenia Ferreira, widow, and save and except all that piece or parcel of land part of the front lands of Goedverwagting forming part of Plantation Wales, cum annexis, situate on the west bank of the Demerara river, in the county of Demerara and colony of British Guiana, said piece of land being shown and defined with a border coloured red on a plan made by J.C. Allen, Acting Government Surveyor, dated 7th May, 1921, and deposited in the Department of Lands and Mines and containing .492 English acres, and the buildings and erections thereon, transported to the Colony of British Guiana on the 23rd day of August, 1922, No.674; Secondly: Plantation Beau Sejour, cum annexis, situate in Canal No.2 on the west bank of the river Demerara no building thereon; Thirdly,

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Plaintiffs'  
Exhibit

"G 1"

Transport  
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Estates  
Limited  
2nd June, 1927  
continued

Plantation Little Alliance, situate in Canal No.2 on the west bank of the River Demerara, no building thereon; Fourthly, Plantation La Resource, situate in Canal No.2, on the west bank of the River Demerara; no building thereon; Fifthly, Plantation Patientia, cum annexis, situate on the west bank of the river Demerara between Plantation Vriesland and a line where the Hababoe Creek formerly was, with all the buildings and erections thereon, save and except a piece of land being 4.15 English acres in area as laid down and defined on a plan by J.T. Seymour, Sworn Land Surveyor, dated 29th March, 1927, and recorded in the Department of Lands and Mines on the 30th March, 1927, and also save and except the School-room and schoolmaster's house situate on the said piece of land; Sixthly, Plantation Vriesland and Laurentia Catherina, situate on the west bank on the river Demerara, with all the buildings and erections thereon; Seventhly, Plantation Vive-la-Force, cum annexis; situate on the west bank of the river Demerara, with all the buildings and erections thereon; Eighthly: Plantation Klyn-en-Rhyn, cum annexis, situate in Canal No.2, on the west bank of the river Demerara, no building thereon; Ninthly, Plantation The Belle, situate on the south bank of Canal No.2, on the west bank of the river Demerara, no building thereon; Tenthly, Plantation Mon Desir, also situate on the south bank of Canal No.2, on the west bank of the river Demerara, no building thereon; Eleventhly, a tract of land being 1,017.2 (One thousand and seventeen decimal two) Rhymland acres in extent situate north of the southern boundary on Nos.1 and 2, Canal Polder, as laid down and defined on a plan by William Cunningham, Government Surveyor, dated 6th day of November, 1912, and deposited in the Office of the Registrar on the 11th day of December, 1912, and which said tract of land was granted to the colony of British Guiana, under Grant No.644, dated 7th July 1892, and is shown on a chart of Canals 1 and 2 Polder by W.H. Hutchens, Colonial Civil Engineer, annexed to said Grant, no building thereon; Twelfthly, Plantation Rosetta cum annexis, situate in Canal No.2, on the west bank of the river Demerara, no building thereon; Thirteenthly, a tract of land 193.187 (one hundred and ninety-three decimal one eighty seven) Rhymland acres in extent situate on the Hababoe creek, and on the

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Plaintiffs'  
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West Bank  
Estates  
Limited  
2nd June, 1927  
continued

10 north of the southern boundary of Nos.1 and 2  
Canals Polder, as laid down and defined on a  
plan by William Cunningham, Government Surveyor,  
dated 25th day of November, 1911, and deposited  
in the Office of the Registrar on the 26th day  
of January, 1912, and which said tract of  
193.187 (one hundred and ninety-three decimal  
one eighty-seven) Rhymland acres formed part of  
a tract of land which was granted to the colony  
of British Guiana, by the Crown under Grant  
No.644, dated 7th July, 1892, and is shown on a  
chart of the Canals 1 and 2 Polder by W.H.  
Hutchens, Colonial Civil Engineer, annexed to  
the said grant, no building thereon;  
15 Fourteenthly, Plantation Potosi, situate on the  
west bank of the river Demerara, bounded on the  
north by the Plantation Vive-la-Force, and on  
the south by the abandoned Plantation Free and  
Easy and running from low water-mark the whole  
20 depth of the said Plantation Potosi, with all  
the buildings and erections thereon, save and  
except a tract of land part of the north half  
of the said Plantation Potosi, and all the  
buildings and erections thereon, transported on  
the 1st day of July, 1882, to and in favour of  
the Reverend John Roberts Sturge McFarlane,  
Independent Pastor of Bethel Chapel, Potosi,  
and the Deacons of the same for the purpose of  
Congregational meetings in connection with the  
30 Independents there assembling; Fifteenthly;  
a tract of land situate, lying and being on the  
right bank of the Hababoe creek, left bank of  
the Demerara river being at a place known as  
Sawari Hill, about 6 miles from the mouth of  
the creek, and having a facade N.5° W 100  
roods, with a mean depth S.85° W. of 300 roods  
and containing 100 acres as shown on a diagram  
by Henry H. Bougle, Government Surveyor, dated  
the 13th day of September, 1900, annexed to  
40 Grant No. 2,515 of the said tract of land a  
duplicate of which diagram together with a  
duplicate of the said grant is deposited in the  
Office of the Lands and Mines Department sub-  
ject to the conditions contained in the said  
grant, no building thereon; Sixteenthly, Plan-  
tation The Boff, in Canal No.2, situate on the  
west bank of the river Demerara, no building  
thereon; Seventeenthly, Plantation The Com-  
mons, in Canal No.2, situate on the west bank  
50 of the river Demerara; no building thereon;

Plaintiffs'  
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Limited  
2nd June, 1927  
continued

Eighteenthly, Plantation Endeavour, situate in Canal No.2 on the west bank of the river Demerara, no building thereon, the properties hereinbefore described from firstly to eighteenthly being laid down and described on a plan (section 2) of a portion of the left bank of the Demerara river from Plantation T'Goode Fortuin to Plantation Potosi showing also the plantations situate in Canals Nos.1 and 2 by William Cunningham, Government Surveyor, dated the 10th day of March, 1913, a duplicate of which is on record in the Office of the Department of Lands and Mines, Georgetown, Demerara; Ninteenthly, Lots numbers 1 (one), 2 (two), 3 (three), 4 (four), 5 (five) 6 (six), 7 (seven), 8 (eight) 9 (nine), 10 (ten), 11 (eleven), 12 (twelve), 13 (thirteen), 14 (fourteen), 15 (fifteen), 16 (sixteen), 17 (seventeen), 18 (eighteen), 19 (nineteen) 20 (twenty), 21 (twenty-one) and 22 (twenty-two), as laid down and defined on a plan of a portion of land situate in the southwestern corner of Canals 1 and 2 Polder, West Bank, Demerara River, which said land was granted to the Colony of British Guiana by the Crown under Grant (No.644), dated 7th July, 1892, and as shown on a chart of the Canals 1 and 2 Polder, by W.H.Hutchens, Colonial Civil Engineer, annexed to the said Grant the said lots having been surveyed and paaled off into lots by M.P. Hastings, Government Surveyor, and being laid out on a plan by the said Surveyor, dated 28th September, 1907, and deposited in the office of the Registrar of British Guiana on the 3rd day of July, 1908; Twentiethly, all those pieces or parcels of land containing four hundred and twenty roods in facade more or less by seven hundred and fifty roods in depth, called and known as Reinstein or Hamilton's Farm, situate on the west bank of the Demerara River in the County of Demerara, bounded on the north by Plantation Hermitage, on the south by plantation Maria's Lodge on the east by the Demerara River, and on the west by Crown Lands, save and except all that piece or parcel of land part of the said plantation Reinstein containing 100 roods by admeasurement commencing from plantation Maria's Lodge and extending thence northwards conveyed to the proprietors of the said plantation Maria's Lodge on the 6th day of April, 1836; Twenty-firstly; Plantation Hermitage situate on the west bank of the river Demerara between Plantations Free and

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Easy and Rhynstein with all the buildings and erections thereon; Twenty-secondly: the provision estate or plantation Vreedestein, situate on the west bank of the Demerara river, in the county of Demerara and Colony of British Guiana, butted and bounded as follows: on the north by Plantation Maria's Lodge on the south by Plantation Jacob's Lust, on the east by the Demerara River and on the west by Crown Lands, as laid down and defined on a plan made by the Sworn Land Surveyor, E.C.H. Klautky, dated November, 1911, and deposited in the office of the Registrar of British Guiana on the 30th day of November, 1911, with all the buildings and erections thereon; Twenty-thirdly, Plantation Alliance, situate in Canal No.2 on the west bank of the River Demerara, in the county of Demerara and colony of British Guiana, with all the buildings and erections thereon; together with the cultivation on and belonging to all the properties hereinbefore described BEING OF THE VALUE OF One hundred and Sixty-Five Thousand Nine Hundred and Ninety-Three 55/100 Dollars of the current money of British Guiana aforesaid transported on the 24th day of February, 1927, No.151; and on the 24th day of February, 1927, No.152. The appearer acknowledging to be fully paid and satisfied for the same.

And appeared at the same time Frank Alexander Mackey, for and on behalf of West Bank Estates Limited, agreeably with Power of Attorney dated the 3rd September, 1926, and recorded in the Deeds Registry who declared to accept of the foregoing Transport and to be satisfied therewith.

In Testimony whereof the parties have hereunto set their hands and I, the said Judge, together with the Transport Clerk, have countersigned the same, the day and year first above written.

The seal of the Court being affixed hereto.

S.J.Gilchrist  
Ag. J.  
J.B.Sharples  
A.S.C.

Barclays Bank  
(Dominion Colonial & Overseas)  
by this Attorney  
A.P.G. Austin  
West Bank Estates Ltd.  
by this Attorney  
F.A. MacKey

Plaintiffs'  
Exhibit

"G 1"

Transport  
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Estates  
Limited  
2nd June, 1927  
continued

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Plaintiffs'  
Exhibit

CERTIFICATE OF REGISTRAR

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas) to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

I hereby certify, that I have examined, checked and satisfied myself as to the sufficiency of the title of the within named transportor to pass the within mentioned transport.

Dated at Georgetown, this 2nd day of June, 1927.

W.A. Parker  
Registrar.

Received Power of Attorney dated 3rd September 1926.

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Sch A 1926 No. 558

A.P.G. Austin  
2.6.1927

Received Memorandum & Articles of Association

F.A.MacKey  
2.6.1927.

BRITISH GUIANA

COUNTY OF DEMERARA

IN THE MATTER OF - TRANSPORT by  
BARCLAYS BANK (Dominion, Colonial  
and Overseas) of Plantation Wales,  
cum annexis, in favour of WEST BANK  
ESTATES LIMITED.

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I, REGINALD HUBERT PAYNE of Plantation Wales, West Bank, Demerara, Planter, make oath and say :-

1. I have been Manager of Plantation Wales since the year 1923.

2. From the 1st January, 1927, to 28th February, 1927, the sum of \$44,070.68 was spent in running the said estate and factory, of which sum \$30,816.96 was spent on maintaining the cultivation.

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3. The spending of the said sum of \$30,816.96 did not increase the value of the said estate; it merely maintained its value and enabled the estate to be sold as a going concern.

Plaintiffs'  
Exhibit

"G 1"

4. Owing to the sale at execution on the 4th of January, 1927, and the subsequent intention of Barclays Bank (Dominion, Colonial and Overseas) to re-sell, the sugar canes growing on the said estate were not reaped in January as they should have been and accordingly deteriorated and became over ripe and as a result thereof the value of the land and cultivation thereon at the 28th of February, 1927, was less than at the 1st of January, 1927. The said canes were not reaped until the month of March, 1927, and the estate will in consequence be only able to reap in March in future.

Transport  
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(Dominion  
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Estates  
Limited  
2nd June, 1927  
continued

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5. This affidavit was drawn by Cameron and Shepherd, Legal Practitioners.

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SWORN to at Georgetown, )  
this 23rd day of May, ) Reginald H. Payne  
1927, )

Before me,

J.B. Humphreys

A.S.C.

A Commissioner of Oaths to Affidavits.

Stamp cancelled  
86¢

BRITISH GUIANA

30

COUNTY OF DEMERARA

IN THE MATTER OF - TRANSPORT by :-

BARCLAYS BANK (Dominion, Colonial and Overseas), in favour of WEST BANK ESTATES, LIMITED.

I, ROBERT STRANG of Plantation Uitvlugt, West Coast, Demerara, Planter, being duly sworn make oath and say as follows :-

Plaintiffs'  
Exhibit

"G 1"

Transport  
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2nd June, 1927  
continued

1. With reference to my affidavit sworn 9th day of May, 1927, in this matter in which I valued the movables situate on and belonging to Plantation Wales, cum annexis, at \$103,006.45 I further state that such value was the value of the movable property on the 28th February, 1927.

2. That the value of the said movables on the 31st December, 1926 was about the same value.

3. In my opinion and to the best of my knowledge and belief, the said sum of \$103,006.45 is a fair proportion of the total purchase price of \$269,000 :- for the whole plantation.

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4. The sum of \$165,993.55 representing the value of the immovable property is to be best of my knowledge a fair and true value for the same and if I were asked to value the same without the movable property thereon my valuation would not exceed the said sum.

5. This affidavit was drawn by Messrs. Cameron & Shepherd, Legal Practitioners.

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SWORN to at Georgetown, )  
this 2nd day of June, ) Robert Strang  
1927 )

Before me,

H.L. Franck

Commissioner of Oaths to Affidavits

Stamps cancelled

86¢

BRITISH GUIANA

COUNTY OF DEMERARA

30

IN THE MATTER OF:- TRANSPORT by  
BARCLAYS BANK (Dominion Colonial &  
Overseas) in favour of WEST BANK  
ESTATES LIMITED.

I ROBERT STRANG, of Plantation Uitvlugt  
West Coast, Demerara, Planter, being duly sworn  
make oath and say as follows :-

1. I have been a planter for many years in this Colony and have considerable experience in the value of movable property of a sugar estate. I have been planting Attorney for Plantation Wales since 1922 and know well the value of the movable property situate thereon.

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Limited  
2nd June, 1927  
continued

10

2. At the request of Messrs. Barclays Bank (Dominion Colonial & Overseas) and the Agents of West Bank Estates Limited, I have inspected all the movable property situate on, and belonging to the said Plantation, and on inspection I have valued the said movable property at \$103,006.45 particulars whereof are set out in the list hereto annexed and marked "A".

3. This affidavit was drawn by Cameron & Shepherd.

SWORN to at Georgetown, )  
this 9th day of May, ) Robert Strang  
1927 )

20

Before me

J.B. Humphreys  
A.S.C.

Stamps cancelled  
86¢

"A"

"Wales" Movable Effects

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- 1. Live Stock
  - (a) 58 Mules @ \$150.00 each \$8700.00
  - (b) 63 Cattle 1000.00
- 2. Carts: One @ \$25.00 25.00
- Carriages:
  - 2 Reo and one Ford 600.00
  - Harness (this includes long chains & Collars 300.00

Plaintiffs' <u>Exhibit</u> "G 1"  Transport No.529 of 1927 by Barclays Bank (Dominion Colonial & Overseas) to West Bank Estates Limited 2nd June, 1927 continued	3.	Cane Punts: 156 @ \$200.00 each	31200.00	
	4.	Sea Punts: 4 Sea Punts, ) 1 large lighter )	5000.00	
	5.	Machinery Spares	36170.74	
	6.	Stores, Manure and Fuel	2305.71	
	7.	Laboratory Fittings	100.00	
	8.	Hospital Fittings Medicines on hand in Hospital	1500.00	
	9.	Dredger	7200.00	
	10.	Irrigation Pumps 4 @ £400 each	7678.00	10
	11.	Overseer's Furniture (in recreation room)	200.00	
	12.	Fire Engines	720.00	
	13.	Books	100.00	
	14.	Manager's House Furniture ) one gramophone )	100.00	
	15.	Movable Trucks in buildings 3 @ \$25.00	75.00	
	16.	Batteaux: 6 @ \$5.00 each	30.00	20
			\$103,006.45	

Robert Strang

This is the document marked "A" referred to  
 in the foregoing affidavit by Robert Strang  
 Sworn before me this                    day of May, 1927.

J.B. Humphreys

A.S.C.

Commissioner of Oaths to Affidavits.

10 BY: BARCLAYS BANK (Dominion, Colonial and Overseas) a company incorporated in England under The Colonial Bank Act, 1925, whose registered office is at 29, Gracechurch Street, London, England, and carrying on business in this colony at lot 48, Water Street, Georgetown, appearing herein by their duly constituted attorney in this colony Arthur Piercy Gardiner Austin, of lot 136, Young Street, Kingston, Georgetown, agreeably with Power of Attorney, dated 3rd September, 1926, and recorded in the Deeds Registry of British Guiana on the 28th September, 1926, in the Book of Records, No.66, Folio 224, et sequentibus;

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Limited  
2nd June, 1927  
continued

20 TRANSPORT of: Firstly, Plantation Wales, formerly situate in the Parish of St. Mark, West Bank, River Demerara, and the sugar Plantation Belle Vue, situate on the west bank of the river Demerara, not including a piece of land called the Concessie, the said two Plantations Wales and Belle Vue being now carried on and worked together as one plantation known as and called Plantation Wales, cum annexis, and including two pieces or parcels of land coloured red on a plan by James A.P. Bowhill, Sworn Land Surveyor, dated 27th January, 1917, and deposited in the Office of the Registrar of British Guiana on the 2nd February, 1917, with  
30 all the buildings, erections, machinery, and further appurtenances thereon and thereto belonging save and except a small one-storey cottage thereon belonging to G.W. Kam and also save and except a building used as a shop belonging to Christina Eugenia Ferreira, widow, and save and except all that piece and parcel of land part of the front lands of Goodeverwagting forming part of Plantation Wales, cum annexis, situate on the west bank of the Demerara river, in the county of Demerara and colony  
40 of British Guiana, said piece of land being shown and defined with a border coloured red on a plan made by J.C. Allen, Acting Government Surveyor, dated 7th May, 1921, and deposited in the Department of Lands and Mines and containing .492 English acres, and the buildings and erections thereon, transported to the Colony of British Guiana on the 23rd day of August, 1922, No.674, Secondly: Plantation Beau Sejour, cum  
50 annexis, situate in Canal No.2 on the West bank

Plaintiffs'  
Exhibit

"G 1"

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Estates  
Limited  
2nd June, 1927  
continued

of the river Demerara no building thereon;  
Thirdly: Plantation Little Alliance, situate in  
Canal No.2 on the west bank of the River Demerara,  
no building thereon; Fourthly: Plantation La  
Resource, situate in Canal No.2, on the west bank  
of the River Demerara, no building thereon;  
Fifthly: Plantation Patientia, cum annexis, situ-  
ate on the west bank of the river Demerara be-  
tween Plantation Vriesland and a line where the  
Hababoe Creek formerly was; with all the build-  
ings and erections thereon, save and except a  
piece of land being 4.15 English acres in area  
as laid down and defined on a plan by J.T.  
Seymour, Sworn Land Surveyor, dated 29th March,  
1927, and recorded in the Department of Lands and  
Mines on the 30th March, 1927, and also save and  
except the Schoolroom and schoolmaster's house  
situate on the said piece of land; Sixthly:  
Plantation Vriesland and Laurentia Catherina, :  
situate on the west bank of the river Demerara,  
with all the buildings and erections thereon; 10  
Seventhly: Plantation Vive-la-Force, cum  
annexis, situate on the west bank of the river  
Demerara, with all the buildings and erections  
thereon; Eighthly: Plantation Klyn-en- Rhyn,  
cum annexis, situate in Canal No.2, on the west  
bank of the river Demerara, no building thereon;  
Ninthly: Plantation The Belle, situate on the  
south bank of Canal No.2, on the west bank of the  
river Demerara, no building thereon; Tenthly: 30  
Plantation Mon Desir, also situate on the south  
bank of Canal No.2, on the west bank of the river  
Demerara, no building thereon; Eleventhly: a  
tract of land being 1,017.2 (one thousand and  
seventeen decimal two) Rhymland acres in extent  
situate north of the southern boundary on Nos.1  
and 2, Canal Polder, as laid down and defined on  
a plan by William Cunningham, Government Surveyor,  
dated 6th day of November, 1912, and deposited in  
the office of the Registrar on the 11th day of 40  
December, 1912, and which said tract of land was  
granted to the colony of British Guiana, under  
Grant No. 644, dated 7th July, 1892, and is shown  
on a chart of Canals 1 and 2 Polder by W.H.  
Hutchens, Colonial Civil Engineer, annexed to  
said grant, no building thereon; Twelfthly:  
Plantation Rosetta cum annexis, situate in Canal  
No.2, on the west bank of the river Demerara, no  
building thereon; Thirteenthly: a tract of land  
193.187 (one hundred and ninety-three decimal one 50



Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas) to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

eight seven) Rhymland acres in extent situate on the Hababoe creek, and on the north of the southern boundary of Nos.1 and 2 Canals Polder, as laid down and defined on a plan by William Cunningham, Government Surveyor, dated 25th day of November, 1911, and deposited in the Office of the Registrar on the 26th day of January, 1912, and which said tract of 193.187 (one hundred and ninety-three decimal one

10 eight seven) Rhymland acres formed part of a tract of land which was granted to the colony of British Guiana, by the Crown under Grant No.644, dated 7th July, 1892, and is shown on a chart of the Canals 1 and 2 Polder by W.H. Hutchens, Colonial Civil Engineer, annexed to the said grant, no building thereon;

20 Fourteenthly: Plantation Potosi, situate on the west bank of the river Demerara, bounded on the north by the Plantation Vive-la-Förce, and on the south by the abandoned Plantation Free and Easy and running from low water-mark the whole depth of the said Plantation Potosi, with all the buildings and erections thereon, save and except a tract of land part of the north half of the said Plantation Potosi, and all the buildings and erections thereon, transported on the 1st day of July, 1882, to

30 and in favour of the Reverend John Roberts Sturge McFarlane, Independent Pastor of Bethel Chapel, Potosi, and the Deacons of the same for the purpose of Congregational meetings in connection with the Independents there assembling; Fifteenthly: A tract of land situate, lying and being on the right bank of the Hababoe creek, left bank of the Demerara river being at a place known as Sawari Hill, about 6 miles from the mouth of the creek, and having a facade N.5°W. 100 roods, with a mean depth S. 85°W. of 300 roods and containing

40 100 acres as shown on a diagram by Henry H. Bougle Government Surveyor, dated the 13th day of September, 1900, annexed to Grant No.2,515 of the said tract of land a duplicate of which diagram together with a duplicate of the said grant is deposited in the Office of the Lands and Mines Department subject to the conditions contained in the said grant, no building thereon; Sixteenthly: Plantation The Boff, in

50 Canal No.2, situate on the west bank of the river Demerara, no building thereon;

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas) to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

Seventeenthly: Plantation The Commons, in Canal No.2, situate on the west bank of the river Demerara; no building thereon; Eighteenthly: Plantation Endeavour, situate in Canal No.2 on the west bank of the river Demerara, no building thereon, the properties hereinbefore described from firstly to eighteenthly being laid down and described on a plan (section 2) of a portion of the left bank of the Demerara river from Plantation T'Goode Fortuin to Plantation Potosi showing also the plantations situate in Canals Nos.1 and 2 by William Cunningham, Government Surveyor, dated the 10th day of March, 1913, a duplicate of which is on record in the Office of the Department of Lands and Mines, Georgetown; Demerara; 10

Nineteenthly:- Lots numbers 1 (one), 2 (two), 3 (three), 4 (four), 5 (five), 6 (six), 7 (seven), 8 (eight), 9 (nine), 10 (ten), 11 (eleven), 12 (twelve), 13 (thirteen), 14 (fourteen), 15 (fifteen), 16 (sixteen), 17 (seventeen), 18 (eighteen), 19 (nineteen), 20 (twenty), 21 (twenty-one) and 22 (twenty-two), as laid down and defined on a plan of a portion of land situate in the southwestern corner of Canals 1 and 2 Polder, West Bank, Demerara River, which said land was granted to the Colony of British Guiana by the Crown under Grant (No.644), dated 7th July, 1892, and as shown on a chart of the Canals 1 and 2 Polder, by W.H. Hutchens, Colonial Civil Engineer, annexed to the said Grant the said lots having been surveyed and paled off into lots by M.P. Hastings, Government Surveyor, and being laid out on a plan by the said Surveyor, dated 28th September, 1907, and deposited in the Office of the Registrar of British Guiana on the 3rd day of July, 1908, 20

Twentiethly: all those pieces or parcels of land containing four hundred and twenty roods in facade more or less by seven hundred and fifty roods in depth, called and known as Reinstein or Hamilton's Farm, situate on the west bank of the Demerara River in the county of Demerara, bounded on the north by plantation Hermitage, on the south by plantation Maria's Lodge on the east by the Demerara River, and on the west by Crown Lands, save and except all that piece or parcel of land part of the said plantation Reinstein containing 100 roods by admeasurement commencing from plantation Maria's Lodge and extending thence northwards conveyed to the proprietors of the said plantation 30 40 50

Plaintiffs'  
Exhibit

"G 1"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial &  
Overseas) to  
West Bank  
Estates  
Limited  
2nd June, 1927  
continued

10 Maria's Lodge on the 6th day of April, 1836,  
Twenty-firstly: Plantation Hermitage situate  
on the west bank of the river Demerara between  
Plantations Free and Easy and Rhynstein with  
all the buildings and erections thereon;  
Twenty-secondly: the provision estate or plan-  
tation Vreedestein, situate on the west bank  
of the Demerara river, in the county of Dem-  
erara and colony of British Guiana, butted and  
bounded as follows: on the north by Planta-  
tion Maria's Lodge on the south by Plantation  
Jacob's Lust, on the east by the Demerara  
river and on the west by Crown Lands, as laid  
down and defined on a plan made by the Sworn  
Land Surveyor, E.C.H. Klautky, dated November,  
1911, and deposited in the office of the  
Registrar of British Guiana on the 30th day  
of November, 1911, with all the buildings and  
erections thereon; Twenty-thirdly: Planta-  
tion Alliance, situate in Canal No.2 on the  
west bank of the River Demerara, in the County  
of Demerara and colony of British Guiana, with  
all the buildings and erections thereon;  
together with the cultivation on and belonging  
to all the properties hereinbefore described;  
to and in favour of WEST BANK ESTATES LIMITED,  
a company incorporated in England, whose  
registered office is at

20

30 Cameron & Shepherd  
Solicitors  
By J. Edward de Freitas  
Solicitor.

Title received from Registrar.

sold at Public Auction on 28th February, 1927  
for \$269,000:- less \$103,006.45 value of  
movables.

Laid Over:

Affidavit by Mr. Strang re movables,  
Power of Attorney.

40 Value - \$165,993.55

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Defendants'  
Exhibit

"G 2"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial and  
Overseas)  
to West Bank  
Estates Ltd.  
2nd June 1927

28.5.27  
10.

"G 2"

TRANSPORT No. 529 of 1927 by BARCLAYS  
BANK (DOMINION COLONIAL AND OVERSEAS)  
to WEST BANK ESTATES LIMITED.

BRITISH GUIANA  
COUNTY OF DEMERARA

Before His Honour William James Gilchrist,  
Acting Puisne Judge of British Guiana  
aforesaid.

Be it known that on this day the Second  
of June, in the Year One thousand nine  
hundred and twenty seven appeared BARCLAYS  
BANK (DOMINION, COLONIAL AND OVERSEAS), a  
Company incorporated in England under The  
Colonial Bank Acts 1925, whose registered  
office is at 29, Gracechurch Street, London,  
England and carrying on business in this  
Colony at lot 48, Water Street, Georgetown,  
appearing herein by their duly constituted  
attorney in this colony Arthur Piercy  
Gardiner Austin, of lot 136, Young Street,  
Kingston, Georgetown, agreeably with Power  
of Attorney dated 3rd September, 1926, and  
recorded in the Deeds Registry of British  
Guiana on the 28th September, 1926, in the  
Book of Records No.66, Folio 224, et  
sequentibus,

which appearer declared by these presents  
to Cede, Transport and in full and free pro-  
perty to make over to and in favour of WEST  
BANK ESTATES LIMITED, a Company incorporated  
in England, whose registered office is at 21,  
Mincing Lane, in the city of London, their  
representatives and assigns inter alia

TWENTIETHLY, all those pieces or parcels  
of land containing four hundred and twenty  
Roods in facade more or less by seven  
hundred and fifty roods in depth called and  
known as Reinstein or Hamilton's Farm,  
situate on the west bank of the Demerara

This copy is issued for JUDICIAL PURPOSES only: in re John Victor -vs- West  
Bank Estates Limited No. 1719/1959

L. Rockcliffe  
Assistant Sworn Clerk  
9.12.59.

10

20

30

40

River, in the county of Demerara, bounded on the north by Plantation Hermitage; on the south by Plantation Maria's Lodge, on the east by the Demerara river, and on the west by Crown lands, with all the buildings and erections thereon, save and except all that piece or parcel of land part of the said Plantation Reinstein containing 100 (one hundred) roods by admeasurement commencing from Plantation Maria's Lodge and extending thence northwards conveyed to the proprietors of the said Plantation Maria's Lodge on the 6th day of April, 1836.

10

This is a True Copy of an extract of the property described under "TWENTIETHLY" in Transport No.529 passed on the 2nd day of June 1927 in favour of WEST BANK ESTATES LIMITED

20

L.O. Rockcliffe  
Assistant Sworn Clerk  
9.12.59.

Defendants'  
Exhibit

"G 2"

Transport  
No.529 of  
1927 by  
Barclays Bank  
(Dominion  
Colonial and  
Overseas)  
to West Bank  
Estates Ltd.  
2nd June 1927  
continued

"H"

LETTERS OF DECREE IN FAVOUR OF  
WILLIAM BRUTON

BRITISH GUIANA

COUNTIES OF DEMERARY AND ESSEQUEBO

By His Honor William Arindell Chief  
Justice of the Supreme Court of Civil Justice  
of British Guiana &c.,

30

To all to whom these presents shall come  
or concern

Be it known that Whereas William Bruton  
an inhabitant of the county of Demerary had  
petitioned me stating that on the twenty-  
second day of June One thousand eight hundred  
and fifty-two the Plantation Maria's Lodge,  
cum annexis, situate in the Parish of Saint

Plaintiffs'  
Exhibit

"H"

Letters of  
Decree in  
favour of  
William Bruton  
10th November  
1844.

Plaintiffs'  
Exhibit

"H"

Letters of  
Decree in  
favour of  
William Bruton  
10th November  
1844  
continued

Mark County of Demerary and colony of British Guiana, as per Inventory "was sold at Execution Sale and he became the Purchaser thereof according to the Extract from the Book of Records of Execution sales and Receipt of the Purchase money with Interest thereon annexed to the Petition requesting Letters of Decree I the Chief Justice aforesaid therefore and in consideration of the payment above stated have transferred and by these presents do transfer all Right and Title of the said Plantation Maria's Lodge cum annexis situate in the Parish of Saint Mark county of Demerary colony of British Guiana as per Inventory" unto the said William Bruton His Heirs Representatives and assigns Annulling and making void by these presents all claims, demands or mortgages which may have been on the aforesaid "Plantation Maria's Lodge cum annexis situate in the Parish of Saint Mark county of Demerary colony of British Guiana, as per inventory before the passing of these Letters of Decree of which annotation is made in the Registrar's Office of the said Counties.

10

20

Given under my Hand and the Seal of the Registrar's office aforesaid thereto affixed at the Court House in the city of Georgetown, colony aforesaid this Tenth day of November One thousand eight hundred and fifty-four.

By command                      William Arindell  
Charles Wilday                      Chief Justice  
Sworn Clerk Judl.Dept. (L.S.)

30

Defendants'  
Exhibit

"J"

Transport No.  
28 of 1836 by  
E.J. Oudkerk  
to the Proprietor or Proprietors, or Representative or Representatives of Pln. Maria's Lodge  
8th March 1836

"J"

TRANSPORT No. 28 of 1836 by E.J.OUDKERK  
to the Proprietor or Proprietors,  
Representative or Representatives of  
Plantation Maria's Lodge

Before His Honor John Noble Harvey actg. second Puisne Judge of the Supreme Court of Civil Justice of the district of Demerary and Essequebo, Colony of British Guiana.

40

Be it known that on this day the 8th March 1836 appeared E.J.Oudkerk an inhabitant of said

district which appearer declared by these presents to Cede, Transport, and in full and free property to make over to and in behalf of the Proprietor or Proprietors Representative or Representatives of Pl; Maria's Lodge A piece of land of one hundred roods facade by seven hundred and fifty roods in depth, being part of the abandoned Plant: Reinestein, situate in the Parish of St.Mark, west bank River Demerary, commencing from the northern boundary or side line of said Pln. Maria's Lodge and extending northwards as pr. contract dd. 13 Decber. 1824 Transported on this day, acknowledging to be fully paid and satisfied for the same, - engaging to warrant the said Property free from all Claims whatsoever, according to Law.

Defendants'  
Exhibit

"J"

Transport No. 28 of 1836 by E.J. Oudkerk to the Proprietor or Proprietors, or Representative or Representatives of Pln. Maria's Lodge 8th March 1836 continued

And appeared at the same time J. Lane for and in behalf of the proprietors or representatives of Pl. Maria's Lodge aforesaid, who declared to accept of the foregoing Transport and to be satisfied therewith.

In testimony whereof the parties have hereunto set their hands and I, the said Judge together with the Colonial Secretary have countersigned the same, the day and year first above written.

E.J. Oudkerk.

John Noble Harvey J.

Jno. Lane

In my presence  
Charles Wilday  
Registrar.

A True copy  
R. Rameshwat  
Asst.Sworn Clerk.

---

Plaintiffs'  
Exhibit

"K"

AGREEMENT OF LEASE

"K"

BETWEEN RICHARD LAYNE AND JAMES SMITH

Agreement of  
Lease between  
Richard Layne  
and James  
Smith  
16th September  
1920

Supply Village,  
West Bank,  
Demerara.

This is an agreement on the sixteenth day of September 1920 (16/9/20) between Richard R. Layne, Agent of the Heirs - Mary Graham, Catherine Graham, Basheba Graham, Elizabeth Butler & Antoinette Graham - of John Cornette Graham (deceased), and James Smith of Maria's Lodge, West Bank, Demerara.

10

The party of the first part (R.R.Layne) agrees to lease a piece of land lot Maria's Lodge, with a facade of 24 roods by 750 roods deep for five (5) yrs (with a title of renewal) and two (2) additional yrs gratis, at a yearly lease of \$12 (twelve) dollars per year.

20

Both parties agree that the amount of lease if not paid in any one year must be recovered by law. The lease must be paid in advance. The said five years expire on the 15th day of August 1928.

Witness:-            1st Party    -   R. Layne  
H. Neptune            2nd Party    -   James A.Smith.





Exhibit 'L'  
 N. Alli  
 30/12/59

"L"  
DEATH CERTIFICATE OF JOHN GRAHAM

Copy of the Register of Deaths in Division No. One District Demerara River, County of Demerara in the year 1914.

No.	When and Where died	Name and Surname and other description.	Sex	Age	Rank or Profession other description.	Cause of Death	Signature Qualification and Residence of Informant.	When Registered.	Signature of Registrar.
70	Twenty Sixth January Nineteen Hundred and Fourteen Free and Easy	John Graham African	Male	105 yrs.	Farmer	Old Age Debility.	Christina Graham her x mark Blk Native Widow Free and Easy	Twenty eight January 1914.	F.T.Mayers Registrar.

G.R.O. R. Alsopp 11/12/59 Fee \$1.20 (L.S.)  
 1959 11th Dec. Sarrabo Dep. Registrar General.

Plaintiffs' Exhibit  
 "L"  
 Death Certificate of John Graham 11th December 1959.

John C. Graham = (1) HANNAH

Died before 1914 (Both in Community)  
CHRISTINA }  
Died August 1916 {

1916	1912		
CATHERINE = J. MOORE	ANTOINETTE = R. L. LAYNE	BARSEBA = J. RICHARDS	ELIZABETH LOUIS (COM)
died 1930	Died 1933	Died 1936	died 1954
Int.	alive	Died 1954	died 1914
			(2) JAMES died 1933
			JOHN VICTOR
			Heirs of JAMES

Nil.

Zacharia

Gideon

Nil

Persons entitled

1. Richard Layne
2. Zacharia Layne
3. Gideon Layne
4. John Victor
5. Heirs of J. Richards
6. Heirs of James Butler.

Certified a true copy

Deputy Registrar  
Federal Supreme Court.



IN THE PRIVY COUNCIL

No. 40 of 1961

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

B E T W E E N

WEST BANK ESTATES LIMITED

Appellant

- and -

JOHN VICTOR (since deceased)  
SHAKESPEARE CORNELIUS ARTHUR  
(substituted for JOHN VICTOR  
deceased)

ZACHARIA LAYNE and  
GIDEON LAYNE

Respondents

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

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SIMMONS & SIMMONS,  
1, Threadneedle Street,  
London, E.C.2.  
Solicitors for the Appellants.

GARBER, VOWLES & CO.,  
37, Bedford Square,  
London, W.C.1.  
Solicitors for the Respondents.