1, 1966

IN THE PRIVY COUNCIL No. 40 of 1964

ON APPEAL FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

IN THE MATTER of THE QUIETING TITLES ACT 1959

- and -

IN THE MATTER of Seventy six one hundred and fifths undivided in and to all that tract of land being part of Lot Number Eight (8) at Hog Island, now known as Paradise Island, containing thirty two and fifteen hundredths (32.15) acres and being bounded on the North by the sea, on the East by Lot Number Nine (9), on the South by the Harbour of Nassau, and on the West by the other portion of Lot Number Eight (8)

- and -

IN THE MATTER of the Petition of Paradise Beach and Transportation Limited, Beach Head Limited and Eleanor Parroti, Joycelyn Maxey, Mixpath Burrows and Frederick Burrows.

CASE FOR THE FIRST, THIRD, FOURTH, FIFTH AND SIXTH APPELLANTS — Record

1. This is an Appeal by leave of the Supreme Court of the Bahama Islands from a judgment, dated 19 December 1963, of the Supreme Court of the Bahama Islands, Equity Side, Scarr, J., dismissing a Petition of the Appellants under the Quieting Titles Act, 1959 that the Appellants' title to certain undivided shares in land situated in Paradise Island in the Bahama Islands, be investigated, determined and declared. P.19

2. The Appellants' Petition related to 17/21st undivided shares in a parcel of land (hereinafter called "the land") part of Lot Number 8, in Paradise Island, formerly Hog Island, which lies to the north of the Harbour of the City of Nassau. The land is shown on a plan attached to the said Petition and P.4

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thereon coloured pink. It comprises 32.15 acres or thereabouts, extends to the whole width of Paradise Island, and is bounded on the north by the open sea and on the south by the said harbour.

3. The land was owned at the date of his death on 23 October 1913 by John Alexander Burrows (hereinafter called "the Testator").

p.120 4. By his Will dated 22 November 1912 The Testator appointed his wife Elizabeth Burrows and his son Nehemiah Burrows executors; and
p.118 on 13 April 1914 Probate of his said Will was granted by the Supreme Court of the Bahama Islands to the said Elizabeth Burrows power being reserved to make a like grant to the said Nehemiah Burrows.

p.120 5. By his said Will the Testator disposed of the land, together with other realty, by a provision which, so far as material, was in the following terms:-

> "To my beloved wife Elizabeth I give an undivided one third part to be enjoyed by her without molestation, of all my lands hereafter mentioned, that is to say ... thirty-one and one quarter acres at Hog Island north of the Harbour of Nassau, and which tract originally contained forty-one and one quarter acres the ten acres having been sold by me to my son-in-law Daniel Hanna ... After the death of my said wife I devise one-third of all the herein-before mentioned lands to my two grandsons Percy Webb and Clarence Azgin as tenants in common and not as joint tenants. The other two-thirds of my real Estate I devise to my children Nehemiah Burrows, Joseph H. Burrows, Rosiliza E. Price, Victoria L. Hanna, Eliza B. Hall Veronica L. Murray and Miriam A. Stuart to be held by them as tenants in common and not as joint tenants".

6. All the devisers named in the Testator's Will are dead. Particulars of their respective

deaths appear in the Genealogical Table of descendants of the Testator which is printed as part of the Record. p.115

7. By their said Petition the Appellants claimed to be owners in fee simple of the said 17/21st undivided shares and prayed that their title thereto might be investigated, determined and declared under the Quieting Titles Act, 1959, Having by a Statement of Facts dated 14 June 1963 particularised the devolution of the said 17/21st shares the Appellants by an amended Statement of Facts dated 30 October 1963 abandoned their claim to 9/105th shares (which the Appellants admitted to be liable to be escheated to the Crown) and claimed to be owners of the residue of the said 17/21st shares, namely 76/105th shares. p.1 p.4 p.11

8. By their Amended Statement of Facts the Appellants traced the devolution of 85/105th shares other than the 10/105th shares devised to Roseliza Price and the 10/505th shares devised to Victoria Louise Hanna as follows:-

(i) Nehemiah Burrows 10/105th shares passed under a general devise of realty in his Will to seven of his children as joint tenants; and the survivors of these children, namely Anna Gill and Fred Burrows conveyed these shares to Arne Lindroth who conveyed the same to the First Appellants, Paradise Beach and Transportation Company Limited. p.122

(ii) Veronica Murray's 10/105th shares passed on her intestacy to her daughter Murial Murray who sold the same to Arne Lindroth who conveyed the same to the First Appellants.

(iv) Miriam Stuart's 10/105th shares devolved upon her son benjamin Stuart; under his will to his wife Ivy Stuart; and upon her intestacy to her sister Sybil Gordon who sold the same to the First Appellants.

(v) In January 1962 the First Appellants conveyed to the Second Appellants, Beach Head Limited 5/105th shares, retaining the 35/105th shares acquired by the First Appellants as aforesaid.

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(vi) John Burrows the younger, the son of Nehemiah Burrows and hereinafter called "Cousin John", because entitled as Eliza Hall's heir-at-law to her 10/105th shares, became entitled as Percy Webb's heir-at-law to his 1/6th share, and became entitled as Clarence Asgin's heir-at-law to his 1/6th shares; and thus became entitled in all to 45/105th shares. Under and by virtue of a devise of residuary realty
p.124 in the Will of Cousin John each of his four illegitimate children the Third, Fourth, Fifth and Sixth Appellants namely Eleanor Parroti and Jocelyn Maxey (in the said Will and at the date thereof respectively called Eleanor Burrows and Jocelyn Burrows) Mizpath Burrows and Frederick Burrows, became entitled to 9/105th shares; and Cousin John's illegitimate son John Burrows became entitled to the remaining 9/105th shares which, on the death of the last mentioned John Burrows, intestate, and a bachelor, became liable to be escheated to the Crown.

9. The Respondents filed an Adverse Claim
p. 8 dated 11 July 1963 claiming to be owners in fee simple in possession of the whole of the land by virtue of facts set out in the papers
p. 8 filed in Action No. 288 of 1961 under the Quieting Titles Act, 1959, and by virtue of facts set out in an affidavit sworn of 11 July 1963 by the Respondents Beatrice Louise Lightbourne and Edith Augusta Price, and an Affidavit sworn also on 11 July 1963, by the Respondent Cyril Price-Robinson. In the said Action No. 288 of 1961 the said Rose-Eliza Price and the Respondent Cyril Price-Robinson petitioned for the investigation of their title under the Quieting Titles Act 1959; Adverse Claims were filed therein by the First Appellants and the Second Appellants and the action was not pursued.

p.14 10. By a statement of Facts dated 23 July 1962 and filed in the said Action No. 288 of 1961 the petitioners Roseliza Price and Cyril Price-Robinson claimed that from and after the death of the Testator the said Roseliza Price and Victoria Louise Hanna with their tenants servants and agents entered into full free and undisturbed possession and control of the whole

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of the land without obtaining the consent or permission of anyone and remained so in possession until the death of Victoria Louise Hanna on 2 October 1945 and that the said Roseliza Price and Cyril Price Robinson had continued in possession thereof, except for certain encroachments made since 1961 on portions thereof. An Abstract of Title filed with the said Statement of Facts is included in the Record and purports to show the documentary and possessory title claimed by Roseliza Price and the devisees claiming under the Will of Victoria Louise Hanna. As appears from their said joint affidavit sworn on 11 July 1963 the Respondents Beatrice Louise Lightbourn and Edith Augusta Price claim to be the successors in title of Roseliza Price. p.14 p.8

11. By her Will dated 30 March 1962 Roseliza Elizabeth Price (herein called "Roseliza Price" and in the Will of the Testator called "Roseliza E. Price") devised to the Respondent Beatrice Louise Lightbourn one third and to the said Edith Augusta Price two thirds of divers lands including that therein described as "all my land at Hog Island in the Bahama Islands". Probate of the said Will of Roseliza Price was on 27 November 1963 granted by the said Supreme Court to the said Beatrice Louise Lightbourn and Edith Augusta Price, who by an Assent dated 3 December 1963 assented to the said devise. p.150 p.152 p.154

12. By her Will dated 3 February 1940 Victoria Louise Hanna appointed Annie Elizabeth Sands and the said Beatrice Louise Lightbourn executors and probate of her said will was granted to the said Executors by the Supreme Court aforesaid on 2 October 1945. The said Will contained a devise in the following terms:- p.140 p.143

> "I give and devise All That Lot of Land given to me by my late father and situated at Hog Island and all other Lands or interest therein owned or possessed by me at my death to the said Annie Elizabeth Sand for the term of her natural life and after her decease to the said Cyril Price Robinson, Cleo Lightbourn, Sybil

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Lightbourn, Mercedes Lightbourn, Cynthia Lightbourn, Naomi Lightbourn, Eric Lightbourn, Patricia Lightbourn and Joyce Lightbourn in equal shares as tenants in common in FEE SIMPLE"

The said Beatrice Louise Lightbourn as the sole survivor of the executors last mentioned assented to the said devise by an Assent dated 11 November 1961. The Respondent Cyril Price-Robinson is one of the devisees referred to in the devise last mentioned. 10

p.19 13. In his Judgment dated 19 December 1963 the learned Judge dealt first with the documentary history of the various shares in the land,
p.30 and held that (subject to compliance with certain conditions as to advertisements and assuming that no other relevant information was discovered as a result of any such advertisement) at the date of the hearing these were owned as follows:-

First Appellants	35/105	shares
Second Appellants	5/105	shares
Third, Fourth, Fifth and Sixth Appellants	22/105	shares
The Crown	23/105	shares
First Respondent	10/105	shares
Second and Third Respondents	10/105	shares

14. The Appellants' claims, in the aggregate, were originally for 85/105 shares and subsequently, upon the filing of the Amended 30
p.11 Statement of Facts, for 76/105 shares. The learned Judge held that the Appellants were entitled in the aggregate to 62/105 shares. The difference between the original aggregate claim and the learned Judge's finding arises in part from the Appellants' abandonment of their claim to the interest taken by John Burrows under the will of Cousin John which they recognised as being escheated to the Crown on the death of the

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said John Burrows (son of Cousin John) illegitimate, intestate and a bachelor; and in part from the Judge's finding that Clarence Azgin was illegitimate, and that on his death intestate and without issue his interest, namely 35/210 shares, would escheat to the Crown, with the consequence that there passed under the will of Cousin John not, as claimed by the Appellants in their Amended Statement of Facts, 45/105 shares, but 55/210 shares, and with the further result that the interest given by that Will to Cousin John's son John which interest also escheats to the Crown, comprises 11/210 shares. The First, Third, Fourth, Fifth and Sixth Appellants do not seek to appeal against the learned Judge's findings as to the devolution of the shares by documentary title. p.22

15. The learned Judge then dealt with the Respondents' claim that they were entitled not only to 20/105 shares by virtue of their documentary title but also to the entirety by virtue of long possession under the Statutes of Limitation. The learned Judge stated that the relevant law is contained in the Real Property Limitation (No. 1) Act, (Ch.214) and the Real Property Limitation (1874) Act, (Ch.216) p.30

16. The two Acts last mentioned are extensions to the Bahama Island, made by The Declaratory Act (ch.2), of the Real Property Limitations Act, 1833 (3 & 4 Will. IV, c.27) and the Real Property Limitation Act, 1874 (37 & 38 Vict., c. 57) subject to and in accordance with the relevant provisions referred to in the second part of the Schedule to the Declaratory Act (Ch.2).

17. The relevant statutory provisions are as follows:-

The Quieting Titles Act, 1959 (No.28 of 1959):-

"s.3 Any person who claims to have any estate or interest in land may apply to the Court to have his title to such land investigated and the nature and extent thereof determined

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and declared in a certificate of title to be granted by the Court in accordance with the provisions of this Act."

"s.8(1)

The Court in investigating the title may hear the application either in Chambers or in open Court, and may receive and act upon any evidence that is received by the Court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the Court of the truth of the facts intended to be established thereby."

The Real Property Limitation (No.1) Act, 1833 (Cap.214) (hereinafter called "the 1833 Act"):-

"s.1. The Words and Expressions hereinafter mentioned, which in their ordinary Signification have a more confined or a different meaning, shall in this Act, except where the Nature of the Provision or the Context of the Act shallexclude such Construction, be interpreted as follows; (that is to say), the Word "Land" shall extend to Messuages, and all other corporeal Hereditaments whatsoever ... and also to any Share, Estate or Interest in them or any of them, whether the same shall be a Freehold or ... Chattel Interest and whether Freehold, or held according to any other tenure, and the word "Rent" shall extend to all Services and Suits for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land ... and the person through whom another Person is said to claim shall mean any Person by, through, or under, or by the Act of whom the Person so

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claiming became entitled to the Estate or Interest claimed, as Heir, Issue in Tail, Tenant by the Curtesy of England Tenant in Dower, Successor, special or general Occupant, Executor, Administrator, Legatee, Husband, Assignee, Appointee, Devisee, or otherwise ...." (The remainder of this section deals with "Person" and with number and gender).

"s.3. In the Construction of this Act the Right to make an Entry or Distress or bring an Action to recover any Land or Rent shall be deemed to have first accrued at such Time as hereinafter is mentioned; (that is to say), when the Person claiming such Land or Rent, or some Person through whom he claims, shall, in respect of the Estate or Interest claimed, have been in possession or in Receipt of the Profits of such Land, or in receipt of such Rent, and shall while entitled thereto have been dispossessed, or have discontinued such Possession or Receipt, then such Right shall be deemed to have first accrued at the Time of such Dispossession or Discontinuance of Possession, or at the last Time at which any such Profits or Rent were or was so received; and when the Person claiming such Land or Rent shall claim the Estate or Interest of some deceased Person who shall have continued in such Possession or Receipt in respect of the same Estate or Interest until the time of his Death, and shall have been the last Person entitled to such Estate or Interest who shall have been in such Possession or Receipt, then such Right shall be deemed to have first accrued at the Time of such Death ....." (The section then deals with the case of alienation and continues): "and when the Estate or Interest claimed shall have been an Estate or Interest in

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Reversion or Remainder, or other future Estate or Interest, and no Person shall have obtained the Possession or Receipt of the Profits of such land or the receipt of such Rent in respect of such Estate or Interest, then such right shall be deemed to have first accrued at the time at which such Estate or Interest became an Estate or Interest in Possession" (and the section then deals with the case of forfeiture or breach of condition.

"s.10. No Person shall be deemed to have been in possession of any Land within the Meaning of the Act merely by reason of having made an Entry thereon."

"s.12. When any One or more of several Persons entitled to any Land or Rent as Copareeners, Joint Tenants, or Tenants in Common, shall have been in possession or receipt of the Entirety, or more than his or their undivided Share or Shares of such Land or of the Profits thereof, or of such Rent, for his or their own Benefit, or for the Benefit of any Person or Persons other than the Person or Persons entitled to the other Share or Shares of the same Land or Rent, such Possession or Receipt shall not be deemed to have been the Possession or Receipt of or by such last-mentioned Person or Persons or any of them."

"s.25. When any Land or Rent shall be vested in a Trustee upon any Express Trust, the right of the Cestuique Trust, or any person claiming through him, to bring a Suit againt the Trustee, or any person claiming through him, to recover such Land or Rent, shall be deemed to have first accrued, according to the Meaning of this Act, at and not before the Time at which such Land or Rent shall have been conveyed to a purchaser for a valuable Consideration, and shall then be deemed to have accrued

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only as against such Purchaser and any Person claiming through him."

"s.34 At the Determination of the Period limited by this Act to any Person for making an Entry or Distress, or bringing any Writ of Quare impedit or other Action or Suit, the Right and Title of such Person to the Land, Rent, or Advowson for the Recovery whereof such Entry, Distress, Action or Suit respectively might have been made or brought within such Period shall be extinguished."

The Real Property Limitation (1874) Act, (Ch.216) (hereinafter called "the 1874 Act"):-

"s.1. After the commencement of this Act no person shall make an entry or distress or bring an action or suit, to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to the person making or bringing the same."

2. A right to make an entry of distress, or to bring an action or suit, to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of

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which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land or rent, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent: But if the person last entitled to any particular estate in which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought, by any person becoming entitled in possession to a future estate or interest, but within twenty years next after the time when the right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession, whichever of those two periods shall be the longer; and if the right of any such person to make such entry or distress, or to bring any such action or suit, shall have been barred under this Act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement, executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid, shall make any such entry

or distress, or bring any such action or suit, to recover such land or rent."

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18. Evidence was given on behalf of the respondents by the respondents Edith Augusta Price and Beatrice Louise Lightbourn, Alpheus Miller, Rudell Miller, Cyril Harcourt Robinson, Sybil Ford, Clifford Dean, Hosea Fergson Alberta Moss, Frederick Dean Phillips and Edward Lercy Butler. The evidence of these witnesses dealt with the following matters:- p.59 p.75 p.83 p.86 p.87 p.90 p.92 p.93 p.93 p.94

(a) Edith Augusta Price said that she was the daughter of Roseliza Price and gave evidence as to matters of pedigree concerning the Testator's family. She said that her grandfather, the Testator, owned land at Hog Island, that her father had taken her there when she was a child; that the land was north of the fort; and there was not house there then; that her father and mother had fields there; that she never saw her grandfather (the Testator) work there; that he lived at Moores Island and was the Registrar of births deaths and marriages. The witness said that none of her family worked at Hog Island until her Aunt Hanna (Victoria Louise Hanna) came in, which she did before ther Testator died; that Victoria Louise Hanna had many people working for her. That the Witness's father kept goats and sheep and her mother and father employed help on Hog Island and so did Victoria Louise Hanna; that her father and mother and Victoria Louise Hanna were still alive and working on the land when the Testator died; and that they continued to do so after the Testator died; and did not stop until in the case of the witness's father he died (in February 1936) and in the case of her mother and Victoria Louise Hanna until they got too old. The witness stated that her mother built a house, a 2 room wooden building on a hill. The witness gave evidence about the caretakers whom she said her mother employed on the land. Alpheus Miller and his wife, Ferguson; and Walter Lightman and William Hall who used to shoot on the p.62 p.63 p.67

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Island but did not farm. The witness gave evidence as to the vegetables which her mother used to grow in the period from 1910 to 1920. She stated that her mother and
p.68 Victoria Louise Hanna had several fields of 3/4 acres each; that Victoria Louise Hanna stopped working a few months before the witness's mother stopped, which was sometime during the last (the 1939-45) war. This witness said that since the death of the Testator only her mother and Victoria Louise Hanna had occupied the land, and that her
p.69 mother would have been glad of help. In cross examination this witness gave evidence as to the manner in which the land was worked
p.70 and stated that they worked a field until it was exhausted and then moved on to others. The witness said that the Farms were now fairly large, quite open, and not in pieces as her mother had. The witness said that when Robert Miller went to the land only
p.72 small places were under cultivation: but he cleared the land. This witness further said that her mother was holding on for the brothers and siters; but they would not come so she gave up the idea; that her mother wanted them to come and help her but they would not; that her mother wrote to the brothers and sisters; and that when they were
p.73 not interested she carried on by herself. In re-examination she said that her mother, after she fell ill, sent various persons whom the witness named: and that in the time between her mother's illness and Robert Miller's arrival those persons worked fields in different parts.

(b) Beatrice Louise Lightbourn stated that her mother was Roseliza Price. After giving evidence as to matters of pedigree she said that she knew Hog Island when she was a school girl and that she went there with her mother. She said that the house on the hill had been brought from Abaco and built on Hog Island before the 1926 hurricane. She said that Victoria Louise Hanna stopped going to the land about two years before her death in 1945 and sent other people; that

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the witness's mother continued to go to the land up to and for about six years after Victoria Louise Hanna's death. Then the witness's mother put first Robert Miller and then Alpheus Miller on the land. In cross examination this witness said that she herself, her mother, her sister Edith and Victoria Louise Hanna ate the produce of the land and never sold it. She also said that they worked on the fields by working them out then leaving to go fallow then went elsewhere and so on. She said that in the 1920's and 1930 her mother had 3/4 fields at a time and Victoria Louise Hanna had 4/5 fields at a time.

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(c) Alpheus Miller said that he was hired as a boy in 1925 to cut and weed on Hog Island. In 1953 he went to Hog Island and helped repaint the house. He found there Robert Miller, Alberta Miller, Irene Mackay and Almira Pinder. In 1954 he returned and started farming there, working under Robert Miller, who collected and paid over one third to Mrs. Price. Robert Miller went to work for one Smidt and thereafter, in 1957 or 1958 this witness took control, and has carried on to the present day. The witness said that Elsie Hanna worked there with his permission; that he had 4 fields and (Elsie) Hanna had 3. This witness said that in 1925 Mrs. Price was farming more than today.

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(d) Rudell Miller said that she worked a farm on Hog Island; and had done so since 1955. In 1955 she met Robert Miller there.

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(e) Cyril Harcourt Robinson said that Roseliza Price was his grandmother. He knew Hog Island as a little boy. When he was about 12 he went there. Mrs. Price was farming there; Miss Hanna had fields. He said that Roseliza Price and Victoria Louise Hanna "had separate fields in some lands". This witness said that his mother, Beatrice Lightbourn, put Robert Miller on the land; but he stopped giving a third; a summons was taken out against

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p.88 him, and he left. This witness said that firewood was cut; net sold. He said that there was no sale of produce that he knew of; but then added that he remembered that Hughie Cleare used to buy some of the produce. He said that once in a while Miriam Stuart went to the land. In cross examination he agreed that they were not farming commercially, that apart from Mr. Cleare they did not produce enough to send to market for sale.

p.90 (f) Sybil Ford said that Beatrice Lightbourn was her mother. This witness said that she went to Hog Island about 1925 when she was about 8 years old; and that her grandmother Roseliza Price and Miss Price (presumably her aunt Edith Augusta Price) were then farming. She said that she remembered Daniel Hanna farming the adjoining land to the west. Until 1936 she went regularly; and during this period Roseliza Price and Hanna (meaning apparently Victoria Louise Hanna) had fields; Hanna in the South end and Roseliza Price in the north west. After 1937 she went less frequently but saw signs of cultivation as before. She said that there was quite a lot of land farmed; that Victoria Louise Hanna sold (produce) but Roseliza Price did not.

p.91 In cross examination this witness said that they never stayed in one place; they cut one field and left another. She would say that more than 50% was under cultivation.

p.92 (g) Clifford Dean said he was born in 1913. He knew Roseliza Price. This witness said that Victoria Louise Hanna had different fields from Roseliza Price and that Roseliza Price and Victoria Louise Hanna had different people working for them.

p.93 (h) Hosea Ferguson said that he worked for Roseliza Price and for Victoria Louise Hanna at times, until 1935; and that Roseliza and Victoria had separate fields.

p.93 (i) Alberta Moss said her first job in

Nassau was weeding and cutting bush for Mrs. Price; that she went to Hog Island for 2 or 3 days weekly, that she met there Clifford Dean, Hosea Ferguson, Helena Cunningham and Ivan Ferguson, and that they all worked for Roseliza Price. She said that most of the farming was over to the north. Record

(j) Frederick Dean Phillips, clerk in the Registrar's Office, produced various documents. p.94

(k) Edward Leroy Butler said that his father's share - cropped with Mrs Price.

19. Evidence was given on behalf of the Appellants by Eleanor Parroti, Adelle Evans, Emerald Alice Pratt, Patrick J. Claredon Davis, N.F. Arandha, Florence Smith and Frederick Dean Phillips. The evidence of these witnesses dealt with the following matters:-

(a) Eleanor Parroti said that she was the daughter of John Burrows (Cousin John) who was a son of Nehemiah Burrows; and that the Appellants Jocelyn Moxey, Mizpath Burrows, and Frederick Burrows were her sisters and brother. She said that she knew the land; that her father went on to it; that he got produce from Roseliza Price and also from Victoria Louise Hanna; that after her father's death Roseliza Price and Victoria Louise Hanna used to send for her to collect produce. She said "We would get something every year from the land". This witness said that Victoria Louise Hanna gave "shares" until she died in 1945; and that thereafter Roseliza Price gave them a share of what was collected until 1954; and that they never received any produce after 1955. She stated that her father frequently took Victoria Louise Hanna to Hog Island by boat. In cross examination this witness said that she started to collect produce in 1943; and that she took the produce which she collected to her mother, that she did not take the produce as a present and that she p.97 p.98 p.99 p.100

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thought it was because they had a share. She stated that after her father, Cousin John, died (he died in 1939) and she was about 14 turning 15 "Mrs. Price told me and my mother that we had some land on Hog Island".

p.102 (b) Adelle Evans said that she had lived with Cousin John from 1924 until he died in 1939 and that they had four children, the third, fourth, fifth and sixth appellants. She said that Cousin John was a stevedore and a farm worker on Hog Island; that he worked the farm Monday to Friday; that he did this from 1924 until a year before he died (i.e. until 1938); that he went sometimes alone and sometimes with Victoria Louise Hanna in her boat. After Cousin John died Victoria Louise Hanna got someone else to row her over she still gave produce to the witnesses' children and that she continued to do so for about 3 years. After that Roseliza Price continued

p.103 to send produce. In cross examination this witness said that she did not know whether Cousin John had fields of his own; that he used to bring produce back 3 or 4 times a year; that he did not have his own boat but used Hanna's. Victoria Louise

p.104 Hanna sent produce twice a year; she would tell the witness's children to come and get it. Roseliza Price continued to send produce either sending it by Edith or sending for the children. The witness

p.105 continued to receive produce, vegetables, until 1954.

(c) Emerald Alice Pratt said that she was the daughter of Sarah Anne Elizabeth David Burrows, who was the second wife of Nehemiah Burrows. She said that Nehemiah Burrows was a farmer on Hog Island; and that he took her there. Roseliza Price and Victoria Louise Hanna were there. The witness said that they dug potatoes three or four times a week. She said that her mother died in 1921; and that Cousin John continued going to the farm and that he gave her

vegetables, which she collected, until he died. In cross examination this witness said that she never went to Hog Island after Nehemiah Burrows died; and that she was 8 years old when he died. Record p.107

(d) Patrick J. Claredon Davis said that he was seventy nine that he knew Nehemiah Burrows; that Nehemiah farmed across at Hog Island; that the witness had been on the land "over and over"; that Nehemiah had a boat built for the farming.

(e) N.F. Aranha produced a plan (Exhibit P.51 which is not included in the Record) which he had prepared. p.111

(f) Florence Smith gave evidence of searching unsuccessfully, for any register of the births of Estella and Benjamin, children of Miriam Stuart.

20. The Judgment, so far as it concerns the Respondents' claim to a possessory title, may be treated as falling into four parts:- pp.30-44

(i) that in which the learned Judge considers the law applicable to the question, from what date time begins to run under the Statutes of Limitations (ii) that in which the learned judge considered the nature of possession established by the evidence and who was shown by the evidence to have been in possession; (iii) that in which the learned Judge considered the question whether the evidence established that the respondents or their predecessors had been in possession of the entirety and (iv) that in which the learned Judge considered the question whether the evidence established that Roseliza Price and Victoria Hanna respectively had each been in possession "for her own benefit". pp.44-50 pp.50-55 pp.56-58

19. On the matter dealt with in the first part of the Judgment on the claim to a possessory title the respective contentions of the Respondents and the Appellants appear from the Judgment to have been as follows. The Respondents contended that their adverse claim fell under the second and fourth limbs of p.31

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s, 3 of the 1833 Act; the second limb providing, in brief, that where the property of a deceased person who has been in possession or receipt of the rents and profits until his death is claimed, time runs from the death, and the fourth providing in brief, that in the case of future estates, time begins to run from the time when the estate falls into possession (subject to the provisions of s.2 of the 1874 Act; and the Respondents contending that in the case of the two thirds devised by the Testator to his children time thus ran from the death of the Testator on 23 October 1913 and that in the case of the one third devised to Percy Webb and Clarence Azgin subject to the widow's life interest, time also ran (by reason of the provisions last mentioned) not from the death of the Widow in 1918 but from the death of the Testator. The

p.37 Appellants' contention was that every tenant in common who takes possession of more than his own share for his own benefit nevertheless has to prove dispossession of the other tenants in common so far as the excess is concerned; and thus that time only runs from the date when such dispossession is established.

20. The learned Judge accepted the contentions

p.48,58 of the Respondents on this matter (subject to the modification that time may not have begun to run in respect of Nehemiah's share until 1917 and in respect of Cousin John's until 1939) and rejected that of the Appellants. It is respectfully submitted that in so doing the learned Judge erred in law. It is implicit in the whole of the learned Judge's reasoning on this part of the case that the time when the right to make an entry or bring an action is to be taken to have accrued can be ascertained only by reference to s.3 of the 1833 Act, that is, that each case must be governed by one or other of the five limbs of that section. The learned Judge thus reasoned that since (apart at least from the cases of Nehemiah and Cousin John) he found as a fact that none of the tenants in common whose shares the respondents claimed had been in possession, the first limb of

p.41 section 3 was inapplicable, and since no limb of s.3. other that the first requires ouster,

p.44 or dispossession, there was no need to prove

ouster or dispossession. It is respectfully submitted that the learned Judge thus erred in law; because s.3 of the 1833 Act (contrary to the premise which appears to underly the learned Judge's reasoning) is not exhaustive of the cases in which a right to make an entry or bring an action accrues; and where the case is not governed by any of the five limbs of s.3 (which it is submitted is so in the present case) the general principles of s.1 of the 1874 Act must be applied.

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21. It is submitted that the burden was upon the adverse claimants to prove ouster or dispossession; and that on the facts this burden was not discharged. It is further submitted that in the light of the learned Judge's finding that neither Percy Webb, Clarence Azgin, Eliza Hall, Veronica Murray or Joseph Burrows ever entered into possession, evidence of the actual possession of Roseliza Price and Victoria Hanna is not evidence of ouster of the five tenants in common first mentioned in this paragraph; because they never entered into possession. p.44

22. It is submitted that the learned Judge erred in law in holding that by reason of the provisions of s.10 of the 1833 Act the evidence as to Miriam Stuart's visits to the land did not constitute evidence of possession. p.45

23. The learned Judge's conclusion on this first part of the Judgment on the possessory claim is stated in the following passage:- p.43

> "In my judgment, therefore, the law laid down in the Statutes of Limitation is that if one tenant in common takes possession of the entirety, or more than his undivided share, for his own benefit and the other co-tenants have never entered into possession in accordance with the first part of section 3 of the 1833 Act, then time begins to run in favour of the possessor from the date of that possession, and his intentions or motives (apart from holding "for his own benefit") are irrelevant; and the same principles apply if one tenant in common having formerly

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entered into possession subsequently discontinues or abandons, the reason being that in these cases, there is no need for "ouster" and all that is necessary under the Acts is for the possessor to prove possession and the simple effluxion of time."

24. The passage last quoted should be read in conjunction with the following passage near the end of the Judgment:-

> "Having carefully considered all the relevant evidence, I have no doubt that the Adverse Claimants have established possession from 1913 to the present day for all the land and all the estates therein save Nehemiah's 10/105 share, when time began to run in 1917, and the Webb and Hall shares when time (taking the view most favourable to the Petitioners) began to run in 1939".

It is submitted that it is evident from the two passages last quoted that the learned Judge accepted the Respondents' contention, that so far as the same applied to such of the 2/3rd shares given by the Testator to his seven children as were devised to Veronica, Joseph and Miriam (each of these three children being a devisee of 10/105 shares) the date when time began to run was to be ascertained by reference to the second limb of s.3 of the 1833 Act that is, that the right to bring the action was deemed to have accrued at the death of the Testator. It is submitted that the learned Judge erred in so holding. The second limb of s.3 is in the following terms:-

> "and when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death".

It is submitted that this provision has no

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application to the case of a devisee, not of the whole interest or estate of the deceased, but of an undivided share thereof.

25. The fourth limb of section 3 of the 1833 Act is in the following terms:-

> "and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such land in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession".

It is submitted that it is evident from the passages from the Judgment quoted in the last preceding paragraph hereof that the learned Judge accepted the submission of the Respondents that the said fourth limb was applicable in relation to the 1/3 share devised by the Testator to his Widow. It is submitted that in so holding the learned Judge erred; because the said fourth limb has no application, nor have the provisions of s.2 of the 1874 Act, to the case where the future interest is an undivided share of the interest upon the determination whereof the future interest falls into possession. No question of time runnin against those tenants in common whose shares the adverse claimants claim to have acquired by long possession could arise until the said shares had fallen into possession; and the provisions of the 1833 Act and the provisions of the 1874 Act dealing with future interests had, it is submitted, no relevance to that question.

26. The learned Judge held that time began to run against those claiming under Nehemiah as from the date of Nehemiah's death in 1917, and in so doing he applied to Nehemiah's share the provisions of the second limb of s.3 of the 1833 Act. By his Will dated 5 April 1917 Nehemiah Burrows appointed his wife Sarah Ann Burrows and his son Cousin John Executors, and he devised and

p.58
p.122

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bequeathed all his real property to seven named children of his, including Cousin John. The devise contained no words of severance and the seven children thus took as joint tenants. The learned Judge erred in not applying to Nehemiah's share the same reasoning that led him to hold, in the case of the Webb and Hall shares, and by reason of Cousin John's possession, that time did not begin to run until John's death in 1939. By the like reasoning, and having regard to the joint tenancy, time could not have begun to run in relation to Nehemiah's share until, at the earliest, the date of John's death in 1939.

27. In the second part of the Judgment on the possessory claim the learned Judge began by
p.44 accepting a submission made on behalf of the Appellants that even if one tenant in common lawfully takes possession of the whole it is still open to the other co-tenants to show that the possession of the one was in reality, on the facts of the case, possession for all. The learned Judge found as a fact that neither Percy Webb, Clarence Azgin, Eliza Hall, Veronica Murray or Joseph Burrows ever entered into possession and considered that there was a conflict of evidence as to possession by Nehemiah and his son Cousin John; which conflict he apparently resolved by finding that each of them Nehemiah and Cousin John could be treated as having been in possession until the dates of their respective deaths. The learned Judge's findings as to the possession of Roseliza Price and Victoria Louise Hanna are set out in the following passage:-

p.49 "I am satisfied for many years prior to their father's death Roseliza and her family, and later Victoria, occupied and farmed Lot 8 at the express wish and desire of their father. Victoria was a washer-woman in her earlier days but gave this up and came onto the land before 1913. The father himself did not farm or employ anyone to farm there; he lived as I say, at Moore's island, Abaco, and only came to Nassau when Registry business demanded or Roseliza sent for him. As already explained none of Roseliza's or Victoria's brothers and sisters or the two

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grandsons, Percy and Clarence came onto or shared the land with them and when their father died in 1913, they were well established in possession by themselves alone, and by that time the daughters Miss Price and Mrs. Lightbourn had reached ages of approximately 18 and 21 years respectively. These two families were then living and sleeping in Hawkins Hill, Nassau, but visiting and farming the Hog Island land regularly by day."

"There is in this case, therefore, no question of Roseliza and Victoria making an entry upon the land since they were already there at the date of their father's death. All that happened is that the nature of their possession changed and instead of holding in their capacity as their father's children they continued to hold lawful possession in their capacity as tenants in common under his Will. This at once in my view distinguishes their case from those falling under the first part of section 3 of the 1833 Act. Roseliza and Victoria were not dispossessing their co-tenants, or indeed anyone else. but were merely continuing a previous occupation."

28. It is respectfully submitted that having regard to the findings of fact set out in the passage last quoted from the Judgment, the learned Judge, had he not erred in law in rejecting the Appellants' submission that the Adverse Claimants, to succeed, had to establish dispossession of the true owners and to establish their own possession according to the standard of proof demanded in Leigh v. Jack (1879) 5 Ex. D.264 Williams Bros. Direct Supply v. Raftery (1958) 1 Q.B. 159, should have concluded that neither Roseliza Price nor Victoria Louise Hanna were ever in possession in such manner as to cause time to run against their co-tenants or any of them.

29. Furthermore it is submitted that in this part of his judgment the learned Judge failed to attach proper significance to the fact that,

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on his own findings as to the facts, during the whole of the period from the death of the Testator until the death of Victoria Louise Hanna in 1945 there were at all times in possession of the land at least two of the persons entitled as tenants in common, namely Roseliza Price and Victoria Louise Hanna. There is no finding of a de facto partition of the land between the two co-tenants last mentioned; and in the absence of any such finding, and in the absence of any finding or any evidence to justify a finding that there was an agreement between Roseliza Price and Victoria Louise Hanna to dispossess their co-tenants, the learned Judge erred in not finding as a fact that the possession of Roseliza Price and Victoria Louise Hanna or one of them was possession on behalf of themselves and their co-tenants.

30. It is further submitted that having regard to the evidence given by Roseliza Price in Suit 177/1960 (which is included in the Record) and in particular the two following statements:-

p.134 "My father left his property by Will to his children. I couldn't take my brothers and sisters shares it was not given to me"; and

p.134 "After my brothers and sisters had died I considered all the property was mine; I had paid the expenses, I did not mean to deprive them of their shares whilst they were alive",

it was not open to the learned Judge to find otherwise than that Roseliza Price's possession, was for herself and her co-tenants in common, or alternatively, was for herself and her co-tenants in common at least until the death of the last to die of her brothers and sisters for herself and her brother and sisters. Furthermore the learned Judge's finding that Roseliza Price's
p.54 possession was possession for herself was against the weight of the evidence not only of Roseliza Price above mentioned but also of all the other evidence called on behalf of the Adverse Claimants and in particular that of Edith Augusts Price, who said:-

"I knew that my grandfather had left it to my mother uncles and aunts, - but since his death only my mother and Hanna have occupied the land. My Mother would have been glad of help." Record p.69

And also:-

"Mother said she was holding on for the brothersand sisters - but they would not come so she gave up the idea: she wanted them to come and help her - but they would not. She wanted her brothers and sisters who were told to come - she wrote to them. When they were not interest she became satisfiedabout them. When she got no answer and saw they were disinterested she became satisfied and carried on by herself." p.72

And again:-

"Whilst mother's brothers and sisters were alive she said she was holding for her brothers and sisters; but when they died she never said it. Aunt Victoria did not agree - she said it cost her too much - she was not concerned over brothers and sisters - and if £1 was spent Mrs. Hanna would offer 10/- Mamma would not take it". p.74

31. It is submitted that having regard to the evidence mentioned in the preceding paragraph the earliest date which it was open to the learned Judge to find as the date from which time ran in favour of Roseliza Price was that of the death of Veronica Murray on 13 August 1954. p.115

32. It is submitted that there was no evidence on which the learned Judge could find as he did that Victoria Hanna's "successors in title" continued her possession after her death in 1945, and that the learned Judge erred in so finding. p.54

33. In the third part of the Judgment on the possessory claim the learned Judge held that the adverse claimants had proved actual possession of the whole of the land, or alternatively constructive possession. It is

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submitted that the learned Judge mis-directed himself in applying the dictum of Lord O'Hagan in Lord Advocate v Lord Lovat (1880) 5 A.C. 288, which he quotes in his Judgment, without having regard, or without having sufficient regard, to the circumstance that each of them Roseliza Price and Victoria Louise Hanna, was, as a tenant in common, lawfully entitled to possession of the whole, but would be liable to account to the other tenants in common in practice only if and in so far as she took possession of more than her aliquot share; and further misdirected himself, in relation to his consideration of constructive possession, by again ignornng that circumstance.

34. It is further submitted that the evidence does not establish that Roseliza Price and Victoria Hanna or either of them were ever in possession of the whole of the land. On the contrary the evidence shows that each of them was from time to time in occupation of a part only; and it is submitted that the evidence does not establish that they or either of them ever occupied any particular part for the time requisit to establish a possessory title.

35. These Appellants' submissions on the matters dealt with in the fourth part of the Judgment on the possessory claim are set out in paragraphs 29 and 30 above.

36. It is humbly submitted that this Appeal should be allowed with costs and that the claim of the First Appellants to 35/105th shares, and of the Third Fourth Fifth and Sixth Appellants to 22/105 shares be upheld, or alternatively be upheld without prejudice to any claim which these Appellants or any of them may have to the 23/105th shares whereto the learned Judge held the Crown entitled, or in the further alternative that the claim of these Appellants be upheld in respect of such other and lesser shares in the land, or alternatively in respect of such shares in such part or parts of the land, whereto these Appellants or any of them are entitled; and that this Appeal be so allowed and upheld for the following among other reasons:-

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1. BECAUSE the learned Judge was wrong in law in holding that the Adverse Claimants did not have to prove ouster or dispossession.

2. BECAUSE the learned Judge misdirected himself as to the standard or burden of proof of possession which the Adverse Claimants had, as a matter of law, to discharge.

3. BECAUSE the learned Judge erred in finding as a fact that Roseliza Price and Victoria Hanna had been in exclusive possession on their own account and that such possession had been continued by their respective successors in title; or alternatively erred so far as such finding related to any period of possession by Roseliza Price prior to 13 August 1954, or alternatively, in relation to the respective shares of the several tenants in common other than Roseliza Price, prior to the dates of their respective deaths.

4. BECAUSE the learned Judge erred in finding that the possession of the said Roseliza Price and the possession of the said Victoria Hanna was in each case possession of the whole of the land.

5. BECAUSE if and so far as Roseliza Price and Victoria Hanna or either of them had exclusive possession, such possession was of one part at one time and of another or other part or parts at another or other time or times, and that the evidence did not establish in relation to the possession by them or either of them of any such part that the possession thereof continued for the requisite period.

6. BECAUSE the respondents did not establish that the title of these Appellants, or of any of them, had been extinguished under s.34 of the 1933 Act, or otherwise.

J.A.R. FINLAY

No.40 of 1964

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

Re THE QUIETING TITLES ACT 1959

- and -

Re 76/105th SHARES IN CERTAIN LAND IN HOG ISLAND

- and -

Re THE PETITION OF PARADISE BEACH and TRANSPORTATION LIMITED and Others

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PARADISE BEACH AND TRANSPORTATION LIMITED and Others

- v -

CYRIL PRICE-ROBINSON & OTHERS

CASE FOR THE FIRST, THIRD, FOURTH FIFTH AND SIXTH APPELLANTS

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