1) 1968

IN THE PRIVY COUNCIL No. 40 of 1964

O N A P P E A L
FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N :

(1) PARADISE BEACH AND TRANSPORTATION COMPANY LIMITED
(2) BEACH HEAD LIMITED
(3) ELEANOR PARROTI
(4) JOYCELYN MOXEY
(5) MIZPAH BURROWS
(6) FREDERICK BURROWS Appellants

- and -

(1) CYRIL PRICE-ROBINSON (as representative of the devisees under the Will of Victoria Louise Hanna)
(2) BEATRICE LOUISE LIGHTBOURNE
(3) EDITH AUGUSTA PRICE Respondents

CASE FOR THE SECOND APPELLANT Record

1. This is an appeal from a judgment, dated the 19th December, 1963, of the Supreme Court of the Bahama Islands, Equity Side (Scarr, J.) dismissing the petition of the Appellants, presented under the Quieting Titles Act, 1959, for the grant of a certificate of title in respect of certain undivided shares in land in the Bahama Islands. Leave to appeal to Her Majesty in Council was granted by the Supreme Court of the Bahama Islands by an Order dated the 8th January, 1964. Pp.19-58 P.114

2. The dispute concerns a plot of land running from sea to sea across an island, now known as Paradise Island but formerly known as Hog Island, lying north of the harbour of the City of Nassau. A plan showing the plot is Pp.2-4

Record

exhibited in the Record as an annexure to the Petition filed by the Appellants in the Supreme Court. This plan was agreed by the Respondents save as to the location in part of the eastern boundary, which limited disagreement is not material to this appeal. The plot is some thirty-one acres in extent and it was common ground that it was owned, at the date of his death in 1913, by one John Alexander Burrows (hereinafter referred to as "the Testator"). The Testator, by his Will, made the following provision:

Pp.120-121

> "To my beloved wife Elizabeth I give an undivided Third part to be enjoyed by her without molestation of all my lands hereafter mentioned, that is to say... thirty one and a quarter acres at Hog Island north of the Harbour of Nassau and which tract originally contained forty one and a 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 hereinbefore 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, Roselia E. Price, Victoria 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...".

The Appellants and the Respondents all trace documentary titles to undivided shares in the land back to the Testator through the various named devisees. A table of descent from the Testator has been agreed between the Appellants and the Respondents, for the purpose of this appeal, and it is annexed to the Record herein. This table shows the relevant dates of death.

P.115

Pp.1-3

3. The Appellants, by their Petition, dated

Record

the 19th June, 1963 and supported by Affidavits, claimed to be owners in fee simple in possession of a 17/21sts undivided share in the land, and they asked for their title thereto to be investigated, determined and declared under the Quieting Titles Act, 1959. In a Statement of Facts, dated the 14th June, 1963 and filed in the action the Appellants traced their claimed documentary titles back to the Testator. This Statement was subsequently varied by an Amended Statement of Facts, dated the 30th October 1963, in which the Appellants withdrew their claim in the Petition to be entitled to a 17/21sts undivided share and substituted therefor a claim to be entitled to a 76/105ths undivided share.

Pp.5-7

Pp.11-13

4. The Appellants, in their Statement of Facts, acknowledged that the Respondents between them had a documentary title to a 20/105ths undivided share. This was made up as follows: Roselia (Roseliza) Price was one of the original devisees under the Testator's Will. Her 2/21sts undivided share (10/105ths) passed under her Will to her devisees, who were the Second and Third Respondents. Victoria Hanna was another original devisee. Her 10/105ths share passed under her Will, after a life interest, to her devisees, who were the nine children of the Second Respondent and who were represented in the action by the First Respondent. The remaining 85/105ths devolved as follows: Nehemiah Burrows (who was the Testator's eldest son) died testate, devising all his realty to his seven children, Anna Gill, Joh, Nehemiah Junior, Frederick, Harold, Elizabeth, and Ellen, in such a way as to create a joint tenancy. Five of these children were dead, leaving Anna Gill and Frederick surviving, and these two persons had conveyed the 10/105ths which had thus accrued to them to the First Appellants. Veronica Murray died testate, and her 10/105ths vested in her daughter Muriel, who had also conveyed to the First Appellants. Joseph Burrows died intestate and his original 10/105ths passed to his son Stanford, who likewise conveyed to the First Appellants. Miriam

Record

Stuart's 10/105ths had also reached the First Appellants, after passing from Miriam to her son Benjamin, from Benjamin to his wife Ivy Stuart and from Ivy to her sister, Sybil Gordon. By these various conveyances 40/105ths had passed to the First Appellants, who in turn conveyed 5/105ths to the Second Appellants. The remaining 45/105ths had all vested in John Burrows (the eldest son of Nehemiah, and referred to in the judgment and hereinafter as "Cousin John") by reason of the death intestate and without issue of Eliza B. Hall (10/105ths) and Percy Webb and Clarence Azgin (who between them had one third, i.e. 35/105ths). Cousin John died testate leaving the residue of his real estate to his five illegitimate children, Eleanor Parroti, Joycelyn Moxey, Mizpah, Frederick, and John Junior. Of these five, John Junior had died intestate and unmarried, so that his 9/105ths had escheated to the Crown, and the remaining four children, each with 9/105ths, were the Third, Fourth, Fifth and Sixth Petitioners. It was the realisation that John Junior's share had escheated to the Crown, rather than accrue to the four survivors, that had led the Appellants to amend their original claim to be entitled to a 17/21st undivided share.

Pp.8-11

5. The Respondents filed an Adverse Claim, dated the 11th July 1963. This was supported by affidavits. The Adverse Claim asserted that the Respondents were the owners in fee simple in possession of the whole of the land by reason of facts set out in papers filed in an earlier action. This earlier action (No. 288 of 1961) was one in which the late Roseliza Price and Cyril Price Robinson (then, as now, acting as representative of the devisees of Victoria L. Hanna) had Petitioned for the determination of their title to the land under the Quieting Titles Act, 1959. This Petition had been met by Adverse Claims filed by the First and Second Appellants, but it had not been pursued. A Statement of Facts, dated the 23rd July, 1962, was filed in support of the earlier Petition. It asserted that Roseliza Price and

P.14

Record

her sister, Victoria L. Hanna, had entered into full free and undisturbed possession of the land from and after the death of the Testator (that is, before the death of the Testator's widow, Elizabeth) and that they had continued in possession of it, exercising full rights of ownership over it, until the death of Victoria L. Hanna on the 2nd October, 1945. Further, neither of the Petitioners was ever appointed executor or executrix of the Will of the Testator, or had ever held the position of personal representative in his estate, or had ever been in a position of trust so as to protect the interests of the other devisees under the Testator's Will. An abstract of title filed with the Statement of Facts traced the documentary title of Roseliza Price and the devisees of Victoria L. Hanna. It agreed with the acknowledgment by the Appellants that they had such a title to a 20/105ths undivided share. By their joint affidavit filed in the present action, the Second and Third Respondents deposed that they were the successors in title of the late Roseliza Price in relation to the land, by virtue of the provisions of the Will of Roseliza Price.

Pp.14-18

Pp.8-9

6. Two main question thus fell to be decided in the action. The first was as to whether the parties had made out their respective claims to a documentary title to the land. The second was as to whether, regardless of documentary titles, the Respondents had established adverse possession such as would entitle them to the whole of the land by reason of the law of limitation of the actions.

7. On the first question the learned trial Judge (Scarr J.) in his judgment dated the 19th December 1963 found the documentary title to be held by way of tenancy in common (and subject to certain advertisements and notices being made) as follows:

P.30 ls.8-15

Record

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
	105

The difference between this finding and the claims put forward by the parties stemmed from the learned Judge's finding that Clarence Azgin not only died intestate and without issue, but was illegitimate. His one-sixth share therefore did not pass to the Third, Fourth, Fifth and Sixth Appellants through Cousin John, but escheated to the Crown. Thus Cousin John's children took 27½/105ths instead of 45/105ths and of the 27½/105ths 5½/105ths escheated to the Crown through John Burrows Junior. The Appellants conceded that Clarence Azgin had been illegitimate, and that the Crown (which did not appear in the action) was entitled to 23/105ths. These Appellants do not seek to appeal against the learned Judge's findings as to the distribution of the shares.

P.22 ls.7-11

P.22. l.8

P.20 ls.28-29

8. Evidence was given by the Respondents as follows:

P.59

(a) Edith Augusta Price said that she was the daughter of Roseliza Price and spoke, partly from memory and partly by way of family tradition, as to the Burrows family pedigree. Miriam Stuart was her youngest aunt and had lived with her mother (Roseliza Price) who had nursed her, Miriam. The Testator died when the witness was 18/20 years old. He owned land at Hog Island but he neither worked the land nor had anyone working it for him. He lived at Moore's Island and spent most of his time there. The witness often went to Hog Island as a child. In those

P.61 ls.15-16

P.62 ls.13-14

P.62 ls.34-35 and ls.24-25

Record

days there was no house on the land. The witness's father and mother had fields there. P.63 ls.3-6
Aunt Hanna (i.e. Victoria L. Hanna) was away then, her husband being a Police Constable at Inagua. None of the witness's family worked the land until Aunt Hanna came back, which she did before the Testator died. She (Aunt Hanna) had a lot of people working for her on the land, and the witness's father kept sheep and goats there. When the Testator died, father, mother and Aunt Hanna were still working on the land. Neither before nor after 1913 did any aunts or uncles work on the land. Neither Percy Webb nor Clarence Azgin ever worked the land or employed anyone to work there. Both Percy and Clarence left Nassau before the Testator died. Percy never returned, and Clarence only came back once, but did not then visit Hog Island. The witness had never seen Uncle Nehemiah there or employing men there. Nehemiah's wife Ellen had ten children and never visited Hog Island. Aunt Eliza (Hall) never worked there or employed men there. Uncle Joseph (Burrows) left Nassau before the land was bought. He never worked the land, nor did his daughter: Sandford (Standord) had never been there or employed men there (the Respondents asserted that Stanford was not Joseph's son, but his grandson, by a daughter). Aunt Miriam never worked there or employed anyone, but her daughter Setella (Benjamin's sister) used to go to the land with the witness and her mother (Roseliza Price). The witness's mother continued to work the land until she became disabled some seventeen to twenty years ago, but thereafter she employed people there and the witness continued to visit. The witness had never seen Cousin John at Hog Island, and he never employed anyone there. The same was true of Cousin John's children. After the Testator died Roseliza Price built a two roomed house on the land. The witness was then a grown child, and she, her sister, her mother and Aunt Hanna lived there on two occasions. They had sick children to take in the sea. Alpheus Miller and his wife were put on the land as caretakers by Roseliza Price, and before they went there

P.62.ls.30-31
P.63.ls.11-12
P.63.ls.33-34
P.64.ls.6-8
P.65.ls.16-18
P.67.ls.2-5

Record

Walter Ferguson was there. Walter Lightbourne and William Hall were appointed as caretakers by Roseliza after the latter was ill. The witness did not think they farmed the land, but they used to shoot over it. Henry Butler also used to shoot there and help Roseliza. After
P.67.11s. 23-37 Roseliza was ill she always had someone on the land. Roseliza grew various crops on the land
P.68.1s.1-13 and she and Aunt Hanna had several fields of three to four acres each. Aunt Hanna stopped working the land a few months before Roseliza. No-one ever tried to stop Roseliza or Aunt Hanna or interfere with them. The witness lived with Roseliza all her days and no relative ever made any claim. After Roseliza stopped working there only her people worked it, and they gave Roselize produce. The witness knew that the Testator had left the land to her mother, uncles and aunts, but since his death only Roseliza and Aunt Hanna had worked the land. Roseliza would have been glad of help.

P.69. 1.14 In cross-examination the witness said she was born in 1895 or 1894. Uncles, aunts and cousins would have been welcome if they had gone onto the land, but they did not. She agreed that many people went over to the Island for swimming and shooting and for collecting coco plums and tops. She had never put anyone off
P.70 1.20 the beach. Roseliza had said that she was
P.72 1s.22-30 holding on for the brothers and 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 wrote to them. When she got no answer and saw they were disinterested she became satisfied and carried on by herself.

P.74 1s.6-14 In answer to the learned Judge the witness said the land was not worth much at the time of the Second World War. That is why nobody bothered with it except her family. Whilst Roseliza's brothers and sisters were alive she (Roseliza) said she was holding the land for her brothers and sisters, but when they died she never said it. Aunt Hanna did not agree: she said it cost her too much. She was not concerned

Record

over brothers and sisters.

(b) Beatrice Louise Lightbourne said that she was Edith Augusta Price's sister, and was nearly three years older than the latter. As a school girl the witness went pretty often after school with Roseliza to Hog Island. The house was built by Roseliza and Aunt Hanna, and the witness used to stay there, at times for twelve weeks continuously, with Aunt Hanna She (the witness) had a sick child with her. Aunt Hanna continued to go to the land until about two years before her death in 1945. She then sent other people. Roseliza continued to go after Aunt Hanna's death. The witness had never seen any other family members on the land except Roseliza and Aunt Hanna. Aunt Hanna's husband farmed, but he kept to his adjacent ten acres. The witness's father did not farm the land. In cross examination the witness said that Cousin John's children never went to the Island, so far as the witness saw. Only Setella Carey (Miriam's daughter) and Annie Sands (Aunt Hanna's daughter) went over. The produce from the Island was eaten by Roseliza, Aunt Hanna and the witness and her sister. It was not sold, although Roseliza (who was a nurse) gave food to friends and patients. The method of cultivation was to use fields until they were worked out and then leave them fallow while they cultivated new fields.

P.75 l.6
P.75 ls.32-P.76 ls.1-3
P.76 l.25
P.78 l.20
P.79 l.28
P.81 ls.20-28

9. Other witnesses testified for the Respondents as follows:

(a) Alpheus Miller gave evidence to the effect that he had been sent on to the land by Roseliza to perform services there, as far back as 1925. Later in 1954 he started farming there, on a share-cropping arrangement, paying one third to Roseliza. Other people were farming the land on the same arrangement.

P.83 ls.25-31 and P.84 ls. 17-29

(b) Rudell Miller had worked a farm on Hog Island since 1955. Her husband paid to Roseliza one third of the money he got from selling vegetables. The one third was now paid to the

P.86 ls.3-26

Record

Second and Third Respondents.

P.87 ls.4-10 (c) Cyril Harcourt Robinson said that he was the Second Respondent's son, and was 51 years of age. He went to Hog Island two or three times
P.88 ls.15-16 a week as a boy, with Roseliza. Once in a while Mrs. Stuart (i.e. Miriam) went to the land when she visited Nassau, but she did no work
P.89 ls.4-6 there. In cross examination he agreed that the land was not farmed commercially: they did not produce enough to send to market. He remembered one occasion when Cousin John took Roseliza across by boat. He was sure that Roseliza intended to keep the land for herself after her brothers and sisters left and never came back.

P.94 ls.24-96-94 (d) Frederick Dean Phillips, a clerk in the Registrar's Office, produced files on the estates of Nehemiah Burrows, Benjamin Stuart, Ivy Stuart, John Burrows, Veronica Murray, Joseph Hopeful
P.113 11s.18-21 Burrows, Eliza Hall, Percy Webb, Clarence Azgin, John Alexander Burrows and Annie Elizabeth Sands. The earliest reference to Hog Island in the executors or administrators' oaths sworn in these estates was in 1956.

P.90-94 and 96-97 (e) Sybil Ford (daughter of the Second Respondent), Clifford Dean, Hosea Ferguson, Alberta Moss, and Edward Leroy Butler also gave evidence as to user of the land by Roseliza Price and Victoria Hanna. Florence Smith gave
P.113 evidence that she had searched for birth certificates of Miriam's children.

10. Various documentary exhibits were tendered by the Respondents. Of these by agreement the following only have been included in the Record.

Ex.A.1 P.140 (a) Certified copy of the last Will of Victoria Louise Hanna dated the 34rd February, 1940, together with a certified copy of the grant of probate in the same estate, dated the 2nd October, 1945. The Will appointed "my daughter Annie Elizabeth Sands and my niece Beatrice Louise Lightbourne" as executrices, and devised specifically:

Record

"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 Sands for the term of her natural life and after her decease to "a group of persons who were referred to as the testatrix's nieces and nephews, but who were in fact the children of the Second Respondent.

10 The Will also gave various benefits to the testatrix's niece, "Satella Carey".

(b) Certified copy of a deed of assent by Beatrice Louise Lightbourne, vesting the real property of Victoria Hanna in the devisees named in the latter's Will. The assent was dated the 11th November, 1961. Beatrice Lightbourne assented as sole surviving representative (Annie Sands had died on the 28th September, 1949). Ex. A.2 P.144

(c) Certified copy of the executrix's oath
20 sworn by Sarah Ann Elizabeth Burrows in the estate of Nehemiah T. Burrows deceased and dated the 11th February 1919. This had annexed thereto a schedule of real property of the deceased, but the only land mentioned was at Dowdeswell Street, Nassau. Ex. A.4(2) P.147

(d) Certified copy of the last will of Roseliza Price dated the 30th March 1962, together with a certified copy of the grant of probate in the same estate, dated the 27th November, 1963. The
30 will purported to devise specifically: "all my land at Hog Island in the Bahama Islands". Ex. 20 P.150

(e) Certified copy of a deed of assent in the estate of Roseliza Price dated the 3rd December, 1963. Exh. A.21 P.154

11. The Appellant Eleanor Parroti gave evidence. She said that she was the daughter of Cousin John and the granddaughter of Nehemiah Burrows, and was 37 years of age. Her father went onto Hog Island and he received produce from Roseliza and Aunt
40 Hanna. After Cousin John's death Roseliza and Aunt Hanna would call the witness and send for her P.97 l.28 P.98 ls.1-9

Record

P.98 ls.10-20 to collect produce. After Aunt Hanna died in 1945 Roseliza gave the witness's family a third of what was collected, until 1955. Cousin John was a stevedore and frequently took Aunt Hanna across to Hog Island by boat. He also helped to repair the house on the land. The witness's deceased brother John often used to go on the land to collect coco plums.

In cross-examination the witness said that her father took her to Hog Island once. She had been there for picnics. Her father always said he had an interest there, and this was well known in the family. She did not take the produce of the land as a present: she thought it was because her family had a share. After father died Roseliza had told the witness and her mother that the whole (i.e. the wider family group) had land on the island. In the 1950's rumours were heard that Muriel had sold her share. When Roseliza stopped giving produce in 1955 they did not ask for it because they did not wish to upset Roseliza.

P.99. l.12
P.100 l.23

12. Other witnesses testified for the Appellants as follows:

P.102 ls.10-28 (a) Adelle Evans said that she lived with Cousin John until he died in 1939, and that she had children (the Third, Fourth, Fifth and Sixth Appellants) by him. Cousin John was a stevedore and farm worker on Hog Island. He rowed Aunt Hanna over. He took produce from the farm, and after he died Aunt Hanna still sent produce. He repaired the house on the island. Her deceased son John went over to Hog Island whenever he could: he was drowned going over.

P.103 ls.9-11

In cross-examination the witness said she had never been to the Burrows' land on Hog Island. Cousin John had offered to take her but she never had the time. He brought back produce three or four times a year. Aunt Hanna sent produce perhaps twice a year. Roseliza continued to send produce. This stopped in 1954, but the witness did not take any action because Roseliza was old.

P.103 l.24

Record

When Cousin John died the witness did not tell the lawyer that the deceased owned land at Hog Island, although she did tell him that there was other property beside Dowdeswell Street. P.105 ls.1-5

In answer to the learned Judge the witness said that the Respondent's witnesses lied when they said Cousin John never went to Hog Island. P.106 ls.14-20

(b) Emerald Alice Pratt said that she was aged 54 and was the daughter of Sarah Ann Elizabeth Davis Burrows, who was the second wife of Nehemiah Burrows. He had children by his first wife, and the witness lived with them. Nehemiah was a farmer on Hog Island and received rent from a house in Dowdeswell Street. She had been with Nehemiah, digging potatoes in Hog Island. Roseliza and Aunt Hanna were there. She met Cousin John in about 1919 - he and the witness's mother used to go to the land. After mother died in 1921 John continued to go, and he gave the witness vegetables until he died. P.106 ls.29-33 P.107 ls.11-16 P.107 ls.23-25

(c) Patrick J. Clarendon Davis said he was 79 years of age, and had known Nehemiah, Cousin John, Roseliza and Aunt Hanna. Nehemiah had married the witness's aunt, Sarah Ann. The witness had been to the Hog Island land "over and over". Nehemiah farmed there, with Roseliza and Aunt Hanna. Nehemiah said he had inherited the land. The witness understood that Cousin John used to go there. P.109 ls.5-11

(d) N.F. Avanha, a surveyor gave evidence of survey of the land

13. Various documentary exhibits were tendered by the Appellants. Of these, by agreement, the following only have been included in the Record.

(a) Certified copy of a conveyance, dated the 3rd June 1896, between John A. Burrows and Daniel H. Hanna. This related to the sale of the ten acre portion of the land by the Testator to his son-in-law. Ex. P.3 P.116

(b) Certified copy of the last Will of John Ex P.4A P.118

Record

Alexander Burrows dated the 22nd November, 1912, together with a certified copy of letters of administration with the will annexed, dated the 27th June, 1917.

Ex. P.5 P.122 (c) Certified copy of the last will of Nehemiah T. Burrows, dated the 5th April, 1917 together with a certified copy of the grant of probate in the same estate, dated the 15th February 1919.

Ex. P.44 P.124 (d) Certified copy of the last will of John Burrows (Cousin John) dated the 11th August 1938, together with a certified copy of the grant of probate in the same estate, dated the 11th September, 1960.

Ex. P.49A P.127 (e) Affidavit by Anna Louisa Burrows Gill (surviving sister of Cousin John). This deposed that Clarence Azgin was the illegitimate son of Veronica Burrows. After his mother's death he lived with his grandparents (the Testator and his wife), but went to Florida in 1920. He died in 1922 never having married.

Ex. P.52 P.129 (f) A transcript of evidence given by the late Roseliza Price and by the Third Respondent, Edith Augusta Price, in an action (No.17 of 1960) in which Roseliza petitioned the Supreme Court of the Bahamas for a declaration under the Quieting Titles Act, 1959. This action related to the western boundary of the Burrows tract on Hog Island, as that boundary is shown on the plan. In this evidence Roseliza asserted that she had worked the Testator's tract and had built the house. She did not say that Aunt Hanna had worked on the land. She acknowledged that the land had been left to her together with her brothers and sisters. She could not take the shares of her brothers and sisters because they had not been given to her, but her brothers and sisters were dead. She had paid all the expenses and after their deaths she considered the land hers. She had been told that Aunt Hanna had left her share to her (Roseliza's) grandchildren.

14. The relevant statutory provisions are as

Record

follows.

The Declaratory Act c.2 of the 1957 Edition of the Statute Law of the Bahama Islands (Act dated the 2nd December 1799)

"s.2 The common law of England, in all cases where the same hath not been altered by any of the Acts or Statutes enumerated in the Schedule to this Act or by any Act... is, and of right ought to be, in full force within the Colony, as the same now is in that part of Great Britain called England".

"s.3(1)

The Acts and Statutes enumerated in the first part of the Schedule to this Act are, and of right ought to be, in full force and virtue within and throughout the Colony, as the same would be if the Bahama Islands were therein expressly named, or as if the aforesaid Acts and Statutes had been made and enacted by the legislature".

(The Acts enumerated in the first part of the Schedule include the Act 21 James I, Ch.16 - Limitation of Actions).

"(2) It is hereby declared that the Acts and Statutes enumerated in the first and second columns of the second part of the Schedule to this Act are in accordance with the provisions of the enactments set out in the third column of the second part, similarly in full force and effect throughout the Colony."

(This subsection was added by s.1 of c.1 of 1957. The second part of the Schedule includes the Acts 3 and 4 William IV Ch.27; 1 Victoria Ch.28; and 37 and 38 Victoria Ch.57. These Acts became respectively in the 1957 Edition the Real Property Limitation (No.1) Act Ch.214; the Real Property Limitation (no.2) Act; and the Real Property Limitation (1874) Act.)

Record

The Quieting Titles Act, 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 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 is 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 c.214 of 1957

"s.1 The Words and Expressions hereinafter mentioned, which in their ordinary Signification have a more confined or different meaning, shall in this Act, except where the Nature of the Provisions or the Context of the Act shall exclude 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...; and the word "Rent" shall extend to all Services and Suits for which a distress may be made... 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 claiming became entitled to the Estate or Interest claimed, as Heir, Issue in Tail, Tenant by the Courtesy of England, Tenant in Dower, Successor, special or general Occupant, Executor,

Record

Administrator, Legatee, Husband, Assignee, Appointee, Devisee, or otherwise....."

"s.3. In the Construction of the 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 Interest, 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 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....."

"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 Co-partners, 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

Record

the Benefit of any Person or Persons other than the Person or Persons entitled to the other, Share or Shares of the sums 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 against 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 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, c.216 of 1957

"s.1 After the commencement of this Act no person shall make any 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

Record

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."

15. After dealing with thd documentary title the learned Judge turned to the Adverse Claimants' possessory claim. This was that time had commenced to run in their favour from the Testator's death in 1913. They claimed that Roseliza and Aunt Hanna entered into possession before he died. So far as two thirds of the devise were concerned the two sisters and their co-devisees became entitled to immediate possession on the death. So far as the one-third, of which the widow was life tenant was concerned, the same date applied because the widow never entered into possession. The first moment therefore when time would have run out in favour of the Adverse Claimants was the 23rd October, 1933.

P.30 1.25- P.32 1.15

P.31 1.39 - P.32 1.3

16. The learned Judge then considered what sort of possession was demanded by the Acts. He quoted Nepean v. Doe d. Knight (1837) 2 M & W 894 as authority for saying that simple effluxion of time was the general criterion. This being so he had to consider, first, whether the true owner had been stripped of possession, and second, whether the claimants had been in possession. As to the latter a claimant normally has to prove not only exclusive possession, but also that his acts were inconsistent with any retention of possession by the true owner. In the present case, however, the Adverse Claimants asserted that the remaining devisees had never entered into possession. If this was so the question of proving acts inconsistent with retention of possession did not arise. The view of the Petitioners was that, although this would be true as between owner and stranger, it was not true as between tenants in common. In such a case the tenants in common in possession were

P.13 ls.24-33

P.36 ls.7-12

P.36 ls.20-22

Record

required to prove dispossession of those who were not, and the standard of proof required of them in so doing was a high one. This view the learned Judge rejected, holding it to be
P.41 ls.6-8 directly contrary to the way in which Section 12 of c.214 had been interpreted by the Courts.

P.44 ls.7-21 17. Scarr, J. then agreed with the submission of the Petitioners that, on the facts of any case, it might be that tenants in common who had entered into possession did so for and on behalf of themselves and other tenants in common. He did not, however, agree that there was a presumption in favour of such co-tenants. He
P.44 ls.34-37 then turned to the facts, holding that neither Percy Webb, Clarence Azgin, Eliza Hall, Veronica Murray nor Joseph Burrows had ever entered into possession. Miriam Stuart paid occasional trips to the Island, but this did not amount to possession: at most it was mere entry under Section 10 of c.214. There was a conflict of
P.45 ls.9-40 evidence where Nehemiah was concerned but construing this in the most favourable light towards the Petitioners, it only carried them
P.48 ls.27-36 forward to Nehemiah's death in 1917. Nehemiah's share passed to his children as joint tenants, of whom two survived. The shares of Percy Webb and Eliza Hall passed to Cousin John as heir at law, on their deaths in 1923 and 1936, and there was again a conflict of evidence as to whether he had ever entered into possession. However, even if, again, the broadest view was taken in favour of the Petitioners, this carried them only to 1939, when Cousin John died. There was no vestige of reliable evidence that Cousin John's children (who took under his will) ever entered into possession. Clarence Azgin's share became liable to escheat by the Crown. On this aspect therefore the learned Judge concluded that with the possible exception of Nehemiah until 1917 and Cousin John until 1939, none of the Petitioner's predecessors in title ever took possession of any part of the land.

P.50 ls.106 18. As topossession by Roseliza and Victoria

Record

Hanna, the learned Judge was satisfied that by 1913 they were well established in possession by themselves alone. When their father died, they never dispossessed their co-tenants; they merely continued a previous occupation. As to the land itself, during the relevant period large areas were covered by rough bush or scrub, a great portion of it being undeveloped. It was difficult of access, comprised mostly of coral rock with only pockets of soil, and, from a monetary point of view, prior to the last War, it was practically worthless. Until the middle of the last War the two sisters or one of them or one of their family or employees crossed over to the land almost daily. The farming was rough, but for the first 20 years after 1913 it was quite extensive, with each sister having three, four or five fields each. It was not done commercially but rather for the needs of the families concerned. It was a type of farming which was in complete conformity with the character of the neighbourhood in those days. Bearing all these factors in mind, and considering the dictum of Lord O'Hagan on possession in Lord Advocate v Lord Lovat (1880) 5 A.C. 288, he was satisfied that the sisters had entered into exclusive possession of the land, which possession they had retained until their deaths, after which it was carried on by their successors in title. Petition No. 171 of 1960 had established that Roseliza and her family exercised considerable activity over her father's land. Roseliza had no quarrel with her brothers and sisters and would have welcomed them if they had come along. Nevertheless, whilst she was in possession, that possession was for her own benefit, and she was not there as agent for her co-tenants. Victoria Hanna also occupied the land for her own benefit; she did not agree that her brothers and sisters had any interest in it.

P.50 ls.24-27

P.52 ls.27-43

P.54 ls.19-29

P.54 l.39 - P.55 ls.1-6

P.56 ls.44 - P.57 l.4

P.57 ls.31-37

19. The learned Judge therefore concluded that the Adverse Claimants had established possession from 1913 until the present day for all the land and all the estates therein save for Nehemiah's 10/105ths share, when time began to run in 1917,

Record

and the Webb and Hall shares, when time began to run in 1939. He therefore dismissed the Petition.

20. It is respectfully submitted that the learned Judge erred in law in holding that, as between tenants in common, some of whom enter into possession and some of whom do not, it is not incumbent upon those in possession to prove dispossession of those not in possession. It is submitted that in such a case the tenants in possession must prove dispossesion; that the standard of proof demanded is a high one; and that in the present case such dispossession was not proved. It is further submitted, respectfully, that any entry by Roseliza and Victoria Hanna was, on the facts of the case, entry on behalf of themselves and their co-tenants. Alternatively, if it be found that Roseliza and Victoria Hanna had entered into exclusive possession for their own benefit then it is respectfully submitted that, on the facts, bearing in mind the nature of the land and the nature of the occupancy, such entry was entry in part only, and does not establish possession of the whole.

21. It is further submitted, respectfully, that the learned Judge erred in any event: in omitting to hold that Nehemiah's 10/105ths share was kept alive until 1939; in holding that Miriam did not enter into possession; and in holding that the possession of Roseliza and Victoria Hanna had been continued after their deaths by their successors in title. On the first of these points it is submitted that the learned Judge overlooked the fact that Cousin John was joint tenant until his death in respect of his father's share. On the third of these points it is submitted that, on the death of Victoria Hanna in 1945 there was no continuance of possession by her successors in title.

22. It is humbly submitted that this appeal should be allowed with costs and that the claim of the Appellants contained in their Petition (as this claim was subsequently amended) should be

Record

upheld alternatively that it should be upheld to the extent of that proportion of the land that the Appellants were properly entitled to claim, for the following among other

R E A S O N S

1. BECAUSE the Respondents failed to prove dispossession of the Appellants' predecessors in title;

2. BECAUSE any possession by Roseliza and Victoria Hanna was, on the facts, possession on behalf of all the tenants in common;

3. Alternatively BECAUSE if Roseliza and Victoria Hanna had exclusive possession, this was possession of part and not possession of the whole.

4. BECAUSE in any event the Respondents did not establish exclusive possession for the requisite period of twenty years.

GERALD DAVIES

No. 40 of 1964

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N :-

(1) PARADISE BEACH AND TRANSPORTATIO CO. LIMITED
(2) BEACH HEAD LIMITED
(3) ELEANOR PARROTI
(4) JOYCELYN MOXEY
(5) MIZPAH BURROWS
(6) FREDERICK BURROWS

Appellants

- and -

(1) CYRIL PRICE-ROBINSON (as representative of the devisees under the Will of Victoria Louise Hanna)
(2) BEATRICE LOUISE LIGHTBOURNE
(3) EDITH AUGUSTA PRICE

Respondents

CASE FOR THE SECOND APPELLANT

74096

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2.