

27, 1967

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
16 JAN 1967  
25 RUSSELL SQUARE  
LONDON, W.C.1.

IN THE PRIVY COUNCIL NO. OF 1967

ON APPEAL  
FROM THE

27 OF 1967

COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE  
GUYANA

BETWEEN:

A. P. SINGH,

(PLAINTIFF)  
APPELLANT

-and-

JNA MORETIMER, widow, individually  
and in her capacity as the Adminis-  
tratrix of the Estate of Dixie  
Electwood Mortimer, deceased.

(DEFENDANT)  
RESPONDENT

27 OF 1967

---

IN THE PRIVY COUNCIL ----- NO. OF 1967

ON APPEAL FROM  
THE COURT OF APPEAL OF  
THE SUPREME COURT OF JUDICATURE, GUYANA  
-----

BETWEEN:

A.P. SINGH,

(Plaintiff)  
Appellant

-and-

INA MORTIMER, widow, individually  
and in her capacity as the Adminis-  
tratrix of the Estate of Dixie  
Fleetwood Mortimer, deceased,

(Defendant)  
Respondent

---

ON APPEAL FROM  
 THE COURT OF APPEAL OF THE SUPREME  
 COURT OF JUDICATURE, GUYANA

BETWEEN:

A.P. SINGH;

(Plaintiff)  
Appellant

-and-

INA MORTIMER, widow, individually  
and in her capacity as the Adminis-  
tratrix of the Estate of Dixie  
Fleetwood Mortimer, deceased,

(Defendant)  
Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page in Record
<u>IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE</u>			
1.	Amended specially Indorsed Writ and Amended Statement of Claim	23.9.63	1 - 9
2.	Defence to Amended Statement of Claim	10.5.65	9 - 13
3.	Reply	5.6.65	13
4.	Notes of Trial Judge		14 - 41
5.	Judgment of Trial Judge	10.12.65	41 - 73
6.	Order on Judgment	10.12.65	74 - 75
7.	Order as to Costs	11.12.65	75 - 76

No.	Description of Document	Date	Page in Record
<u>IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE</u>			
8.	Notice of Appeal	19.1.66	76 - 80
9.	Judgment of the Court of Appeal	28.10.66	81 - 116 116 -129 129 -149
10.	Order on Judgment	28.10.66	150 -151
11.	Order granting conditional leave to appeal to Her Majesty's Privy Council	3.2.67	151 -154
12.	Exhibits as listed below		155 -168

LIST OF EXHIBITS TO BE INCLUDED IN THE RECORD

Exhibit Mark	Description of Exhibit	Date of Exhibit	By Whom Tended	Page in Record
"A"	Agreement of Sale	26.7.61	Plaintiff	155-157
"B"	Receipt for \$5.00	16.7.62	-do-	157
"C"	Death Certificate No. 44 of Hannah De Camp	23.2.60	Defendant	158
"D"	Certified copy of Transport No.675/1957	-	Plaintiff	159-163
"E"	Certified copy of Letters of Administration 94/63	-	-do-	163-164
"F"	O.G. advertisement of Transport No. 67 of 31.8.63	-	-do-	165-166
"G"	Copy of letter from Gomes & Gomes, Solicitors, to Defendant -5.4.63	-	-do-	167-168

LIST OF DOCUMENTS OMITTED FROM THE RECORD

No.	Description of Document	Date of Document
<u>IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE</u>		
1.	Specially endorsed Writ with Statement of Claim	23.9.65
2.	Affidavit verifying claim	18.10.65

LIST OF DOCUMENTS OMITTED  
FROM THE RECORD (CONTINUED)

No.	Description of Document	Date of Document
<u>IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE</u>		
3.	Affidavit of Defence	31.1.64
4.	Extension of Time	.7.64
5.	Defence	29.7.64
6.	Summons	25.8.64
7.	Affidavit in Support	25.8.64
8.	Affidavit in Reply	14.9.64
9.	Extension of Time	.5.65
10.	Extension of Time	5.6.65
<u>IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE</u>		
1.	Affidavit of Service	28.1.66
2.	Application for extension of time to file record	28.2.66
3.	Affidavit in Support	25.2.66
4.	Notice of intention to appeal to Her Majesty's Privy Council	17.11.66
5.	Petition for conditional leave to appeal to Her Majesty's Privy Council	17.11.66
6.	Affidavit in support of petition	17.11.66
7.	Authority to Solicitor	17.11.66

Settled by me this 4th day of April, 1967  
in the absence of appellants or his legal representative  
and in the presence of Solicitor for the respondent.

H. Maraj  
for Registrar.

27 OF 1967

IN THE PRIVY COUNCIL

NO. OF 1967

---

O N A P P E A L  
FROM THE  
COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE  
GUYANA

---

BETWEEN:

M. P. SINGH,

(PLAINTIFF)  
APPELLANT

-and-

INA MORTIMER, widow, individually  
and in her capacity as the Adminis-  
tratrix of the Estate of Dixie  
Fleetwood Mortimer, deceased.

(DEFENDANT)  
RESPONDENT

---

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

---

PROCEEDINGS ON HEARING OF ACTIONS

NO. 1

Amended Specially Indorsed Writ and  
Amended Statement of Claim.

In the High Court  
of the Supreme  
Court of Judica-  
ture.

ELIZABETH THE SECOND, by the Grace of God,

of the United Kingdom of Great Britain and

Northern Ireland, and of Her other Realms and

Territories, Queen, Head of the Commonwealth,

Defender of the Faith.

10

To: INA MORTIMER, widow,

of Airy Hall, Essequibo.

WE COMAND YOU that at 9 o'clock in the

forenoon on MONDAY the 20TH day of January, 1964,

you do appear before the Supreme Court of British

Guiana, at the Victoria Law Courts, Georgetown,

in an action at the suit of AJODHIA PERSAUD SINGH

AND TAKE NOTICE that in default of your so doing,

the plaintiff may proceed therein, and judgment

may be given in your absence.

20

WITNESS the Honourable JOSEPH ALEXANDER

LUCKHOO, Knight Chief Justice of British Guiana,

this 23rd day of September, in the year of Our

Lord one thousand, nine hundred and sixty-three.

No. 1  
Amended Specially  
Indorsed Writ  
and Amended  
Statement of  
Claim.

N.B.

In the High Court  
of the Supreme  
Court of Judi-  
cature

If the defendant desires to defend this  
action, she shall, not later than 11 o'clock  
in the forenoon of the day (not being a Sunday  
or Public Holiday) immediately preceding that  
fixed for her appearance, file an affidavit at  
the Registry at Georgetown, setting forth her  
defence, and serve a copy of such affidavit  
forthwith after filing the same, on the plaintiff.

No. 1  
Amended Specially  
Indorsed Writ  
and Amended  
Statement of Claim  
(Cont'd)

- 10 AMENDED STATEMENT OF CLAIM:

Amended Statement  
of Claim

1. On the 13th day of September, 1963,  
the plaintiff entered opposition to the passing  
of transport by the defendant in her capacity as  
the administratrix of the estate of Dixie Fleetwood  
Mortimer, deceased, for one undivided third part  
or share of and in Plantation Endeavour contain-  
ing 118 acres situate on the northern side of  
Hogg Island, in the Essequibo River to and in  
favour of herself the said Ina Mortimer for one  
20 undivided third part or share of the said property,  
and the minors George Mortimer, Paul Mortimer and  
Errol Mortimer for the remaining two undivided  
third parts or shares of and in the said property



in the terms following:-

"BRITISH GUIANA.

COUNTY OF DEMERARA.

TO: Ina Mortimer, widow,  
in her capacity as the administratrix  
of the estate of Dixie Fleetwood  
Mortimer, deceased,

Lot 57 New Road,  
Vreod-en-Hoop,  
West Bank, Demerara,

10

-and-

TO: The Registrar of Deeds.

TAKE NOTICE that AJODHIA PERSAUD SINGH,

of lot 37 Brickdam, Stabroek, Georgetown, Demerara,

oppose the passing of a certain conveyance by way

of a TRANSPORT advertised in the Official Gazette

of the 31st day of August, 1963, and numbered 67

therein for the counties of Demerara and Essequibo,

20 by you the said Ina Mortimer, in your capacity

as the administratrix of the estate of DIXIE

FLEETWOOD MORTIMER, deceased, Letters of Adminis-

tration whereof was granted to you by the Supreme

Court of British Guiana on the 16th day of March,

1963, in favour of yourself, the said INA MORTIMER

for one undivided third part or share of and in

the said property hereinafter described, and the

minors GEORGE MORTIMER, PAUL MORTIMER and ERROL

In the High Court  
of the Supreme  
Court of Judi-  
cature

---

No. 1  
Amended Statement  
of Claim.  
(Cont'd)

MORTIMER, all of lot 57 New Road, Vreed-en-Hoop,  
 West Bank, Demerara River, for the remaining  
 two undivided third parts or shares of and in  
 the said property, you and then being the heirs  
 ab intestato of the said deceased, being -

"One undivided half part or share  
 of and in Plantation Endeavour  
 containing 118 (one hundred and  
 eighteen) acres, situate on the  
 northern side of Hogg Island in  
 the Essequibo River, in the county  
 of Essequibo and Colony of British  
 Guiana, the said plantation being  
 shown on a plan by J. Phang, Sworn  
 Land Surveyor, dated the 5th March,  
 1955, and deposited in the Deeds  
 Registry on the 20th day of September,  
 1956, and on a plan by J.A.P. Bownhill,  
 Sworn Land Surveyor, dated June 1898,  
 and recorded in the Department of  
 Lands and Mines as Plan No. 1109;"

as fully described in the said Official Gazette  
 of the 31st August, 1963, numbered 67, and that  
 the following are his reasons for opposition:

1. That on the 26th day of July, 1961,

the Opponent entered into an Agreement of Sale and  
 Purchase with the abovenamed Dixie Fleetwood  
 Mortimer, also called Dixie Fleetwood Trotz, then  
 alive, and one Hannah Beatrice De Camp, both of

In the High Court  
 of the Supreme  
 Court of Judi-  
 cature

---

No. 1  
 Amended Statement  
 of Claim.  
 (Cont'd)

10

20

Lot 57 New Road, Vreed-en-Hoop, aforesaid, to  
purchase from then jointly:

"Plantation Endeavour adjoining  
Pln. Johanna in Hogg Island  
with the scrap iron, brass and  
other appurtenances thereon",

for a sum of \$2,500.00 and on the said 26th July,  
1961, the Opponent paid to the said Dixie Fleetwood  
Mortimer, the sum of \$100.00 on account of the  
10 said purchase price, the balance to be paid on  
the passing of transport.

2. That on the 16th day of July, 1962,  
the Opponent paid to you, the said Ina Mortimer,  
a sum of \$5.00 further on account of the purchase  
price of the said property, leaving a balance of  
\$1,145.00 for the undivided half part or share of  
and in the said property of the said Dixie Fleetwood  
Mortimer, deceased. The said sum of \$5.00 was paid  
to you, as administratrix of the estate of the  
20 said Dixie Fleetwood Mortimer, deceased.

3. That on the 5th April, 1963, the  
Opponent caused his Solicitors Messrs. Gones  
& Gones, to write you, the proponent herein,  
calling upon you in your capacity aforesaid to  
take steps to pass transport to the Opponent of

In the High Court  
of the Supreme  
Court of Judi-  
cature

---

No. 1  
Amended Statement  
of Claim,  
(Cont'd)

one undivided half part or share of and in the  
said Plantation Endeavour aforesaid by the 20th  
April, 1963, which said letter was sent to the  
proponent by prepaid registered post, with  
acknowledgement of receipt and which was received  
by you the proponent on the 8th April, 1963, up  
to the date hereof, you the proponent have failed  
and neglected to comply with the request contained  
in the said letter of the 5th April, 1963.

10

4. That it is not competent for you the  
said Ina Mortimer in your capacity aforesaid to  
seek to pass transport of the said property to  
yourself and the minors George Mortimer, Paul  
Mortimer and Errol Mortimer, as heirs, ab intes-  
tato of the said deceased. The said transport  
should be passed to the Opponent in pursuance and  
completion of the aforesaid agreement of sale and  
purchase dated 26th July, 1961.

5. Notice of Opposition has been duly given.

20

6. The Opponent claims costs.

Dated this 13th day of September, 1963.

Carlos Gomes

Solicitor for the Opponent.

In the High Court  
of the Supreme  
Court of Judi-  
cature

---

No. 1  
Amended Statement  
of Claim.  
(Cont'd)

2. The plaintiff repeats and relies on

the said Notice and Grounds of Opposition as if  
the same were herein set out verbatim et scriatim.

---

No. 1  
Amended Statement  
of Claim  
(Cont'd)

The plaintiff's claim is against the defendant

for -

- (a) specific performance of the contract of sale and purchase dated the 26th day of July, 1941, and made between the plaintiff, and the said Dixie Fleetwood Mortimer in respect of one undivided half of Plantation Endeavour, Hogg Island in the county of Essequibo, for the purchase price of \$1,250.00;
- (b) a declaration that the said opposition entered on Friday the 13th day of September 1963, by the plaintiff to the passing of the transport advertised in the Official Gazette of the 31st day of August, 1963, by the defendant in her capacity as the administratrix of the estate of Dixie Fleetwood Mortimer, deceased, to herself and George Mortimer, Paul Mortimer and Errol Mortimer, and numbered 67 therein for the counties of Demerara and Essequibo, is just, legal and well founded.
- (c) an injunction restraining the defendant, or her agent or attorney from passing the said transport, or

in any way disposing of the said property in respect of her said one undivided third part or share therein;

- (d) In the alternative, the sum of \$5,000.00 as damages for loss of bargain;
- (e) such other order as the Court may deem fit.

In the High Court of the Supreme Court of Judicature.

No. 1  
Amended Statement of Claim.  
(Cont'd)

Carlos Gomes

10

Solicitor for the Plaintiff.

And the sum of \$83.10 (or such sum as may be allowed on taxation) for costs. If the amount claimed is paid to the plaintiff, or his Solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This Writ was issued by Carlos Gomes,

Solicitor, of and whose address for service and place of business is at the offices of GOMES & GOMES, Solicitors, Lot 2, Croal Street, Stabroek, Georgetown, Demerara, Solicitor for the plaintiff who resides at lot 37, Brickdan, Stabroek, Georgetown.

20

Carlos Gomes

Solicitor.

The defendant is sued individually, and in her capacity as the administratrix of the estate of Dixie Fleetwood Mortimer, deceased,

letters of administration whereof were granted to her on the 16th March, 1963.

AUTHORITY TO SOLICITOR TO ACT:

I, AJODHIA PERSAUD SINGH, of Lot 37, Brickdam, Stabroek, Georgetown, the abovenamed plaintiff, hereby authorise the abovenamed CARLOS GOMES, Solicitor, and/or ANDREW GOMES, Solicitor, of and whose address for Service and place of business is at the offices of GOMES & GOMES, Solicitors, of Lot 2, Croal Street, Stabroek, Georgetown, Demerara, to act as my Solicitor and/or Solicitors on my behalf in this matter, and to receive all moneys in connection therewith on my behalf, and give receipts for same.

Dated this 23rd day of September, 1963.

A.P.SINGH,  
PLAINTIFF.

Delivered this 7th day of August, 1964.

No. 2

20 DEFENCE TO AMENDED STATEMENT OF CLAIM:

1. The defendant admits that the plaintiff entered opposition as alleged in paragraph 1 of the Statement of Claim, but

In the High Court of the Supreme Court of Judicature

No. 1  
Amended Statement of Claim.  
(Cont'd)

Authority to Solicitor to Act

In the High Court of the Supreme Court of Judicature

No. 2  
Defence to Amended Statement of Claim.

does not admit the statements alleged in the  
said opposition.

In the High Court  
of the Supreme  
Court of Judi-  
cature.

---

No. 2  
Defence to Amen-  
ded Statement of  
Claim (Cont'd)

2. The defendant says that the document  
dated 26th July, 1961, containing the alleged  
agreement of sale was never signed by Hannah  
Beatrice De Camp one of the persons proposed as  
constituting the vendor party, and there is no  
memorandum in writing sufficient to satisfy the  
Statute of Frauds, proviso (d) to section 3 (D)  
10 of the Civil Law of British Guiana, Chapter 2.

3. In the said document dated the 26th  
July 1961, containing the terms of the proposed  
sale, the proposed vendor was Dixie Fleetwood  
Mortimer and Hannah Beatrice De Camp . At the  
said date Hannah Beatrice De Camp was already dead  
and the contract of sale was never concluded,  
and the said document is null and void and of no  
effect.

4. The defendant denies that the Plaintiff  
20 ever entered into an agreement with Dixie Fleetwood  
Mortimer and Hannah Beatrice De Camp as alleged  
in paragraph 1 of the aforementioned Reasons of



Opposition or that the plaintiff paid the  
defendant \$5.00 further on account of the sale  
as alleged in paragraph 2 of the said Reasons.

The plaintiff, after the death of the defendant's  
husband not the defendant on several occasions  
and pressed upon her the sum of \$5.00 which he  
said he owed the defendant's deceased husband.  
Eventually the defendant accepted the said sum  
and signed a document which the plaintiff said  
10 and the defendant believed was a receipt, but which  
the defendant did not read. The defendant was not  
at the time of the said receipt of \$5.00 the  
administratrix of the estate of her said deceased  
husband.

5. The proposed sale as set forth in the  
aforesaid document of 26th July, 1961 was for the  
whole of Plantation Endeavour by Hannah Beatrice  
De Camp and Dixie Fleetwood Mortimer jointly as  
vender for the sum of \$2,500.00, to the plaintiff  
20 as purchaser and it is not competent for the  
plaintiff to divide the said parcels or the  
purchase price into separate halves or to

dissociate the deceased De Camp from the  
deceased Mortimer for the purpose of maintaining  
this action.

6. The defendant is unaware of the  
alleged agreement with D. Yhap referred to in  
the "Condition" in the aforementioned document  
of 26th July, 1961, or the terms of the said  
agreement, or whether it has been fulfilled or  
broken, or rescinded and the defendant does not  
10 know whether the sum of \$950.00 was ever required  
or advanced.

7. The defendant is willing to repay to  
the defendant the two sums of \$100.00 and \$5.00  
mentioned in the Reasons of Opposition if they  
be found to be due to the plaintiff by the estate  
of the deceased Dixie Fleetwood Mortimer.

8. The defendant will contend that the  
plaintiff's Statement of Claim does not disclose  
any cause of action against the defendant in  
20 either of the two capacities mentioned therein.

Laurie T. Persaud

Solicitor for Defendant.

S.L.V. Batenburg Stafford.

OF COUNSEL

Georgetown, Demerara,

10th May, 1965

In the High Court  
of the Supreme  
Court of Judi-  
cature

---

No. 2

Defence to Amen-  
ded Statement  
of Claim (Cont'd)

---

No. 3

R E P L Y:

The plaintiff joins issue with the  
Defendant in her defence.

Dated this 5th day of June, 1965.

Carlos Gones

10

Solicitor for the Plaintiff.

J.O.F.Haynes,

Of Counsel.

---

In the High Court  
of the Supreme  
Court of Judi-  
cature

---

No. 3

Reply dated 5th  
June, 1965

NOTES OF TRIAL JUDGE, BOLLERS, J.

In the High Court  
of the Supreme  
Court of Judicature

1.50 p.m. - Court opens.

Mr. J.O.F. Haynes, Q.C., instructed by Mr. Carlos

No. 4  
Notes of Trial  
Judge Bollers, J.

Gomes for plaintiff.

Mr. S.L. Van B. Stafford, Q.C., instructed by

Mr. L. Persaud for defendant with Mr. John

Stafford.

Mr. Haynes - The defendant is the administratrix  
of the Estate of Dixie Fleetwood Mortimer.

Submission by  
Counsel for  
Plaintiff

Mortimer had a sister and her name was Hannah

10 Beatrice Camp. Mortimer and Camp were the

co-owners of Plantation Endeavour, Hogg Island.

Hannah predeceased Dixie and after she died Dixie

signed a document on 26th July, 1961 and that is

the document that is the subject matter of this

litigation. In that document Hannah is referred

to as if she were alive; but she did not sign and

a space was left for her signature. However, Mortimer

signed. On the face of it the document purported

to sell the whole interest in Plantation Endeavour

20 by a person who was the owner of an undivided half

of the estate.

The whole case is that the effect of the

document is to give the plaintiff-purchaser the right to demand a conveyance of whatever interest Mortimer possessed in the property with a right of abatement.

Supposing both vendors had signed what would have been the legal effect of Mortimer's signature. Co-owners have undivided shares. So when both signed the legal consequence is that each signatory sells his undivided interest.

10 If they do it together the effect of it is 2 contracts. It should not be different if he alone signs. He is selling whatever interest he has in the Estate.

After Dixie died his wife the defendant took administration of this Estate and then she sought to vest title in the one undivided half of the Estate to herself and other heirs of the deceased.

The plaintiff then opposed by way of  
20 opposition action; para. 6 of defence.

AJODHIA PERSAUD SINGH on his oath saith:-

I am the plaintiff and I knew Dixie

In the High Court of the Supreme Court of Judicature

---

No. 4  
Notes of Trial  
Judge, Bollers J.  
(Cont'd)

Submission by  
Counsel for  
Plaintiff(Cont'd)

In the High Court of the Supreme Court of Judicature

---

No. 5  
Evidence of 1st  
Witness, A.P.  
Singh

Mortiner; I knew him about 2 years before he  
died. In 1961, I lived at 37, Brickdam. Mortiner  
had his address at Vreod-en-Hoop. I did not  
know Hannah Beatrice De Camp. I know this document,  
tendered, admitted and marked Exhibit "A". Mortiner  
and I signed the document. It was never signed  
by Hannah Camp. One of the witnesses to the docu-  
ment who signed was Ina Mortiner and she signed it.  
Ina Mortiner is the defendant. I do not know the  
10 Mr. Yhap referred to in the document. Mortiner did  
not show me the agreement of sale with Yhap; he  
merely told me that he and his sister had borrowed  
money from Yhap and that is why they had made an  
agreement of sale with Yhap and he had to pay back  
that money. The document itself states that if it  
becomes necessary I the (purchaser) would pay \$950.00  
to Yhap. I am prepared to do this. I never got  
possession of the property.

Hogg Island is in the Essequibo River. I

20 know Plantation Johanna in Essequibo. Dixie  
Mortiner died in 1962. I know this document which  
is in the handwriting of the defendant. It is

In the High Court  
of the Supreme  
Court of Judicature

---

No. 5

Evidence of 1st  
Witness, A.P.  
Singh (Cont'd)

signed by the defendant. She asked me for \$5.00 and I gave it to her and she wrote and signed the document.

In the High Court  
of the Supreme  
Court of Judi-  
cature

---

No. 5  
Evidence of 1st  
Witness A.P. T.  
Singh (Cont'd)

Mr. Stafford makes formal objection to the document. She does not purport to sign as Administratrix. Tendered, admitted and marked "B" Exhibit "B".

The defendant is the Administratrix of the Estate of Dixie Mortimer, deceased, and Letters of Administration were granted to her by the Supreme Court of British Guiana on 16th March, 1963.

In these proceedings I opposed the passing of the transport advertised in the Official Gazette of 31st August, 1963. What was advertised was transport of one half undivided share in Plantation Endeavour, Hogg Island, from herself in her capacity as Administratrix of the Estate of Dixie Mortimer, deceased, to herself in her personal capacity. I served notice of opposition on her as set out in my Statement of Claim. Later I filed this action.

On the occasion when Dixie Mortimer

signed Exhibit "A" I paid the sum of \$100.00 to him.

I am asking the Court to compel the Defendant

to convey the property advertised to me for

\$1,250.00 and to declare that my opposition is

just, legal and well founded. Alternatively I am

asking for \$500.00 loss of bargaining. I put the

value of \$12,000.00 on the whole of the Estate of

Plantation Endeavour. I would have used the

10 estate for the cultivation of rice. I have passed

and seen the Estate and I will say it is 118 acres.

I own several plantations in the county of Essequibo.

The value of land in Essequibo is now \$700 an acre.

Between 61 and 62 the value of land would be around

\$400: an acre. I actually sold land at that price.

From 1942 I started to own land in Essequibo. I am

in a position to pay this money now.

This is the death certificate of Hannah

De Camp (tendered by consent of the parties) tendered,

20 admitted and marked Exhibit "C".

Cross-examined by Mr. Stafford:- Declined.

No. 5  
Evidence of 1st  
Witness L.P.  
Singh (Cont'd)

Cross-Examined



Mr. Haynes states that subject to tender-  
 ing the transport in Plantation Endeavour and  
 Letters of Administration in the Estate of  
 Dixie Mortimer, deceased, that is the plaintiff's  
 case.

In the High Court  
 of the Supreme  
 Court of Judica-  
 ture

---

No. 5  
 Evidence of 1st  
 Witness A.P.Singh  
 (Cont'd)

Submission by  
 Mr. Haynes

15th November, 1965

1.05 p.m. - Court opens

A.P. SINGH recalled at request of Counsel for the  
 Plaintiff sworn:-

In the High Court  
 of the Supreme  
 Court of Judica-  
 ture

10

This is a copy of transport No. 675/57

---

No. 5  
 Evidence of 1st  
 Witness A.P.  
 Singh (recalled  
 at request of  
 Counsel for  
 Plaintiff)

in favour of Dixie Fleetwood Mortimer and Hannah  
 De Camp in relation to Plantations Endeavour and  
 Johanna, tendered, admitted and marked Exhibit  
 "D".

This is a certified true copy of Letters  
 of Administration in the Estate of Dixie Fleetwood  
 Mortimer granted to Ina Mortimer on 16th March,  
 1963, tendered, admitted and marked Exhibit "E".

20

This is Official Gazette of 31st August,  
 1963, at page 431 "whereof" is advertised the  
 transport that I oppose No. 67 of 31/8/63 tendered,  
 admitted and marked Exhibit "F"

In the High Court  
of the Supreme  
Court of Judica-  
ture

Under this advertisement she purports  
to pass transport to herself in her individual  
capacity and that of her minor children from  
herself in her capacity as administratrix of the  
Estate of Dixie Fleetwood Mortimer, deceased. I  
consulted Mr. Carlos Gomes, Solicitor, in this  
matter and I gave him certain instructions copy of  
a letter dated 5th April, 1963 addressed by Gomes &  
Gomes, Solicitors to the Defendant Ina Mortimer

No. 5  
Evidence of 1st  
Witness A.P.  
Singh (recalled  
at request of  
Counsel for  
Plaintiff (Cont'd)  
at request of Coun-  
sel

10 by consent of the parties is tendered and admitted  
in evidence. Tendered, admitted and marked Exhibit  
"G".

When the document Exhibit "A" was signed  
the Plantation Endeavour was in a bushy condition  
and there was no cultivation on the land and there  
was no building on the land.

Cross-examined by S.L. Van B. Stafford:

Cross-examined

The Plantation is overgrown with trees  
and bush. It was not rice land at that time. I  
20 don't know if any part of it has since been  
cultivated. I have passed it on the river in a boat  
and by steamer but I have never landed there.

CASE FOR PLAINTIFF

In the High Court  
of the Supreme  
Court of Judica-  
ture

No. 6

SUBMISSIONS BY COUNSEL FOR DEFENDANT AND  
PLAINTIFF TO COURT

No. 6

Submission by  
Defendant's  
Counsel to Court

Mr. Stafford states that he will lead no evidence.

Mr. Stafford submits that counsel for the Plaintiff

must address as he is leading no evidence. The

death certificate of Hannah De Camp is produced

from the custody of the Defendant but it is submitted

10 that it was not put in by the Defendant it was put

in by the Plaintiff with the consent of the Defendant.

Mr. Haynes states that the death certificate is

Submission by  
Plaintiff's  
Counsel to Court

tendered in evidence by counsel for Defendant. The

document was handed to him by Counsel who asked

him to put it in evidence through the witness.

Court rules counsel for Defendant must address

Ruling by Court

No. 7

ADDRESS BY DEFENDANT'S COUNSEL  
TO COURT

In the High  
Court of the  
Supreme Court of  
Judicature

No. 7

Address by De-  
fendant's Counsel  
to Court

20 Mr. John Stafford addresses the Court:

This is an action for agreement of sale

of land and as such could only be brought if

evidence in writing as provided by Section 3 D

proviso (d) of Chapter 2. It is contended

that whenever an action is brought on a written

contract moreso where the law provides that the

contract shall be in writing then the only

evidence admissible to prove the terms of the

contract is the actual written agreement. Clowes v.

Higginson in 35 English Report 1813 E.R. page 204.

No parole evidence can be admitted ~~in order~~ to vary

or explain or add to the terms of the contract.

10 V.C. at p. 205. The writing must speak for itself.

No other document which has been put in by the

plaintiff can be relied upon to alter, add to or

vary the terms of the written agreement.

Mr. S.L. Van B. Stafford: The action is against

the Estate of Dixie Mortiner, deceased, and it is

for Specific Performance and in the alternative

damages.

Counsel for Plaintiff specifically

abandoned any claim that he might have against

20 Ina Mortiner personally. At the beginning of the

trial he specifically abandoned any claim against

Ina Mortiner personally. There are two distinct

claims one against her personally and one against  
her in her capacity as Administratrix.

Ina Mortimer individually ought to be  
dismissed from the action. If one has not a claim  
against another individually then one ought not to  
say so. If a judgment were entered against an  
individual in her personal capacity as well as her  
representative capacity, her personal property would  
be liable in addition to the property of the  
10 person represented.

Mr. Stafford asks now that the Defendant  
in her personal capacity be dismissed from the  
action. Receipt for \$5.00 dated 16/7/63 Exhibit "B",  
Letters of Administration Exhibit "E" were granted  
in 1963.

At the time Exhibit "B" was made by  
Defendant she was not yet Administratrix. Nothing  
that she did before grant of Letters of Administration  
could be interpreted as an admission by her on behalf  
20 of the estate as a party in this cause. Leggee v.  
Edmonds 25 L.J. Ch. 1855 - 4 Weekly Report page 71.

No. 7

Address by defen-  
dant's counsel  
to court (cont'd).

Receipt cannot be used against her as

administratrix. Wood V.C. under "Fourthly". Letters  
cannot be used by the plaintiff as an admission or  
declaration by the representative defendant against  
the Estate as she was not then the administratrix.

Reason (1) of the opposition.

The agreement is to purchase from the two persons  
jointly and he gave \$100.00 to one of them towards  
the purchase price.

10           Next piece of evidence of plaintiff's  
intention is the letter written by Mr. Carlos Gomes,  
Solicitor, of 5th April, 1963. Speaks of purchase  
of whole of estate of Plantation Endeavour for \$2,500:  
from late husband who signed for himself and on behalf  
of Mrs. Hannah De Camp.

It shows that at the time of the execution of  
the agreement the witness was to purchase the whole of  
Plantation Endeavour and the plaintiff's Solicitor  
alleges that the signature of Dixie Mortimer is that of  
20 an agent for and on behalf of Hannah De Camp as well as  
for himself personally. No suggestion of splitting the  
Estate into interests.

No evidence has been led to show that Dixie  
Mortimer had or had not any standing instructions to sell  
on her behalf or to act as her agent.

If there had been instructions it ceased  
on the death of the principal and the evidence is  
that she died on 23rd February, 1960.

The agreement was made in 1961 26th July.

No evidence that parties to the agreement knew of her  
death. Both signatories to the agreement believed  
her to be alive. Unfortunately she was dead.

Newborne v. Sansolid Ltd. 1953 ; 1 A.E.R. at

p. 708. An agreement could only be an agreement for  
10 an existing principal. A principal must be in  
existence.

If Dixie Mortimer was acting as an agent  
at the time of the making of agreement his authority  
would have to be in writing because it is for the sale  
of land. 1812 35 English Reports p. 79.

Submissions is that there is no evidence that  
Dixie Mortimer was acting as agent for Hannah De Camp and  
even if he had been acting as agent the agency came to an  
end upon her death 23rd February, 1960 which is a date  
20 prior to the date of the agreement. The agreement is  
negatory because it was never completed.

The phrasing of the agreement shows that both  
signatories believed Hannah De Camp to be alive and

expected her to append her signature at some later date to complete the document and the agreement.

Until she did so the agreement was not complete.

Dixie did not die until 18th December, 1961, i.e. 5 months after the agreement Exhibit "A" was made.

No evidence from the plaintiff that during the 5 months he called on Dixie to complete the contract by getting Hannah to sign, or to convey to him Dixie's half interest. Hannah being dead or to recover  
10 : the \$100.00 paid to Dixie by him on account.

This Agreement Exhibit "A" envisages another agreement with one Yhap. We have not had the terms of the agreement with Yhap. Such evidence would not be admissible.

The evidence given by the plaintiff as to what he was told by Mortimer is not admissible. In respect of the receipt signed by Ina Mortimer before the granting of Letters of Administration do not estop her in an action brought after grant in setting up the capacity of  
20 Administratrix to defeat her own act. 16 Halsbury p.136 para. 207 Hornby v. Glen 1834 1 Adolphus v. Ellis page 49. Mettors v. Brown (1865) 7 L.T. New Series p. 795.

The plaintiff is seeking to treat the incom-



pleted agreement as being complete in so far as the  
deceased Mortimer is concerned and entitling him the  
plaintiff to claim such interest of Plantation  
Endeavour as he the plaintiff considers the deceased  
Mortimer to have possessed. If two parties meet one  
agree with the hope of a third party agreeing the  
agreement is not complete. Can it be considered com-  
plete in regard to the two parties who have agreed  
excluding the third party altogether. Is the agree-  
10 ment to be considered jointly and severally. Sumner  
v. Powell 1860 35 English Reports p. 852. The only  
obligations created was the obligation under this  
incomplete document in other words no obligation at  
all. It was intended that the plaintiff should pur-  
chase the whole Plantation and not separately the  
undivided half of each owner, selling the whole of the  
estate in undivided parts would affect the purchase  
price of the property. The doctrine of Mutuality.

Where one asks for Specific Performance one  
20 should also ask to give Specific Performance. If I ask  
for Specific Performance can the Court enforce Specific  
Performance against me otherwise there can be no relief.  
The fact that he was willing to purchase an undivided  
half now is no criterion that he under the contract

In the High Court  
of the Supreme  
Court of Judicature

No. 7

Address by defen-  
dant's counsel  
to court (cont'd).

Specific Performance could be decreed against him  
for the purchase of an undivided half where the  
agreement between the two parties was for the sale of  
the whole. Snell's Principles of Equity, 25th Edition  
at page 537; Flight v. Bolland 1828 4 Russell at  
p. 298; p.301 Judgment of the M.R. Ray Bryant &  
Birmingham 1890 59 L.J. at page 636; Elliot v. Pear-  
son 1 A.E.R. 1948 at page 939.

They submit that they could get Specific  
10 Performance of an undivided half with an abatement of  
the purchase price.

What the plaintiff is doing is asking the  
Court to change the whole contract.

Case adjourned to 16/11/65 at 9.15 a.m.

16th November, 1965.

Cox v. Coureless 1860, 175 English Reports p.996.

---

No.8

ADDRESS BY PLAINTIFF'S COUNSEL TO COURT:

Mr. Haynes:

The plaintiff is entitled to succeed. No  
intention of asking the Court to look at anything it  
20 is not entitled to look at.

Rule of Mutuality is not allowed to apply

In the High  
Court of the  
Supreme Court  
of Judicature

No.8

Address by  
plaintiff's  
counsel to  
court.

No. 8  
Address by  
plaintiff's  
counsel to  
court (cont'd)

to cases like this. Cases will be cited similar to the circumstances of the present case.

Mortimer and De Camp acquired a title in 1957 Exhibit "D". It is clear that the two of them acquired the whole interest in Plantation Endeavour so that each person acquired an undivided half. Each person could have sold his undivided half without consideration to the other owner. Each person could have sold his or her share separately by two separate  
10 . agreements.

Suppose they do it in the same document in the same contract they could each individually be conveying only his share as if it were being done in two separate documents.

In the ultimate the purchaser acquires the whole because he gets the half from each. The obvious effect of Mortimer signing the document is to sell his half or share. The totality is to give the buyer the whole. When Mortimer signed the document he was agree-  
20 ing to sell his share and the plaintiff the purchaser was agreeing to accept his share and the other person's share when the other person signed. The two interests are not so inextricably bound up that they cannot be separated.

Mortimer signed the document - why should not he be  
made to carry out his term of the contract?

No. 8  
Address by  
plaintiff's  
counsel to  
court (cont'd).

Mortimer did not purport on the face of the  
document to sign for her. He did not purport to sign  
for anyone but himself. He signed to convey his half  
interest. There is no splitting of any contract. It  
is a question of construing the document what did  
Mortimer agreed to convey when he signed the document?

The Court is not asked to split anything. Because  
10 they happen to do it in the same document would make  
no difference. Two ways of looking at it.

1. Contract only amounted to contract  
by Mortimer to sell his half share.
2. Mortimer signed the document purporting  
to sell the whole plantation when he  
only had a half interest.

It is submitted that the first view is  
correct. Either way the plaintiff is entitled to suc-  
ceed. Boursot v. Savage (1866) L.R. Equity cases p.134.  
20 One person signed the other two did not sign. He  
forged their signatures. The purchaser intended to buy  
the whole property. The other two refused to sign when  
it was brought to their notice. Very similar situation  
to the present case. What is the legal effect of that  
document. The Court held that it passed one-third legal

interest i.e. interest that the person who signed  
have vested in him.

Page 141.

No.8  
Address by  
plaintiff's  
counsel to  
court (cont'd).

Court refused to grant Specific Performance because  
it is trust property. The buyer acquired a legal  
interest but not a beneficial interest. No trust  
property in the present case.

Barker v. Cox 1876 4 Ch. D. p.464.

10 They had the power to appoint. He signed  
the agreement to sell the whole property and agreed  
to get the wife to sign who also had the power to  
sign. He died and wife refused to sign. Court held  
that the buyer was entitled to Specific Performance  
to the extent of the interest that the signatory had  
in the property. P.469 Naylor v. Goodall 1877 Vol.47  
L.J. Ch. p.53. They only refused to grant Specific  
Performance because it is Trust Property. Malins V.C.  
at p.56.

Cooper v. Smartt 1874 L.R. 18 Equity 683. 43 L.J. Ch.  
20 704. 31 L.T. 86 Horrocks v. Rigby 1878 9 Ch. p.180,  
182. Doctrine of Mutuality does not apply in this  
type of case.

If the contract is for the whole but Mortimer  
mer only had the half he could not compel the purchaser  
Singh to take the whole. Singh could say I

purchased the whole and not an undivided half and there would be hardship, equity might then have refused to specifically enforce the contract, if there is no evidence of hardship. Lord Hardwicke - Howrocks v. Rigby.

Exhibit "A" is not a contract to sell the whole by two owners; this is a contract entered by Mortimer alone or by Mortimer to sell his half with the expectation that Hannah would sign the contract to sell her half.

10           This is a contract to sell the whole property comprising his half and her half not binding on her until she signs. Since she did not sign can you enforce his signature if purchaser is willing to take the other signatory's half. The purchaser has indicated his willingness to do so.

          On the authorities cited if Mortimer had signed to sell the whole property to Singh and represented that he is the owner of the whole he would be compellable to convey his half at half the purchase price. Why should the position be different where he has not represented that he is the owner of the whole.

Burrow v. Scammell 1882 45 L. Times at page 606.

The plaintiff in this case is claiming

In the High Court  
of the Supreme  
Court of Judica-  
ture

Specific Performance of the contract in relation

---

No. 8  
Address by Plain-  
tiff's Counsel  
to Court (Cont'd)

to the undivided half share in the Plantation

sold by the deceased Mortiner with an abatement of

the purchase price to the extent of one half the

purchase price named.

Burrow v. Scannell p. 608.

Bacon V.C. - Doctrine of mutuality does not apply.

If the agreement or contract was construed as a con-

10 tract by Singh to purchase Mortiner's half there is

no reason why Mutuality should not exist between

the two of them still open to Equity to refuse

Specific Performance on the ground of hardship.

Bower v. Cooper 1843 2 Hare's Reports page 408.

It is only if any question arises as to the

whole of his interest that one could even think of

Mutuality. What did it mean the moment after

Mortiner signed.

To solve the question of Mutuality he has to

20 rely on the fact that Hannah was to come into the

transaction and sell her half.

---

No. 9

SUBMISSION BY PLAINTIFF'S COUNSEL TO COURT

---

In the High Court  
of the Supreme  
Court of Judica-  
ture

Mr. Haynes submits:-

---

No.9  
Submission by  
Plaintiff's  
Counsel to Court

(1) That the contract which was  
between Singh and Mortiner

is actually enforceable.

- (2) If it is not then the doctrine of Mutuality would never apply to cases of this kind.

In the High Court of the Supreme Court of Judicature

No.9  
Submission by plaintiff's counsel to court (cont'd).

One of the defences was that there was a conditional sale. They must prove it. Ina Mortimer should know of the sale to Yhap because she was a witness to the agreement.

All that that provision means is that the  
10 vendor was informing the purchaser that another person had a contractual right to get transport.

No.10

ADDRESS BY PLAINTIFF'S COUNSEL TO COURT (CONT'D)

Mr. Haynes:

A.G. v. Day 1748 27 English Reports p. 992.

A contract between two tenants is common in tail.

One died and the interest then left him and nothing

left in his estate. One tenant in tail still had an

interest. Tenant in tail sought Specific Performance

i.e. the vendor. Lord Hardwicke said you could not

20 compel the purchaser to take the half because his

intention was to take the whole. In this case the

purchaser is the defendant.

P. 996. This was on the basis of hardship

In the High Court of the Supreme Court of Judicature

No.10  
Address by plaintiff's counsel to court (cont'd).



and not on the basis of want of mutuality. Courts  
have held there is a binding contract with the  
person remaining. 1804 Mortlock v. Buller 1804 Vol.  
10 Vesey's Report at p.291. P.315 Judgment of  
the L.C.

In the High Court  
of the Supreme  
Court of Judicature

No 10  
Address by  
plaintiff's  
counsel to  
court (cont'd).

Not open to the vendor to say to the  
purchaser "you wanted the whole". The assertion in  
Mortimer's contract was that he owned a half and was  
selling a half. He was asserting that he had an  
10 interest in the property and he was bound by his  
assertion and he cannot say to the purchaser you  
contracted to get the whole and you cannot get the  
half. Price v. Griffith 1851 21 L.J. Ch. p.78.

Two persons as tenants in common agreed  
and one of them agreed that he would let the coal to  
another person on certain terms. The other person  
assigned his interest to the plaintiff and the plain-  
tiff filed a bill for Specific Performance by the two  
persons. One man was the owner, two men were the  
20 tenants in common in fee. Knight Bruce L.J. He agreed  
that contract could not enforce it. He went on to deal  
with another point.

P. 81. Obiter dictum by Knight Bruce.

Cramworth just dealt with the point in a vague way.

This is a case of letting and not a case of selling.

The dictum is not right.

Bailey v. Piper 1874 22 W.R. at p.943; Sneesby v.

Thorne, 1855 3 W.R. p. 438. Wood V.C. 438-439.

p. 605 (case went to the Court of Appeal).

Knight Bruce L.J. In this case the one man was

an executor.

Mortimer had full power to sell his half

share whether De Camp sold or not. Executor could

10 not have sold his half share. This was not possible.

Nobody could say that Mortimer did not intend to

enter into a contract to sell his undivided half.

Flight v. Bolland 1828 38 English Reports p. 817.

The contract between plaintiff and defendant was

mutually enforceable. Alternatively by filing the

Writ the plaintiff made it mutually enforceable. In

the alternative doctrine of want of mutuality does

not apply to the present circumstances. If the Court

accepts the position that there was mutuality should

20 Court allow Specific Performance or leave him to

damages.

Unless there is some special circumstance

why he ought not to get the land he ought to get the

land. It is true to say that in these cases the Court

No.10  
Address by  
plaintiff's  
counsel to  
court (cont'd).

In the High Court  
of the Supreme  
Court of Judicature

does grant Specific Performance. Court cannot  
assume that there would be a conflict with the owner  
of the other undivided half interest.

No.10  
Address by  
plaintiff's  
counsel to  
court (cont'd).

Thompson v. Park 1944 2 A.E.R. p.477.

No. 11

ADDRESS BY DEFENDANT'S COUNSEL TO COURT:

11.05 a.m.

Mr. Stafford commences:

In the High Court  
of the Supreme  
Court of Judicature

No.11  
Address by  
defendant's  
counsel to  
court.

When one looks at the contract it is  
clearly a contract where the plaintiff intended to  
purchase the whole plantation. In the absence of  
pleading of fraud or mistake (as in this case) the  
Court cannot go outside the contract to import into  
the case the document of title for the purpose of  
construing the contract so as to say that this  
owner contracted for an undivided half.

Parole evidence is not admissible to vary  
support or add to a written document. Court can only  
look at the written contract.

Another document can only be let in if there  
is a patent ambiguity, fraud or mistake. Whenever  
there has been an abatement granted there has either  
been a mistake or fraud.

Boursot v. Savage - This is a case of

Fraud.

No. 11

Parker v. Cox - Case of Misrepresentation.

Address by  
defendant's  
counsel to  
court (cont'd).

Naylor v. Goodall - Case of trust,  
breach of trust.

Cooper v. Startt - Clear case of  
Mistake.

Morrocks v. Rigby - Another case  
of Mistake.

10

Burrow v. Scammell - Case of  
Mistake.

Bower v. Cooper - Fraud.

A.G. v. Day - both the tenants in common

agreed to sell. The contract was frustrated. It  
did not come into existence.

What Mortimer had was not known.

This document is not for land alone. "With scrap  
iron, brass, and other appurtenances". It is not  
known how these things were owned.

20

The Court cannot look at the Transport in order to  
explain the contract unless they had pleaded fraud or  
mistake. Court cannot look at the Transport to say  
that Mortimer was only selling his half. No sugges-  
tion in the agreement that they were breaking the  
jointure. This is without prejudice to his submission  
that there could be no letting in of extrinsic evidence.

805/1959 The agreement does not indicate an intention to sever. The agreement indicates an intention to sell jointly as joint tenants. The agreement shows that they intended to sell jointly. Mortimer contemplated that they would sell jointly.

In the High Court of the Supreme Court of Judicature

No.11  
Address by defendant's counsel to court (cont'd).

No pleading of fraud, mistake or ambiguity to enable the Court to look outside the contract and interpret by means of the petition for prescriptive title.

10 11.30 a.m. Court adjourned.

No.12

RULING BY TRIAL JUDGE, BOLLERS, J.:

In the High Court of the Supreme Court of Judicature

No. 12  
Ruling by Trial Judge, Bollers J.

The Rule of Evidence that one must not look outside of the contract is fatal to the plaintiff's case and insofar as the plaintiff asks for an abatement. Mortlock v. Buller 32 English Reports p.864. Lord Eldon "the first consideration" p. 866.

20 Nowhere does he say this is his own "No mis-representation". If no mis-representation he should be in a better position. Here it is not intended to be a contract of the vendor. When two or more persons sign a contract to sell a plantation it means that they are all going to sell the entire plantation. Goodeve on Personal Property 5th Edition p.9. They are joint tenants. Each man can sell his own interest and only the conveyance would make it undivided. In joint tenancy each one is entitled to the whole and in the case of tenancy in common each has an undivided interest. He is free to break the jointure but he has not done it

it in this case.

No.12

In this agreement the evidence is to sell  
the whole jointure.

Ruling by Trial  
Judge, Bollers, J.  
(cont'd).

If the agreement had spoken of each one  
selling his half share and thereby undertaking to  
transport the whole then it could be said that each  
one was selling his undivided half. In this case  
it is plantation plus movables. We do not know in  
what proportion these movables are owned. Neither  
10 of them was selling his share. Burrow v. Scammell,  
1881-1882 L.R. Ch. D. 175 clear case of mistake.

In this case the joint ownership is divided in the  
contract itself. Hopcraft v. Hopcraft 76 L.T. New  
Series 1897 p.341. In the present case both parties  
knew of the circumstances of title.

Without fraud or mistake the plaintiff is not  
entitled to split the contract to omit half and ask  
for conveyance of Mortimer's half interest with an  
abatement because the principle of abatement is con-  
20 fined to those cases where the vendor through mis-  
representation fraud or mistake appears to sell more  
than the interest he can convey. This is not the  
position here where both the vendor and the pur-  
chaser knew about the land in relation to title.

Rudd v. Lascelles 1900 1 Ch. D. at p. 818. Farwell,

-----  
No.12  
Ruling by Trial  
Judge, Bollers, J.  
(cont'd).

J. How can the Court order Specific Performance of  
a contract in respect of an undivided half not only  
of land but of unspecified movables.

James v. Lichfield 1869 L.R. Equity Cases p.51 21 L.T.

p. 521.

Where compensation is incapable of being assessed or  
where the Court is not in a position to assess com-  
pensation then no abatement will be ordered.

10 Durham v. Logard 1865 54 Bevan p.611. 55 English  
Reports at p.771.

English & Empire Digest under Specific Performance.

This is a case where the contract never became  
complete.

Equity follows the law.

H.B.S. BOLLERS  
Puisne Judge.

---

No.13

JUDGMENT DELIVERED BY BOLLERS, J.

20 On 26th July, 1961, the plaintiff entered  
into an agreement of sale with Dixie Fleetwood Mor-  
timer, now deceased, in respect of certain property  
consisting of Plantation Endeavour in Hog Island,  
Essequibo, with the scrap-iron, brass and other

In the High  
Court of the  
Supreme Court  
of Judicature

-----  
No.13  
Judgment de-  
livered by  
Bollers, J.  
on 10th  
December, 1965.

appurtenances thereon; Mortimer agreed to sell  
and the plaintiff agreed to purchase the said  
property for the sum of \$2,500:00. The agreement  
in writing, which is Exhibit "A" in this case, was  
signed by the plaintiff as purchaser and Dixie Mor-  
timer as one of the vendors. The signature of the  
other vendor, Hannah De Camp, does not appear in the  
agreement in the space reserved for it, and it is  
the evidence that at the time of the execution of  
10 the Agreement she was already dead and never signed  
the Agreement.

On 16th July, 1962, when Letters of Adminis-  
tration had not yet been granted to her, the  
defendant received \$5.00 from the plaintiff for and  
on account of the said sale and gave a receipt there-  
for in her personal capacity.

The Agreement in writing reads as follows:

20 "MEMORANDUM OF SALE made and entered  
into this 26th day of July, 1961, at the  
city of Georgetown, county of Demerara, and  
Colony of British Guiana, by and between  
DIXIE FLEETWOOD MORTIMER, also called Dixie  
Fleetwood Trotz of 57 New Road, Vreed-en-  
Hoop, West Bank, Demerara, and HANNAH  
BEATRICE DE CAMP, of the same address,  
hereinafter referred to as the VENDORS and  
A.P. Singh of 37 Brickdam, Georgetown,  
Demerara, hereinafter referred to as the  
Purchaser:



PARTIES: The Vendor and the Purchaser which term shall include the heirs, executors, administrators and assigns of the parties hereto.

No.13 Judgment delivered by Bollers, J. on 10th December, 1965 (cont'd).

PROPERTY: Plantation Endeavour adjoining Plantation Johanna in Hogg Island with the scrap iron, brass and other appurtenances thereon.

10

PURCHASE PRICE: The sum of \$2,500:00 (two thousand five hundred dollars) of which the sum of \$100:00 (one hundred dollars) is being paid on the signing of this agreement (receipt whereof is acknowledged). The balance of purchase price to be paid on the passing of transport.

20

CONDITION: This agreement shall and is expressly made subject to the agreement of sale and purchase with D. YHAP dated 22nd June, 1957. When it becomes necessary a further sum of \$950 will be advanced to D. YHAP, and deducted.

TRANSPORT: To be advertised and passed as soon as title is acquired by the Vendor.

30

EXPENSES: To be borne equally by the Vendor and Purchaser.

IN WITNESS WHEREOF the parties have hereunto set their hands the date and year and first above written in the presence of the subscribing witnesses:

WITNESSES:

D.F. MORTIMER  
.....  
VENDORS

1. Ina Mortimer.

2. Karan Singh.

A.P. SINGH  
PURCHASER. "

No.13  
Judgment delivered by  
Bollers, J.  
on 10th December,  
1965 (cont'd.)

In the Official Gazette of 31st August,  
1963, and numbered 67, the defendant, Ina Mortimer,  
the widow of Dixie Fleetwood Mortimer, who died on  
17th December, 1961, advertised transport of one  
undivided half part or share of and in the said  
10 Plantation Endeavour containing 118 (one hundred  
and eighteen) acres, situate on the northern side of  
Hog Island in the Essequibo River, in the County of  
Essequibo and Colony of British Guiana, by herself  
in her capacity as the administratrix of the estate  
of Dixie Fleetwood Mortimer, deceased, Letters of  
Administration whereof were granted to her by the  
Supreme Court of British Guiana on 16th March, 1963,  
in favour of herself in her personal capacity in  
respect of one undivided third part or share of and  
20 in the said property and for her three minor children  
- George, Paul and Errol Mortimer - the remaining  
two undivided third parts or shares of and in the  
said property, the defendant and her three children  
being the heirs ab intestato of the said deceased.

On the 13th September, 1963, the plaintiff

entered opposition to the passing of the transport  
as advertised in the Official Gazette of 31st  
August, 1963, No.67, and in his reasons of opposi-  
tion he stated that on the 26th July, 1961, he had  
entered into an agreement of sale and purchase with  
the deceased and Hannah Beatrice De Camp to purchase  
from them jointly the said Plantation Endeavour with  
scrap-iron, brass and other appurtenances thereon  
and on the said date he had paid the deceased the  
10 sum of \$100 on account of the said purchase price,  
the balance to be paid on the passing of transport.  
His second reason was that on 16th July, 1962, he  
had paid to the defendant in her capacity as the  
administratrix of the estate the sum of \$5.00 fur-  
ther on account of the purchase price of the said  
property. The third and fourth reasons were that on  
5th April, 1963, he had caused his Solicitors to  
write the defendant in her aforesaid capacity to  
take steps to pass transport to him of the one undi-  
20 vided half part or share of and in the said Plantation  
Endeavour by a certain date and she had failed to com-  
ply with the request and it was not competent for  
her in her aforesaid capacity to seek to pass trans-  
port of the property to herself and three minor

children as heirs ab intestato of the said  
deceased.

In the present action which now follows  
the opposition entered by the plaintiff to the  
passing of the transport, the plaintiff claims:

- 10 (a) specific performance of the con-  
tract of sale and purchase dated  
26th July, 1961, made between  
Dixie Mortimer, deceased, and  
himself in respect of one undivided  
half of Plantation Endeavour, Hog  
Island, in the County of Essequibo  
for the purchase price of \$1,250.;
- (b) a declaration that the opposition  
entered by him to the passing of  
the transport as advertised in the  
Official Gazette No. 67 of 31st  
August, 1963, is just, legal and  
well-founded;
- 20 (c) an injunction restraining the  
defendant, her agent and/or attorney  
from passing the said transport  
or in any way disposing of the  
property;
- (d) in the alternative, damages for the  
loss of the bargain.

It is the uncontradicted evidence of the  
plaintiff, who is a landed proprietor in the County  
of Essequibo, that land in Essequibo has increased in  
30 value from \$400 an acre in 1961 and 1962 to \$700 an  
acre at the present time, so it is important to him

him that the undivided interest be conveyed to him  
or that he obtains damages for the breach of the  
contract against the administratrix of the estate.

It is the submission of counsel for the  
defendant that the agreement entered into between  
the plaintiff and Dixie Fleetwood Mortimer on 26th  
July, 1961, is not complete, and as a result, the  
contract is unenforceable. He urged that the  
phrasing of the agreement showed that both signa-  
10 tories to it believed that Hannah De Camp was alive  
and both parties expected her to append her signa-  
ture at some later date to the document and so  
complete the agreement; until Hannah De Camp signed  
the document the agreement was not complete and as  
a result it was of no effect. He stressed that there  
was no evidence from the plaintiff that during the  
lifetime of Dixie Mortimer, deceased, subsequent to  
the signing of the agreement that the plaintiff had  
called on him to complete the contract by getting  
20 Hannah De Camp to sign or to refund to him the \$100  
received by him on the failure of Hannah De Camp to  
sign the agreement. Nor did the plaintiff call on  
Dixie Mortimer to convey his half interest to him.

Counsel argued that if two parties

No.13

meet and agree with the hope of a third party agree- Judgment delivered  
ing, the agreement is not complete and the agreement by Bollers, J.:  
could not be considered complete in regard to the on 10th December,  
two parties who had agreed, which would have the 1965 (cont'd).

result of excluding the third party altogether.

Finally, he submitted that equity would never decree

specific performance in such a case where there was

lack of mutuality, that is, where a party asked for

10 specific performance of a contract equity would

never grant a decree in his favour if the circum-

stances were such that specific performance would

never be decreed against him under the contract.

Under the doctrine of want of mutuality, counsel

stated that the fact that the plaintiff was willing

to accept an undivided part or share in the property

now, was no criterion that under the contract speci-

fic performance would be decreed against him for the

purchase of an undivided half part or share of the

20 property where the agreement between the two parties

was for the purchase of the whole property. In

support of this proposition counsel cited Snell's

Principles of Equity, 25th Ed., p. 537; Flight v.

Bolland (1828) 4 Russ, p.298; In re Bryant and

and Birmingham's Contract (1890) L.J. Vol. 59 New Series, p. 636; Elliot v. Pearson (1948) 1 A.E.R. p. 939.

In the High  
Court of the  
Supreme Court  
of Judicature

---

No.13  
Judgment de-  
livered by  
Bollers, J.  
on 10th December,  
1965 (cont'd).

Counsel for the plaintiff in reply

submitted that the rule or doctrine of want of mutuality is not allowed to apply to cases like the present one, or that if it did apply there was in fact mutuality between the parties. He submitted that it was clear that Dixie Mortimer and his sis-  
10 ter, Hannah De Camp, had acquired the whole interest in Plantation Endeavour, so that each person acquired one undivided half part or share in the plantation and each person could then have sold his undivided half part or interest without consideration to the other owner. As each person could have sold his own share separately in a separate agreement, he could see no reason why any difference should arise where a single contract had purported to do what could have been done under  
20 separate contracts.

He argued that if each of the co-owners had signed the same document, then each would be conveying merely his own share as if it were done on two separate documents, and in the ultimate the

purchaser would acquire the whole property or estate because he would then get the half interest of each co-owner. He urged that when Mortimer signed the document he was agreeing to sell his share and the plaintiff, the purchaser, was agreeing to accept Mortimer's share and the other person's share when that other person signed, and the two interests were not so inextricably bound up that they could not be separated.

In the High  
Court of the  
Supreme Court  
of Judicature

---

No.13  
Judgment  
delivered by  
Bollers, J. on  
10th December,  
1965 (cont'd)

10 His final submission was that there was a wealth of authority to establish that the plaintiff was entitled to a decree of specific performance in respect of the half part or share of and in the property, that is, Plantation Endeavour, with an abatement of the purchase price which would be approximately one-half of the agreed sum of \$2,500.00.

Counsel cited in support of this proposition the following authorities: Mortlock v. Buller (1804) Vol. 10, Vesey's Reports, p. 291; Bower v. Cooper,  
20 (1842) Vol. 2 Hare's Reports, p. 408; Sneesby v. Thorne (1855) 3 W. Reporter pp. 438 & 605; Boursot v. Savage (1866) Eq. cases Vol. 2, p.134; Hooper v. Smartt 43 Law J. Rep. Chanc. 704; Horrocks v. Rigby (1878) Vol. 9, Ch. D. p. 180; Burrow v. Scammell



(1881-1882), 19 Ch. D. p. 175; Bayley v. Piper  
(1873-1874) W. Reporter, Vol. 22, p. 943; Price  
v. Griffith (1852) Vol. 30 L.J. Reports, p. 78.

No. 13  
Judgment  
delivered by  
Bollers, J. on  
10th December,  
1965 (cont'd).

I think I ought to make it clear from  
the beginning that I accept the point of view  
expressed by junior counsel for the defence that  
this is a contract for the sale of land and perforce  
must be governed by section 18 of the Civil Law of  
British Guiana Ordinance, Ch. 2, which is section 4  
10 of the Statute of Frauds replaced by section 41 of  
the Law of Property Act, 1925, and is required to be  
evidenced in writing. The contract there having  
been reduced to writing, the extent of the obliga-  
tion which exists under it is to be measured only by  
the words expressed thereon. Sumner v. Powell (1816)  
35 E.R. p. 852; Clowes v. Higginson (1813) 35 E.R.  
204.

As the learned author of Phipson on  
Evidence, paragraph 1781 states:

20

"When a transaction has been  
reduced to or recorded in writing,  
either by requirement of law or  
agreement of the parties, extrinsic  
evidence is in general inadmissible  
to contradict, vary, add to or sub-  
tract from the terms of the document."

The reason for this rule is given that when the parties have deliberately put their agreement in writing it is presumed between themselves that they intend the writing to form a full and final statement of their intention. It follows then that, if in my opinion is correct, I must look at the document of 26th July, 1961, alone without regard to any other evidence and even the transport of the vendors for that matter, in order to ascertain the intention of the parties at the time of the making of the agreement.

No.13  
Judgment delivered in  
by Bollers, J.  
on 10th December,  
1965 (cont'd).

On a close perusal of the document Exhibit "A", I have to come to the conclusion that it was the intention of the parties, that is to say, Dixie Fleetwood Mortimer and the plaintiff, the two signatories to the agreement to sell and purchase, respectively, the whole of Plantation Endeavour with the scrap iron, brass and other appurtenances thereon when the other purported signatory to the agreement had been obtained. I have come to that conclusion chiefly because it is not stated in the document whether the two vendors hold the property in equal shares, or in what proportion the property is held by them, or whether the title to the land was in the name

of Hannah De Camp and the title to the movable  
property in the name of Dixie Mortiner, or vice  
versa. In other words, it was the intention of  
the plaintiff to purchase the whole of the property  
stated in the agreement jointly from the two vendors.

To a lesser extent I have been influenced  
in this finding by the circumstances that in the  
body of the document the parties are described  
as the vendor and the purchaser, that is to say,  
10 the singular is used and not the plural, which  
would suggest rather that the parties contemplated  
a single joint sale. If, as suggested by Counsel  
for the plaintiff, Dixie Fleetwood Mortiner was  
merely selling his undivided half interest in the  
property and the purchaser was acquiring that in-  
terest and expected at a subsequent date to acquire  
the other undivided half interest in the property  
from Hannah De Camp and thus acquire the ownership  
of the whole property, there was nothing to prevent  
20 the plaintiff from purchasing Mortiner's half  
interest in a separate document and the undivided  
half interest of Hannah De Camp in another  
document on a subsequent date.

The strong inference to be drawn from the circumstances is that the signatories to the agreement were not aware of the death of Hannah De Camp at the time of the signing of the agreement and fully expected that she would at a subsequent date append her signature to the document which would complete the sale and purchase of the whole property. The contract, therefore, between the two signatories remained incomplete as the intention was to make a joint sale and purchase of the whole property, and indeed it is worthy of note that the plaintiff so states in his reasons for opposition.

I accept the submission of counsel for the defence that in the situation which I have found, that is to say, there was an attempt at a joint purchase of the whole of the property mentioned in the agreement by the plaintiff or, indeed, if I am wrong in this approach and there was merely a purchase by him of the undivided half interest of Dixie Mortimer (which I have not found) there was such a lack of mutuality between the parties that equity would never decree specific performance of the agreement. The Court will not enforce the obligation of the

In the High  
Court of the  
Supreme Court  
of Judicature

---

No.13  
Judgment  
delivered by  
Bollers, J.  
on 10th December,  
1965 (cont'd)

defendant by a decree of specific performance unless it can also enforce the obligation of the plaintiff, for, as Lord Lyndhurst put it in Hills v. Croll (1845) 1 De G.M. & G. 627, "the Court will not decree an agreement to be specifically performed unless it can execute the whole of the agreement." The time when the mutuality is material is when the contract is made. It must be possible to give full relief to both parties, and it is evident to me that if the defendant sought a decree of specific performance against the plaintiff in respect of the sale of his undivided half interest, he would be met by the obvious defence that under the contract it was the clear intention of the defendant to purchase the whole of the property, that is, the whole of Plantation Endeavour and the movables, as stated, thereon. Hoggart v. Scott (1830) 1 Russ & M. 293. A Court of Equity would never decree specific performance of a contract against the purchaser for the purchase of an undivided interest in land with its attendant difficulties from the other co-owners where the intention was to purchase the whole interest in the land.

In the High Court of the Supreme Court of Judicature

---

No.13  
Judgment delivered by Bollers, J. on 10th December, 1965 (cont'd).

At this stage I think I ought to say that there was nothing in the agreement to suggest that

Dixie Mortimer, deceased, contracted as agent for  
Hannah De Camp, or that he had any authority from  
her whatever to enter any transaction for sale of  
her property on her behalf. Thus the learned author  
of Snell's Principles of Equity 25th Ed. p.538,  
observes that if a vendor has no title to the estate  
which he has contracted to sell and no right to com-  
pel the real owner to convey, he cannot force the  
purchaser to take a conveyance from the real owner,  
10 even if he is willing to convey the property, for  
the purchaser has no right to compel a conveyance by  
the real owner. It follows then that the doctrine  
of want of mutuality is applicable to the circum-  
stances of this case and a decree for specific  
performance in favour of the plaintiff is out of the  
question.

I now turn to consider the aspect of the  
case on the basis that I am entitled to examine the  
transport tendered in evidence in which it appears  
that in the year 1957 Dixie Fleetwood Mortimer and  
20 Hannah De Camp made application jointly by petition  
to the Supreme Court of British Guiana for a declara-  
tion of title to certain parcels of land which  
included Plantation Endeavour (the subject-matter of  
the agreement Exhibit 'A'), and as a result of which

they obtained transport on 8th February, 1957, on the basis of prescription in their favour jointly.

In the High Court of the Supreme Court of Judicature

---

No.15  
Judgment delivered by Bollers, J., on 10th December, 1965 (cont'd).

It is pressed upon me by counsel for the plaintiff that under the agreement Dixie Mortimer was merely selling his undivided half interest in Plantation Endeavour which he could have done by separate agreement and, following a long line of authority, his administratrix ought to be compelled to specifically perform his contract and to convey  
10 his undivided half interest to the plaintiff (purchaser). A close examination of the authorities cited by counsel for the plaintiff reveals that they are all based on the principle enunciated in the dictum of Lord Eldon, L.C., in Mortlock v. Buller (1804) Vesey's Rep., Vol. 10 p. 315, wherein he stated in the course of his judgment:

20 "I also agree, if a man, having partial interest in an estate, chooses to enter into a contract, representing it, and agreeing to sell it, as his own, it is not competent to him afterwards to say, though he has valuable interests, he has not the entirety; and therefore the purchaser shall not have the benefit of his contract. For the purpose of this jurisdiction, the person contracting under those circumstances is bound by the assertion in his contract; and, if the

vendee chooses to take as much as he can have, he has a right to that, and to an abatement; and the Court will not hear the objection by the vendor that the purchaser cannot have the whole. But that always turns upon this: that it is, and is intended to be, the contract of the vendor."

10           In Bower v. Cooper it was stated that an agreement to sell land not expressing what interest in it, must be construed to mean the whole of the interest of the vendor in the land. So that where the defendant agreed to sell to the plaintiff "a certain cottage and land recently purchased", it was decided that the word "land" there meant the whole of the interest of the vendor in the land.

          In Boursot v. Savage, A, one of three trustees, executed an assignment of leasehold property  
20 held jointly by them, to a purchaser, and forged the signatures of his two co-trustees and requisite assent of the beneficiary to the sale. A, who was the Solicitor, acted in that capacity on behalf of the purchaser. It was held that the purchaser had constructive notice of the trust and that the execution by one of the three joint tenants was a valid assignment of the legal interest in one-third to the purchaser.



The beneficial interest in the one-third of the property A could not, however, pass to the assignee.

In the High Court of the Supreme Court of Judicature

---

No.13

Judgment delivered by Bollers, J. on 10th December, 1965 (cont'd).

In Barker v. Cox real estate was, by a marriage settlement, limited to such uses as the husband and wife should appoint; and in default of appointment to the wife for life, with remainder to the husband in fee. The husband, having entered into a contract to sell the property, died suddenly. The wife then refused to convey her life interest, and it was held that the purchaser was entitled to all the interest, which the husband's representatives could convey, with compensation for the interests of the wife which could not be conveyed. There again, Bacon, V.C., repeated what was in effect the principle in Mortlock v. Buller when he said that:

20

"If a man enters into a contract to sell something, representing that he has the entire interest in it, or the means of conveying the entire interest and receives the price of it and does not perform his contract, then the other party to the contract, who has parted with his money, or is ready to pay his money, is entitled to be placed in the same position he would be in if the contract had been completed; or, if not, by compensation to be placed in the same position in which he would be entitled to stand."

In the High  
Court of the  
Supreme Court  
of Judicature

---

No.13

Judgment  
delivered by  
Bollers, J.  
on 10th  
December, 1965  
(cont'd).

In Hooper v. Smartt where the defendants had entered into a contract to sell the entirety of certain property, and it subsequently turned out that they were only entitled to a moiety of it, the purchaser, electing to take a moiety, took a moiety instead of the entirety, paying half the price for half the moiety.

In Snecby v. Thorne there was an agreement for the sale of leasehold property entered into by one of two executors in the firm belief that the other executor would agree to what he did and, accordingly, the contract was signed by him on behalf of himself and his co-executor. The other executor refused to concur in the sale, and it was laid down by the Lord Justices that a decree for specific performance could not be made as the property was trust property. Their Lordships declined to decree specific performance as to part of the property saying that it was never the intention of the executor to enter into a contract to sell an undivided part.

These cases were reviewed by Malins, V.C., in Naylor v. Goodall (1877) L.J.R. Ch. Vol. 47, p.53, where one of three trustees, acting as if he were

absolute owner, entered into a contract to sell the entirety of certain freehold property in one-fifth part of which he had a beneficial interest. The other trustees afterwards refused to concur in the sale. The plaintiff, having brought his action for specific performance of the contract, it was held that the contract for the sale of the entirety could not be enforced and the property being trust property it could not be enforced against the defendant as to his one-fifth share only.

In the High Court of the Supreme Court of Judicature

No. 13)  
Judgment delivered by BOLLERS, J. on 10th December, 1965 (cont'd).

Malins, V.C., in the course of his judgment, however, stated that if the property had not been trust property he would have followed the decision in Hooper v. Smartt and decreed specific performance as to the undivided one-fifth part of which the defendant was owner. He placed great reliance on the statement of the law as expressed in Dart's Vendors & Purchasers, 5th Ed. p. 1067, that where the whole of the contract cannot be performed, the Court will insist on the vendor making good his contract to the extent which he is able to make it good, if the purchaser is willing to complete on those terms.

Finally, in Burrow v. Scammell (1881-1882)

L. Repts. 19 Ch. D., p. 175, by a memorandum in writing

the defendant agreed to let business premises for one year to the plaintiffs with an option for the plaintiffs at the end of the year to have a lease for a further period of seven, fourteen or twenty-one years. The plaintiffs entered into possession under the agreement and laid out money in alterations, and at the end of the year gave notice of their intention to exercise the option. When the defendant's title came to be investigated it was found that she was  
10 possessed of only a moiety of the premises, the other moiety being vested in her son, a minor. The defendant had made a bona fide mistake as to the title to the entirety. The defendant was decreed to perform specifically so much of the contract as she was able to perform, with an abatement of one moiety of the rent.

Bacon, V.C., in the course of his judgment recited the principle stated by Lord Eldon in Portlock v. Buller which he declared to be a rule of the Court  
20 and made the point that the plaintiffs did contract for the entirety and when the defendant entered the bargain she honestly believed that she was entitled to the entirety and she certainly did mean to bind the entirety, and in her mind she never had the intention

In the High Court of the Supreme Court of Judicature

-----  
No.13  
Judgment delivered by  
Bollers, J.  
on 10th  
December, 1965  
(cont'd).

of dealing with anything less than the whole, and therefore the parties were all ad idem as to the subject-matter of the contract. In the result, the plaintiffs were entitled to the relief claimed by them on the discovery of the mistake, and that was specific performance of what the defendant was able to give them. These cases are in sharp contrast with Price v. Griffith where A, in a letter addressed to B~~y~~ said he would let the coal at a certain place  
10 on the terms stated in the agreement in the hands of C. C had two papers in his hands: one for letting coals at this place and another place. A and another were in fact tenants in common in fee in the property situate in these two places. B had assigned his interest to P who filed a Bill for specific performance of the agreement by A and the other joint owner. The prayer of the Bill was that both might specifically perform the agreement or that A might perform it if the claim should fail against both. It  
20 was held inter alia that there being no ground of impropriety or mis-representation by A, the Court would not act against him as the owner of an undivided moiety by decreeing specific performance as to that share, with compensation for the other moiety which he was unable to demise.

Lord Justice Knight Bruce in his judgment

Judgment  
delivered  
by Bollers, J.  
on 10th December,  
1965 (cont'd).

pointed out that the colliery belonged to two persons  
in undivided moieties and that the plaintiff had  
filed his Bill against both alleging that the con-

tract was binding against both but, alternatively,

he prayed relief against one if he should fail to

establish his claim against the two. The Bill was

dismissed against one leaving only the owner of the

other share, but the owner, of the other share never

10 meant to contract for one share alone; if he intended

to contract at all he intended for the lease of the

whole colliery. The learned Lord Justice dismissed

the Bill for specific performance against the owner

of the other share and in so doing repeated the

principle laid down in Mortlock v. Buller when he

stated:

" I can conceive cases where a  
person who has contracted to convey  
more than it is in his power to con-  
vey ought to be decreed to convey  
20 what he can, either with or without  
making compensation to the vendor for  
such part of the subject-matter of  
the contract as the vendor is unable  
to convey."

But he went on to point out that a lease of an undi-  
vided moiety of a colliery is a very different thing

from the lease of the whole colliery and in the  
circumstances there was no ground of impropriety  
or mis-representation as by holding himself out as  
capable of contracting for the whole or in fact any  
other ground for enabling the Court to act against  
the owner of one undivided share.

It is clear from an examination of the  
afore-mentioned authorities, that the principle laid  
down in Mortlock v. Buller could have no application  
10 to the present circumstances where it cannot be  
seriously contended that Dixie Mortimer ever made  
any representation, or mis-representation for that  
matter, that he was disposing of the whole of the  
property. Indeed, as already indicated, I have not  
so found, and on the contrary counsel for the plain-  
tiff has pressed upon me that I should find that Dixie  
Mortimer was merely selling his undivided half interest  
which he was entitled to do. I have also rejected  
this argument, but even if this were the position the  
20 plaintiff would still not on the authorities be  
entitled to specific performance of the interest of  
Dixie Mortimer in the property, as he made no repre-  
sentation that he was selling the whole of the pro-  
perty, nor was it his intention at the time he signed  
the agreement to dispose of his undivided interest

in the property.

In Boursot v. Savage one of the trustees of the property forged the signatures of the other trustees and was guilty of fraud by representing that he was in a position to dispose of the whole property. In Hooper v. Smartt the defendants represented that they were in a position to sell the entirety of the property. In Naylor v. Goodall the trustee acted as if he were the absolute owner of the freehold property whereas he was not. In Burrow v. Scammell the defendant by mistake thought she held title to the entirety whereas she did not in fact do so.

Judgment delivered by Bollers, J. on 10th December, 1965 (cont'd).

In all these cases then, where equity compelled the vendor to convey that which he was in a position to convey, there was either fraud, misrepresentation or mistake by the vendor, causing hardship to be suffered on the part of the purchaser. It should be noted that in Sneesby v. Thorne where the executor signed on behalf of himself and co-executor agreeing to sell leasehold property, the Court refused to decree specific performance as to part of the property because it was never the intention of the executor to sell an undivided part.



It is not difficult to see why the doctrine of want of mutuality was not discussed in these cases where the vendor was compelled to convey his interest, which he was in a position to convey, and that was because the doctrine simply did not arise as there was in fact mutuality between the parties brought about by the mis-representation or mistake of the vendor. In these cases the defendant/vendor was ad idem with the plaintiff/purchaser on the property, subject-matter of the contract, and was representing and agreeing to sell the entirety in the property which the purchaser was agreeing to purchase. In these circumstances then, there would be no want of mutuality existing at the date of the contract but equity would never of course permit a vendor to take advantage of his own wrong for he who seeks equity must do so with clean hands and he would be compelled to convey his interest, although he could not obtain specific performance against the purchaser in respect of that interest. Halsbury's Laws of England, 3rd Ed., Vol. 36, para. 368, p. 271, lists this situation as an exception or apparent exception to the rule of want of mutuality, but I prefer to treat it as being outside of the rule.

In the present case, Dixie Mortimer made no representation that he was selling the whole property nor did he represent that he was selling his undivided half interest in the property. All that could be said was that he signed the agreement expecting Hannah De Camp, at a subsequent date, to sign the document which would have the effect of passing their joint interest in the property to the purchaser who would then acquire the whole property.

10           The matter becomes clearer on a consideration of Rudd v. Lascelles (1900) L.R. Ch. D., Vol.1, p. 815, cited by counsel for the defendant, where it was laid down that the jurisdiction to enforce specific performance with compensation for defects on a vendor, in cases where the contract is silent as to compensation, rests on the equitable estoppel referred to in Mortlock v. Buller namely, that where a vendor has represented and contracted to sell an estate as his own and the purchaser has relied on his representation, the vendor cannot afterwards be heard to say he had not the entirety.

20           Farwell, J., in the course of the argument, referred to Dart on Vendors & Purchasers, 5th Ed., p. 1193, where the author states:

10

" The result then of the authorities appears to be that, except where there is a good defence on the ground of hardship, mistake, or injury to third parties, the Court will insist on a vendor making good his contract to the extent of his ability, and on his submitting to a proportionate reduction of the purchase-money, if the purchaser was ignorant of the defect at the date of the contract, and is willing to complete on these terms."

In Castle v. Wilkinson (1870) Vol. 5 L.R.

Ch. Ap. Cases, where a husband and wife agreed to sell the wife's estate in fee simple, the purchaser being aware that the estate belonged to the wife and the wife afterwards refused to convey, it was held that the purchaser could not compel the husband to convey his interest and accept an abated price. Lord Hatherley, L.C., in the course of his judgment stated:

20

" If a man professes to be the owner of the fee simple and undertakes to sell the fee simple and it turns out that he had not power so to do, the purchaser not being at the time aware of the difficulty, then the vendor must convey as much as he can and submit to an abatement, but the case is wholly different where the vendor does not profess to sell the fee, but only that estate which he is able to dispose of."

It follows then, that in the present case,  
on my findings, that as the vendor Dixie Mortimer  
did not represent himself able to dispose of the  
whole interest in the property and the purchaser was  
well aware that Dixie Mortimer was not intending to  
sell the whole property but both he and Dixie Mortimer  
expected Hannah De Camp to sign the document in  
order to complete the agreement, the defendant in her  
capacity as the administratrix of the estate of Dixie  
10 Mortimer, deceased, cannot be compelled to convey the  
undivided interest in the property which Dixie Mortimer  
was able to convey. Nor could the receipt of 16th  
July 1962 issued by her in her personal capacity bind  
the estate. The agreement is therefore incomplete  
and a mere nudum pactum out of which no right of action  
can arise. The sum of \$100 paid to Dixie Mortimer on  
account of the purchase price must therefore be  
returned to the purchaser but as counsel for the defendant  
has given an undertaking that this sum will be  
20 repaid, I refrain from making any order in relation  
to it.

The submission made by counsel for the  
defendant that Dixie Fleetwood Mortimer and Hannah De  
Camp were joint tenants, I consider to be sound. When

When these two persons acquired title to the property at Plantation Endeavour, Hog Island, Essequibo, they did so in their joint names, and no words of severance were used. Indeed, in the transport issued to them, No. 675/1957 there was nothing to indicate that they each held a separate estate in the property. In other words, transport was passed to them absolutely in their joint names and the four unities of a joint tenancy were present.

In the High Court of the Supreme Court of Judicature  
-----  
No.13  
Judgment delivered by  
Bollers, J.,  
on 10th December,  
1965 (cont'd).

10           In England when two or more persons took as tenants in common, the share of each was treated as a separate item of property, which could not only be transferred by him in his lifetime but which would pass on his death to his representative. In the case of joint tenancy, the rights of each were extinguished by his death so as to increase the interest of his survivor or survivors. A joint tenant, however, could transfer his interest in his lifetime though not by will. In other words, the joint tenant could sever

20           the jointure by alienating his interest. By section 3D of the Civil Law of British Guiana, the law relating to immovable property in this colony is determined according to the principles of the Common Law of England, applicable to personalty. Hence the

principles by which the Courts of England are  
guided when deciding whether a tenancy is joint or  
in common are relevant in determining whether in  
this colony a tenancy is joint or common. See

Hanoman v. Hamanden L.R.B.G. (1944) pp. 201 and 208.

This situation, to my mind, all the more serves to  
indicate that the signatories to the agreement  
contemplated a joint sale and purchase of the  
property by Mortimer and De Camp, on the one hand,  
10 to the plaintiff on the other, which was never  
completed.

In any event, as Lindley, L.J., stated in  
Lumley v. Ravenscroft (1855) Q.B.D. p. 685:

20 " This case is not within the  
exception as to mis-representation  
or mis-conduct stated in Price v.  
Griffith and Thomas v. Dering, but  
comes within the general rule that  
where a person is jointly interested  
in an estate with another person and  
purports to deal with the entirety  
specific performance will not be  
granted against him as to his share.  
The plaintiff's only remedy is by  
way of damages."

But, as I have already stated, Dixie Mortimer did not  
even purport to deal with the entirety, a fortiori  
specific performance could not be obtainable against

his administratrix, nor could damages be awarded against her.

In the High Court of the Supreme Court of Judicature

No.13

The action must therefore fail and be dismissed, and the opposition be declared unjust, illegal and not well-founded. There will be judgment for the defendant with taxed costs certified fit for two counsel.

Judgment delivered by Bollers, J. on 10th December, 1965 (cont'd).

Stay of execution for six (6) weeks.

H.B.S. BOLLERS  
.....  
Puisne Judge

10 Dated this 10th day of December, 1965.

SOLICITORS:

Carlos Gomes for plaintiff.

L. Persaud for defendant

No. 14

ORDER OF THE SUPREME COURT OF

BRITISH GUIANA

BEFORE THE HONOURABLE MR. JUSTICE BOLLERS

DATED THE 10TH DAY OF DECEMBER, 1965

ENTERED THE 27TH DAY OF JANUARY, 1966.

In the High Court  
of the Supreme  
Court of Judic-  
ature

No. 14  
Order of the  
Supreme Court  
of British  
Guiana dated  
10.12.65

THIS ACTION having come on for hearing on  
the 12th, 16th, 22nd November and on this day AND  
UPON hearing counsel for the plaintiff and counsel  
for the defendant and the evidence adduced AND THE  
10. COURT having ordered that judgment be entered for  
the defendant with costs to be taxed THEREFORE IT  
IS THIS DAY ADJUDGED that the plaintiff do recover  
nothing against the defendant and that the defend-  
ant do recover against the plaintiff costs of this  
action to be taxed certified fit for counsel AND IT  
IS ORDERED that the question of whether costs should  
be certified fit for two counsels be reserved and ad-  
journd into chambers for determination on 11th Dec-  
ember, 1965. AND THIS COURT Doth declare that the  
20. opposition entered on the 13th September, 1963, by  
the plaintiff to the passing of the transport



between INA MORTIMER in her capacity as the admin-  
 istratrix of the Estate of DIXIE FLEETWOOD MORTIMER  
 deceased to and in favour of the said INA MORTIMER,  
 GEORGE MORTIMER, PAUL MORTIMER, and ERROL MORTIMER  
 advertised in the Official Gazette of the 31st  
 August, 1963 and numbered 67 to be unjust illegal  
 and not well-founded.

In the High Court  
 of the Supreme  
 Court of Judic-  
 ature

---

No. 14

Order of the  
 Supreme Court  
 of British  
 Guiana dated  
 10.12.65

(cont'd)

BY THE COURT

KENNETH W. BARNWELL

10.

DEPUTY REGISTRAR.

---

No.15

ORDER OF THE SUPREME COURT OF

BRITISH GULANA

BEFORE THE HONOURABLE MR. JUSTICE BOLLERS

(IN CHAMBERS)

DATED THE 11TH DAY OF DECEMBER, 1965

ENTERED THE 27TH DAY OF JANUARY, 1966

Upon the question of costs reserved herein  
 coming on for consideration on this day AND UPON

In the High  
 Court of the  
 Supreme Court  
 of Judicature

---

No. 15

Order of the  
 Supreme Court  
 of British  
 Guiana dated  
 11.12.65

HEARING Counsel for the plaintiff and counsel for the defendant IT IS ORDERED that the defendant do recover against the plaintiff her costs in this action to be taxed certified fit for two counsel.

In the High Court of the Supreme Court of Judicature

No. 15

Order of the Supreme Court of British Guiana dated 11.12.65

(cont'd)

BY THE COURT

KENNETH W. BARNWELL

DEPUTY REGISTRAR.

No.16

NOTICE OF APPEAL IN THE BRITISH

CARIBBEAN COURT OF APPEAL

DATED 19. 1. 66

10.

TAKE NOTICE that the Plaintiff (Appellant)

being dissatisfied with the decision of the Supreme

Court of British Guiana contained in the Judgment

or Order of the Honourable Mr. Justice Bollers

dated the 10th day of December, 1965, doth

hereby appeal to the British Caribbean Court of

Appeal from the whole of the said Judgment or

Order upon grounds set out in paragraph 3 and

will at the hearing of the appeal seek the

In the Court of Appeal of the Supreme Court of Judicature

No.16

Notice of Appeal in the British Caribbean Court of Appeal dated 19.1.66

relief set out in paragraph 4.

In the Court of  
Appeal of the  
Supreme Court of  
Judicature

---

No. 16

Notice of Appeal  
in the British  
Caribbean Court  
of Appeal dated  
19. 1. 66

And the Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

(cont'd)

2. The whole of the decision of the lower Court is complained of.

3. Grounds of Appeal:

(i) The learned trial judge in his

10. judgment erred in law:-

(a) in holding that the document Exhibit

"A" dated 26th day of July, 1961 and

signed by the Appellant and the

deceased Dixie Fleetwood Mortimer

was a mere nudum pactum out of which

no right of action could arise;

(b) in holding that the said Exhibit "A"

was not a contract of sale binding on

and enforceable against the deceased's

20. estate to the extent of whatever in-

terest the deceased had in the movable

and immovable property intended to be

sold;

(c) because he held that the deceased Dixie Fleetwood Mortimer and Hannah De Camp on the 8th day of February, 1957, obtained title by transport to Plantation Endeavour, Hogg Island, Essequibo River, the subject matter of the action as joint tenants; and failed to take into consideration that such joint tenancy (if any) had been determined by the death of Hannah De Camp prior to the 26th day of July 1961;

10.

(d) in holding that he was precluded from examining the said transport tendered in evidence and from using it as written evidence of the interest of the deceased Dixie Fleetwood Mortimer in the property intended to be sold under Exhibit "A";

20.

(e) in holding that Exhibit "A" if it was a contract at all was one for the sale of the entirety of the property described therein and that in the absence of fraud, mistake, misrepresentation or some misconduct on the part of the deceased Dixie Fleetwood Mortimer in respect thereof the Court could not compel the Administratrix to convey to the Appellant any lesser interest therein;

30.

(f) in holding that in the circumstances of the case the equitable doctrine of

In the Court of  
Appeal of the  
Supreme Court  
of Judicature

---

No. 16

Notice of Appeal  
in the British  
Caribbean Court  
of Appeal dated  
19. 1. 66

(cont'd)

want of mutuality was applicable and operated to bar the remedy of specific performance; and

In the Court of Appeal of the Supreme Court of Judicature

No. 16

(g) in holding that the appellant could not obtain against the Administratrix of the estate of Dixie Fleetwood Mortimer either specific performance as claimed or damages in lieu thereof.

Notice of Appeal in the British Caribbean Court of Appeal dated 19. 1. 66

(cont'd)

10. 4. The Appellant therefore seeks from the

British Caribbean Court of Appeal the following

relief:-

(a) that the judgment of the Court below be reversed on the grounds set forth in paragraph 3 hereinbefore and judgment be entered for the Appellant with costs in this Court and in the Court below;

(b) alternatively, that a new trial be ordered; and

(c) such further or other order as the Court may deem just.

20.

5. Persons directly affected by the appeal:

<u>NAMES</u>	<u>ADDRESSES</u>
1. A. P. Singh (Plaintiff) Appellant	43, Brickdam, Georgetown, Demerara.
2. Ina Mortimer, (Defendant) Respondent	Airy Hall, Essequibo.

CARLOS GOMES  
Solicitor for Appellant  
(Plaintiff).

In the Court  
of Appeal of  
the Supreme  
Court of Judi-  
cature

---

Georgetown, Demerara.

Dated this 19th day of January, 1966.

No. 16  
Notice of Appeal  
in the British  
Caribbean Court  
of Appeal dated  
19. 1. 66

(cont'd)

---

No. 17

JUDGMENT OF THE COURT OF APPEAL OF THE SUPREME COURT  
OF JUDICATURE

In the Court  
of Appeal of  
the Supreme  
Court of Judi-  
cature

The Chancellor:

No. 17  
Judgment of the  
Court of Appeal  
The Chancellor

In this appeal it will be convenient to state the facts which emerged at the trial before discussing the questions of law arising from those facts.

On the 20th October 1956, one Dixie Fleetwood Mortimer and his sister Hannah Beatrice De Camp, petitioned the High Court claiming that they had been in the sole and undisturbed possession for upward of 30 years of two pieces of land known as Plantations Johanna and Endeavour in the county of Essequibo in Guyana and as a result of such possession they had acquired title. In accordance with sections 3 and 4 of the Title to Land (Prescription and Limitation) Ordinance, Chapter 184, the Judge held they were entitled to the conveyance and a conveyance was granted to them in 1957.

On the 23rd February, 1960, Hannah De Camp died, but according to the finding of the trial judge her death was not known either to the appellant or the respondent at the time of the signing of the agreement to which reference will be made hereunder.

On the 26th July, 1961, the appellant signed what has been described as an agreement of sale between Dixie Fleetwood Mortimer and Hannah De Camp in respect of Pln. Endeavour, that is to say, one of the pieces of land to which a conveyance had been granted by the Court in 1957 to Mortimer and his sister, Hannah De Camp. Dixie Mortimer died and his widow Ina Mortimer obtained letters of administration of his estate on the 16th March, 1963.

In the Court  
of Appeal of  
the Supreme  
Court of Judicature  

---

No. 17  
Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

10 She thereupon sought to convey to herself and her three minor children the interest of her late husband in Pln. Endeavour. This conveyance was opposed by the appellant. In Guyana the practice of opposition was specifically retained by virtue of the Civil Law Ordinance Chapter 2, section 3 (D) (b) which states that "the law and practice relating to conventional mortgages or hypothecs of movable or immovable property, and to easements, profits à prendre, or real servitudes, and the right of opposition in the case of both trans-

20 ports and mortgages shall be the law and practice now administered in those matters by the Supreme Court". It is accepted that the law and practice relating to opposition is that anyone who wishes to oppose a



conveyance must give notice of opposition and enter an opposition within a certain time. The opposition must contain the reasons or grounds of opposition which, after a certain time, cannot be altered, added to or amended. See Subsidiary legislation Cap. 32 rules 2 to 9.

In the Court  
of Appeal of  
the Supreme  
Court of Judi-  
cature  

---

No. 17  
Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

The appellant's reasons for opposition were, among others - "that on the 26th day of July, 1961, he entered into an agreement of sale and purchase with Dixie Fleetwood Mortimer and Hannah Beatrice De Camp to purchase from them jointly Pln. Endeavour adjoining Pln. Johanna in Hogg Island with the scrap iron, brass and other appurtenances thereon for the sum of \$2,500, and on the said 26th July, 1961, he paid to Dixie Fleetwood Mortimer the sum of \$100 on account of the said purchase price, the balance to be paid on the passing of transport."

10

20

He made certain other formal allegations which are not relevant to this appeal. In his statement of claim he relied on the same ground and consequently what he had to establish at the trial was that he had purchased Pln. Endeavour from Mortimer and De Camp jointly.

In his evidence in the Court below the appellant tendered the agreement signed by Dixie

Fleetwood Mortimer and said that he did not know Hannah Beatrice De Camp and she had never signed the document. The document is as follows:-

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

10

" MEMORANDUM OF SALE made and entered into this 26 day of July, 1961, at the city of Georgetown, county of Demerara and colony of British Guiana, by and between DIXIE FLEETWOOD MORTIMER, also called Dixie Fleetwood Trotz of 57 New Road, Vreed-en-Hoop, West Bank, Demerara, and HANNAH BEATRICE DE CAMP, of the same address hereinafter referred to as the VENDORS and A.P. SINGH of 37 Brickdam, Georgetown, Demerara, hereinafter referred to as the PURCHASER:

20

PARTIES: The Vendor and the Purchaser which term shall include the heirs, executors, administrators and assigns of the parties hereto.

PROPERTY: PLOT ENDEAVOUR adjoining Plot Johanna in Hoggy Island, with the scrap iron, brass and other appurtenances thereon.

30

PURCHASE PRICE: The sum of \$2,500 (two thousand five hundred dollars) of which the sum of \$100 (one hundred dollars) is being paid on the signing of this agreement (receipt whereof is hereby acknowledged). The balance of purchase price to be paid on the passing of transport.

CONDITION: This agreement shall and is

expressly made subject to the agreement of sale and purchase with D. YHAP dated 22nd June, 1957. When it becomes necessary a further sum of \$950.00 will be advanced to D. Yhap & deducted.

In the Court of Appeal of the Supreme Court of Judicature

No.17  
Judgment of the Court of Appeal, The Chancellor (Cont'd)

TRANSPORT: To be advertised and passed as soon as title is acquired by the Vendor.

10 EXPENSES: To be borne equally by the Vendor and Purchaser.

IN WITNESS WHEREOF the parties have hereunto set their hands date and year and first above written in the presence of the subscribing witnesses.

.....D.F. Mortimer.....  
.....

VENDORS

.....A.P. Singh.....

PURCHASER

Witnesses:

- 20 1. Ina Mortimer.
- 2. Karan Singh. "

In the Court below counsel for the appellant contended that although De Camp had not signed the agreement there was nevertheless a binding contract on the part of Mortimer to sell his interest in the Plantation and as it was his interest which the widow was seeking to convey to herself and her minor children, he was entitled to have specific performance

to Mortimer's share. In support of his argument he referred to the Attorney-General v. Day (1749) 1 Ves. Sen. 218, Horrocks v. Rigby (1878) W.R. 715; 9 Ch. D. 180, and Basma v. Weekes (1950) App. Cas. 441. The learned Judge

In the Court of Appeal of the Supreme Court of Judicature  
No.17  
 Judgment of the Court of Appeal, The Chancellor  
 (Cont'd)

after reviewing the authorities came to the conclusion that it was Mortimer's intention to sell the whole property and not his intention to sell a part and that until De Camp had signed there was  
 10 no binding contract between the appellant and Mortimer. As I said before he also found that Dixie Mortimer was not aware of his sister's death at the time he signed the document Exhibit "A".

In view of the arguments addressed to us in this Court and in view of the law and practice relating to oppositions, I must emphasise, the issue in the Court below was whether Mortimer and De Camp having acquired a title to Pln. Endeavour so that each owned an undivided half and as each could have  
 20 sold an undivided half, the effect of Mortimer signing the document was to sell his undivided half share. The sole question was the construction of a document. There was no allegation of fraud or misrepresentation.

In this Court counsel for the appellant developed the submission he had made before the trial judge. He said the proper inferences to be drawn from

the document Ex. "A" were that Mortimer was representing that De Camp was a co-owner of the property, her signature was necessary to sell the whole, she was alive and she would sign the agreement; counsel's contention was that there was no contract to sell the whole but there was a binding contract between the appellant Singh and the deceased Mortimer. Particular emphasis was placed on Basma v. Weekes (1950) A.C. 442; 1950

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

10 L.R. House of Lords, where three tenants in common sold their property but the contract was not binding against one but enforceable against the others in respect of their interest in the property. Lord Reid in his opinion said:-

"Cases have not infrequently arisen where a single vendor has been unable to give a good title to all he has contracted to sell. The general rule in such a case has been stated by Lord St. Leonards thus:-

20

'A purchaser generally although not universally may take what he can get with compensation for what he cannot have.....In regard to the limits of the rule that a purchaser may elect to take the part to which a title can be made at a proportionate price, it has not been determined whether under any circumstances of deterioration to the remaining property the vendor could be exempted from the obligation of conveying that part to which a title could be made: but the proposition is untenable that if there is a considerable part to which title could be made the vendor was therefore exempted from the necessity of conveying any part.'

30

In the present case there are three vendors. One cannot convey her interest, but there is nothing to prevent the conveyance of the interests which belonged to the others. This type of case is less common, but one example is Horrocks v. Rigby, where two persons agreed to sell

40

a public house and it was found on investigation that one of them had no interest in it but that a moiety belonged to the other. In an action by the purchaser against the latter vendor for specific performance Fry, J. said:

In the Court of Appeal of the Supreme Court of Judicature No. 17 Judgment of the Court of Appeal, The Chancellor (Cont'd)

10

'I think that where an agreement is entered into by A. and B. with C. and it afterwards appears that B. has no interest in the property, A. may nevertheless be compelled to convey his interest to C. I should have come to that conclusion upon principle, for I do not see why a purchaser is to lose his right against his vendor who can complete, because from a circumstance of which the purchaser had no knowledge, he has no right against persons who cannot complete. But I am very much fortified in that conclusion by a passage in the judgment of Lord Hardwicks in Attorney-General v. Day.' "

20

From the case of *Basma v. Weekes* ( supra )

and other authorities, the following two propositions are unquestionable:

30

1. Where A contracts to sell Blackacre and Whiteacre and is unable to give a good title to Whiteacre he can be compelled to convey Blackacre.
2. Where A and B contract to sell Blackacre to C and it is found either that B has no interest in the property to sell or B's contract is unenforceable or void, then A can be compelled to convey his interest to C.

40 Counsel's argument was that the agreement Ex. "A" was indisputably not complete for the sale of the whole property, but that in such circumstances equity intervenes and makes a new contract for the parties.

If this submission means that on a proper interpretation of the contract Ex. "A" it can be inferred that Mortimer intended to sell his undivided interest

in Pln. Endeavour whether De Camp sold hers or not, then of course equity will compel him to carry out his obligation. But if the submission means that even if the correct interpretation of Ex. "A" is that Mortimer intended to enter into a joint contract with his sister whereby both would sell Pln. Endeavour and there was never any intention to sell undivided interests in the Plantation and despite the fact that the contract was never completed equity would convert an incomplete contract into a complete one, then I unhesitatingly reject the submission.

10

20

In Price v. Griffith (1851) 1 D.M. & G. 80, two tenants in common were alleged to have agreed to grant a mineral lease. The plaintiff failed to prove any agreement at all with one of them. Farwell, J. in Hexter v. Pearce (1900) 1 Ch. 341, pointed out that the plaintiff in Price v. Griffith failed on the ground that the agreement was void for uncertainty. In Price v. Griffith, Knight Bruce, L.J. had said; "Cases may be conceived where a person, who has contracted to convey more than it is in his power to convey, ought to be decreed to convey what he can, either with or without compensation to the vendee for such part of the subject-matter of the contract as the vendor is unable to convey. But a lease of an undivided moiety of a colliery is a

In the Court of Appeal of the Supreme Court of Judicature  
No. 170  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

very different thing from a lease of a whole colliery." And Farwell, J. referring to these observations said: "In a sense, with great deference to the Lord Justice, that is a truism; but the meaning, I think, is that in that case the intention of the lessor was to grant a lease of the entirety and nothing else."

In the Court of Appeal of the Supreme Court of Judicature  
 No. 37  
 Judgment of the Court of Appeal,  
 The Chancellor  
 (Cont'd)

In Basma v. Weekes Lord Reid in his opinion was explaining by referring to the above passages why Price v. Griffith is not an authority for the proposition stated by Lindley, L.J. in Lumley v. Ravenscroft (1895) 1 Q.B. 683, that unless there is misrepresentation or misconduct specific performance will not be granted where there are two parties to a contract which is unenforceable against one.

While, therefore, Price v. Griffith is no authority for any general rule that misrepresentation or misconduct must exist in order to compel one party to a contract to carry out his part of the obligation, it is authority for what appears to me to be a very elementary legal proposition which is that before the



principle that a vendor must convey the interest  
he possesses in property if he is unable to convey  
all he contracted to sell can apply, he must first  
have contracted to sell something.

In the Court of  
Appeal of the  
Supreme Court of  
Judicature  
No. 17  
Judgment of the  
Court of Appeal,  
The Chancellor,  
(Cont'd)

The appellant's case on his pleadings was  
that he entered into a contract with Mortimer and  
De Camp to purchase Pln. Endeavour from them jointly.  
He never proved the existence of such a contract.

In Basma v. Weekes (supra) there was a contract. It

10 was the married woman's intention to sell; the law  
prevented her. Her contract was void; but once she  
put her signature to the agreement then the purchaser  
was able to say he had purchased from three people.

But where two persons intend to enter into an agree-  
ment jointly there is no concluded contract until both  
enter into the agreement. Had De Camp been alive and  
refused to sign the agreement how could it have been  
said that an agreement binding Mortimer existed? In

Jones v. Williams (1836) 5 L.J. Ch. 253, a number of

20 persons having an interest in an estate which was the  
subject of litigation, some of them executed an under-  
taking to the town agent of their country solicitor

to mortgage the estate, to secure the present and future costs, but it was not signed by the other parties. A bill for specific performance was brought by the town agent against such of the parties as had signed the undertaking. It was held that being part of the agreement all should sign; the bill would be dismissed with costs.

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

See also Coopers v. United Contract Corp.,

Ltd. & Danziger (1897) 14 T.L.R. 29 where the

10 defendants had entered into an agreement with a syndicate, consisting of eight persons, but the agreement was executed by seven only of them. It was held that it was not binding on the defendants.

The test then is to determine whether the agreement Ex. "A" signed by Mortimer should be construed as showing an intention on the part of Mortimer to enter into a joint agreement with his sister to sell the whole of Pln. Endeavour or whether his intention was to sell his interest in  
20 Pln. Endeavour whether his sister sold hers or not.

I will postpone for the moment any discussion on the question of joint ownership or ownership in common.

The nature of the ownership of Pln, Endeavour  
is not germane in ascertaining the intention  
of the parties.

In the Court of  
Appeal of the  
Supreme Court of  
Judicature  
No. 17  
Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

I have already attracted attention to the  
fact that the appellant's notice of opposition  
and statement of claim proceeded on the basis of  
a joint promise. The letter from his solicitor  
produced by him and its contents presumably approved  
by him (there was no other reason for producing it)

10 is as follows:-

" 2 Croal Street,  
Georgetown,  
5th April, 1963.

GOMES AND GOMES,  
SOLICITORS.

Mrs. Ina Mortimer,  
57 New Road,  
Vreed-en-Hoop,  
West Coast, Demerara.

20 Dear Madam,

We are instructed by our client  
Mr. A.P.Singh to call on you as executrix of  
the last will of Dixie F. Mortimer, for trans-  
port of an undivided half share of and in  
Plantation Endeavour adjoining Plantation  
Johanna in Hogg Island, Essequibo, which he  
purchased from your husband Dixie Fleetwood  
Mortimer, since deceased, in the month of  
July, 1961. Our client had purchased the  
whole of Plantation Endeavour for \$2,500.00

from your late husband who signed for himself  
and on behalf of Mrs. Hanna Beatrice De Camp.

Our client paid your husband \$100.00 on account  
of the purchase price and he paid you \$5.00 on  
the 16th July, 1962, further on account of the  
said sale to him. On the passing of transport  
of an undivided half interest in Plantation  
Endeavour to our client he will pay you  
\$1,145.00 being \$1,250.00 less \$105.00 for the  
10 half share in Plantation Endeavour.

Unless you take steps to pass transport to  
our client by the 20th April, 1963, our instructions  
are to take proceedings against you for transport  
of same without further delay.

Yours faithfully,

Gomes & Gomes

G & G/ns

"

The important words are "Our client had  
purchased the whole of Plantation Endeavour for  
\$2,500 from your late husband who signed for  
20 himself and on behalf of Mrs. Hanna Beatrice De Camp."

The appollant in giving evidence never said  
he had entered into a contract with Mortimer to  
purchase his interest separately. He could not  
say so as it was never his case, His case was  
he had bought the whole of Pln. Endeavour. From  
whom had he bought? The agreement is the  
answer. From Mortimer and De Camp, when De Camp

In the Court of  
Appeal of the  
Supreme Court of  
Judicature

No. 17

Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

signed. She never signed, so he never bought.

An attempt was made in the argument  
to saddle Mortimer with innocent misrepresent-  
ation so as to bring the case in line with those  
authorities which decide that if a man purports  
to sell more than he owns then he can be made to  
convey what he in fact owns. This argument was  
not proceeded with as misrepresentation was never  
alleged or pleaded. Had an amendment been asked  
10 for at the trial it must have been refused having  
regard to the strict procedure in ~~op~~position  
actions, or if allowed, particulars had to be  
given.

There is no warrant for saddling Mortimer  
with misrepresentation and no reasonable inference  
exists in the document or the evidence that he  
was entering into a joint or several contract; the  
contract was a joint one and nothing else.

This brings me to the submission that the  
20 property was held in joint ownership and that as  
De Camp had died at the time when Mortimer signed  
the document Ex. "A", Mortimer was in law the  
owner of the whole property.

This is an argument of the utmost  
importance and if correct would require immediate  
legislation to avoid chaos in the conveyancing  
system of this country.

In the Court of  
Appeal of the  
Supreme Court of  
Judicature  
No. 17  
Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

For a proper understanding of the extent and importance of the problem we must retrace our steps to the 1st January, 1917. Prior to that date Roman Dutch Law was the common law of the country. Land was held in full ownership but joint ownership was permissible. In a paper on some aspects of West Indian law presented by Professor Marshall to the United Kingdom National Committee of Comparative Law Colloquium on West Indian Laws at Clare College Cambridge in 1956, he said, referring to land tenure in Guyana -

" The system recognises the concept of joint ownership which is particularly important to land holding in the village communities. The practice throughout British Guiana appears to have been to grant title to village lands for the joint possession of all the villagers represented by two of their number who signed the transport on behalf of all the others. Originally, therefore, the title of the villagers was joint and there was no registered sub-divisions of the village."

L.A. Freeman, who for years worked in the Deeds Registry and became knowledgeable in the conveyancing

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

10

20

system, says in his paper "Land Tenure in British Guiana" that the acquisition of land by villagers began in 1842 when the planters decided to reduce wages because the cost of production had exceeded the prices received in the previous year. The labourers refused the reduced wages and were ejected from the free houses on the plantations. They then combined and purchased various plantations with a total of 15,000 acres for settlement. These areas were surveyed and divided up among the purchasers and their families, and in many cases are now villages under the administration of the Local Government Board.

. 10

20

Dr. Ramsahoye, a practising lawyer who has devoted much study to this branch of the law, says -

"Many opportunities were available to the British Guiana Courts to consider the problems of joint ownership because of the joint purchase by freedmen, after the abolition of slavery, of large estates and because of the institution of marriage in community of goods prevailing in the country both before and after the

In the Court of Appeal of the Supreme Court of Judicature

No.17

Judgment of the Court of Appeal,

The Chancellor, (Cont'd)

union of the colonies in 1831. The latter institution created no problem but joint ownership of large estates was a constant source of controversy and it will be seen that the legislature had to direct its attention to the division of property jointly owned."

In the Court of Appeal of the Supreme Court of Judicature No.17 Judgment of the Court of Appeal, The Chancellor (Cont'd)

I know that tradition enjoins me not to quote  
10 the works of living authors. I do so now not in order to break with tradition but because the views are representative of the practising Bar and show an anxiety for judicial pronouncement on the point now being considered.

This joint ownership of which professional and lay writers spoke had no parallel in English law; there was no right of survivorship. Since Roman Dutch law unlike English law applied the  
20 conception of ownership to land there was no tenancy in common, but as the occupation of co-owners or joint owners approximated more to tenants in common in that co-owners could hold unlimited shares without being able to point to any particular part of the land which was theirs, it became customary in Guyana to speak of ownership



or tenancy in common as a synonym for joint ownership. As late as 1923 Duke in his Immovable Property said "there is no joint ownership in British Guiana only ownership in common."

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

For reasons which it is not necessary to discuss a Common Law Commission was appointed to examine the state of the law. This Commission reported in 1914 and as a result the Civil Law of British Guiana Ordinance was passed. Section

10 3 (C), (D)(a) and (b) are relevant:

"3. (C) the English common law of real property shall not apply to immovable property in the Colony;

(D) there shall be as heretofore one common law for both immovable and movable property, and all questions relating to immovable property within the Colony and to movable property subject to the law of the Colony shall be adjudged, determined, construed and enforced, as far as possible, according to the principles of the common law of England applicable to personal property;

20

Provided that -

(a) immovable property may be held as heretofore in full ownership, which shall be the only ownership of immovable

property recognised by the common law and shall not be subject to any rule of succession by primogeniture or preference of males to females, or to any other incident attached to land tenure or to estates in land in England and not attached to personal property in England;

In the Court of Appeal of the Supreme Court of Judicature  
No. 17 c  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

10 (b) the law and practice relating to conventional mortgages or hypothecs of movable or immovable property, and to easements, profits à prendre, or real servitudes, and the right of opposition in the case of both transports and mortgages, shall be the law and practice now administered in those matters by the Supreme Court; "

Despite the clear admonition in section 3 (D) it

has been found in practice that to apply the

20 English common law of personal property to land  
bristles with difficulties.

Vaines in his work on Personal property says -

"As in the case of realty, co-ownership may exist in respect of personalty and the relationship of the co-owners inter se is determined by application of the same rule, namely that if property be granted to two or more persons simply, without any words of severance, the grantees are joint tenants, and a right of survivorship exists between them."

30

In Halsbury's Laws of England (3rd Edition) Vol. 29 p. 380, this statement<sup>of</sup> the

In the Court of Appeal of the Supreme Court of Judicature No. 17 Judgment of the Court of Appeal, The Chancellor (Cont'd)

law occurs:

" Concurrent ownership of chattels may be either joint or in common, and in this respect resembles concurrent interests in real estate;..... The right of survivorship attaches to a joint tenancy of personalty, including choses in possession and in action, as well as to realty until severance."

10

According to Blackstone's Commentaries,

Vol. II p. 398 -

" Things personal may belong to their owners, not only in severalty, but also in joint tenancy, and in common, as well as real estates. They cannot indeed be vested in coparcenary; because they do not descend from the ancestor to the heir, which is necessary to constitute coparceners. But if a horse, or other personal chattel, be given to two or more, absolutely, they are joint-tenants hereof; and, and unless the jointure be severed, the same doctrine of survivorship shall take place as in estates of lands and tenements. And, in like manner, if the jointure be severed, as by either of them selling his share, the vendee and the remaining part-owner shall be tenants in common, without any jus

20

30

accrescendi or survivorship. So also, if £100 be given by will to two or more, equally to be divided between them, this makes them tenants in common; as we have formerly seen, the same words would have done in regard to real estates.

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor,  
(Cont'd)

10

Residuary legatees and executors are joint tenants, unless the testator uses some expression which converts their interest into a tenancy in common; and if one dies before a division or severance of the surplus, the whole that is undivided will pass to the survivor or survivors."

20

In 1637 in the case of Lady Shore v. Billingsly 23 English Report p. 607, it was held that the surplus of a personal estate bequeathed to A and B was a joint devise and the doctrine of survivorship applied. The cases of Morley v. Bird 3 Ves. 628 and Stuart v. Bruce 3 Ves. 632 show that this doctrine is now clearly established and apply to personalty as in realty unless there are words of severance.

Mention may be made of three more cases which bear out the doctrine of joint tenancy and survivorship with respect to personalty, the first of which is Bone v. Pollard (1857) 24 Beav. 283; 53

53 E.R. 367. The facts were:-

Two sisters carried on business  
 as farmers. They had a joint account  
 at their bankers, and an establishment  
 and purse in common. They invested  
 part of their money in the purchase of  
 consols in their joint names, and they  
 had a balance due to them in their bank-  
 ing account, besides a sum due to them  
 from their bankers on deposit notes.

10

It was held that on the death of one, the two sisters  
 were joint tenants of the consols, and tenants in  
 common of the balance and of the deposit notes.

The second case is Re Barton's Will Trusts  
 (1852) 10 Hare 12; 19 L.T.O.S. 362; 16 Jur. 631; 68

E.R. 818 in which the facts were:-

A woman, joint tenant of a reversionary  
 interest in a legacy of £2,000 stock,  
 married; and after the marriage the husband  
 became bankrupt, and then the wife died,  
 leaving the tenant for life of the fund  
 surviving.

20

It was held that by the death of the wife, the other  
 joint tenants of the fund became entitled to her  
 interest therein by survivorship; that was the  
 elder title to that of the husband, which also  
 accrued after the death of the wife; and upon the

In the Court of  
 Appeal of the  
 Supreme Court of  
 Judicature  
 No. 17  
 Judgment of the  
 Court of Appeal,  
 The Chancellor  
 (Cont'd)

death of the tenant for life, the other joint tenants, and not the assignees of the husband, were entitled to what had been the wife's share of the fund.

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

The third case is the more recent case of *Re Cohen* (deceased) (1953) 1 A.E.R. p. 378 where the facts were:-

10 A husband and wife lived in a flat which was the freehold property of the wife. The husband died in April, 1948, and his wife four months later, both leaving wills under which the plaintiffs were appointed executors and trustees. After the death of the wife a large number of banknotes and coins were found hidden in the flat. On the question whether the notes and coins belonged to the estate of the husband or to that of the wife or  
20 equally to both,

it was held that they belonged to the estate of the wife on the ground -

- (i) That the freehold of the property on which they were found was vested in her: South Staffordshire Water Co. v. Sharman (1896) 2 Q.B. 44, applied; or alternatively,
- (ii) The fund was intended to be a joint fund in which both spouses were

equally interested, and which,  
on the death of one of them,  
accrued to the survivor.

In the Court of  
Appeal of the  
Supreme Court of  
Judicature

No. 17  
Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

From the above it is clear that joint

ownership and ownership in common are part of the  
law of personal property in England and unless the  
incidents accompanying such ownership have been  
specifically excluded then the doctrine of sur-  
vivorship applies to joint owners in Guyana. It  
10 must be borne in mind that it is an Act of Parlia-  
ment which has to be interpreted, not a common law  
rule. In the latter case where the Courts have  
given the rule a certain interpretation for a long  
period of time, it would be wrong to upset the  
accepted interpretation even though such interpre-  
tation is wrong. No such principle applies in  
20 interpreting an Act of Parliament.

This is the first case as far as I can  
gather where the point has been specifically raised.

20 The judges have long been aware of the problem but  
it was always possible to decide the point in issue  
without pronouncing on the question of survivorship.

Archer, President of the Caribbean Court of

Appeal, referred to it in Dhanrajie v. Baijnauth,

Civil Appeal No. 5 of 1963 when he said -

"The Civil Law Ordinance, Cap. 2, while disavowing the application of the common law of real property in matters affecting immovable property failed to particularise the branch of the English Law of personal property, namely, leaseholds, choses in possession, or choses in action, to be applied."

10

In Hanoman v. Harnandan (1944) L.R.B.G. p. 208

Blackall, Verity and Malone, C.JJ., said -

"The next point for consideration is whether upon Sockary's death Katie succeeded to a life interest in her mother's moiety, or whether that moiety fell into the residue; in other words whether the devise operated to create a joint ownership or an ownership in common. As to this the four unities of possession, interest, title and time which characterise a joint tenancy of real estate in England apply also to a joint ownership of chattels. Although then the English common law of real property does not apply to immovable property in this Colony, the principles by which the Courts in England are guided when deciding whether a tenancy is joint or in common are relevant."

20

30

Gordon, J. made reference in Jansen v. Jansen

In the Court of Appeal of the Supreme Court of Judicature

No.17

Judgment of the Court of Appeal, The Chancellor (Cont'd)



No. 805 of 1959 Demerara, as follows:-

In the Court of  
Appeal of the  
Supreme Court of  
Judicature

No.17

Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

" On this interpretation the effect of the gift will therefore be that the bequest is an absolute gift to the four beneficiaries named in undivided shares:-  
i.e. as Joint Tenants, in view of the absence of words of severance and the principle established by the case of Hanonan v. Harmandan 1944 B.G.L.R. p. 201."

10 In his judgment in this case Bollers, C.J. said -

" In England when two or more persons took as tenants in common, the share of each was treated as a separate item of property, which could not only be transferred by him in his lifetime but which would pass on his death to his representative. In the case of joint tenancy, the rights of each were extinguished by his death so as to increase the interest of his survivor or survivors. A joint tenant, however, could transfer his interest in his lifetime though not by will. In other words, the joint tenant could sever the jointure by alienating his interest. By section 3D of the Civil Law of British Guiana, the law relating to immovable property in this Colony is determined according to the principles of the common law of England, applicable to personalty. Hence the principles by which the Courts of England are guided when deciding whether a tenancy is joint or in common are relevant in

20

30

determining whether in this Colony a tenancy is joint or common. See Hanonan v. Harmandan, L.R.B.G. (1944) pp. 201 and 208. This situation, to my mind, all the more serves to indicate that the signatories to the agreement contemplated a joint sale and purchase of the property by Mortimer and De Camp, on the one hand, to the plaintiff on the other, which was never completed."

In the Court of Appeal of the Supreme Court of Judicature  
No.17  
 Judgment of the Court of Appeal,  
 The Chancellor  
 (Cont'd)

10

Dalton, J. writing on the Civil Law seems to express the view that the Deceased Persons Estates Ordinance, 1917 precluded the possibility of survivorship:

" The purpose of the Deceased Persons Estates Ordinance, 1917, was, amongst other things, to effect the same purpose as has been done in England by the Land Transfer Act, 1897 whereby real estate, vested in a person without a right in any other person to take by survivorship, on his death and notwithstanding any testamentary disposition, becomes vested in his personal representative or representatives."

20

I am unable to accept this view of Dalton, J. (if I have not misunderstood him), as the Land Transfer Act, 1897 section 1 (1) is "Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary

disposition, devolve to and become vested in his personal representative or representatives from time to time as if it were a chattel real vesting in them or him."

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

The Act was designed to regulate the devolution of real estate and was not intended to abolish survivorship. The Deceased Persons Estates Ordinance, 1917, did not mention survivorship.

Two important questions remain to be answered. Is there any section in the Civil Law Ordinance which excludes survivorship. Douglas, J. in Barry v. Mendonca (1923) L.R.B.G. 107 said:  
"That such a system of co-ownership still exists is recognised by Ordinance No. 13 of 1914 and its amending Ordinance No. 12 of 1920. I am of opinion that the Civil Law Ordinance has not altered the rights or remedies of such co-owners ....."

I do not think Douglas, J. meant to disavow section 3(D) Cap. 2 which said that the law of immovable property was to be adjudged according to the principles of the common law of England applicable to personal property. What he was doing was to maintain the rights of a co-owner acquired

before 1917 and that those acquired rights could not be impinged by an act after 1917 which would not have been lawful before 1917.

In the Court of Appeal of the Supreme Court of Judicature 1917 Judgment of the Court of Appeal, The Chancellor (Cont'd)

Now section 2(3) of Cap. 2 is as follows-

10 " 2. (3) Nothing in this Ordinance contained shall be held to deprive any person of any right of ownership, or other right, title, or interest in any property, movable or immovable, or of any other right acquired before the date aforesaid; and where in any matter whatsoever any right is founded upon a rule or custom of Roman-Dutch law or procedure for which there is no equivalent in the English common law, or where the English common law in the opinion of the Supreme Court is not applicable owing to any special local conditions for which no provision is made by this or any other Ordinance, effect 20 may be given to the Roman-Dutch rule or procedure to the extent the Supreme Court deems advisable in the interests of equity if that Court is so advised."

The first part of the sub-section dealt with the saving of existing rights. Those persons who in 1916 were co-owners could not I apprehend be subjected to survivorship nor could a co-owner even at this date acquire the property of the other co-owner on the latter's death if such ownership dates prior to 1916.

The second part of the sub-section is not very helpful at the present date; it is sub-divided into two parts (a) where a right is founded upon a rule or custom of Roman Dutch law or procedure.

In the Court of Appeal of the Supreme Court of Judicature

---

No.17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)

This I think is applicable to individual cases not to the general law of the country; and (b) where the English common law is not applicable owing to special local conditions for which no provision is made in Cap. 2 or any other Ordinance, then effect may be given to the Roman Dutch rule or procedure. This part of the section does not affect the point under discussion as there are no special local conditions which make the English common law inapplicable.

10

I am therefore reluctantly compelled to hold that the English law of survivorship is the law of Guyana and all property, immovable or movable, held in joint ownership passes to the survivor on the death of one of the joint owners.

20

The second question is whether Pln. Endeavour, the subject of this litigation, was held in joint ownership by Mortimer and De Camp.

I have endeavoured to show that prior to 1917

co-ownership was the form of ownership by which two or more persons could own land. After 1917 those responsible for the mechanics of preparing title to land assumed there was no joint ownership as understood in England and all conveyances of land to two or more persons were conveyances as owners in common. Duke took the view there was no joint ownership in Guyana. He was Registrar of Deeds and of the Supreme Court from 1933 to 1944. Because of the assumption that there was no joint ownership, the Registrar conveyed an undivided half share of Pln. Endeavour to Sheila De Camp and others as heirs of H.B. De Camp, on the 18th February, 1963. This indicates that Singh himself was not claiming Hannah De Camp's interest in the land. His ownership in Pln. Endeavour was to him ownership in common. Joint ownership must be the voluntary act of parties; it is not forced upon persons by the Courts. Furthermore when the Chief Justice granted a declaration of title in favour of Singh and De Camp he was not giving consideration to the manner in which the plantations were to be held; he was granting then a legal title and left it to the Registrar to register

In the Court of Appeal of the Supreme Court of Judicature

No. 17

Judgment of the Court of Appeal, The Chancellor (Cont'd)

the title. In view of the subsequent events,  
it is clear the Registrar registered title as  
owners in common. I therefore hold that Singh  
and De Camp held as owners in common and on the  
death of De Camp her share did not pass to Singh.  
Indeed, having regard to the prevailing belief in  
Guyana, I consider that all conveyances presently  
held by more than one person should be treated as  
ownership in common and future conveyances should  
10 be in accord with the specific wishes of those  
transporting immovable property; I also think that  
legislation clarifying this matter should be  
enacted at an early date.

In expressing the view that when persons  
have for a long number of years been acting under  
a mistaken belief of what the law is and should  
not be penalised as a consequence, I have some  
support in the case of James v. United States  
Vol. 366 United States Reports 15.5.1961. In that  
20 case one James had embezzled a certain sum of  
money and had not included the embezzled amount in  
his income tax return. He was convicted of wilfully  
attempting to evade federal income tax. On appeal

In the Court of  
Appeal of the  
Supreme Court of  
Judicature  
No. 17  
Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

the court held that 15 years previously the Court had decided that embezzled money was not gross income and although the 15 year old decision was being overruled by holding embezzled money to be returnable as gross income, the conviction would be quashed on the ground there could be no wilful evasion in the circumstances.

In Bray v. Colenbrander (1953) 1 All E.R.

1090, the Crown sought to challenge the correctness of two decisions which had stood for 28 and 15 years. In his speech dismissing the appeal and holding the two decisions correctly decided, Lord Normand said:

" If, instead of being fully satisfied that Bennett v. Marshall had correctly interpreted the reasoning in Foulsham v. Pickles, we had come to think, on a nice balance of considerations on one side and the other, that the Crown's argument in the appeals should, on the whole, be preferred, what would our duty have been? Ought we to have given judgment in favour of the Crown? Or ought we to have had regard to the hardships and injustices which might result? The point is this. In 1937 Bennett v. Marshall was decided, leave was obtained to appeal to this House, but nothing followed on that. In the

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor  
(Cont'd)



successive Finance Acts, between  
1938 and 1950, when the assessments  
in the present cases were, I think,  
made, the Inland Revenue could have  
laid before Parliament a clause to  
make it clear for the future that the  
place where the employee performed his  
duties was a relevant circumstance in  
considering the locality of the employ-  
ment. Nothing was done. But now this  
10 appeal is taken, and if it had succeeded  
it would have rendered a number of tax-  
payers liable to additional assessments  
going back six years. In the interval  
between 1938 and 1950 many people must,  
I should think, have entered into con-  
tracts of employment with a tract of  
future time in the faith that the place  
of payment of their salary was conclu-  
sive in settling whether they would have  
20 to pay British income tax on the actual  
amount of their remuneration remitted to  
the United Kingdom, or on the whole  
amount of their remuneration. That would  
have been for them of great importance  
when they were negotiating the contract.  
This matter was mentioned at the hearing  
but it was not debated. I would have  
asked that it should be debated if the  
conditions in which it might have been  
30 important had not evaporated by the con-  
clusion of the argument. I am still in  
doubt about what our duty would have been  
if these conditions had still been present.

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No. 7  
Judgment of the  
Court of Appeal,  
The Chancellor  
(Cont'd)

I have formed no opinion about it, save on this one point, that in modern times it would be unrealistic to attach more importance to a disposition of property made on the faith of a judicial decision than to a contract with a tract of future time entered into on the faith of a judicial decision."

In the Court of Appeal of the Supreme Court of Judicature  
No. 17  
Judgment of the Court of Appeal,  
The Chancellor,  
(Cont'd)

10            Since Pln. Endeavour was not held in joint ownership, and for the reasons already given, this appeal must be dismissed with costs here and in the Court below.

Dated this 28th day of October, 1966.

KENNETH S. STOBY,  
CHANCELLOR.

-----  
No. 18

JUDGMENT OF THE COURT OF APPEAL (PERSAUD J.)

20.    PERSAUD, J.A

In the Court of Appeal of the Supreme Court of Judicature  
No. 18  
Judgment of the Court of Appeal (Persaud J).

The relevant facts are set out in the judgment of My Lord the Chancellor, and I do not propose to reiterate them here unless it is necessary to do so to expand any point in this judgment.

While I agree that the nature of the interest

held by Dixie Fleetwood Mortimer and his sister  
Hamah Beatrice De Camp in Pln. Endeavour may be  
irrelevant to ascertaining the intention of the  
parties to the contract, yet it may be useful

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No. 18  
Judgment of the  
Court of Appeal  
Persaud J,  
(Contd.)

to make a few observations of my own on that  
question, particularly so as counsel for the  
appellant has sought to argue his submissions on  
both assumptions - that is to say, that Mortimer  
and De Camp held as joint tenants, as well as

10. tenants in common. Counsel urged that if they were  
joint tenants then upon De Camp's death on February  
23, 1950, her interest accrued to the surviving  
tenant, and therefore the intention of the parties  
to the contract executed on July 26, 1951, having  
been to dispose of the whole of Pln. Endeavour,  
the contract caught the entire property; alter-  
natively, if they held Pln. Endeavour as tenants  
in common, then the contract would have caught  
Mortimer's interest, that is, half of the estate,
20. and as a result he ought to be made to convey his  
interest to the appellant Singh for either of two

reasons, viz., he misrepresented to Singh that his sister was alive and would execute the contract, or if he was not guilty of misrepresentation, impropriety, misconduct or fraud, equity will compel him to convey whatever interest he owned on the date of the contract. Mr. Haynes further submits that there is no place here for the application of the doctrine of mutuality, but that in circumstances such as these, equity will intervene by making a fresh contract and enforcing that contract against the party who executed it.

In the Court of Appeal of the Supreme Court of Judicature  
No. 18  
Judgment of the Court of Appeal  
Persaud J,  
(Cont'd.)

Pln. Endeavour, together with another plantation called Johanna, was acquired by Dixie Fleetwood Mortimer and Hannah De Camp on October 20, 1956, upon a petition to the Supreme Court under the provisions of the Title to Land (Prescription and Limitation) Ordinance Chapter 184, the Court declaring that by virtue of the fact that they have been in the sole and undisturbed possession of upwards of 30 years,

20. "the said petitioners have by such sole and undisturbed possession for the period aforesaid acquired title (to the two estates) and are entitled to the

conveyance thereof." It is to be observed that there are no words of severance used, and this indicates, says Mr. Haynes, that the two people acquired the property as joint tenants.

In the Court of Appeal of the Supreme Court of Judicature  
Judgment of the Court of Appeal  
Persaud, J.  
(Cont'd).

Prior to the enactment of the Civil Law of British Guiana Ordinance (Chapter 2) in 1917, co-ownership of land was recognised by Roman-Dutch law, but joint ownership was recognised only in certain cases, as a result of contract, partnership,

10. joint purchase succession or marriage in community of goods. All other forms of co-ownership were regarded as interests in common.

- It should be borne in mind that there was at one time a system of purchase of land in this country whereby two or three persons would acquire title in undivided shares to land, notwithstanding that the purchase money was subscribed by several persons. Difficulties arose whenever the other subscribers or their descendants were required to
20. prove their title. The difficulty was resolved by the courts introducing the idea of the trust, and holding that the interest of the other subscribers

must be protected accordingly.

(See Muller v. Elliot (1864) L.R.B.G.

O.S. Vol. 2, 138). This point of view was

bound to take root in the judges' minds as soon

as they appreciated that it would never have been

intended by the various purchasers that their

interests should accrue to the surviving purchasers.

As from January 1, 1917, the law governing

immovable property in this country ceased to be

10. Roman-Dutch Law, except in so far as it has been

expressly retained by statute.

(See Mohamed Din v. Boodhoo and Tetry (1949) L.R.B.G.

219). The words of section 3 of the Civil Law

of British Guiana, (Chapter 2) are quite plain.

That section provides -

"From and after the date aforesaid .....  
the law of the colony relating to .....  
immovable or real property and chattels real,  
and all matters relating to any of the  
aforesaid subjects, and the law of the colony  
relating to all other matters whatsoever,  
whether eiusdem generis with the foregoing  
or not, shall cease to be Roman-Dutch law  
and as regards all matters arising and all

20.

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No. 18  
Judgment of the  
Court of Appeal  
Persaud J,  
(Cont'd.)

rights acquired or accruing after the date  
aforesaid (January 1, 1917), the Roman-  
Dutch Law shall cease to apply to the  
colony".

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No. 18  
Judgment of the  
Court of Appeal  
Persaud J,  
(Cont'd.)

The section goes on to provide that the  
common law of the colony shall be the common law of  
England as at the 1st January, 1917, and after  
precluding the English common law of real property  
from applying to immovable property in the colony,  
10. further provides as follows (sub-section D) -

"there shall be as heretofore one common  
law for both immovable and movable property,  
and all questions relating to immovable  
property within the colony and to movable  
property subject to the law of the colony  
shall be adjudged, determined, construed  
and enforced, as far as possible, according  
to the principles of the common law of  
England applicable to personal property."

20. Personal property may be owned by several  
persons jointly or in common, and the right of sur-  
vivorship attaches to a joint tenancy of personalty,  
but not so to a tenancy in common. Ownership in  
common may arise either from the severance of  
joint tenancy, or from a gift to two or more persons

As far as I am aware, neither of these incidents is applicable to the instant case. It will, therefore, be of some interest to examine a few of the decisions on this matter. In Hanoman v.

In the Court of Appeal of the Supreme Court of Guyana No. 32 Judgment of the Court of Appeal Persaud J, (Cont'd.)

Harmandan (1944) L.R.B.G. 201 at page 208, the West Indian Court of Appeal accepts that English common law of real property does not apply to immovable property in this country, but that the principles by which the courts in England are

10. guided when deciding whether a tenancy is joint or in common are relevant. The judgment sought to lay down a general rule to the effect that -

"joint ownership is not favoured on account of the right of survivorship that attaches to it, and in a will any words that denote an intention to give to each of the legatees a distinct interest in the subject of the gift will be sufficient to make them tenants in common."

20.

It seems, therefore, that there can be both joint tenancies as well as tenants in common in relation to land in Guyana, depending on the language of the document of title and the circumstances and in



administering the doctrine of Equity, the Courts would be more disposed to hold in favour of tenancies in common rather than joint tenancies. Duke in his Treatise on the Law of Immovable Property says in a footnote that there is no joint ownership in British Guiana, but only ownership in common, and in the body of the treatise, he says -

In the Court of Appeal of the Supreme Court of Judicature  
No. 18  
Judgment of the Court of Appeal  
Persaud J,  
(Cont'd.)

10. "It will be conceded that two persons can join in one petition and apply for prescriptive title in respect of the whole, and the title which will be obtained by each of them will be an undivided interest being one-half".

I would, therefore, hold that in this case Dixie Fleetwood Mortimer and his sister Hannah Beatrice De Camp held Pln. Endeavour as tenants in common.

20. Now, to the interpretation of the contract itself. Mr. Haynes concedes that it was the intention of the signatories to the contract (Mortimer and Singh) that the whole of Pln. Endeavour should be sold. On the assumption that there is a tenancy

in common, it is contended for the appellant that the court should make a new contract for the parties in that Mortimer (represented by the respondent) should be made to pass his undivided half of the estate to the appellant.

In this regard great reliance has been placed on Horrocks v. Rigby 9 Ch. D 180, A.G. v. Day (1748) 27 E.R. 992, and Basma v. Weekes (1950) 2 All E.R. 146.

In the Court of Appeal of the Supreme Court of Judicature No. 18 Judgment of the Court of Appeal Persaud J, (Cont'd).

10. In Horrocks v. Rigby, the plaintiff had entered into a contract with two tenants in common for the sale of the entirety, and it was found that one of those supposed tenants in common had no interest whatever in the property. It was held that there would be judgment for specific performance with abatement. In the course of his judgment, Fry, J referred to A.G. v. Day in which a contract had been entered into between tenants in common in tail after which one
20. tenant died leaving heirs in tail. In that case Lord Hardwicke said (1 Ves. Sen. 224).

"On the other hand, if on the death of one of the tenants in common who contracted for the sale of the estate, the purchaser brings a bill against the survivor desiring to take a moiety of the estate only, the interest in the money being divided by the interest in the estate, I should think (though I give no absolute opinion as to that) in the case of a common person he might have a conveyance of moiety from the survivor, although the contract cannot be executed against the heir of the other."

10.

In Basma v. Weekes and ors. the first three

respondents agreed to sell to the appellant two houses in Freetown, Sierra Leone, of which they were tenants in common. Under the law of Sierra Leone, the first respondent, being a married woman, had no power to enter into a contract without the concurrence of her husband. It was contended on behalf of the respondent as the contract could not as a result be performed in its entirety, there could be no order for specific performance against the other respondents. It was held that although the first respondent had no power to convey her interest, there were no special circumstances which would make it wrong to grant

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No. 13  
Judgment of the  
Court of Appeal  
Persaud J,  
(Cont'd.)

20.

specific performance of the contract in regard to the interests which belonged to the other respondents, and, therefore, the appellant was entitled to enforce the contract against the other respondents.

In the Court of Appeal of the Supreme Court of Judicature  
No. 18  
Judgment of the Court of Appeal  
Persaud J,  
(Cont 'd.)

A distinction can immediately be drawn between the cases referred to above and the instant case, and that is, that in the former contracts were signed by all the parties who were purporting

10. to enter therein, whereas here the other vendor, viz. Hannah De Camp had not signed the contract. In fact, she could not, as unknown to Mortimer and Singh, she was already dead. When it is borne in mind that it was the intention of both Singh and Mortimer that the contract was to be made complete by the signature of De Camp so that the whole estate might be sold, I cannot acquiesce in the appellant's contention.

In other words, it was not the contract contemplated by the parties that only a half of Pln. Endeavour

20. should be sold.

In Mortlock v. Buller 10 Ves. jun. 315,

another case referred to by Mr. Haynes, the Lord

Chancellor thus expressed himself -

".....if a man having a partial interest in an estate, chooses to enter into a contract, representing it, and agreeing to sell it, as his own, it is not competent to him afterwards to say, though he has a valuable interest, he has not the entire, and therefore the purchaser shall not have the benefit of his contract."

In the Court of Appeal of the Supreme Court of Judicature  
No. 18  
Judgment of the Court of Appeal  
Persaud, J,  
(Cont'd.)

10. That case would on the surface appear to support the appellant's contention, but, in my opinion, there is a distinction between that case and this case. Here Mortimer was not seeking to sell his interest (whatever that was) to Singh; the arrangement was, as I have already indicated, was to sell the entire estate, and if this is a true view of the facts, then the contract could not have been complete until it was executed by Hannah De Camp if alive, or by her personal representative if,
20. as was the case, De Camp was dead, on the day of the signing of the contract.

"Where a promise is intended to be made by several persons jointly, if any one of those persons fails to enter into the agreement, or to execute the instrument of the agreement, there is no contract

and no liability is incurred by such of them as have entered into the agreement."

(Hals. Laws of England, 3rd Ed. para. 100).

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment of the Court of Appeal

Persaud J,  
(Cont'd).

Even if my view that Mortimer and De Camp

held Pln. Endeavour as tenants in common is wrong,

and the correct legal position is that they were

joint tenants, this appeal would, in my judgment,

still fail. In Leek and Moorlands Building

10. Society v. Clark & ors. ( (1952) 2 All E.R. 492),

a husband and wife were in possession of premises

under a joint tenancy. By a contract of sale,

the husband agreed to buy the premises from the

landlords subject to the existing tenancy, and by

another contract he agreed to sell the premises to

C, vacant possession to be given upon completion.

C mortgaged the property to the plaintiffs. The

wife had no knowledge of the terms of the sale to

C or of the mortgage, nor did she authorise the

20. termination of the joint tenancy. On a claim for

possession, it was held that in the absence of

express authority it was not competent for

one of two joint tenants to surrender rights held jointly.

For the reasons I have endeavoured to give, I would dismiss this appeal. I agree with the order proposed by the learned Chancellor.

G.L.B. PERSAUD,  
.....  
Justice of Appeal  
(Acting).

In the Court of Appeal of the Supreme Court of Judicature  
No.18  
Judgment of the Court of Appeal  
Persaud, J,  
(Cont'd).

No. 19

10.

JUDGMENT OF THE COURT OF APPEAL (CUMMINGS J.)

CUMMINGS, J.A.

On the 26th day of July, 1961, the

plaintiff (appellant) and the defendant's (respondent's) husband executed the following agreement of sale:

"MEMORANDUM OF SALE made and entered into this 26th day of July, 1961, at the city of Georgetown, county of Demerara and colony of British Guiana, by and between DIXIE FLEETWOOD MORTIMER, also called Dixie Fleetwood Trotz of 57 New Road, Vreed-en-Hoop, West Bank, Demerara and HANNAH BEATRICE DE CAMP, of the same

20,

In the Court of Appeal of the Supreme Court of Judicature  
No.19  
Judgment of the Court of Appeal  
Cummings, J.

address hereinafter referred to as the VENDORS and A.P. SINGH of 37 Brickdam, Georgetown, Demerara, hereinafter referred to as the PURCHASER:

In the Court of Appeal of the Supreme Court of Judicature No.19 Judgment of the Court of Appeal Cummings, J, (Cont'd.)

PARTIES: The Vendor and the Purchaser which term shall include the heirs, executors, administrators, and assigns of the parties hereto.

PROPERTY: PLN. ENDEAVOUR adjoining Pln.

10. JOHANNA in Hogg Island, with the scrap iron, brass and other appurtenances thereon.

PURCHASE PRICE: The sum of \$2,500 (two thousand and five hundred dollars) of which the sum of \$100.00 (one hundred dollars) is being paid on the signing of this agreement (receipt whereof is hereby acknowledged). The balance of purchase price to be paid on the passing of transport.

20. CONDI- TION: This agreement shall and is expressly made subject to the agreement of sale and purchase with D. YHAP dated 22nd June, 1957. When it becomes necessary a further sum of \$950.00 will be advanced to D. YHAP and deducted.

30. TRANSPORT: To be advertised and passed as soon as title is acquired by the Vendor.



EXPENSES: to be borne equally by the Vendor and Purchaser.

In the Court of Appeal of the Supreme Court of Judicature

No. 19

Judgment of the Court of Appeal Cummings, J, (Cont'd).

IN WITNESS WHEREOF the parties have hereunto set their hands date and year and first above written in the presence of the subscribing witnesses:

D.F. Mortimer  
.....  
VENDOR

A.P. SINGH  
.....  
PURCHASER

10.

WITNESSES:

- 1. Ina Mortimer.
- 2. Karan Singh.

The defendant died on the 17th day of December, 1961, intestate and without having performed the agreement.

His widow, Ina Mortimer, obtained Letters of Administration of his estate on the 16th March, 1963.

20. She proceeded to vest title of her late husband's interest in Pln. Endeavour in her three children and herself. The appellant opposed the Transport and duly followed up his opposition with the proceedings in this action in which he claimed -

- (a) Specific performance of the agreement

- (b) A declaration that the opposition was just, legal and well-founded.
- (c) An injunction restraining the respondent from passing the Transport or in any way disposing of the property.
- (d) In the alternative, damages for the loss of bargain.
- (e) Such other order as the Court may deem fit.
- 10.

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J, (Cont'd.)

The document to which I have referred purports to be a Memorandum of Sale between Mortimer and Hannah de Camp as the Vendors and A.P. Singh as Purchaser. It is important to observe that it was not signed by de Camp and that one of the terms was that Transport was "To be advertised and passed as soon as title is acquired by the vendor."

The evidence disclosed -

- (1) That Hannah de Camp was Mortimer's
20. sister and that she was not alive at the time of the signing of the agreement, having died at Sheet Anchor, East Canje, Berbice, on the 23rd of February, 1960.

(2) The property, Pln. Endeavour, was owned by Mortimer and de Camp under Transport No. 675 of 1957, which was registered as such by Order of the Court in accordance with the provisions of sections 3 and 4 of the Title to Land (Prescription and Limitation) Ordinance, Cap. 184.

In the Court of Appeal of the Supreme Court of Judicature. No. 19 Judgment of the Court of Appeal Cummings, J, (Cont'd.)

(3) Upon the signing of the agreement the appellant paid \$100 to Dixie Mortimer.

10. (4) Pln. Endeavour comprised 118 acres which the appellant values at \$12,000. Nevertheless, he said that the present value of land in Essequibo is now \$700. per acre and it was around \$400 per acre in 1961 - 1962.

Upon a consideration of the terms of the agreement, the manner of its execution and the evidence referred to, the learned trial Judge found that: it was the intention of the appellant and respondent to sell and purchase, respectively, the whole of the property described in the agreement, "because it is not stated in the agreement whether the two vendors hold the property in equal shares or in what proportion

20.

the property is held by them, or whether the title to the land was in the name of Hannah de Camp and the title to the movable property in the name of Dixie Mortimer or vice versa.

In the Court of Appeal of the Supreme Court of Judicature  
No. 19  
Judgment of the Court of Appeal  
Cummings, J,  
(Cont'd.)

He said he was also influenced in this finding

"by the circumstance that in the body of the

document the parties are described as the vendor

and purchaser, that is to say, the singular is

used and not the plural, which would suggest

10. rather that the parties contemplated a single

joint sale."

Although the learned trial Judge was of the

view that he ought not to have looked at the

Transport for assistance in arriving at the inten-

tion of the parties, he nevertheless did consider

the case also on the basis that he could have looked

at it.

In Plant v. Bourne, (1897) 2 Ch., X, agreed

to sell and A. to buy "24 acres of land freehold and

20. all appurtenances thereto at Totmanslow in the parish

of Draycott in the County of Stafford." Part of

evidence was admitted to identify the land.

A fortiori, would title deeds with the exact description and reference to a plan be admissible?

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J, (Cont'd.)

It is also trite law that evidence of surrounding circumstances is admissible, not to vary the written document, but to show what was the object appearing from those circumstances which the person using the words had in view -

10. per Lord Blackburn in River Wear Commissioners v. Adamson, (1877) 2 App. Cas. p. 743 at p. 763.

Looking, then, at all the evidence, that is, the oral evidence, the agreement and the Transport, what was the intention of the parties?

I find it difficult to believe that Mortimer was unaware of his sister's death which took place in Berbice over a year prior to the execution of the agreement.

In his judgment the learned trial Judge said:

20. "The strong inference to be drawn from the circumstances in that the signatories to the agreement were not

aware of the death of Hannah de Camp at the time of the signing of the agreement and fully expected that she would at a subsequent date append her signature to the document which would complete the sale and the purchase of the whole property."

In the Court of Appeal of the Supreme Court of Judicature No. Judgment of the Court of Appeal Cummings, J, (Cont'd).

I agree that that is an inference that can be drawn, but it is the only one? There is no evidence that the agreement was drawn up by a lawyer.

10. On the contrary, it seems quite clear that it was drawn up by a layman or laymen. The penultimate clause of the agreement stipulates: "Transport to be advertised and passed as soon as title is acquired by the Vendor." In construing the document the maxim "ut res valeat quam pereat" is germane.

Surely this clause must mean that a title was to be acquired by the person selling before he would be in a position to convey. It is quite clear from the

20. Transport that Mortimer and de Camp were owners of undivided halves of the property mentioned and described therein since 1957. The title to be acquired by the Vendor could not then include

Mortimer's half. Was not Mortimer stipulating that he could acquire his sister's undivided half and then transport the whole property to Singh? Might he not have known of his sister's

death and thought that he could acquire the property as an heir or by purchase from her or her heirs? This clause of the agreement will be meaningless if it were not referring to the acquisition of de Camp's undivided half share. It

10. seems to me that this inference is stronger than the one drawn by the learned trial judge.

The facts upon which the trial Judge based his inference are before this Court and are not disputed. This Court is then in as good a position to draw its own inferences if it considers that the facts do not support the trial Judge's inference.

The inference I draw from the facts is that Mortimer intended to sell his undivided half share in the property mentioned and fully described in Transport

20. No. 675 of 1957, and later to acquire his sister's portion, whether she was dead or alive, and transport it to Singh.

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J, (Cont'd.)

I am reinforced in drawing this inference  
by the view I hold regarding co-ownership in Guyana.  
I am of the opinion that the incidents of co-owner-  
ship in Guyana are the same as they were under the  
Roman-Dutch Law.

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No. 19  
Judgement of the  
Court of Appeal  
Cummings, J.  
(Cont'd).

Section 2(3) of the Civil Law Ordinance,

Cap. 2, provides:-

10.           "(3) Nothing in this Ordinance con-  
tained shall be held to deprive any person  
of any right of ownership, or other right,  
title, or interest in any property, movable  
or immovable, or of any other right ~~as~~  
acquired before the date aforesaid; and  
where in any matter whatsoever any right  
is founded upon a rule or custom of Roman-  
Dutch Law or procedure for which there is  
no equivalent in the English common law,  
or where the English common law in the  
opinion of the Supreme Court is not appli-  
20.           cable owing to any special local conditions  
for which no provision is made by this or  
any other Ordinance, effect may be given  
to the Roman-Dutch rule or procedure to the  
extent the Supreme Court deems advisable  
in the interest of equity if that Court is  
so advised."

In Barry v. Mendonca, (1923) B.G.L.R. p.

107, Douglas, J., at page 109 said:



"In Roman Dutch Law then as administered in this colony up to the 31st December, 1916, a co-proprietor had no right to put up a house or fence in a portion of the common property without permission. That such a system of co-ownership still exists is recognised by Ordinance No. 13 of 1914 and its amending Ordinance No. 12 of 1920. I am of opinion that the Civil Law Ordinance has not altered the rights or remedies of such co-owners and that section 2(3) of Ordinance No. 15 of 1916 is applicable."

10.

Whether the Courts universally considered that this was a correct statement of the law does not clearly emerge from the other decided cases; but they have so acted during the past fifty years as if it were; and the conveyancing practice in this country has always proceeded and still does proceed on this basis.

20.

As eminent a jurist as Duke (subsequently Duke, J.) stated in his treatise on "The Law of Immovable Property in British Guiana." "There is no joint ownership in British Guiana, but only ownership in common." He made this remark while dealing with the conveyancing practice with regard

In the Court of Appeal of the Supreme Court of Judicature  
No. 19  
Judgment of the Court of Appeal  
Cummings, J.,  
(Cont'd).

to the acquisition of prescriptive title in respect of an undivided interest, and the reason for the remark was probably based upon his knowledge of the conveyancing practice at that time.

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J, (cont'd.)

The conveyancing practice in 1963 is evidenced by the annotation on Transport No. 675 of 1957: 'Undivided half in remainder here-in (share of H.F. de Camp) transported to Sheila de Camp et all on 18.2.1963. No. 337." That interpretation of the effect of the title issued to Mortimer and de Camp is not confined to the Registrar of Deeds and his conveyancing officer. It is the interpretation that has been given to such a deed by the Courts of Justice of this country long prior to the introduction of the provisions of the Civil Law Ordinance of 1916, Cap. 2, and, so far as I have been able to ascertain, has never been departed from by any Judge up to the present moment. Any member of the public who acquires or sells land jointly with another has always understood and still understands

that he is acquiring an undivided right, title and interest which is his and which he is free to alienate by deed inter vivos or testamentary gift without let or hindrance from anyone. It has always been held, and is still held by the Courts, to pass to his heirs upon intestacy. I accept as a correct statement of the law on this topic the following passage from Maxwell on the Interpretation of Statute 10th Edition page 306.

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J, (Cont'd.)

10.

EFFECT OF USAGE

"It is said that the best exposition of a statute or any other document is that which it has received from contemporary authority. Optima est legum interpretatio consuetudo. Contemporanea expositio est optima et fortissima in lege. Where this has been given by enactment or judicial decision, it is of course to be accepted as conclusive. But, further, the meaning publicly given by contemporary or long professional usage is presumed to be the true one, even when the language has etymologically or popularly a different meaning. It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or

20.

near the time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions. Moreover, the long acquiescence of the legislature in the interpretation put upon its enactment by notorious practice may, perhaps, be regarded as some sanction and approval of it. It often becomes, therefore, material to inquire what has been done under an Act, this being of more or less cogency, according to circumstances, in determining the meaning given by contemporaneous exposition."

10.

In arriving at the intention of the parties,

we must impute to them knowledge of notorious incidents of co-ownership. So when Mortimer made up

20. his mind to sell, his intention was to sell his in-

terest, and since Singh wanted to buy the whole estate he undertook to acquire his sister's interest and then convey to Singh. He thought that exhibit "D" would achieve this object.

The learned trial Judge found as a matter of law that the effect of the Transport was to operate a joint tenancy. He said:

In the Court of Appeal of the Supreme Court of Judicature  
No. 19  
Judgment of the Court of Appeal  
Cummings, J,  
(Cont'd.)

"In other words, Transport was passed to them absolutely in their names and the four unities of a joint tenancy were present..... In the case of joint tenancy the rights of each were extinguished by his death so as to increase the interest of his survivor or survivors."

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J. (Cont'd).

As I have already stated, I hold the view

that co-ownership as conceived here is in accord

10. with the Roman-Dutch concept; this is analogous to the English tenancy in common and similar incidents arise therefrom. If I am wrong in this view and the learned trial Judge is right, then Hannah de Camp's interest at the time of the execution of the agreement would have vested Mortimer and the latter's administratrix would then be in a position to deal with the whole of Pln. Endeavour, subject of course, to any third party rights which may be existing.

I agree with the submission of Counsel for

20. the appellant that the effect of this transaction was that Mortimer contracted to sell his half share. There is no evidence that Mortimer would not have sold his share if his sister did not join. This was no joint contract; Hannah de Camp was dead

and the plaintiff is willing to take what he  
can get.

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No.19  
Judgment of the  
Court of Appeal  
Cummings, J,  
(Cont'd).

The law applicable to these circum-  
stances is not in doubt and is lucidly expressed  
by the learned author of Fry on Specific Perfor-  
mance: Edition at p. 1257.

10. "Although, as a general rule, where  
the vendor has not substantially the  
whole interest he has contracted to  
sell, he, as we have seen, cannot en-  
force the contract against the purchaser,  
yet the purchaser can insist on having  
all that the vendor can convey, with a  
compensation for the difference."

In Attorney General v. Day, 1 Ves. Sen.

224, Lord Eldon said:

20. "If a man, having partial interests  
in an estate, chooses to enter into a  
contract, representing it, and agreeing  
to sell it, as his own, it is not com-  
petent to him afterwards to say, though  
he has valuable interests, he has not  
the entirety; and therefore the pur-  
chaser shall not have the benefit of his  
contract. For the purpose of this juris-  
diction, the person contracting under  
those circumstances is bound by the asser-  
tion in his contract; and, if the vendee

chooses to take as much as he can have, he has a right to that, and to an abatement; and the Court will not hear the objection by the vendor, that the purchaser cannot have the whole."

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J, (Cont'd).

In Horrocks v. Rigby, 9 Ch. D. 180, A.

and B.

- 10. "contracted to sell leasehold property to C., and on examining the title it appeared that A. was entitled to a moiety subject to a mortgage for its full value, and that B. had no interest at all, - facts which were not known to C. at the time when he entered into the contract, - C. was held entitled to an assignment of A.'s moiety, on the terms of covenanting to pay the rent and perform the covenants in the lease, and also to pay the mortgage-debt, and to indemnify A. in respect of those liabilities."
- 20.

In cases of this nature the Court executes the contract, cy pres, or rather perhaps carries into execution a new contract. Attorney General v. Day and Horrocks v. Rigby were expressly approved by the Judicial Committee of the Privy Council in Basma v. Weekes, (1950) 2 A.E.R. at p. 146, the head-note of which stated:

"By an agreement, dated Nov. 29, 1946, the first three respondents agreed to sell two houses in Freetown, Sierra Leone, which they were tenants in common, to W., who was acting, with the knowledge of the respondents, as agent for the appellant, but the agreement contained no reference to the appellant or to the fact that W. was purchasing as an agent. On

10.

Dec. 2, 1946, the first three respondents with the concurrence of the first respondent's husband, conveyed the property to the fourth respondent, who already had notice of the agreement of Nov. 29. In an action by the appellant for specific performance of the agreement of Nov. 29, the first three respondents contended inter

20.

alia (a) that the appellant had no right of action against them as the agreement was not a sufficient memorandum within the Statute of Frauds, 1677, s. 4, and (b) that, under the law of Sierra Leone, the first respondent, being a married woman, had no power to enter into a contract without the concurrence of her husband, and, therefore, as the contract could not be performed in its entirety, there could be no order for specific performance against the other respondents.

30.

Held: (ii) although the first respondent had no power to convey her interest, there were no special circumstances which would

In the Court of  
Appeal of the  
Supreme Court  
of Judicature  
No. 19  
Judgment of the  
Court of Appeal  
Cummings, J,  
(Sented).



make it wrong to grant specific performance of the contract in regard to the interests which belonged to the second and third respondents, and therefore, the appellant was entitled to enforce the contract against the second and third respondents so as to require conveyance to him of their two one-third shares, with abatement of the purchase price in respect of the interest of the first respondent".

10.

At page 154, letter "D", their Lordships, after a review of the leading cases some of which appeared to be in conflict with Horrocks v. Rigby and Attorney General v. Day, said:

"Their Lordships have reached the conclusion that the weight which must otherwise be given to a judgment of Lindley, L.J., is in this case seriously diminished by the circumstances to which they have adverted, and that the decision in Lumley v. Ravenscroft cannot be regarded as having impaired the authority of Horrocks v. Rigby or of the opinion of Lord Hardwicke in A.G. v. Day. In the present case there appear to be no special circumstances which would make wrong to grant specific performance, and their Lordships hold that the decision of Wright, J., was correct in

20.

In the Court of Appeal of the Supreme Court of Judicature No. 19 Judgment of the Court of Appeal Cummings, J, (Cont'd).

principle. It was not argued that the form of the order made by Wright, J., should be altered in any way. Their Lordships will humbly advise His Majesty that this appeal should be allowed and the order of Wright, J., restored. The Respondents, other than the respondent Mrs. Weekes, will pay the costs of this appeal and in the West African Court of Appeal."

In the Court of Appeal of the Supreme Court of Judicature No.19 Judgment of the Court of Appeal Cummings, J, (Cont'd).

10. In Fry on Specific Performance, ubi supra,

the following passage appears:

"The principle will not, it seems, be applied where the alienation of the partial interest of the vendor might prejudice the rights of third persons interested in the estate. Thus where a tenant for life without impeachment of waste under a strict settlement had contracted for the sale of fee, the Court refused to compel him to alienate his life interest, on the ground that a stranger would be likely to use his liberty to commit waste in a manner different from a father, and more prejudicial to the rights of those in remainder.

20.

If the purchaser is, from the first, aware of the vendor's incapacity to convey the whole of what he contracts for, he cannot, generally, insist on having at an abated price, what the vendor can convey."

30.

I should have applied this principle in the instant case, but because of the condition expressed in the agreement that the transaction was "subject to the agreement of sale and purchase with D. They dated 22nd June, 1957" - about which no evidence was led, I must refuse specific performance as the rights of a third person may be prejudiced. There are, in my view, other reasons why specific performance should not

10. in these circumstances be granted, but I consider it unnecessary to detail them in view of what I have just stated.

The plaintiff is, however, entitled to damages. I would allow the appeal, set aside the judgment of the learned trial Judge, declare that the opposition is just, legal and well founded, and assess the damages payable by the respondent to the appellant at \$500. The respondent should pay one-third of the appellant's costs here and in the Court

20. below.

Percival A. Cummings,  
 .....  
 Justice of Appeal (Ag).

Dated this 28th day of October, 1966.

In the Court of Appeal of the Supreme Court of Judicature  
 No. 19  
 Judgment of the Court of Appeal  
 Cummings, J,  
 (Cont'd).

No. 20

ORDER ON JUDGMENT OF THE COURT  
OF APPEAL DATED 28.10.66

In the Court of  
Appeal of the  
Supreme Court  
of Judicature

No. 20  
Order on Judgment of the Court  
of Appeal  
dated 28.10.66

BEFORE:

THE HONOURABLE SIR KENNETH STOBY, CHANCELLOR

THE HONOURABLE MR. G.L.B. PERSAUD, JUSTICE OF  
APPEAL

THE HONOURABLE MR. P.A. CUMMINGS, JUSTICE OF  
APPEAL

10 DATED THE 28TH DAY OF OCTOBER, 1966

ENTERED THE 29<sup>TH</sup> DAY OF APRIL, 1967

UPON READING the Notice of Appeal on  
behalf of the above-named Plaintiff (Appellant)  
dated the 19th day of January, 1966, and the  
Record of Appeal filed herein on the 23rd day of  
March 1966

AND UPON HEARING Mr. J.O.F. Haynes  
Queen's Counsel of Counsel for the Plaintiff  
(Appellant) and Mr. S.L. Van B. Stafford, Queen's  
20 Counsel of Counsel for the Respondent (Defendant)

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED that the Judgment of  
Honourable Mr. Justice Bollers dated the 10th

day of December, 1965, in favour of the said

Defendant (Respondent) be affirmed and this Appeal

dismissed with costs to be taxed certified fit

for two Counsel and paid by the said Plaintiff

(Appellant) to the said Defendant(Respondent).

BY THE COURT

H.Maraj

SWORN CLERK AND NOTARY PUBLIC

FOR REGISTRAR.

In the Court of  
Appeal of the  
Supreme Court  
of Judicature

---

No. 20  
Order on Judgment  
of the Court of  
Appeal dated  
28.10.66 (Cont'd)

10

---

No. 21

ORDER GRANTING CONDITIONAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

BEFORE THE HONOURABLE MR. E.V. LUCKHOO, JUSTICE  
OF APPEAL (IN CHAMBERS)

DATED THE 3RD DAY OF FEBRUARY, 1967

DATED THE 20TH DAY OF FEBRUARY, 1967

UPON the petition of the above-  
named petitioner (appellant) dated the 16th

In the Court of  
Appeal of the  
Supreme Court of  
Judicature

---

No. 21  
Order granting  
Conditional Leave  
to appeal to Her  
Majesty in Council  
dated 3.2.67

day of November, 1966 for leave to appeal to Her Majesty in Council against ~~the~~ judgment of the Court of Appeal of the Supreme Court of Judicature delivered herein on the 28th day of October, 1966 AND UPON READING the said petition and the affidavit in support thereof sworn to by Mr. Jayme Anthony Jorge, Solicitor for the said petitioner (appellant) on the 15th day of November, 1966 and filed herein:

In the Court of Appeal of the Supreme Court of Judicature

No. 21

Conditional Leave to appeal to Her Majesty in Council

3rd February, 1967.

(cont'd)

10. AND UPON HEARING Mr. J.O.F. Haynes, Queen's Counsel, of counsel for the petitioner (appellant) and Mr. S.L. Van B. Stafford, Queen's Counsel, of counsel for the respondent (respondent):

THE COURT DOTH ORDER that subject to the performance by the said petitioner (appellant) of the conditions hereinafter mentioned and subject to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Council against the said judgment of the Court of Appeal of the Supreme Court of Judicature be and the same is hereby granted to the petitioner (appellant):

AND THIS COURT DOTH FURTHER ORDER that the petitioner (appellant) do within six (6) weeks from the date hereof enter into good and sufficient security to the satisfaction of the Registrar in the sum of \$2,400 (two thousand four hundred dollars) with one or more surety or sureties or deposit into Court the said sum of \$2,400: (two thousand four hundred dollars) for the due prosecution of the said appeal and for the payment of all such costs as may become payable by the petitioner (appellant) in the event of the petitioner (appellant) not obtaining an order granting them final leave or of the appeal being dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the respondent (respondent) on such appeal as the case may be:

AND THIS COURT DOTH FURTHER ORDER that all costs of and occasioned by the said appeal shall abide the event of the said appeal to Her Majesty in Council if the said appeal shall be allowed or dismissed or shall abide the result

In the Court of Appeal of the Supreme Court of Judicature

No. 21

Conditional Leave to appeal to Her Majesty in Council

3rd February, 1967.

(cont'd)

of the said appeal in case the said appeal shall stand dismissed for want of prosecution:

In the Court of Appeal of the Supreme Court of Judicature

No.

AND THIS COURT DOTH FURTHER ORDER that the petitioner (appellant) do within three (3) months

Conditional Leave to appeal to Her Majesty in Council

from the date of this order in due course take out

3rd February, 1967.

all appointments that may be necessary for settling

(cont'd)

the record in such appeal to enable the Registrar

of the Court to certify that the said record has

been settled and that the provisions of the order

10. on the part of the petitioner (appellant) have

been complied with:

AND THIS COURT DOTH FURTHER ORDER that the petitioner (appellant) be at liberty to apply

within five (5) months from the date of this

order for final leave to appeal as aforesaid on

the production of a certificate under the hand

of the Registrar of this Court of due compliance

on their part with the conditions of this order:

AND THIS COURT DOTH FURTHER ORDER that the

20. costs of and incidental to this application be the

costs in the cause.

LIBERTY TO APPLY.

BY THE COURT  
H. Maraj  
Sworn Clerk & Notary Public  
for REGISTRAR.



AGREEMENT OF SALE BY D.F. MORTIMER AND

A.P. SINGH DATED 26.7.61

Plaintiff's

Exhibit

"A"

BRITISH GUIANA

COUNTY OF DEMERARA

Agreement of  
sale by  
D.F. Mortimer  
and A.P. Singh  
dated 26.7.61

MEMORANDUM OF SALE made and entered into this  
26th day of July, 1961, at the city of Georgetown,  
county of Demerara and colony of British Guiana,  
by an between BIKIE FLEETWOOD MORTIMER, also called  
Dixie Fleetwood Trotz of 57 New Road, Vreed-en-Hoop,  
10. West Bank, Demerara, and HANNAH BEATRICE DE CAMP, of  
the same address hereinafter referred to as the  
VENDORS and A.P. SINGH of 37 Brickdam, Georgetown,  
Demerara, hereinafter referred to as the

PURCHASER:

PARTIES: The Vendor and the Purchaser which  
terms shall include the heirs, executors  
administrators and assigns of the parties  
hereto.

PROPERTY: Pln. Endeavour adjoining Pln. Johanna  
20. in Hogg Island, with the scrap iron,  
brass and other appurtenances thereon.

PURCHASE

PRICE: The sum of \$2,500.00 (two thousand  
five hundred dollars) of which

the sum of \$100.00 (one hundred dollars)  
is being paid on the signing of this  
agreement (receipt whereof is hereby  
acknowledged). The balance of purchase  
price to be paid on the passing of  
transport.

Plaintiff's  
Exhibit  
"A"  
Agreement of sale  
by  
D.F. Mortimer  
and A.P. Singh  
dated 26.7.61  
(cont'd)

CONDITION: This agreement shall and is expressly  
made subject to the agreement of sale  
and purchase with D. YHAP dated 22nd

10. June, 1957. When it becomes necessary  
a further sum of \$950.00 will be advanced  
to D. Yhap & deducted.

TRANSPORT: To be advertised and passed as soon  
title is acquired by the Vendor.

EXPENSES: To be borne equally by the Vendor and  
Purchaser.

IN WITNESS WHEREOF the parties have hereunto set their  
hands date and year and first above written in the  
presence of the subscribing witnesses.

20.

D. F. Mortimer  
.....  
.....

VENDORS.

A. P. Singh  
.....  
PURCHASER.

Plaintiff's  
Exhibit  
"A"

Agreement of  
sale by  
D.F. Mortimer  
and A.P. Singh  
dated 26.7.61  
(cont'd)

WITNESSES:

1. Ina Mortimer.
2. Karan Singh.

"B"

RECEIPT FOR \$5.00 DATED 16.7.62 BY

Plaintiff's  
Exhibit

INA MORTIMER.

"B"

Georgetown

Receipt for  
\$5.00 dated  
16.7.62 by  
Ina Mortimer.

10

16th July, 1962.

Received from A.P. Singh the some of \$5 dollar  
five dollar forder on account for the sale by my  
husband Mortimer of Endeavour Hog Island.

Ina Mortimer.

"G"

Death Certificate No. 44 of  
Hannah De Camp,

Defendant's  
Exhibit

No. 10483

BRITISH GUIANA

D.C.B.  
12/11/65.

Death certificate No. 44 of Hannah De Camp

COPY FROM THE REGISTER OF DEATHS IN DIVISION NO. ONE DISTRICT Lower Canje IN THE COUNTY OF Berbice IN THE YEAR 1960

No.	When and Where died	Name and Surname and other Description	Sex	Age	Rank or Profession and other Description	Cause of death	Signature Qualification and Residence of Informant	When Registered	Signature of Registrar
44	Twenty third February nineteen hundred and sixty. Sheet Anchor, East Canje	Hannah De Camp Native of Br. Guiana	Female	68 years	Not employed	Exonoria General Debility Seniles Debility certified by Dr. L.R. Samples 42 Anira St. G.T.	Fitzgerald Stoby present at death Sheet Anchor	Ninth March 1960	L. G. Smith Registrar,

C. R. O.

?

CERTIFIED A TRUE EXTRACT

11/11/65

?

"D".

CERTIFIED COPY OF TRANSPORT No.

675/1957.

Plaintiff's  
Exhibit

"D"

Certified copy  
of Transport  
No. 675/1957.

Registered as a Title under Sections 3 and 4 of the Title to Land (Prescription and Limitation)  
Ordinance Chapter 184 this 27th day of April, 1957

M.R. CHASE

Sworn Clerk & Notary Public.

Portion of herein property known as Pln. Johanna containing 313 acres transported to Budni Farouk  
on 20/12/1960

B.R.

A.S.C.

an (share of

of Essequibo

in the county of Essequibo

of British Guiana, as shown

on a plan by Mr. J. Phang,

and duly recorded in the Department

of Lands and Mines on the 29th day of

March, 1957. The said plan is hereto

attached and marked with the letter "A".

TRANSPORT No. 675 of 1957.

on 21/2/1963

Petition No. 390 of 1956 Essequibo.

IN THE SUPREME COURT OF BRITISH GUIANA

De Camp et

-vs- I. Mortimer

(DECLARATION OF TITLE)

To the Supreme Court of British Guiana.

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

the matter of A. Sing

of November, 1963

-and-

In the matter of the Title to Land

(Proscription and Limitation) Ordinance,

Chapter 184,

Plaintiff's

Exhibit

"D"

Certified copy  
of Transport  
No. 675/1957.

(cont'd)

-and-

In the matter of the joint petition of  
  
DIXIE FLEETWOOD MORTIMER also known as and  
  
called Dixie Trotz, and HANNAH BEATRICE  
  
DE CAMP nee MORTIMER, she having been married  
  
to Innis Anthony De Camp (now deceased)  
  
subsequent to the 20th day of August, 1904,  
  
both of lot 37, New Road, Vreed-en-Hoop,  
  
West Coast, Demerara, in the colony of  
  
British Guiana.

A. BACCHUS - TIMARI  
ASSISTANT SMOEN CLERK

BEFORE THE HONOURABLE MR. JUSTICE LUCKHOO

DATED THE 20TH DAY OF OCTOBER, 1956

ENTERED THE 8TH DAY OF FEBRUARY, 1957.

UPON PETITION of Dixie Fleetwood Mortimer also  
  
known as and called Dixie Trotz and Hannah Beatrice  
  
De Camp, both of lot 37 New Road Vreed-en-Hoop,  
  
West Coast, Demerara, preferred unto this Court  
  
on the 15th day of March, 1956 AND UPON READING  
  
the affidavits of the petitioners, and Andrew  
  
Benjamin, Samuel King, Ramlakhan, B.R. No. 1126

This copy is issued for Judicial Purposes only for use in the case of A.P. Singh -vs- I. Mortimer  
Action 1718/1963 this 15th day of November, 1965.

of 1901, and Alexander Taylor filed on the 15th day  
of March, 1956, in support thereof AND UPON HEARING  
Counsel for the Petitioners AND IT appearing that  
the Rules of the Supreme Court (Declaration of  
Title) 1923, have been duly complied with, AND IT  
having been established to the satisfaction of the  
Court that the said petitioners Dixie Fleetwood  
Mortimer also known as and called Dixie Trotz  
and Hannah Beatrice De Camp have been in the sole  
10. and undisturbed possession for upwards of 30  
(thirty) years of "Two pieces or parcels of land  
known as Plantation Johanna and Endeavour situate  
in the county of Essequibo and colony of British  
Guiana as more particularly described in the schedule  
hereto, this Court in terms of sections 3 and 4 of  
the Title to Land (Prescription and Limitation)  
Ordinance, Chapter 184 doth hereby declared that  
the said petitioners have by such sole and un-  
disturbed possession for the period aforesaid  
20. acquired the title to the "two pieces or parcels  
of land known as Plantation Johanna and Endeavour  
situate in the county of Essequibo and colony of

Plaintiff's  
Exhibit

"D"

Certified copy  
of Transport  
No. 675/1957  
(cont'd)

British Guiana as more particularly described in  
the schedule hereto and is entitled to the  
conveyance thereof.

Plaintiff's

Exhibit

"D"

Certified copy  
of Transport  
No. 675/1957

(cont'd)

CERTIFIED A TRUE COPY

BY THE COURT

C. CHARAN

J. E. N. Earl

Assistant Sworn Clerk

SWORN CLERK & NOTARY

19. 2. 57

PUBLIC

for REGISTRAR.

SCHEDULE

10. "Two pieces or parcels of land known as  
Plantations Johanna and Endeavour containing  
an area of 313 acres and 118 acres respectively  
situate on the northern side of Hog Island  
in the Essequibo River in the county of  
Essequibo and colony of British Guiana,  
and as shown and defined on a plan by J. Phang,  
Sworn Land Surveyor, dated the 5th March, 1955  
and deposited in the Deeds Registry on the  
20th day of September, 1956, the said  
20. Plantations being also shown on a plan by  
J.A.P. Bowhill, Sworn Land Surveyor,  
dated June, 1898, and recorded in the



Department of Lands and Mines as Plan No. 1109.

Plaintiff's  
Exhibit

A TRUE COPY

"D"

A. BACCHUS - TIWARI

Certified copy  
of Transport  
No. 675/1957

Assistant Sworn Clerk.

(cont'd)

-----  
"E"

CERTIFIED COPY OF LETTERS

Plaintiff's  
Exhibit

OF ADMINISTRATION No. 94/63.

"E"

PROBATE AND ADMINISTRATION No. 94 of 1963.

Certified copy  
of Letters of  
Administration  
94/63

IN THE SUPREME COURT OF BRITISH GUIANA

-----  
LETTERS OF ADMINISTRATION  
-----

10. In the Estate of DIXIE FLEETWOOD MORTIMER, deceased

Sworn at

(1,100

BE IT KNOWN that DIXIE FLEETWOOD MORTIMER

late of this colony, died on the 17th day of December

1961 at Suddie Hospital, Essequibo intestate.

AND BE IT FURTHER KNOWN on the 16th day

of March 1963, Letters of Administration of all

the estate which by law devolve on and vests in

the personal representative of the said deceased  
 were granted by the Supreme Court aforesaid to  
 INA MORTIMER, widow of the deceased, of lot 57  
 New Road, Vreed-en-Hoop, West Bank Demerara, she  
 having been first sworn well and faithfully to  
 administer the same.

Dated this 16th day of March, 1953.

Extracted by Dabi Dial, Esq.,

N.A. Bhulai

10 Solicitor for the Applicant.

Sworn Clerk & Notary

Public

for Registrar.

SUPREME COURT - No. 60.

CERTIFIED

A TRUE COPY

HARRY

Assistant Sworn Clerk

12. 11. 65

Plaintiff's

Exhibit

"E"

Certified copy  
 of Letters of  
 Administration  
 94/63

(cont'd)

"F"

O.G. ADVERTISEMENT OF TRANSPORT NO. 67  
OF 31.8.63

Plaintiff's

Exhibit

"F"

Extract from first supplement of Official Gazette  
for 31st August, 1963.

O.G. advertisement  
of Transport  
No. 67 of 31.8.63

67. By Ina Mortimer, of lot 57, New Road,  
Vreed-en-Hoop, West Bank, Demerara River, widow,  
in her capacity as the administratrix of the  
estate of DIXIE FLEETWOOD MORTIMER, deceased,  
Letters of Administration whereof was granted to  
10. her by the Supreme Court of British Guiana, on  
the 16th day of March, 1963.
- TRANSPORT of one undivided half part or share of  
and in Plantation Endeavour containing 118 (one  
hundred and eighteen) acres situate on the northern  
side of Hog Island in the Essequibo River in the  
county of Essequibo and the colony of British  
Guiana, the said plantation being shown on a  
plan by J. Phang, Sworn Land Surveyor, dated the  
5th March, 1955 and deposited in the Deeds  
20. Registry on the 20th day of September, 1956, and  
on a plan by J.A.P. Bowhill, Sworn Land Surveyor,

dated June, 1898, and recorded in the Department  
of Lands and Mines as Plan No. 1109.

To the said INA MORTIMER, of lot 57, New Road,  
Vreed-en-Hoop, West Bank, Demerara River, widow,

for one undivided third part or share or and

in the herein described property and the minors

GEORGE MORTIMER, PAUL MORTIMER and ERROL MORTIMER,

all of lot 57, New Road, Vreed-en-Hoop, West

Bank Demerara River, for the remaining two un-

10 divided third psrts or shares of and in the said

property, they being the heirs ab intestator of

the said deceased.

Plaintiff's

Exhibit

"F"

O.G. advertis-  
ment of Trans-  
port No. 67 of  
31. 8. 63

(cont'd)

"G"

LETTER OF INSTRUCTIONS FROM GOMES & GOMES,

SOLICITORS TO DEFENDANT. 5.4.63

Plaintiff's

Exhibit

"G"

Copy of letter  
from Gomes &  
Gomes, Solicitors  
to defendant  
5.4.63

2 Croal Street

Georgetown.

GOMES AND GOMES

SOLICITORS.

5th April, 1963.

Mrs. Ina Mortimer,

57 New Road,

Vreed-en-Hoop,

10. West Coast Demerara.

Dear Madam,

We are instructed by our client

Mr. A.P. Singh to call on you as executrix of the

last will of Dixie F. Mortimer, for transport of

an undivided half share of and in Plantation

Endeavour adjoining Plantation Johanna in Hogg

Island, Essequibo, which he purchased from your

husband Dixie Fleetwood Mortimer, since deceased,

in the month of July, 1961. Our client had pur-

20. chased the whole of Plantation Endeavour for

\$2,500.00 from your late husband who signed

for himself and on behalf of Mrs. Hanna Beatrice

De Camp. Our client paid your husband \$100.00

on account of the purchase price and he paid you  
\$5.00 on the 16th July, 1962, further on account  
of the said sale to him. On the passing of  
transport of an undivided half interest in  
Plantation Endeavour to our client he will  
pay you \$1,145.00 being \$1,250.00 less \$105.00  
for the half share in Plantation Endeavour.

Unless you take steps to pass transport  
to our client by the 20th April, 1963, our in-  
structions are to take proceedings against you  
for transport of same without further delay.

Yours faithfully

Gomes & Gomes.

G & G/ns.

---

N 006925

ACCEPTANCE RECEIPT

REGISTERED PACKET

Addressed: Ina Mortimer

57 New Road

Received by V/Hoop.

Plaintiff's

Exhibit

"G"

Copy of letter  
from Gomes &  
Gomes, Solici-  
tors to the  
defendant

5. 4. 63

(cont'd)