

2, 1969

(2)

IN THE PRIVY COUNCIL.

No. 30 of 1967.

ON APPEAL FROM THE COURT OF
APPEAL FOR THE BAHAMA ISLANDS

B E T W E E N :-

OCEAN ESTATES LIMITED (Plaintiffs)
Appellants.

- and -

NORMAN PINDER (Defendant)
Respondent.

RECORD OF PROCEEDINGS.

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- MAR 1970
25 RUSSELL SQUARE
LONDON, W.C.1

WIGRAM & CO.,
9, Queen Street,
Mayfair, London, W.1.
Solicitors for the Appellants.

HATCHETT JONES & CO.,
90 Fenchurch Street,
London, E.C.3.
Solicitors for the
Respondent.

IN THE PRIVY COUNCILNo. 30 of 1967ON APPEAL FROM THE COURT
OF APPEAL FOR THE BAHAMA ISLANDSB E T W E E N :OCEAN ESTATES LIMITED (Plaintiffs)
Appellants

- and -

NORMAN PINDER (Defendant)
RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE PART 1

| No. | Description of Document | Date | Page |
|-----|--------------------------------|---------------------|------|
| | <u>In the Supreme Court</u> | | |
| 1 | Writ of Summons | 20th December 1963 | 1 |
| 2 | Defence | 25th March 1964 | 4 |
| 3 | Further and Better Particulars | 8th March 1966 | 5 |
| 4 | Judge's Notes | 11th July 1966 | 6 |
| 5 | Judge's Notes | 12th July 1966 | 13 |
| 6 | Judge's Notes | 3rd August 1966 | 21 |
| 7 | Judge's Notes | 7th August 1966 | 21 |
| 8 | Judge's Notes | 10th August 1966 | 31 |
| 9 | Judge's Notes | 21st September 1966 | 36 |
| 10 | Judge's Notes | 1st November 1966 | 43 |
| 11 | Judgment | 1st November 1966 | 43 |
| 12 | Notice of appeal | 10th December 1966 | 49 |

| No. | Description of Document | Date | Page |
|-----|--|-------------------|------|
| | <u>In the Court of Appeal</u> | | |
| 13 | Judgment of Sinclair. P. | 20th June 1967 | 52 |
| 14 | Judgment of Hallinan J.A. | 20th June 1967 | 67 |
| 15 | Judgment of Bourke J.A. | 20th June 1967 | 77 |
| 16 | Certificate of The Order of The Court | 21st June 1967 | 85 |
| 17 | Order Grant Leave to Appeal (Conditional) | 21st June 1967 | 86 |
| 18 | Bond for costs on Appeal to Privy Council | 28th July 1967 | 88 |
| 19 | Letter Appellants' Solicitors to Respondent's Solicitors | 27th July 1967 | 90 |
| 20 | Letter Appellants' Solicitors to Respondent's Solicitors | 31st July 1967 | 91 |
| 21 | Order granting final leave to appeal to Her Majesty in Council | 27th October 1967 | 91 |

EXHIBITS

| Exhibit Mark | Description of Document | Date | Page |
|-----------------|--|-------------------|------|
| O.E.1. | Grant to Thomas Dodd Milburne | 4th December 1890 | 93 |
| O.E.2. | Conveyance to Minnie Beatrice Albury | 28th August 1919 | 95 |
| O.E.3. | Renunciation of Dower by Jean Crawford Milbourne | 2nd June 1920 | 99 |
| O.E.4. | Conveyance to Edmund Dorset Knowles | 14th January 1922 | 102 |
| O.E.5. | Conveyance to Elsie May Key | 6th February 1922 | 104 |
| O.E.6. | Renunciation of Dower by Rosalie Blanche Knowles | 7th February 1922 | 106 |
| O.E.7. | Affidavit of Howard Nelson Chipman with attached conveyance to Chipper Orange Company Limited | 3rd May 1937 | 109 |

| Exhibit Mark | Description of Document | Date | Page |
|--------------|---|-----------------------|------|
| O.E.8. | Affidavit of Ronald Edward Fountain with attached conveyance to British Bohemian Land Company Limited | 24th June 1946 | 111 |
| O.E.9. | Affidavit of Ronald Edward Fountain with attached Conveyance to British Bohemian Land Company Limited | 24th June 1946 | 115 |
| O.E.10. | Declaration of Howard Nelson Chipman | 28th February 1948 | 118 |
| O.E.11. | Conveyance to British Bohemian Land Company Limited | 12th February 1949 | 120 |
| O.E.12. | Conveyance to Alfred John Roy Whiteway | 14th February 1949 | 123 |
| O.E.13. | Conveyance to Ocean Estates Limited | 30th March 1950 | 127 |
| O.E.14. | Extract from Minutes of Ocean Estates Limited | 28th January 1960 | 131 |
| O.E.15 to 20 | Copy Photographs | Separately Reproduced | |
| O.E.23. | Statement of Chipper Orange Company Limited and Extract from Register | 19th October 1938 | 132 |
| O.E.24. | Statement of Chipper Orange Company Limited and Extract from Register | April 1944 | 134 |
| O.E.25. | Statement of Chipper Orange Company Limited and Extract from Register | 4th May 1947 | 136 |

1.

IN THE PRIVY COUNCIL

No.30 of 1967

ON APPEAL FROM THE COURT OF
APPEAL FOR THE BAHAMA ISLANDS

B E T W E E N :

OCEAN ESTATES LIMITED (Plaintiffs)
Appellants

- and -

NORMAN PINDER (Defendant)
Respondent

10

RECORD OF PROCEEDINGS

No. 1

Writ of Summons

Bahama Islands
Supreme Court

No.1

Writ of
Summons.
20th December
1963

BAHAMA ISLANDS

IN THE SUPREME COURT

1963 No. 724.

COMMON LAW

Side

B E T W E E N:

OCEAN ESTATES LIMITED Plaintiff

- and -

NORMAN PINDER Defendant
Fox Hill

20

Elizabeth THE SECOND , by the Grace of God, of
the United Kingdom of Great Britain and Northern
Ireland and of Our other realms and territories
Queen, Head of the Commonwealth, Defender of the
Faith.

TO

NORMAN PINDER
Fox Hill

WE COMMAND YOU That within eight days after
service of this writ on you, inclusive of the

Bahama
Islands
Supreme Court

No.1
Writ of
Summons
20th December
1963
(Contd.)

day of such service, you do cause an appearance to be entered for you in an action at the suit of

OCEAN ESTATE LIMITED

And take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS, His Lordship the Honourable Sir Ralph Abercromby Campbell Our Chief Justice of Our Bahama Islands, the 20th day of December in the year of Our Lord One thousand nine hundred and sixty three

10

Geraldine Murdoch

Sg. Asst. Registrar.

N.B. This Writ is to be served within twelve calendar months from the date thereof, or, if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may enter appearance personally or by attorney either by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court, Public Square, in the City of Nassau in the Island of New Providence, or by sending them to that office by post.

20

If the defendant enters an appearance he must also deliver a defence to the attorney for the plaintiff within fourteen days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge, otherwise judgement may be entered against him without notice, unless he has in the meantime been served with a summons for judgment.

30

STATEMENT OF CLAIM

THE PLAINTIFF'S CLAIM IS

1. The Plaintiff was and is the owner of all that tract of land situate in the Eastern District of the Island of New Providence and bounded on the North by the Yamacraw Road, on the East by

3.

Sand's Souci and land granted to Henry M. Dyer on the South by a road reservation bordering the sea, and on the West by the Fox Hill South Side Road.

Bahama
Islands
Supreme Court

No.1

Writ of
Summons
20th December
1963 (Contd.)

2. The Defendant has wrongfully entered upon the Plaintiff's said tract of land and has cut down trees and shrubs growing thereon without the consent or authority of the Plaintiff.

10 3. The Defendant threatens and intends to continue and repeat the said acts of trespass complained about.

And the Plaintiff claims

(a) Damages

(b) An injunction restraining the Defendant from entering upon the said tract of land or otherwise trespassing thereon.

(c) Costs

(d) Further or other relief.

Delivered this 20th day of December A.D. 1963.

20

Lash & Fountain
Attorneys for the Plaintiff.

And the sum of £ (or such sum as may be allowed on taxation) for costs, and also, in case the Plaintiff obtains an order for substituted service, the further sum of £ (or such sum as may be allowed on taxation).

30 If the amount claimed be paid to the plaintiff or his attorney or agent within four days from the service hereof, further proceedings will be stayed.

Provided that if it appears from the endorsement of the writ that the plaintiff is/are resident outside the scheduled territories, as defined by The Exchange Control Act, 1947, or is/are acting by order or on behalf of a person so

Bahama
Islands
Supreme Court
No.1
Writ of
Summons
20th December
1963 (Contd.)

resident, or if the defendant is acting by order or on behalf of a person so resident proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the plaintiff, his attorney or agent.

This writ was issued by Cash & Fountain, of and whose address for service is The Moses Building, Bay Street, Nassau, Bahamas, attorneys for the said plaintiff, who resides at

10

This writ was served by me at Fox Hill, South Beach Rd. in the Eastern Dist. of New Providence. on the defendant Norman Pinder on Saturday the 15th day of February 1964 at 12.55 p.m.

Indorsed the 17th day of February 1964.

(Signed) Arthur K.Parus
Deputy Provost Marshal,

(Address) Supreme Court,
Nassau,
Bahamas.

20

No.2
Defence.
25th March
1964.

No.2
Defence.

BAHAMA ISLANDS 1963 No. 724
IN THE SUPREME COURT
Common Law Side
B E T W E E N

OCEAN ESTATE LIMITED Plaintiff

- and -

NORMAN PINDER Defendant

DEFENCE

30

1. The Defendant is in possession of the premises by himself.

DATED the 25th day of March 1964

ATTORNEY FOR THE DEFENDANT,
Chambers,
Nassau, Bahamas.

No.3
Further and Better Particulars

Bahama
Islands
Supreme Court

BAHAMA ISLANDS
IN THE SUPREME COURT
Common Law Side.

1963 No. 724

No.3
Further and
Better Partic-
ulars 8th
March, 1966.

B E T W E E N :

OCEAN ESTATES LIMITED Plaintiff

- and -

NORMAN PINDER Defendant

10

FURTHER AND BETTER PARTICULARS

The Defendant says that he has been in full free and undisturbed possession of the land the subject matter of this action by farming thereon continuously from about the year 1938 up to the present time.

DATED this 8th day of March, A.D. 1966

20

Attorney for the Defendant,
Chambers,
Deveaux Street,
Nassau, Bahamas.

Bahama
Islands
Supreme Court

No.4
Judge's Notes

No.4
Judge's Notes
11th July 1966

IN THE SUPREME COURT OF THE BAHAMA ISLANDS

HOLDEN AT NASSAU

This 11th day of July, 1966

Before: Mr. Justice James Smith

Suit No. 724 of 1963.

B E T W E E N :

OCEAN ESTATES LIMITED Plaintiff

- and -

NORMAN PINDER Defendant

10

JUDGE'S NOTES

Liddell for Plaintiffs

Hanna for Defendant

Liddell: Plaintiffs claim to be owners in fee simple. Defendant has trespassed on the land and we claim damages.

If I establish a documentary title the burden of proof passes to defendant. I would then like to lead rebutting evidence.

20

Halsbury 3rd Edition Volume 15 p. 269 para. 492.

Hanna: Plaintiffs claims damages and must call evidence as to that.

Liddell: We are not so much interested in damages as getting defendant off the land.

Liddell calls.

P.W.1. Eleanor Joan Christianson S/S
Widow, secretary of Ocean Estates Limited,

Sasson Building, Shirley Street, Nassau.

I have custody of the records kept in my office. The deeds are held by plaintiffs solicitors on behalf of a mortgagee.

Bahama
Islands
Supreme Court

No.4

Judge's Notes
11th July
1966 (Contd.)

Deeds put in as:

Exhibit O.E.1. Crown Grant dated 4th December, 1890 to Thomas Dodd Milburne.

10 Exhibit O.E.2. Certified copy of a Conveyance dated 28th August, 1919 Major Claude Edward Allan Milburne and Hugh Ernest Spencer Milburne, executors of estate of Thomas Dodd Milburne to Minnie Beatrice Aubery of 239 acres in fee simple.

Exhibit O.E.3. Release of Dower - certified copy from Jean Crawford Milburne to Minnie Beatrice Aubery dated 2nd November, 1923.

20 Exhibit O.E.4. Certified copy conveyance dated 14th January, 1922 from Minnie Beatrice Aubery to Edmund Dorsett Knowles of 239 acres in fee simple.

Exhibit O.E.5. Certified copy conveyance of 6th February, 1922 Edmund Dorsett Knowles to Elsie May Key of 239 acres in fee simple

Exhibit O.E.6. Renunciation of Dower by Rosalie Blanche wife of Edmund Dorsett Knowles dated 7th February, 1922.

Exhibit O.E.7. Conveyance dated 1st May, 1937 Elsie May Key to Chipper Orange Company of 100 acres in fee simple.

30 Exhibit O.E.8. Conveyance dated 24th June, 1946 Chipper Orange Company Limited to British Bahamian Land Company Limited of 80 acres in fee simple. Plan on deed.

Exhibit O.E.9. Conveyance dated 24th June, 1946 Chipper Orange Company to British Bahamian Land Company Limited of 64 acres in fee simple. Plan on deed.

Bahama
Islands
Supreme Court

No.4

Judge's Notes
11th July
1966 (Contd.)

Notarial Declaration produced.

Liddell: This declaration is I submit admissible on the question of the boundary and of ownership and also that the person who made the declaration has been dead many years.

Hanna: I concede the deponent is dead and died sometime in the early 1950's.

I object to its admissibility as it is heresay evidence.

Section 42(7) Evidence Act and Section 42(8). 10

The document - the notarial declaration - falls within neither and is inadmissible.

Deponent was not a general agent but merely an agent to buy land.

Unless it can be shown it is part of the res gestae under Section 42(1) it is not admissible.

Liddell: I submit Section 42(7) fits the present case. 20

As a real estate agent it was deponent's duty to make enquiries as to trespassers or squatters on the land.

In paragraph 5 he says he managed the said land.

Court: I hold the document is admissible in evidence, put in as Exhibit O.E.10.

P.W.1. continues. produces following documents as:

Exhibit O.E.11. Conveyance of 12th February 1949 Elsie May Key to British Bahamian Land Company (recites indenture Exhibits O.E.7, O.E.8 and O.E.9) in fee simple. 30

Exhibit O.E.12. Conveyance dated 14th February 1949 British Bahamian Land Company Limited to

Alfred John Roy Whiteway, whereby the land in Exhibits O.E.8 and O.E.9 (inter alia) was conveyed to the purchaser in fee simple.

Bahama
Islands
Supreme Court

Exhibit O.E.13. Conveyance of 30th March, 1950 Alfred John Roy Whiteway to Ocean Estates Limited of land in Exhibit O.E.12 and the tract in fee simple.

No.4
Judge's Notes
11th July
1966 (Contd.)

10 I know Mercantile Bank Ltd. have a mortgage and further charge on (inter alia) the property in question. The mortgagees have not entered into possession. All interest payments on the mortgages are up to date. I have been secretary of plaintiff company since 1960. I know where the land is. I have not officially been on the land. We had a surveyor out from England who advised. This is the minute book of Ocean Estates Limited. A directors meeting was held on 20 28th January, 1960. There is a reference to the survey in the minutes of this meeting paragraph 49(2) (no objection) put in as Exhibit O.E.14.

30 **XXD. Hanna:** Mr. Andreae told me you had told him that you had a claim to a portion of the land. I think it was December, 1963. I saw you enter his office at Trade Wind Buildings. Mr. Andreae is a director of Plaintiff company. It was 8th, 9th or 10th December in connection with Yamacraw. Prior to that I was unaware there was anybody trespassing on the land. We employed a surveyor to look at the property and advise. I didn't know if he made a survey.

RXD Liddell: No questions.

Liddell: At this stage I submit I have shown title and the burden shifts to the defendant.

40 **Hanna:** Defendant says he cut down all the land in 1928 and did not go back until 1938. In 1939 he farmed tomatoes and okra on all the land which he exported. He continued to farm in this way every year up until the early part of 1960 when exporters discontinued buying the crop. He planted fruit trees on

Bahama
Islands
Supreme Court
No.4
Judge's Notes
11th July
1966 (Contd.)

the land - there are some 200 fruit trees on the land now. He met some fruit trees on the land. He maintained a wall on three sides of the property on north, on east and on west. He kept intruders off the swamp and gave permission for persons to take sand from the land.

Calls:

D.W.1.: Horatio Bosmun Pinder S/S

also called Norman Pinder, resides South Beach Road, Fox Hill, farmer. The north boundary of the land is the road which goes to Sea Breeze Estate east of it is Frank Berry's land on the west is a wall and a road: the south boundary is the beach and the sea. I first cut down this land in 1927 and 1928 and then I went back to the U.S.A. I cut all of it in those two years. I came back from the U.S.A. in 1932. I farmed on the land in 1938. The land was all grown up - all high land. I had about 18 acres under cultivation I grew tomatoes alone; after tomatoes were over I put in corn, beans and pigeon peas and butter peas. Then I put the land again for tomatoes. In 1939 I farmed 20 acres - tomatoes. There was plenty of land. I cut down 20 new acres each year. I never had the whole of the land cut down at one time. Then I grew up to 1959 for the Canadian market. Then that closed down and I grew for the local market. I grew okras for Campbells Soup Company about 1942 to about 1956. I still grow okra for the local market in Nassau. The whole of the land including the swamp and the beach was about 165 acres. I planted quite a few fruit trees on the land, avocado pears and mangoes, grapefruit trees and a few orange trees, tangerine trees and sapodilla trees.

I planted trees every year - one or two. I started about 18 or 20 years ago including several lime and lemon trees. I planted fruit trees in the early 40's. There are about 250 trees there altogether now. Quite a few were blown down in the hurricane

last September - five or six. Trees did not suffer much damage in the storm. I have bananas too; and sugar cane. I started planting bananas about two years ago. There is a wall about 700 feet on the east of the land and the same on the west and on the north 2,500 feet along Yamacraw Road. There were some walls there in 1938 in bad condition. I had them mended up. I maintained the walls every year because the rain breaks it down. The wall on Yamacraw Road is now in good condition. I have farmed every year since 1938, almost every day. If it rained I would not go to the farm. Anybody going that way would see the land was occupied. I saw Howard Chipman twice, I don't know Elsie May Key. I've heard of her. I didn't know she was the owner of this land. I was not disturbed by anybody. Mr. Fountain showed up in 1963 and said he was representing Ocean Estates; he sent a writ. I met a few fruit trees when I first went in and I cleaned round the trees. I put trees there in 1927 - 1928. About six (6) or more of the original fruit trees are still there. I have some fruit trees in front of the prison. I have a few grapefruit trees about 1,000 feet from the main road, I have coconut trees. The trees go back as far as the swamp. When I first went there I found fruit trees by the prison gate. I planted fruit trees to within 1,500 feet of South Beach Road. I did not do anything with the swamp. I took care of the beach. I stopped people going on the beach. I did not give permission to anybody to do something on the beach. It was round about 1944 when I first saw people going on the beach. After 1959 I farmed less tomatoes. I farmed Okras, pigeon peas, indian corn, bananas cane, melons. My main crop after 1959 was okra. It is still my main crop. Never heard of British Bahamian Land Corporation nor Chipper Orange Company Limited. I've heard of George Murphy. He had the land where the prison is now. I leased land from George Murphy somewhere in 1934 - a hundred acres. I don't know who owned the land that I now claim. Only myself and my labourers worked on this land. Augustus Knowles helped me to

Bahama
Islands
Supreme Court
No.4
Judge's Notes
11th July
1966 (Contd.)

farm. He worked there for the whole of 1938. He took my produce to the packing house. I have stayed on the land since 1938 to now, 1966. I had no other living except farming. this land. I don't know Mr. Philip Andreae. No surveyor came round the land. Anyone can pass the place.

XXD. Liddell: In 1938 I employed about 25 or 30 men. I farmed on South Beach Road in 1938. South Beach Road in 1939 - 1940. In 1942 I farmed that same land near South Beach Road. I was born blind I can't read - air photograph. I was on South Beach Road coming east. I didn't keep track of how many acres I was farming. I cut down the land on South Beach Road. In 1958 I was farmang on Yamacraw Road coming east - sometimes 10 acres, sometimes 9, sometimes 8, sometimes 14 acres. In 1958 I had about 20 acres of okras against the pond. I have 8 or 9 acres under cultivation now near South Beach Road and Yamacraw Road. Each year I cut down coming east to Yamacraw Road. I reached Yamacraw Road last year for the third time since 1938. I farmed on any piece cleared for a year or eighteen months. Then I gave it up and then I'd go back and cut again. I don't keep track of how many years before I cut it again. In 1942 I employed 25 - 30 sometimes less or sometimes more. You can't produce in rows on rocky land. I plant in potholes and put in fertilisers.

Adjourned to 3 p.m. on site of land.

(Sgd.) James A. Smith
Judge.

Resumed on site of land, 3 p.m.
in presence of
Liddell for Plaintiffs
Hanna for Defendant.

Defendant present.
Secretary of Plaintiffs company, Mrs.
Christianson present.

Land inspected.

(Sgd) James A. Smith
Judge.
11th July, 1966.

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No.5
Judge's Notes

Bahama
 Islands
Supreme Court

Resumed in Court 12th July.

No.5

Appearances as before.

Judge's Notes
 12th July
 1966

Horatio Bosnam (alias Norman) Pinder-continues.

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XXD.Liddell: - Age 69. I have no spectacles. I can't read. I checked on people coming on the land. I could see well enough to keep trespassers off. I have four labourers now. They farm. I have never done anything with the swamp. I kept people off the beach. The first farm we looked at yesterday was about two acres; the next one near the prison gate was about five acres. We grow peas there and corn and beans and sweet potatoes. There was only a small piece of cleared land. The farm of South Beach Road was about four acres. That is all I am cultivating at present. The rest of the land is lying idle for the time being. I figure I have a thousand trees altogether mangoe, grapefruit, tangerine. I have a couple of dozen seeding mangoes. In 1958 I think I was cultivating more than 4 to 6 acres in the north east corner (the first place we went to yesterday). I was farming other parts too. I was farming there in 1942. From 1938 to 1940 all that land was cut out as farms. I was growing tomatoes 1938 - 1939. To grow tomatoes you have to clear the land. They do not grow under bush. In a good season you would get 8,000 or 9,000 lugs (28 lbs.) of tomatoes in one crop of five or six good pickings. I got the tomatoes off the farm to the road by head carrying and trucking from the main road. There is now a track on the land for walking to the farms. I did not know who owned the land when I went on it in 1938. I do not know who owns it now. I went in as a trespasser. Everyone on the road was bound to see the farming. When it was cleared up you could see good. I saw Howard Chipman I did not speak to him. I stopped him going on to the land in 1963. I'm talking about his boy. I did not meet Howard Chipman up there (on the land). I stopped them on the

Bahama
Islands
Supreme Court

No.5

Judge's Notes
12th July
1966 (Contd.)

beach from taking sand. I still stop them. I farmed land for Murphy. I didn't pay him a thing. I offered him money: he did not take it. I would have paid rent on the land in dispute if anyone had come along. Nobody showed up. I didn't try very hard to find an owner. If somebody had come along I would either have taken a lease or got off the land. After I had been on the land for seven years I started claiming the land. I had farms through the land all the time.

10

XXD. Hanna: There would be spaces between tomato plants when they are growing. You have to make a footpath to go past them. There would be bare parts because I plant in the holes in the rocks. Adjoining plants would overlap. I would plant $1\frac{1}{2}$ feet to $2\frac{1}{2}$ feet apart. You clear in June: plant in August and get the first crop in November. You can plant each month from August to December. The earliest crop would be in 60 days. I cultivated all the farming land north of the swamp. I employed labour for planting, weeding and reaping and sometimes for the season. I have 250 fruit trees that are fruit bearing. Those not bearing are three, four or five years old. I include the seedling trees in the total of a thousand. I would cut the land in June for one crop - 20 acres: then cut for another crop in August. By 1940 I had cut down all the land. When I have some land under tomatoes the rest is used for pigeon peas and corn. Campbell Soup Company contract gave up in 1956. After that I sold okra in local markets. After tomatoes went out I planted corn for the local market. The farms we visited yesterday, the first was about 2 acres. We did not reach the five acres farm yesterday.

20

30

The farm by the prison gate was about two acres. I have about ten small fields - about two or three acres each. The storm destroyed part of my farm. I don't do as much now: I don't have much labour. The first fruit trees I planted about 1941. Some of them go in 500 feet from Yamacraw Road - that's where I stopped planting. Some were close by the swamp and salt spray and wind killed them. Nelson

40

Chipman, the son tried to put a tractor on my land in the early part of 1963. I told him he could not do it. I thought he might be Howard Chipman's son. Nobody disturbed me from 1938 until I had a writ in 1963. I regard the swamp as part of my land, and the beach since 1938.

Bahama
Islands
Supreme Court

No.5

Judge's Notes
12th July
1966 (Contd.)

D.W.2

Ellison Norman Pinder S/S

10 Resides Johnson Road, Eastern District,
age 29, musician. Defendant is my father. I
was present at the inspection of the land
yesterday. The land is bounded on the north
by Yamacraw Road: on the west by South Beach
Road: on the south by the sea: on the east by
land of Frank Berry. My father has been
associated with the land as far back as I
remember. I assisted my father on the farm until
I was seventeen. As a young boy I used to
weed. I used to keep books for my father
20 because he could not see - the books were the
payroll for the employees. I started doing this
when I was about 13 or 14. At that time my
father employed between 20 and 30. He would
have some to come and cut the bush: then some
to come and plant and the majority of them
would reap the crops. Usually ten men to cut
the bush: for planting we employed mostly
women: and reaping we employed most of them -
30 most were women. My father mostly grew
tomatoes when I was a young boy: then he went
to okra. In a period he grew tomatoes and
okra. There was a track road and they would
head carry from the farm to the track and the
truck would be on the track road. Nearly all
the hauling was done by Augustus Knowles. He
also was farming - not on this land. I can't
say I can remember a whole week when he didn't
farm. I can remember him been away for a
couple of days sick. The fruit trees were all
40 over the land. We lost quite a lot of fruit
trees against the swamp. Fruit trees started
right against Yamacraw Road they went in five
or six hundred feet. At five or six hundred
feet there is a small swamp - about two acres.
Not much fruit trees in that - I didn't see any
in that part. In the south west of the property
there were quite a few fruit trees and that went

Bahama
Islands
Supreme Court
No.5
Judge's Notes
12th July
1966 (Contd.)

down to the big swamp on the south side. The fruit trees are scattered throughout the land - these are bearing fruit trees. There were bearing fruit trees as long as I can remember. There are other fruit trees planted within the last six years - I would say 100 or 150. I stopped working on the land when I was 17. I can remember seeing large farms when I was about 10, about 1947. I could not tell the acreage. Assuming there were 12 - 14 acres of tomatoes: other land would be cut for new crops and pigeon peas would be growing on the old farms. Mostly pigeon peas on the old fields also beans and corn. Most of the farm land was under cultivation except for ten or twelve feet of high bush between the farms. That continued until they stopped selling tomatoes and the okra crop closed down. In 1960 they stopped shipping tomatoes: okras stopped in the late sixties. After tomatoes, pigeon peas were grown on the farms except for okras. Then the farming got very much less. I would say he now has six to ten small fields, some are tasks, some two acres, acre and a half, an acre. I told my father not to farm. Anyone farming Yamacraw Road, and South Beach Road would know my father was farming. We lived at South Beach Road opposite the farm. My father did not farm the swamp. I've told people on the beach to stop taking sand.

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XXD.Liddell: I worked on the property from 13 to 17. I was at school. I worked on the land and kept books. I was born in 1937. I couldn't say how much of the land was farmed before 1946. I recognise the area of land on this air photograph. (Air photograph put in as Exhibit O.E.15 by consent of counsel). I cannot tell from this air photograph Exhibit O.E.15 which parts are cultivated. Tomatoes were planted one month after the other.

RDX. Hanna: No questions.

D.W.3. Charles Vincent Mortimer S/S

Age 72 next month - resides Sea Breezes Road, Eastern District. I know the land on the corner of Yamacraw Road and South Beach

Bahama
Islands
Supreme Court

No.5

Judge's Notes
12th July
1966 (Contd.)

10 Road - Yamacraw Road on the north, South Beach
Road on the west, out to the sea. I have known
defendant to work there from 1938. I knew him
before he was working there. Before that he
was working a farm in another place. I was
working on Yamacraw Beach from 1930 to 1956.
I passed the property twice or three times up
to now. I've never known him to stop farming
there. In 1938 he planted tomatoes, beans,
cassava and pigeon peas. His biggest farming
was to grow tomatoes and okra. They put in a
crop of tomatoes in August, sometimes they put
in two or three crops. After the tomato crop
they would plant pigeon peas. I haven't any
idea how big his farm was. I'm talking about
1939. I couldn't tell you what time defendant
started but I know he was there in 1938. They
always used to farm in a big way. Farming
20 slowed down after they stopped shipping tomatoes
to Canada. There are fruit trees on the land -
I couldn't say how many. Only defendant claimed
the land. You could see from the road there
was cultivation. There are walls there but
I do not know who put them there.

XXD. Liddell: I never worked on the land. I
was a gardener at Yamacraw Beach. I don't
know the size of the land. I didn't say the
whole was cut down. I heard Chipman owned
the land but I never saw him there.

30 RXD. Hanna: I was told a very long time ago by
one of my children that Chipman owned the land.

D.W.4. Thomas Davis S/S

40 Resides South Beach Road, Farmer 81
next month. I've known defendant for many
years. The land is between Yamacraw Road
and South Beach Road, I do not know who
owns the land east of where defendant farms.
I couldn't tell where the land ends on the
south. Defendant has farmed the land for
longer than 30 years between 1936 and 1938.
He used to raise tomatoes, okras and pigeon
peas - most of the time tomatoes, I haven't
been to the farm lately. When he started he
cut bush and planted his tomatoes and then
made an extension. He had a big farm around
1949 up to 1950. He couldn't have a big

Sic

Bahama
Islands
Supreme Court

No.5

Judge's Notes
12th July
1966 (Contd.)

farm in a short time. It would take two or three years. I only saw the fruit trees there. I don't know when the old trees were planted but I know when the new trees were planted. Nobody else to my recollection came up to say he owned the land. Defendant went to his farm every day: he does nothing else.

Adjourned to 2.30 p.m.

Resumed 2.30 p.m.

D.W.4. Thomas Davis - continues

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XXD. Liddell: - old friend of defendant. Known him all my life. I have been over part of the land. Except for Yamacraw Road I cannot say what fields defendant had. Defendant did not say 1938 to me. I'm sure defendant was on the land in 1938. If land has grown up its hard to tell what was cultivated. If you're farming properly you clear some new ground every year. I know the fruit trees you can see from the road. I did not know who owned the land. I did not know Edward Dorsett Knowles. I knew Howard Chipman well. I did not see him on the property himself. I knew Elsie May Key. I saw her with Howard Chipman - both riding in the area. I know very little about the farm.

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RXD. Hanna: No questions.

D.W.5. Maud Rahming

Affirmed. Resides South Beach Road, Fox Hill. Widow. Age 53. I know defendant. He's doing a little farming now on South Beach Road and Yamacraw Road. I've known him farming there from 1938 up to this time. I used to see him farming there. I never went on to the farm myself, until 1961. I helped him pick his crops and helped him weed. He had a little tomatoes, peas and beans, all kinds of vegetables. The big tomato farming was finished in 1960. There were fruit trees on the land wherever I walked - right along the road-way. I know there are some small trees there. I know when he planted them. There are bearing fruit trees on the same place. I gave him a hand with weeding over two

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Sic

years and I'm still doing it now. Nobody besides defendant and his labourers farmed on this land. When I pass I see the people but how many I don't know. No big farming since I began working for defendant. In 1961 the farming was bigger than it is now. I knew Howard Chipman in Bay Street. If he was looking after any land, I wouldn't know. Defendant visited his farm most every day except when he's sick or its raining.

Bahama
Islands
Supreme Court

No.5
Judge's Notes
12th July
1966 (Contd.)

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XXD. Liddell: I remember 1938 because I know I used to get tomato plants from defendant that's how I know. I don't know how many acres. The main field is on South Beach Road; there is one by the prison gate: I know of no other. I did not know Elsie May Key: nor who owned the land.

20

RDX. Hanna: I have a patch in the middle to work for myself. There are no others there. My patch is about three tasks. He gets fruits but I don't know how many. I did not go all over the land.

D.W. . Augustus Knowles S/S

30

Resides South Beach Road, farmer, age 50. I knew defendant in 1938. He asked me to work for him. I didn't have time. The land goes out to the beach. There was a wall on the Yamacraw Road. In 1938 defendant started farming tomatoes there. I did no farming myself. I helped defendant along. I did all his trucking and fertilisers. I wouldn't know the size - about 18 acres when he started to grow tomatoes for the markets. I think by 1940 the farming land was cut down. I took the produce to the packing house. There was a packing house in Yamacraw Road. I trucked produce to the packing house all the years from 1938 to 1961. There were few fruit trees when I went along there - Yamacraw Road. Defendant planted fruit trees right along from 1938. He planted a couple hundred trees: I can't tell which they were. There wasn't much to pick up after 1961. In early years he farmed more

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Bahama
Islands
Supreme Court

No.5
Judge's Notes
12th July
1966 (Contd.)

than he farms now. Defendant had plenty of labourers - sometimes 20 - 25. I sometimes brought them to the farm. He reaped 1000 - 1500 bushels or lugs per week. Tomatoe plants grow 2½ to 3 feet high. My brother exports tomatoes to Bermuda and I sell now in the local market. I never heard of Elsie May Key. I knew Mr. Chipman. Never heard he was looking after the land. I rode the truck into the middle of the tomato field. The land was cleared out by the wall in Yamacraw Road. You could see into the farm. You'd keep a ten foot wind break between the farms. I've seen defendant building up a gap in the wall.

10

XXD. Liddell: You clear the ground first before planting. There would always be a piece of cleared ground. 1938 was the year I went to work for defendant - that was the year I came to Nassau to live. I lived in the same district as defendant.

20

RXD. Hanna: No questions.

Hanna: I have a surveyor, Wilmore Brown, who is not here.

Liddell: I have a witness who is in England and will be back in two weeks. I ask for an adjournment to first week in August.

Hanna: I agree.

Adjourned to 3rd August 10 a.m.

(Sgd) James A Smith
Judge.

30

12th July, 1966.

No.6
Judge's Notes

Bahama
Islands
Supreme Court

No.6
Judge's Notes
3rd August
1966

Resumed 3rd August 1966.

Appearances as before.

Hanna: I shall have to ask for an adjournment to subpoena air photos from the Crown Lands Office. I would ask for an adjournment to another day, earliest possible.

10 Liddell: My witness would be readily available.

Adjourned to 8th August 10 a.m.

(Sgd) James Smith
Judge.
3rd August, 1966.

No.7
Judge's Notes

No.7
Judge's Notes
7th August
1966

Resumed 8th August.

Appearances as before.

D.W.7. Palestine Michael S/S

20 Senior Agricultural Officer. With Board of Agriculture 1936 - 1964 and senior agricultural officer for 16 years, resides Mount Royal Avenue. I run my own farm now. I visited the land in dispute about two weeks ago at the request of Mr. Pinder. I went through about 300 feet from Yamacraw Road opposite H.M. Prison. I examined the fruit trees - orange, grapefruit, avocado, guavas. I started my inspection from about 30 foot
30 in. The majority of the trees I would say are from 10 to 12 years old. There are some 20 to 25 years old. There are other fruit trees beyond the 300 feet that I did not go into. The fruit trees were in little blocks of 100 feet x 100 feet. The groups of trees were 150 - 200 feet apart scattered through the land. There were two plots of fruit trees recently

Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

cleared: the rest of the property the land had not been cleared for two or three years - it had about two or three years wild growth. I have known the defendant since 1939. He was farming there when I first knew him and reared his family there in that area not on that particular land. In the earlier days he farmed tomatoes. In the earlier days he was looked at as one of the big tomato growers. I couldn't say the amount he used to farm. In those days I would go up to Fox Hill once or twice a year. In recent years I'd go that way once or twice a month. I couldn't say if he was still farming or had stopped farming. I knew he was in the area. 2

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XXD. Liddell: The trees were pointed out to me by defendant's son. I saw about four blocks of fruit trees. 100 x 100 feet is a quarter of an acre - a total area of one acre. I knew defendant was farming in that area.

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RXD Hanna:9 In the period 1939 - 1940 the prison was not there and the whole of that used to be farmed and defendant used to farm in all of that section there. Both sides of the road used to be farmed. Defendant farmed both sides.

D.W.8. Francis Garaway S/S

(Liddell: I was going to call Mr. Garaway too).

Crown Surveyor of 13 years experience. This photograph is a certified copy of an aerial photograph in the vicinity of Yamacraw Road taken in the fall of 1941. Scale 1/12,500.

30

(Liddell: I have no objection to the Crown Land photographs being put in evidence).

This photo put in as Exhibit O.E.16. The air photograph now shown to me was taken in the fall of 1943 according to our records. This is at a scale of 1/30,000. Put in as Exhibit O.E.17.

XXD. Liddell: This photograph is a print of an air photograph taken in the fall of 1942. Scale

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Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

1/30,000. Put in as Exhibit O.E.18. Exhibit O.E.17 is a print of the series of photographs taken in 1942. The photograph shown to me is an enlargement of Exhibit O.E.18 (put in by consent as Exhibit O.E.19). Another official survey was done in 1958. These are two prints of the series showing the same land. Put in by consent as Exhibit O.E.20 (the two photographs).
 10 I am experienced in interpreting air photographs over the last year. I did some air photograph interpretation as part of my surveyors training at the Institute in Canada. From Exhibit O.E. 18 and 19 there seem to be patches of varying sizes in the area. The area south of Yamacraw Road shows that there has been clearing - about a year old; but no patches of clearing within a year. There are signs of more recent clearing in the prison grounds north of
 20 Yamacraw Road. Possibly the land south of Yamacraw Road had not been cleared for two years. This land has regrowth on it - what kind of regrowth it would be hard to tell on this scale but probably shrub growth. No sign of fresh cultivation within the area of the land in dispute. Fresh cultivation shows up on Exhibit O.E.19 in light coloured patches - the lighter the patch the more recent the cultivation. There are patches of recent cultivation on both sides of Yamacraw Road
 30 east of the land in dispute - cultivation in the year the air photo was taken. Shown Exhibit O.E.16 - it seems that the area south of Yamacraw Road and immediately east of the land in dispute was cleared in the year the photo was taken - 1941. In 1942 on Exhibit O.E.19 the same patch looks as though it has a year's growth. The different colour within the patch would be different vegetation. In the 1941 photo (Exhibit O.E.16) part of it is slightly darker. Within the boundary of the
 40 land in dispute there are signs of clearing not as fresh as on the other side of the boundary (Exhibit O.E.16) - some parts are cleared a little more than others. In the 1958 survey (Exhibit O.E.20) I see two patches of clearing within the land in dispute and a tiny patch to the S.W. and a footpath leading to it. The westerly of the two patches I

Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

estimate at about 400 x 350 feet, that is about 2½ acres: the easterly patch 400 x 200 feet about two acres. The bush south of Yamacraw Road within the land in dispute there is some vigorous re-growth - more than five years old. The area south of the patches does not appear to have been touched for sometime - and west of that is growth of more than five years (Aerial photograph panorama taken a few weeks ago put in by consent but Mr. Hanna does not admit it was taken a few weeks ago. Put in and marked Exhibit O.E.21). 10

Exhibit O.E.21 shown to witness. There is a lot of patches of clearing within the boundary. More fresh clearing than in any of the other photographs - more scattered activity.

RXD. Hanna: On Exhibit O.E.16 the clearing to the east of the boundary is more recent than the clearing to the west within the land. In the photo Exhibit O.E.19 the lighter patch would be the most recent clearing. 20

The central area in Exhibit O.E.16 shows more growth than Exhibit O.E.19 - it looks like some trees have been removed. It is hard to tell on a photo of this scale what the vegetation is but I would say that it is scrub-like growth - regrowth of under bush (immediately south of Yamacraw Road within the boundary). It could be pigeon peas. In the 1941 photo (Exhibit O.E.16) you can in this area see rows which seem to be cultivation. It starts a little to the west of the eastern boundary and goes almost up to the South Beach Road and very close to Yamacraw Road and starts about 50 or 60 feet from the southern edge of the road for a depth of 400 or 500 feet. The 1958 photo Exhibit O.E.20 were taken in March. There seems to be more activity of clearing on Exhibit O.E.21 than Exhibit O.E.20. More visual evidence of clearing in Exhibit O.E.21 than Exhibit O.E.16 (1941) but more farming on Exhibit O.E.16 than Exhibit O.E.21. 30 40

D.W.9. Andrew Aitken Sworn states:

Photographer and manager of Toogoods

Studios resides Caanan Lane, Nassau.
 Photographer for 9½ years: 40% of my work is
 aerial photography. Shown Exhibit O.E.16
 This is a reproduction of a panorama. I did
 it. I do all reproduction work for Crown
 Lands Office. This photo was taken from a
 considerable height between 10 and 12 thousand
 feet and it is almost impossible to tell if
 an area has been farmed unless that area
 happened to be tomatoes. In the land in
 dispute from Yamacraw Road to two hundred yards
 or so south of Yamacraw Road, I would say that
 area in question is farming tomatoes -
 it is more than 200 yards deep at the western
 end. The reason being you can see the lines in
 which the tomatoes were planted. Western
 section is darker than eastern - I would say
 a later stage in growth - may be three crops.
 South of the tomato area there is some activity
 because part of the undergrowth has been
 cleared. It extends almost to the swamp, not
 quite - about 250 yards from the nearest
 portion to the swamp. On Exhibit O.E.19 the
 central area has either been burnt or chopped
 down pretty close. I say burnt down because
 the clearing does not have a great deal of
 contrast. I would say that the tomato area
 on Exhibit O.E.19 is a late stage in the
 growth of tomatoes. On Exhibit O.E.20 north of
 the swamp there are a few high trees - no more
 than 15 feet - the rest is comparatively low.
 I arrive at this conclusion by the shadow
 detail - but it would vary according to the
 time of day. I would say approximately 3 p.m.
 It is comparatively dense growth. In general
 the shorter growth is not casting any shadow.
 There is some shadow detail on the cleared
 areas. There are indications of farms mostly
 in the tomato area and the central area.

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40 **XXD.** Liddell: In a reproduction you look at detail
 and contrast. In the original Exhibit O.E.18
 the contrasts are not built up. On the original
 Exhibit O.E.18 with a magnifying glass I can
 see that there is some tomato growing. On
 Exhibit O.E.18 I can only say that tomatoes are
 grown on the eastern corner because of the
 poor quality of the print of the photograph.
 I can detect them from the way tomatoes are

Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

planted here. On Exhibit O.E.20 the three patches on the north east corner have been cleared: the westerly patch most recent clearing, the easterly patch had been cleared before the western and the central patch before either. Along the southern boundary of - if I may say - of what I have previously called the tomato patch there is a clearing running along there and would not be there unless there was some activity there at the time. Bush grows very fast - faster than the majority of vegetation. In the south western area a part has been cleared and has growth on it. It is difficult for me to say if it is bush or okra or other crops. Right around (pointing to photo) is an edge showing the bush around is older than the central area - which may be eight months old. 10

RXD. Hanna: No questions.

Case for defendant. 20

Liddell: I wish to call rebutting evidence.

Adjourned to 2.30 p.m.

(Sgd.) James A. Smith.
Judge.
7th August, 1966.

Resumed 2.30 p.m.

Appearances as before.

Liddell: Calls

P.W.1. Eleanor Joan Christianson -

Recalled and resworn. 30

The plaintiffs have held the property for development and the cultivation of the land would not interfere with that purpose. The development was a long term policy. Plaintiffs bought two tracts of land and decided to develop the other one first - the development called Gleniston Gardens, north of Sea Breeze Estates east of Soldier Road,

over two hundred acres about a quarter developed.
The Yamacraw land was a long term investment.

Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

10 XXD. Hanna: The company was formed in 1947 I think. I have been secretary since 1960 or 1961. I have been associated with the company since 1957. I was not with the company when the land was purchased. I kept the books of the company until I became secretary and I still keep the books. There are letters from the beneficial owners stating intentions. The matter has come up from time to time at directors meetings. I don't know what happened in the very early days of the plaintiffs company before I became associated with it. I became secretary probably in December 1961. I followed Mrs. Adams.

RXD. Liddell: Since I have become secretary I have become familiar with the affairs of the company.

20 P.W.2. William Telford Lowes Sworn states:

30 Planning consultant, resides Dicks Point. I am an associate partner of Harland Bartholomew and we as a firm manage the technical details of plaintiff company. That covers the subdivision known as Gleniston Gardens and the area of land at Yamacraw in this action. We have been advising the company for approximately for two years on planning matters, the lay out of land, the use of land. I have been down to the Yamacraw site from time to time to look at the boundaries. I walked on the land. I never saw anyone except on one occasion when we instructed workmen to clear the boundaries of the site. I was advised the men were stopped and I went down there. Altogether I must have been down there eight or ten times in the last two years.

40 XXD. Hanna: There had been bits of clearing on the land. The main clearing I noticed was off South Beach Road. The wall along Yamacraw Road was pretty overgrown. I never saw prisoners tending the hedge on this side of the road. You cannot decide on the use of

Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

the land in one visit. You go time and again and look at the topography.

RXD. Liddell: No questions.

P.W.3. Ray James Holman Nathaniels Sworn states:

Resides Village Road, Nassau,
Architect. I came to New Providence in 1957
to make suggestions and develop two properties
for Ocean Estates Limited, plaintiffs. I was
shown two properties by Mr. Harry Sands senior,
one was Gleniston Gardens the other Yamacraw 10
Road property, the property in this case
identified by plan put in by consent as
Exhibit O.E.22. I went there on several
occasions in 1957 with the objection of
producing a multi million dollar scheme for
plaintiff company - hotel, convention hall and
so on and I still have those drawings. They
are in sketch form: they never went ahead.
On one occasion I met a man in a clearing. I 20
was with another gentleman at the time. I
was not turned off the land. I moved freely
over the land. Altogether I went there three or
four times. I had a survey plan with me. I
never went on to the property after 1957.

XXD.Hanna: I saw what could have been melons
growing. I don't recollect seeing fruit trees.

RXD. Liddell: No questions.

P.W.4. Ethelyn Taylor Sworn states:

Resides Blue Hill Road, married woman.
I knew Howard Nelson Chipman senior all my 30
life. He died in 1951. My eldest son is
also named Howard Nelson Chipman. I have
five children, four boys and one girl.
Howard Nelson Chipman senior is the father
of all five children. I first knew him in
1922 and he left my house the morning of the
day he died. He had a big tract of land near
the prison at Fox Hill across the road from
the prison. I used to get surplus fruit from
this land: it came by truck and I used to 40
sell it. He grew tangerine, orange, grape-
fruit and he used to have pigeon peas and all
other fruits but the substantial crop was the

fruit. So much fruit went to his store on Bay Street and I had the surplus. He farmed there all his life. I believe he sold the land to some English people. I would go along with Mr. Chipman in the car and the truck would come behind. I used to work in Mr. Chipman's store in Bay Street and I went with him in the car to the land when the shop was closed. I never saw Mr. Pinder nor nobody else on that farm up to the day Mr. Chipman died. I do not know Mr. Norman Pinder. He paid all the helps that worked for him every Saturday.

Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

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XXD. Hanna: Mr. Chipman told me he sold the land and would farm until the people come. He said the purchasers were in England. I went to the farm when my children were walking about. The first was born in 1923. I do not know what date or what year I was going to the farm but I know I went there with him. I do not know what year he started farming this place. He grew tomatoes, beans, cassava. He grew every vegetable. I planted many trees myself. I held the tree while he put in the manure and soil. What he didn't plant himself he hired people. I can't understand the photograph. Mr. Chipman did not rent that land to Mr. Pinder.

20

RXD. Liddell: No questions.

30

P.W.5. Frederick Carl Claridge Sworn states:

Resides Village Road, Nassau. Road contractor and farming. I know the piece of land opposite the prison in Yamacraw Road and South Beach Road. I know Mr. Chipman Senior planted some orange trees there. I knew him well. I knew Elsie May Key, she was known as Mrs. Chipman. I used to grow tomatoes on the western side of this property on South Beach Road about 1957 - 58. I remember Mr. Chipman planting the trees. He used to pick the fruit himself. I talked to him at the side of the road. I think Mr. Chipman was there when the prison was built. I think it was 29 - 30 or 41, 42. Norman Pinder (defendant) farmed there 16 or 17 years ago. He farmed okra and

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Bahama
Islands
Supreme Court

No. 7

Judge's Notes
7th August
1966 (Contd.)

tomato and I used to buy the okra from him. The first piece he cut there was 90 to 100 feet wide and 400 to 500 feet long. That was just before Howard Chipman died. Before plaintiff used to grow tomatoes on the eastern end of Nassau on the Winton Estates about two miles along Yamacraw Road. That was 2 years anyway before he cut this piece and he used to farm on the western side of South Beach Road too.

XXD. Hanna: These orange trees were planted about 10
20 - 25 years ago at the same time the prison
was being built. I don't know if Mr. Chipman
grew tomatoes - might have had a small piece
but not grown to ship. I know John Pinder
defendant's brother. John lived just below
east end. All of them were farming there
John, his father, defendant. The father must
have died in the 40's and went to Long Island
before that. I went up and down Yamacraw
Road when the prison was built. When Chipman 20
first cut the land it was pretty high bush.
I don't think defendant was farming the land
at the same time that Mr. Chipman was gathering
the fruit. Mr. Chipman stopped bothering with
the farm a couple of years before he died.
I would say defendant cut this piece of land
on east side of South Beach Road a couple of
years before Mr. Chipman died. The trees
along the wall on the Yamacraw Road were put
there by Mr. Chipman. I saw him planting 30
fruit trees there, and the trees went back
about 200 feet. All the trees were the same
age along there. I saw him planting trees
about 25/26 years ago. I couldn't tell you
if any old trees were there. I have known
Ocean Estates for about 3 years. I am
building the road for them now at Gleniston
Gardens. The first thing I knew about this
was when Mr. Liddell rang me up a few weeks
ago. If Exhibit O.E.16 was 1941 the land 40
would be cut for Mr. Chipman to plant fruit
trees there. I don't remember it being cut.
I know Mrs. Taylor she was connected with him,
and I believe she has children by him. I
think she kept a shop for him. I don't think
the fruit trees were planted longer than 26
or 27 years - a couple of thousand trees he

must have planted there. It must have been 2 or 4 years afterwards before he gathered fruit. I don't know if defendant cut 18 - 20 acres of land and planted tomatoes. I never saw it. Defendant I'm sure did not have all that land cultivated since 1940. All the land was not worked by 1941. The photo O.E.16 shows that there is high bush at the back. I was farming up at east end when Mr. Chipman was on the land. Defendant was at the east end farming then. I know Augustus Knowles. Its hard to remember who trucked defendant's tomatoes that far back. I had more tomatoes than defendant. I stopped farming east end about 20 years ago. I farmed Pyfrom brothers land for a year or two before I left east end - two to four years.

Bahama
Islands
Supreme Court

No.7
Judge's Notes
7th August
1966 (Contd.)

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Adjourned to 10.30 a.m. Wednesday.

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(Sgd.) James A. Smith,
Judge.
7th August 1966.

No.8

Judge's Notes

Resumed 10th August.

Appearances as before.

No.8

Judge's Notes
10th August
1966

P.W.5. F.C. Claridge.

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XXD. Hanna: Defendant left east end because the leases were terminated and not renewed. I was working at east end on property owned by my aunt in which I had an interest. I left east end in the late forties. The first time I saw defendant on the land in dispute was about 17 years ago. He could have been there before. That was the first time I saw him. I know Harold Darville. He used to work for me in 1955 - 56. I farmed in the Englerston area leased from Bethell Estates. He was my foreman at that time. I gave evidence 1965 in

Bahama
Islands
Supreme Court

No.8
Judge's Notes
10th August
1966
(Contd.)

the quieting petition brought by the Pyfrom brothers. I said I bought my property next to Pyfrom 26 or 28 years ago. I farmed Pyfrom land after I bought mine around 24 years ago. I did not arrange the leases for my aunt. I might have overseen it for them. The tenant would go and cut the piece of land he wanted and then it would be measured up. John and Simeon Pinder brothers of defendant rented from my aunt. Defendant never leased any farm of his own but he was up there working on the farm with them. It is hard for me to tell if defendant was leasing from his brothers or farming on his own. Defendant was up there most every day. It could not have been as long as before 1938 since Howard Chipman senior stopped gathering fruit. It would be 30 to 35 years since he (Chipman) planted the fruit trees there. Chipman was there long after the prison was built. I know I saw him there planting the trees I saw him several times on the side of the road. It's hard to be certain but he was there for a period the prison had been built anyway - about 5 or 6 years after I saw him planting the fruit trees. The tomato farmers were farming at east end for a period of about 20 years from the early 30's. I was supplying okras to a company in Canada up to about 11 years ago. I have never been inside the property in dispute. I do not remember it being farmed in the 1940's. I first remember the land adjoining the Yamacraw Road being cut down for the first time three or four years ago when Mrs. Moore formerly Claridge was claiming the adjoining land. There is a wall in between and the land in dispute was cut down at the same time. I don't know by whom.

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RXD. Liddell: No questions.

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P.W.6. Howard Nelson Chipman Sworn States:

Resides Chippingham, son of Howard Nelson Chipman senior. I'm the eldest living son. The northern boundary of the land is on the south side of Yamacraw Road. I'm familiar with the property. I was born in 1924. My first acquaintance with the

Bahama
Islands
Supreme Court

No.8
Judge's Notes
10th August
1966

(Contd.)

property was when I went up there with my father and mother in the middle thirties - when I was about 10 - 12 and in the forties. My father taught me on that land how to bud and plant fruit trees. He had tangerine, orange, shaddock, grapefruit, limes - most of the citrus fruit. I planted a few of the trees and my father planted them. I was about 16 or 17 when I planted and budded trees, roughly between 1936 and 1942. I used to go there and collect fruits. I don't know exactly when the land was sold. I think it was sold in the late forties. My father was disgusted because the fruits were being stolen. My father had caretakers on the land. I have seen Norman Pinder. He was not a caretaker and he could not have been farming there when my father was farming there. He used to do a lot of budding - growing fruit was his hobby. He had no tenants. I know defendant was farming in the Fox hill area but not till the 60's. I saw in the 50's that the land had grown up and the fruit trees were choked up and going to waste. I worked with my father in the stores in Bay Street. I used to go up to the land quite frequently and sometimes take my friends to get fruits from there.

30 XXD. Hanna: I did not make any enquiries in 1958 - 59 as to where this property was because I thought my father still owned land in the area. I was not contending up to this action that my father owned this land. I sat in court on Monday for a few minutes and then I sat outside with my mother. I came to court to enquire about my mother. I was not sitting in court when Mr. Garaway was giving evidence. As a boy I planted and budded trees on this land. I've been there a hundred times. I showed you this property myself when I was trying to buy a piece of land in Foxhill at that time. I know how to bud. You cut a 'T' in the bark and insert a bud.

RXD. Liddell: I volunteered myself to give evidence in this case.

Bahama
Islands
Supreme Court
No. 8
Judge's Notes
10th August
1966
(Contd.)

P.W.7. James Roy Brownhill Henderson Sworn states:

Resides Eastern District, Articled clerk with McKinney, Bancroft & Hughes. I went to the Registry of Records and obtained certified copies of the annual returns of the Chipper Orange Company during the period at which this company was in ownership of the land in dispute. I obtained three certified copies for the years ending October, 1938, April, 1944 and May, 1947.

10

Liddell: I put these in evidence.

Hanna: I object as this witness is not the proper person to put these in.

Ruling: They are certified copies obtained from the Registry of Records by the witness and may be put in evidence by him. Marked respectively Exhibits O.E.23, 24 and 25.

P.W.7. J.R.B. Henderson - continues.

In 1938 Exhibit O.E.23, Howard Nelson Chipman held 2438 shares out of an issued capital of 2442 shares. The directors then were Howard Nelson Chipman, Rowland Cash and Harold Hastings Chipman. In 1944, Exhibit O.E.24 the share ownership was the same and the Directors and officers are the same. In 1947, Exhibit O.E.25, the ownership of Howard Nelson Chipman is the same and he was still president, treasurer and director.

XXD. Hanna: No questions.

Case for plaintiffz in rebuttal.

Hanna: The evidence led by plaintiffs in rebuttal is of a new nature. Plaintiffs in no way disclosed to the court that they were going to say that Howard Nelson Chipman farmed this land. Plaintiffs went further - and I may say to mislead - that little farming was done on the land. Defendant could have shown that it was not true that Howard Nelson Chipman planted any trees there from 1938 to the time of his death. I submit it is almost a rule of law one party should put his case

30

40

Bahama
Islands
Supreme Court

No.8

Judge's Notes
10th August
1966
(Contd.)

10 with other party's witnesses and not hide his case and bring a surprise upon the other party. If any plaintiffs were allowed to do that great harm or inconvenience would be done to the other side. It might be in this particular case that it only transpired at the last minute that this was going to be his side of the case. If this transpired at the last minute plaintiffs should have put their case to one of the witnesses at the earliest opportunity. Under the circumstances I make an application to allow the defendant to call witnesses to rebut the evidence that Mr. Chipman senior farmed or grew fruit after the year 1936 and to show that Chipman junior did not even know where the land was as late as 1958/59. That would necessitate the calling of three witnesses.

20 Liddell: At the beginning of this case we claimed to be the true owners. It seems to me anyone setting up a possessory title of this nature must expect us to exercise our full rights to rebut the possessory claim. In cases of this kind it can be extraordinarily difficult to find the right witness and persuade the right witness to come. I always believe in this kind of case a compelled witness is a useless one. It was only after defendant's first batch of witnesses had been examined and cross-examined
30 that I realised I had good and solid evidence to bring. Usually I do not like to cross-examine on points that I cannot establish on my own evidence.

In a case such as this where we claim to be documentary owners my learned friend should be ready for anything.

Hanna: Nothing to add.

Adjourned to 16th September, 10 a.m.

40 (Sgd.) James A Smith,
Judge
10th August, 1966.

Bahama
Islands
Supreme Court

No.9
Judge's Notes
21st September
1966

No.9
Judge's Notes

Resumed 16th September.

Appearances as before.

Authorities in support of my submission to call rebutting evidence.

Phipson. Evidence 9th Ed. p.45 (para 115 10th Ed.) Evidence in reply and rebuttal.

Barker v Furlong 1891 2Ch.D.172
per Romer T. at p. 184.

10

Cook v. Derbyshire 1961 3 All E.R.
786 per Ormerod L.J. at pp 787 to 789.

We were taken by surprise and misled.

Liddell: If my learned friend was misled or surprised he should not have been We had a documentary title which defendant knew. Acts of ownership to be proved by an owner under a documentary title is much less than acts of possession to amount to adverse possession. Affidavit of Howard Nelson Chipman introduced at early stage in the case - Exhibit O.E.10. Paragraph 5. That surely is notice enough. Burden was on defendant to put forward his case before plaintiffs called evidence in rebuttal.

20

My main submission rests on the evidence of the defendant in cross-examination which could not now be corrected by any additional witnesses. The essence is defendant knew he was going on to someone else's land. He would have paid for the land if anyone had showed up. No one ever showed up. He said he did not try very hard to find the owner, and "I didn't intend to claim ownership. I was willing to take a lease or go off the land. After 7 years I started to claim the land". that would be around 1945.

30

Franks on Limitation of Actions
p.132 - must prove ouster or discontinuance,
must have animus to oust.

Littledale v Liverpool College. 1900
1. Ch. p.19. - acts were equivocal.

Bahama
Islands
Supreme Court

Here acts in themselves were also
equivocal. Farm as owner or tenant farmer.
Defendant has interpreted his act and
intentions - nothing equivocal in that.

No.9
Judge's Notes
21st September
1966 (Contd.)

In 1900 1. Ch. per Lindley L.J. at
p.23.

10 Thus even believing defendant's
evidence it was not till 1945 he started to
claim the land and thus acquire the animus
possedendi. This action was brought in 1963
when time ceased to run, so at most his
possession and animus was 18 years.

Hanna: I do not disagree with the law laid
down in Littledale v Liverpool College: but
with my learned friend's interpretation. I
submit defendant meant that he could not claim
20 the land until after 7 years by which time he
thought he had obtained ownership. Time
started to run when defendant entered the land
in 1938.

Under Real Property Limitation (1874)
Act Sec. 1. Plaintiff should bring an action
for trespass before 1958.

Defendant knew he was a trespasser
and that was sufficient animus possedendi and
by farming defendant in fact excluded the true
owner.

30 Reads from judgment of Lindley L.J.
at p.21 in same law report and p.23 and per
Juene L.J. at p.25.

Court: Application by defendant to call
further rebutting evidence is refused.

Hanna: I would like to address the court
on the evidence and the law.

Adjourned 2.30 p.m.

(Sgd.) James A. Smith
Judge

21st September 1966.

Bahama
Islands
Supreme Court

No.9
Judge's Notes
21st September
1966 (Contd.)

Resumed 2.30 p.m.

Appearances as before.

Hanna: Defendant claims by possession -
plaintiffs say they are true owners.

Exhibit 1 is a Crown Grant to one
Thomas D. Milburne - 47 acres - reads
parcels. Grant could include this land.
No connection between Exhibit 1 and any
other part of plaintiffs title.

Exhibit 2. Conveyance 28th August, 1919 - reads parcels - 239 acres part of tract granted to Lewis Carr and Henry M. Dyer. 10

Parcels differently described in
Exhibit 7 deed of 1937. This is the first
document describing the land now claimed.
No recitals. This is conveyance to Chipper
Orange Company Ltd. who conveyed to plaintiffs.

After the death of Chipman Snr. 1951
at latest defendant was in possession - only
14 years after the 1937 conveyance. 20

In 1948 Chipman made a declaration
Exhibit 10 refers to plan attached to 1937
deed, and he said he'd been in possession
since 1922. This I submit was to correct
a defect in title - as land was not that
bought by Elsie May Key in 1922 - Exhibit 5.

If plaintiffs have a sufficient title,
I submit defendant has dispossessed the
true owner.

Defendant said in 1927 or 1928 he cut 30
down the farming land and farmed for two
years - no fruit trees on the land at that
time. When he went back on to the land in
1938 he met fruit trees near wall on Yamacraw
Road. Defendant repaired old wall on the
north and also walls on east and west. By
1940 he had cut down all the land and he
began planting fruit trees as he went along
as far as the swamp on the south. He farmed
as much as 30 - 35 acres at a time. This 40

continued until the early 1960's. Farming reduced after this action was brought.

Bahama
Islands
Supreme Court

Photographs show extensive cultivation in 1942 of tomatoes and large sections in the south cleared by burning - Exhibit 16 and 19.

No.9
Judge's Notes
21st September
1966 (Contd.)

10

Fruit trees on land. Evidence of Snr. Agricultural Office D.W.7.- He said defendant was there in 1938. Witness Knowles D.W.6. trucked produce for defendant.

Except for Chipman's son and Ethelyn Taylor (P.W.4), defendant's evidence not contradicted.

Defendant said Chipman Junior claimed land and put tractor on it. But Chipman Junior said he knew his father had sold the land.

Defendant's evidence is corroborated.

20

Defendant's statement "after seven years I started claiming the land". This was in answer to questions by counsel. In context I submit it means defendant thought he could not be removed from the land after seven years.

Defendant said he was on the land almost every day - except Sundays and wet days.

Defendant seen on the land by plaintiffs agent but agent did not say anything to defendant about ownership.

30

Inspection of land showed north wall has been maintained: old fruit trees as claimed by defendant: almost all land had evidence of cultivation some time or another: several small patches of crops.

I submit Norman Pinder (defendant) was in possession as he said.

Defendant stopped persons taking away sand on the beach - limited user.

As area was walled and farming was

Bahama
Islands
Supreme Court

No.9
Judge's Notes
21st September
1966 (Contd.)

according to custom defendant is deemed to be in possession of the whole.

Lord Advocate v Lord Blantyre 1879
4 A.C. 770. per Blackburn L.J. at 791.

Jones v Williams 150 E.R. 781 at
783 (para 331).

Harper and Chadesworth 107 E.R. 1174 at p.1178
(para 585) and p.1181 (para 594).

Lord Advocate v Young 1887.
12 A.C. 556.

10

Pollock and Wright. Possession at Common Law
p. 30.

Slight acts of occupation is sufficient to establish occupation of the whole when land is swamp or beach. Defendant was in physical possession of the other portion of the land. Taking both together established possession of the whole.

Leigh v Jack 1879. Exch. - dispossession is a question of fact. 20

If Court believes Chipman farmed the land up to his death that is the end of the matter.

It may be all witnesses are telling the truth but plaintiffs witnesses are speaking of a different time.

All defendant did for his living was to farm this land from 1938.

Exhibit 10 condemns what Chipman Junior said in evidence. 30

Liddell: Title. Exhibit 1.47 acres exclusive of swamp and unusable land. Exhibit 2 is a conveyance from Milburne to Aubrey.

Exhibit 5 is a good root of title. Exhibit 10 reads declaration - contains explanation of extent of land.

I emphasize the point I made this morning as to animus possessedendi.

Leigh v Jack 1879. 5. Exch.

We have a good documentary title where Chipman Senior exercised the normal rights of an owner and planted citrus trees.

Very slight acts of possession by a documentary owner rebut any suggestion of discontinuance of the possession of land.

Bahama
Islands
Supreme Court
No.9
Judge's Notes
21st September
1966 (Contd.)

10 Evidence of Nathaniels and Lowes.

Fixation of year 1938 in minds of defendants witnesses though vague in other matters - without explanation as to why they could remember the year - except one.

20 Claridge - disinterested witness - said defendant was farming on his aunt's property but on the eastern end of the island. He was clear on his meetings with Chipman when prison was being built. Prison only started in 1941. Exhibit 18.

Evidence of Mrs. Taylor - going to land with Chipman - collecting and selling fruit from land.

Chipman Junior - has no interest in this and volunteered to give evidence in this matter. His is to my mind evidence of high quality.

30 If defendant did farm the land he did not do so until after Chipman had sold the land or after his death.

Their evidence goes far beyond the mere evidence of possession.

Quality of possession. Exhibit 22 is plan defendant filed - wall on north about 1/3 of way on South Beach Road and less than 500 feet on eastern boundary - it is not enclosed land.

Bahama
Islands
Supreme Court

No.9
Judge's Notes
21st September
1966 (Contd.)

Constructive possession applies when one enters under colour of title. No presumption in favour of a wrongdoer that possession of part is possession of the whole.

Wood v Le Blanc. 1904. Canadian S. Ct. Cases. Vol. 34 Tuck C.J. and at p.646 Killan J. The doctrine of constructive possession can have no application to a trespasser.

Defendant said he did nothing with the swamp: He said about 1944 he stopped people taking sand from the beach. As to farming operations - even if his evidence is true is not notorious possession. He farmed 18 acres at a time and then let it lie fallow for about 3 years. 10

Defendant said he started planting fruit trees 18 to 20 years ago - that would be late forties not 1938.

Pinder junior's evidence not very valuable as he was born in 1937. 20

Mortimer had never been on the land: said he knew from his children Chipman owned the land - that was a long time ago.

We have proved possession in support of our documentary title. What defendant has shown is insufficient to oust the true owner.

Adjourned to 11 a.m. Saturday, 8th October for judgment. 30

(Sgd. James A. Smith,
Judge
21st September 1966.

43.

No.10
Judge's Notes

Bahama
Islands
Supreme Court

Resumed 1st November.

Liddell for Plaintiffs.

Hanna for defendants.

Judgment read and delivered.

No.10
Judge's Notes
1st November
1966

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Judgment for plaintiff with costs:
damages assessed at £100: perpetual injunction
restraining defendant his agents and servants
from continuing the trespass and from
entering upon the land at any time in the
future.

No.11
Judgment

No.11
Judgment.
1st November
1966

IN THE SUPREME COURT OF THE BAHAMA ISLANDS

HOLDEN AT NASSAU

This 1st day of November, 1966.

BEFORE: His Lordship Mr. Justice James Smith,
Puisne Judge, C.B.E., T.D.

20

Suit No. 724 of 1963.

B E T W E E N :

OCEAN ESTATES LIMITED Plaintiff

and

NORMAN PINDER Defendant

JUDGMENT

Plaintiffs claim from defendant damages for
trespass to a tract of land "bounded on the north

Bahama
Islands
Supreme Court

No.11
Judgment
1st November,
1966 (Contd.)

by Yamacraw Road, on the east by San Souci and land granted to Henry M. Dyer on the south by a road reservation bordering the sea and on the west by Fox Hill Side Road." This latter road is also known as South Beach Road. The defendant in the further and better particulars to his statement of defence has averred that "he has been in full, free and undisturbed possession of the land the subject matter of this action and farmed thereon continuously from about 1938 up to the present time." Plaintiffs rely upon a documentary title contained in the deeds and documents Exhibits O.E.1 to O.E.13. The issue between the parties is whether or not the defendant by his use of the land has dispossessed the plaintiffs or the true owners through whom they claim title.

10

The procedure followed at the trial was that plaintiffs called evidence to establish their documentary title to the land and their right to possession. Defendant then called evidence to support his averment that he had dispossessed the true owners and the plaintiffs called evidence in rebuttal. At the close of plaintiffs evidence in rebuttal learned counsel for defendant sought leave to call further evidence intended to contradict statements made by plaintiffs witnesses relating to the extent to which Howard Nelson Chipman (senior) planted trees and gathered fruits from the land after 1936. Learned counsel for defendant submitted he had been taken by surprise and misled as counsel for plaintiffs had not cross-examined any of the witnesses for defendant on this point. I refused the application. The extent of the interest of Howard Nelson Chipman (senior) in the land had been disclosed in the statutory declaration made in 1948 (Exhibit O.E.10) which was put in evidence at an early stage in the trial and to which learned counsel for defendant made objection.

20

30

In the earlier deeds put in evidence by plaintiffs the parcels described the land as being part of the 'Pen tract' containing 239 acres with boundaries and dimensions as delineated on a plan attached to an indenture dated 17th February, 1890 made between James Thomas Claridge and Thomas Dodd Milburne. Such is the description of the land in the conveyance from Edmund Dorsett

40

Knowles to Elsie May Key dated 28th August 1919 (Exhibit O.E.2) but the plan referred to therein is not in evidence. The said Elsie May Key by an indenture dated 1st May, 1937 (Exhibit O.E.7) conveyed part of the said land being 100 acres in extent to Chipper Orange Company Limited in fee simple. The parcels read:-

Bahama
Islands
Supreme Court

No.11
Judgment
1st November
1966 (Contd.)

10 "all that tract of land commonly known
as a portion of 'The Pen' tract situated
in the Eastern District of the aforesaid
Island of New Providence comprising about
100 acres and bounded on the North by
the Yamacraw Hill Road on the East by the
portion of the Sans Souci tract and by
land of the estate of the late Herbert
James Claridge formerly also a portion
of the said Pen Tract. On the south also
20 by land of the estate of the said late
Herbert James Claridge formerly portion
of the said Pen Tract and by a Road
Reservation along the sea shore separating
the said tract of land from the sea, and
on the west by the Fox Hill South Side Road."

30 On 24th June, 1946 Chipper Orange Company Limited
by two separate conveyances of this date conveyed
to British Bahamian Land Company Limited in fee
simple 80 acres and 64 acres in Exhibits O.E.8
and O.E.9 respectively and in each deed the land
conveyed has been described as being part of a
tract of land "being a portion of the tract
commonly known as the 'Pen Tract' situated in the
Eastern District of the Island of New Providence
comprising about 100 acres." The plan attached to
each of these conveyances (Exhibits O.E.8 and
O.E.9) shows both pieces of land which together
total 144 acres but it is the same tract of land
as earlier described in Exhibit O.E.7 as being
"about 100 acres." There is no doubt that the
40 area in dispute in this action is the land shown on
these plans in Exhibits O.E.8 and O.E.9 as is apparent
from the oral evidence and the air photographs
which are in evidence. In the conveyance from
British Bahamian Land Company Limited to A.J.R.
Whiteway dated 4th February, 1949 (Exhibit O.E.12)
and the later conveyance dated 30th March, 1950
from the said A.J.R. Whiteway to Plaintiffs

Bahama
Islands
Supreme Court
No.11
Judgment
1st November
1966 (Contd.)

(Exhibit O.E.13) the land is described in paragraphs 2 and 3 of the schedule thereto in similar words to the descriptions in conveyances Exhibits O.E.8 and O.E.9. These conveyances (Exhibits O.E.12 and O.E.13) were executed by Howard Nelson Chipman (senior) as president of Chipper Orange Company Limited.

The documentary title of the plaintiffs shows that in 1946 at the time of the conveyances Exhibits O.E.8 and O.E.9 the predecessors in title of the plaintiffs had by their documentary title a right to possession of the land as against the defendant who was at that time a trespasser on the land. The onus of proof then shifted to the defendant to show that he has dispossessed plaintiffs and barred their title by operation of the Limitation Acts. 10

The defendant's story is that he started growing tomatoes on about 18 acres of the land near South Beach Road in 1938 and has continued to farm there cutting down new areas for cultivation year by year moving eastwards from South Beach Road. His system of farming was first to clear a piece of land; then farm on it for a year or eighteen months; then give it up; and in due course return and clear the land again. He said in effect that in the period 1938 - 1965 he had reached the eastern boundary at Yamacraw Road three times and did not cultivate more than 20 acres at any one time. From this I infer that on average any single area of land cleared was cultivated three times in a period of 27 years. The cultivation of vegetable crops was confined to the northern part of the land the southern part being mainly swamp and nothing was done with that. Defendant mentioned isolated instances of stopping persons taking sand from the beach. 20 30

The air photographs Exhibits O.E.16 and O.E.19 show that in 1941 and 1942 patches of the northern portion of the land were being cultivated but not the extent that defendant has alleged. Plaintiffs witness, F.C. Claridge said that defendant farmed there 16 or 17 years ago - that is 1949 - 1950 - but the air photographs show the existence of farming on the land eight or nine years earlier. It is possible that about that time the land 40

was being farmed by caretakers said by H.N. Chipman (junior) (P.W.6) to have been employed by his father whose company Chipper Orange Company had the documentary title to the land at that time. However the preponderance of the evidence is that tomato and other vegetable crops as opposed to the growing of fruit were at that time being cultivated on the land by defendant.

Bahama
Islands
Supreme Court

No.11
Judgment
1st November
1966 (Contd.)

10 As to the planting of fruit trees, defendant said he first planted them 18 or 20 years ago, that is in the period 1946 - 1948. This I note is not earlier than the time Chipper Orange Company Limited sold the land to British Bahamian Company Limited. Defendant's witness, Michael (D.W.7) a retired agricultural officer inspected the fruit trees in July of this year and formed the opinion that some of the fruit trees were 10 - 12 years old and some 20 - 25
20 years old. I accept that defendant planted the younger trees, that would be about the years 1954 - 1956 but the preponderance of the evidence is that the older trees planted about 1941 - 1946 were planted by H.N.Chipman (senior) and I accept the evidence of H.N.Chipman (junior) that he at the age of 16 - 17 (1940-1941) assisted his father to plant fruit trees on the land.

30 It would appear that both defendant and Chipman (senior) were on the land at the same time, the one farming tomatoes, the other planting fruit trees and gathering fruit in season. Thus in the period 1941 - 1946 defendant did not have exclusive occupation of the land and in those years the growing of vegetable crops by defendant was not inconsistent with the use of the land by the true owner for growing fruit trees.

40 Defendant witnesses, Mortimer (D.W.3) Maud Rahming (D.W.4) and Augustus Knowles (D.W.6) have said that defendant started farming in 1938. The witnesses Mortimer and Maud Rahming gave me the impression of repeating a date that had been mentioned rather than remembering from their own knowledge what had happened in 1938. Augustus Knowles had a clear recollection of the year because he said that was the year he came to live

Bahama
Islands
Supreme Court

No. 11
Judgment
1st November
1966 (Contd.)

in Nassau and to work for defendant. I accept that he worked for defendant in 1938 but I do not think he was working on the land in dispute because the air photograph Exhibit O.E.16 as interpreted by the witnesses Garraway (D.W.7) and Aitken (D.W.9) does not indicate cultivation as early as 1938. On this evidence I think it probable cultivation started in 1940.

Accepting that date it seems to me that defendant's possession was not adverse to Chipper Orange Company whose president, H.N. Chipman (senior) grew fruit trees on the land up to 1946. Defendant on his own story was still a trespasser when plaintiffs bought the land in 1950. They bought the land for the purpose of development and in the meantime made no use of it. Thus defendant's farming was not inconsistent with the purpose for which plaintiffs held the land.

10

But on his own admission in evidence defendant did not enter on the land with the intent to oust the true owner. He said:

20

"I would have paid rent on the land in dispute if anyone had come along. Nobody showed up. I didn't try very hard to find the owner. If somebody had come along I would either have taken a lease or got off the land. After I had been on the land for seven years I started claiming the land".

I take this as an admission by defendant that it was not until he had been on the land for seven years that he formed the intent to oust the true owner. That being so time would not have started to run against the true owner in 1938 or 1940 when defendant said he first grew tomatoes on the land but in 1945 or 1947 that is seven years later when he said he "started to claim the land".

30

I find for the reasons given that defendant by his trespass had not dispossessed the true owner at the date this action was commenced, namely 20th December, 1963, and plaintiffs claim succeeds.

40

There will be judgment for the plaintiffs with costs. I assess damages at £100 and order that there be a perpetual injunction restraining the defendant his agents and servants from continuing the trespass and from entering upon the land at any time in the future.

James A Smith
Judge
1st November, 1966.

No.12
Notice of Appeal

Bahama
Islands
Appeal Court

BAHAMA ISLANDS

1966 No.14.

IN THE COURT OF APPEAL

No.12
Notice of
Appeal
10th December
1966

NORMAN PINDER Appellant

and

OCEAN ESTATES LIMITED Respondent

NOTICE OF APPEAL

10 TAKE NOTICE that the Court of Appeal will be moved
so soon as Counsel can be heard on behalf of the
above-named Appellant on appeal from the whole
of the judgment herein of the Honourable Mr.
Justice James Smith given at the trial of this
action on the 1st day of November, A.D.1966
whereby it was ordered that there be judgment for
the Respondents for £100 with costs and that
there be a perpetual injunction restraining the
Appellant his agents and servants from continuing
the trespass and from entering upon the land at
20 any time in the future.

For an order that there be a new trial or that
the said judgment be reversed or varied and for
such further or other order as the Court of
Appeal seem just AND for an order that the
costs of this appeal be paid by the Respondents.

AND FURTHER TAKE NOTICE that the grounds of this
appeal are:-

30 1. That the learned Judge was wrong in law
in holding that the statutory declaration of Howard
Nelson Chipman was admissable in law.

2. That the learned Judge was wrong in law
in refusing to allow the appellant to call
evidence in rebuttal so far as the Appellant
had been misled or caught by surprise.

Bahama
Islands
Appeal Court
No.12
Notice of
Appeal
10th December
1966 (Contd.)

3. That the learned Judge was wrong in law in refusing to allow the attorney for the Plaintiff to put to the witness, Howard Nelson Chipman Junior, that the (the witness) knew nothing about fruit farming in that the witness did not know the difference between "budding" and "grafting" and thus was not telling the truth.

4. That the learned Judge was wrong in holding that the Respondents had sufficiently proved their documentary title to the land in dispute. 10

5. That the learned Judge was wrong in holding that the older fruit trees were planted by the H.N. Chipman (Senior) in that his finding was against the weight of evidence.

6. That the learned Judge was wrong in holding that the Appellant and H.N. Chipman (Senior) were farming the land at the same time in that his finding was against the weight of evidence. 20

7. That the learned Judge was wrong in his findings as to the extent of farming shown by the air photographs.

8. That the learned Judge was wrong when he found that the air photograph does not indicate cultivation as early as 1938.

9. That the learned Judge was wrong in law and fact in holding that the Appellant's farming was not inconsistent with the purpose for which the Respondents held the land and that the evidence that was admitted on this fact that was inadmissible in law and in any event was insufficient. 30

10. That the learned Judge was wrong in holding that it was not until the Appellant had been on the land for seven years that he formed the intent to oust the true owner.

11. That the learned Judge's interpretation of the Appellant's statement, "After I had been on the land for seven years I started claiming the land", was wrong and also against the weight 40

of evidence.

12. That the learned Judge misinterpreted the Appellant's evidence as to the extent of the Appellant's farming, disregarded the preponderance of evidence supporting the extent of the Appellant's possession of the said land, and found matters of fact that was not given in evidence.

Bahama
Islands
Appeal Court
No.12
Notice of
Appeal
10th December
1966 (Contd.)

10 13. That the learned Judge was wrong in law as to his finding in law as to the law of the barring of title by operation of the Limitation Act.

14. That the learned Judge's finding was against the weight of evidence.

Dated this 10th December, A.D.1966.

(Sgd.) Arthur J. Frame

Attorney for the above-named
Appellant

Chambers,
Nassau, Bahamas.

20

TO: The above-named Respondent
and

TO: Messrs. McKinney Bancroft & Hughes,
their Attorney.

Bahama
Islands
Appeal Court

NO.13

Judgment of Sinclair P.

No.13
Judgment of
Sinclair P.
20th June,
1967,

IN THE COURT OF APPEAL FOR THE BAHAMA ISLANDS

CIVIL APPEAL NO. 14 OF 1966

NORMAN PINDER

Appellant

v.

OCEAN ESTATES LIMITED

Respondent

JUDGMENT OF SINCLAIR, P.

This is an appeal from the judgment of the Supreme Court awarding to the respondent company, 10 the plaintiffs in the Supreme Court, damages for trespass and ordering that there be a perpetual injunction restraining the appellant, the defendant in the Supreme Court, his agents and servants from continuing the trespass and from entering the land in suit at any time in the future.

The land in respect of which the trespass is alleged is described in the Statement of Claim as:

"situate in the Eastern District of the Island of New Providence and bounded on the North by the Yamacraw Road, on the East by Sans Souci and land granted to Henry M. Dyer, on the South by a road reservation bordering the sea, and on the West by the Fox Hill South Side Road." 20

The defence as set out in the appellant's further and better particulars to his statement of defence is that "he has been in full free and undisturbed possession of the land the subject matter of this action by farming thereon continuously from about the year 1938 up to the present time." The Writ is dated the 20th December, 1963 and the trial commenced on the 11th July, 1966. The 30

Bahama
Islands
Appeal Court
No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

respondents sued as owners and at the trial
relied upon a documentary title. The learned
trial judge stated in his judgment that the
issue between the parties was whether or not
the appellant by his use of the land had
dispossessed the respondents or the true owners
through whom they claimed title. The procedure
followed at the trial was that the respondents
called evidence to establish their documentary
10 title to the land and their right to possession.
The appellant then called evidence to support
his averment that he had dispossessed the true
owners and the respondents called evidence in
rebuttal. At the close of the respondents'
evidence in rebuttal counsel for the appellant
sought leave to call further evidence intended
to contradict certain evidence given by the
respondents' witnesses in rebuttal. This
20 application was refused by the learned judge
and his refusal is the subject of one of the
grounds of appeal.

As to the respondents' claim to a
documentary title the learned judge held as
follows:

"The documentary title of the plaintiffs
shows that in 1946 at the time of the
conveyances Exhibits O.E.8 and O.E.9 the
predecessors in title of the plaintiffs
30 had by their documentary title a right to
possession of the land as against the
defendant who was at that time a trespasser
on the land."

He then went on to consider the appellant's
claim to have dispossessed the respondents and
found that the appellant by his trespass had not
dispossessed the true owner at the date the
action was commenced, namely 20th December, 1963.

The first question which arises is whether
the learned judge was correct in holding that
40 the respondents had established a good documentary
title to the land in question. On behalf of the
appellant it is contended that the respondents
did not establish a good root of title of the
necessary age, namely thirty years, in accordance

Bahama
Islands
Appeal Court

No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

with the provisions of Section 3(4) of the
Conveyancing and Law of Property Act (now Cap 115),
That subsection reads:

"(4) A purchaser of land shall not be
entitled to require a title to be deduced
for a period of more than thirty years,
or for a period extending further back
than a grant or lease by the Crown or a
Certificate of title granted by the
court in accordance with the provisions
of the Quieting Titles Act, whichever
period shall be the shorter."

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It is common ground that by an indenture
dated 1st May, 1937 (Exhibit O.E.7) Elsie May
Key conveyed the land in dispute therein
described as being about 100 acres in extent
to the Chipper Orange Company Limited in fee
simple. The parcels read:

"All that tract of land commonly known as
a portion of the Pen Tract situated in
the Eastern District of the aforesaid
Island of New Providence comprising
about One Hundred (100) acres and
bounded on the North by the Yamacraw
Hill Road on the East by a portion of
the Sans Souci Tract and by land of
the Estate of the late Herbert James
Claridge formerly also a portion of the
Pen Tract on the South also by land of
the Estate of the said late Herbert James
Claridge formerly a portion of the said
Pen Tract and by a road reservation
along the Sea-Shore separating the said
tract of land from the Sea and on the
West by the Fox Hill South Side Road."

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On 24th June, 1946 The Chipper Orange Company
Limited by two separate conveyances of this date
(Exhibits O.E.8 and O.E.9) conveyed to the
British Bahamian Land Company Limited in fee
simple 80 acres and 64 acres respectively.
In each deed the land conveyed is described as
being part of the tract of land conveyed by
Elsie May Key to the Chipper Orange Company
Limited by the indenture dated 1st May 1937
(Exhibit O.E.7) "being a portion of the tract

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Bahama
Islands
Appeal Court
No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

10 commonly known as the 'Pen Tract' situated in the Eastern District of the Island of New Providence comprising about One Hundred (100) Acres." It is clear from the plan attached to each of these conveyances and from the other evidence that the two pieces of land totalling in all 144 acres together comprise the same tract of land described in the conveyance dated 1st May, 1937 from Elsie May Key to the Chipper Orange Company Limited (Exhibit O.E.7) and therein said to be about 100 acres. Subsequent dispositions of these same two pieces of land comprising 144 acres which lead to the respondents were as follows:

Exhibit O.E.11. Conveyance dated 12th February, 1949, Elsie May Key to British Bahamian Land Company Limited.

20 Exhibit O.E.12. Conveyance dated 14th February, 1949, British Bahamian Land Company Limited to Alfred John Roy Whiteway.

Exhibit O.E.13. Conveyance dated 30th March, 1950, Alfred John Roy Whiteway to Ocean Estates Limited, the respondents.

30 As between vendor and purchaser a good title is one which can at all times and in all circumstances be forced on an unwilling purchaser: Williams on Title, 3rd edn. p.526. The vendor must show a good root of title which is at least thirty years old and a good root of title is a document which, inter alia, describes the land sufficiently to identify it. Having proved a good root of title of the necessary age, the vendor must prove all the later steps in the title which lead down to himself.

40 The earliest of these documents, namely the conveyance, Exhibit O.E.7, of 1st May, 1937 was less than thirty years old when action was brought. But the respondents also relied on earlier documents of title. As to those earlier documents counsel for the appellant contends that the parcels do not sufficiently identify

Bahama
Islands
Appeal Court

No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

the land to connect it with the land in the subsequent deeds and, accordingly, with the land in dispute.

The first of the earlier documents is a Crown Grant dated 4th December, 1890 to Thomas Dodd Milburne of a tract of land described thus:

"A Tract of Crown Land comprising about forty seven acres exclusive of swamp and useless land and situated in the Eastern District of the Island of New Providence Bounded on the north by land granted the Honourable Lewis Kerr, Esq., on the East by land granted the Honourable Henry M. Dyer Esq., on the south by the sea, and the west by the Fox Hill Road." 10

Reference is made to a plan of the land granted, but it is not in evidence. It appears from the description of the western boundary, as being Fox Hill Road and of the southern boundary as being the sea that it forms part of the land in dispute and included in the conveyance dated 1st May, 1937 from Elsie May Key to The Chipper Orange Company Limited (Exhibit O.E.7). 20

The next document is a conveyance dated 28th August, 1919 from the Executors and Trustees of the will of Thomas Dodd Milburne to Minnie Beatrice Albury (Exhibit O.E.2) of:

"All that piece parcel or tract of land situate in the Eastern District of the Island of New Providence aforesaid containing Two hundred and thirty nine acres the said tract comprising a tract originally granted to Lewis Kerr and part of the tract originally granted to Henry M. Dyer and now called the 'Pen' the said piece parcel or tract of land now being conveyed fronts to the North on a Public Road and has the boundaries shape and dimensions delineated and set out in a plan of the same marked A which is annexed to an indenture made between James Thompson Claridge and others of the one part and the said Thomas Dodd Milburne of the other part and bearing date the 17th day of February A.D. 1890 and now 30 40

of Record in the Registry of Records in Book N 9 at pages 132 to 141."

Again the plan referred to is not in evidence.

The remainder of the earlier documents relied upon are:

Exhibit O.E.3. Release of Dower by Jean Crawford Milburne to Minnie Beatrice Albury dated 2nd June, 1920.

10 Exhibit O.E.4. Conveyance dated 14th January, 1922 from Minnie Beatrice Albury to Edmund Dorsett Knowles.

Exhibit O.E.5. Conveyance dated 6th February, 1922 from Edmund Dorsett Knowles to Elsie May Key.

Exhibit O.E.6. Renunciation of Dower by Rosalie Blance wife of Edmund Dorsett Knowles dated 7th February, 1922.

20 In each of these documents the land, comprising 239 acres, has the same description as in the conveyance dated 28th August, 1919 (Exhibit O.E.2) and the same reference to the plan not in evidence.

30 The first difficulty which arises with regard to these earlier documents is that although the tract of 47 acres granted to Thomas Dodd Milburne (Exhibit O.E.1) appears from the boundaries to be included in the documents less than thirty years old commencing with the conveyance of 1st May, 1937 (Exhibit O.E.7) it does not appear to be included in Exhibits O.E.2-6 since in those deeds the land is described as comprising part of a tract originally granted to Lewis Kerr and part of a tract originally granted to Henry M. Dyer. There is no mention of the tract originally granted to Thomas Dodd Milburne. There is therefore no good root of title in respect of those 47 acres which form part of the land in dispute.

A second difficulty arises from the failure in Exhibits O.E. 2 - 6 to define the land by

Bahama
Islands
Appeal Court
No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

Bahama
Islands
Appeal Court

No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

metes and bounds, coupled with the absence of the plan referred to therein. The only boundary referred to is a public road to the north; the road is not named and there is nothing to suggest that it is Yamacraw Road which is the northern boundary of the land in the conveyance of 1st May, 1937 (Exhibit O.E.7) and the later deeds. The connecting link between that conveyance and the earlier deeds which appears to have been accepted by the trial judge is that in the earlier deeds the land or at least part of it, is described as "now called 'the Pen'" and in Exhibit O.E.7 and subsequent deeds the land in dispute is described as being "part of the Pen Tract." But I do not think that the description of the land in the conveyance of 1st May, 1937 (Exhibit O.E.7) as being part of the Pen Tract is sufficient proof that it is part of the Pen Tract in Exhibits O.E.2-6 when the Pen Tract is not described by metes and bounds in those deeds and has not been identified. In my view, therefore, none of the deeds, Exhibits O.E.2-6, can constitute a good root of title in respect of any part of the land indispute.

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It was submitted that by virtue of the provisions of sub-section (3) of section 3 of the Conveyancing and Law of Property Act reliance can be placed on the recital in the conveyance of 1st May, 1937 (Exhibit O.E.7) that the vendor (i.e. Elsie May Key a predecessor in title of the respondents) is "seised in fee simple" of the land which is admittedly the land in dispute. It was argued that that recital must be taken to be correct unless proved to be inaccurate, and it was not proved to be inaccurate. Sub-section (3) of section 3 reads:

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"(3) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts or declarations, shall, unless and except so far as they shall be proved to be inaccurate, shall be taken to be sufficient evidence of the truth of such facts, matters and descriptions."

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But in Wallace and Grout's Contract, (1906) 2 Ch. 210, where a similar provision was under consideration, it was held that such a provision does not relieve a vendor from proof of title for the full period. Furthermore, it seems that the provision binds only the parties and those claiming under them: see Williams on Title, 3rd edn. p 545. I do not think it can be of any assistance to the respondents. In the
 10 circumstances, therefore, I am of the opinion that the respondents have not sufficiently established a good documentary title, that is to say a title which could be forced on an unwilling purchaser. If it is not a good documentary title, it is a defective title.

Bahama
 Islands
Appeal Court
 No.13
 Judgment of
 Sinclair P.
 20th June,
 1967 (Contd.)

But since this was an action for trespass, it was not necessary for the respondents to establish that they had a good documentary title which would have given them legal possession;
 20 it was sufficient if they established that they had a better right to possession than the appellant had. I propose now to examine that aspect of the case.

As I have indicated, at the trial the respondents relied on a documentary title and called evidence to support it. The appellant then adduced evidence that he had been farming on the land since 1938 and thus had acquired a possessory title. The respondents then called
 30 evidence in rebuttal as to occupation of the land and acts of ownership by themselves and their predecessors in title.

The appellants evidence as to the extent and method of his farming is summarized in the following passage from the judgment:

"The defendant's story is that he started growing tomatoes on about 18 acres of the land near South Beach Road in 1938 and has continued to farm there cutting
 40 down new areas for cultivation year by year moving eastwards from South Beach Road. His system of farming was first to clear a piece of land; then farm on it for a year or eighteen months; then give it up; and in due course return

Bahama
Islands
Appeal Court

No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

to clear the land again. He said in effect that in the period 1938 - 1965 he had reached the eastern boundary at Yamacraw Road three times and did not cultivate more than 20 acres at any one time. From this I infer that on average any single area of land cleared was cultivated three times in a period of 27 years. The cultivation of vegetable crops was confined to the northern part of the land the southern part being mainly swamp and nothing was done with that. Defendant mentioned isolated instances of stopping persons taking sand from the beach."

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Fox Hill Side Road is also known as South Beach Road. The appellant's farming activities consisted of growing vegetables and fruit trees. He alleged that he himself planted the fruit trees. On the other hand the case for the respondents was that Howard Nelson Chipman (Senior), President of the Chipper Orange Company Limited, planted at least the earlier fruit trees. On the preponderance of the evidence the judge found that tomato and other vegetable crops, as opposed to the growing of fruit trees, were being cultivated on the land by the appellant in 1941 and 1942. As to the fruit trees he found that some were 10 to 12 years old and some 20 to 25 years old and that the younger trees, planted about 1954 to 1956, were planted by the appellant and the older trees, planted about 1941 to 1946 were planted by H.N. Chipman (Senior). He concluded, therefore, that in the period 1941 to 1946 both the appellant and H.N. Chipman (Senior) were on the land at the same time, the former growing tomatoes and other vegetables and the latter planting fruit trees and gathering fruit in season.

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Counsel for the appellant attacked that finding first on the ground that a notarial declaration by H.N. Chipman (Senior) dated 28th February, 1948 (Exhibit O.E.10) was wrongly admitted in evidence. Chipman (Senior), who died in 1951, deposed inter alia that in his capacity as Real Estate Agent and Manager for

Bahama
Islands
Appeal Court
No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

10 Elsie May Key he managed the land from the time when she purchased it in 1922 until it was conveyed to the Chipper Orange Company Limited in 1937, after which he managed and developed a portion of the land for that Company. He also deposed that Elsie May Key, the Chipper Orange Company Limited and British Bahamian Land Company Limited exercised full rights of ownership over the land without
20 interference on the part of any person or persons and that to his personal knowledge they enjoyed undisturbed uninterrupted and undisputed possession and used the land as their undisputed property and were recognised as the sole owners. Objection to the admissibility of this declaration was taken at the trial, but the trial judge ruled that it was admissible without stating his reasons. Both before us and at the trial counsel for the respondents submitted that it was admissible under the provisions of section 42 (7) of the Evidence Act (Cap. 42). Section 42 (7) provides:

"Hearsay evidence may not be admitted except in the following cases:-

30 (7) where the statement was made by a person, since dead, in the ordinary course of business, in discharge of a duty incumbent upon such person for the purpose of recording or reporting something which it was the duty of the person to perform, at or near the time when the matter stated occurred and of his own knowledge.

Provided that evidence of such statement shall not be admitted in order to prove any fact mentioned therein which it was not the duty of the person making it to embody in such statement."

40 At the time when the declaration was made Chipman (Senior) had ceased to have any connection with the land either as agent for Elsie May Key or as President of the Chipper Orange Company Limited. The land had then been conveyed to the British Bahamian Land Company Limited. In those circumstances I do not think

Bahama
Islands
Appeal Court
No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

it can be said that the statements were made in the ordinary course of business or in the discharge of any duty then incumbent upon him. Furthermore, the statements were not made at or near the time when the matter stated occurred. In my view, therefore, the declaration was inadmissible and must be disregarded. It is, however, to my mind clear that the judge did disregard the declaration in arriving at his finding. He made no mention of it when considering the evidence on this aspect of the case and, indeed, came to conclusions contrary to the matter contained in the declaration. I am satisfied, therefore, that it did not influence his finding.

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Counsel for the appellant's main attack on the finding was, however, that it is against the weight of evidence. On the other hand, counsel for the respondents submitted that the evidence established that the respondents had prior possession. Prior possession would be a sufficient title to maintain an action for trespass provided possession was maintained.

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The evidence adduced by the respondents relating to prior possession was that of Howard Nelson Chipman, Junior, the eldest surviving son of Howard Nelson Chipman, Senior, Ethel Taylor, the mother of Chipman, Junior, and F.C. Claridge. Chipman Junior testified that he was born in 1924, that he was familiar with the property, his first acquaintance with it being when he went there in the middle thirties when he was about 10 to 12 years of age and that when he was about 16 or 17 (that would be in 1940 or 1941) he planted and budded trees on the land. Ethel Taylor had five children of whom Chipman Senior was the father. She deposed that she first knew Chipman Senior in 1922, that he farmed the land in dispute all his life growing fruit and vegetables and that she used to go to the land to collect surplus fruit and sell it. She did not know the date when she started going to the property, but it was when her children were walking about, her first child according to her evidence being born in 1923. But her evidence as to the time

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when she first had knowledge of farming on the land by Chipman Senior was too vague to justify any reliance being placed on it. Claridge gave evidence as to the planting of fruit trees by Chipman Senior but, again, his evidence as to the time when they were planted is too uncertain and unreliable to carry any weight. At first he said the fruit trees were planted 20 to 25 years ago. The trial was in 1966 which would make the time of planting between 1941 and 1946. But later he said it would not be earlier than 26 or 27 years ago. At one stage he said it would be 30 to 35 years since they were planted.

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The learned judge accepted the evidence of Chipman Junior that at the age of 16 or 17, that is in 1940 or 1941, he assisted his father to plant fruit trees on the land. He also accepted the evidence of Michael, a retired agricultural officer, who inspected the fruit trees in July, 1966 that some of the fruit trees were 10 to 12 years old and some 20 to 25 years old. That again would place the earliest planting of the fruit trees between 1941 and 1946. Furthermore, there was to my mind, no sufficient evidence to support a finding that Chipman Senior did any other type of farming on the land, such as growing vegetables before the fruit trees were planted. On the other hand, there was evidence which the learned judge accepted that at that time the appellant was also farming on at least part of the land growing tomatoes and other vegetables. As I have stated, the judge found that in the period 1941 to 1946 both the appellant and Chipman were on the land at the same time, the former growing tomatoes and other vegetables and the latter planting fruit trees and gathering fruit in season. Having carefully considered the evidence I can find no good ground for differing from that finding. Moreover, in my view there was no sufficient evidence to justify a finding that the respondents or their predecessors in title had prior possession.

Bahama
Islands
Appeal Court
No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

I turn now to the other ground on which

Bahama
Islands
Appeal Court
No.13
Judgment of
Sinclair P.
20th June,
1967 (Contd.)

counsel for the respondents contends they are entitled to succeed in the action, if they have not proved a good documentary title. It is that they have at least a colourable title and, having entered into possession of part of the land under colour of title, they are in constructive possession of the whole. In support of his contention counsel referred us to a passage from Franks on Limitation of Actions, 1959 edn, page 125 and to the Canadian case of Wood v LeBlanc (1904) 34 Can. S.C.R. 627. The passage from Franks reads:

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"The benefit of the Statute (of Limitations) will be permitted to the intruder only in respect of the land of which he proves actual possession. There is no presumption in favour of a wrongdoer that possession of part imports possession of the whole, but this has no application when it was intended that the intruder should have possession of the whole, e.g. where he entered under an ineffective conveyance."

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Low Moor Company v. Stanley Coal Company Limited, 34 L.T. 186, and Glyn v. Howell, (1909) 1 Ch. 666 are cited in support of the statement. But I do not think the principles laid down in those cases are wide enough to cover the circumstances of the present case. Wood v. LeBlanc, a decision of the Supreme Court of Canada, is, however, more in point. That was an action by the plaintiff for the recovery of the possession of a quantity of saw logs claimed by the plaintiff to be his property upon the ground that they were cut upon certain lands of the plaintiff known as the Dickie lot. The Dickie lot was part of a large tract of wilderness land known as "Sackville Rights". The action, though nominally a personal one, involved the trial of the title as between the parties to the land where the logs were cut. Neither party pretended to have a good documentary title, but both claimed to have acquired title by possession. The plaintiff contended that he had constructive possession of the whole of "Sackville Rights" by virtue of having entered into possession of part of the land under colour of title to the whole. The relevant part of the headnote reads:

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"The possession of a part of land claimed under colour of title is constructive possession of the whole which may ripen into an indefensible title if open, exclusive and continuous for the whole statutory period."

Bahama
Islands
Appeal Court

No.13
Judgment of
Sinclair P.
20th June,
1966 (Contd.)

Davies J. expressed the principle, at p. 635 thus:

10 "Now, in my judgment, the possession
necessary under a colourable title to
oust the title of the true owner must be
just as open, actual, exclusive, continuous
and notorious as when claimed without such
a colour, the only difference being that
the actual possession of part is extended
by construction to all the lands within the
boundaries of the deed but only when and
while there is that part occupation. And
before it can be extended it must exist
and is only extended by construction while
20 it exists. It may be that a person with
colourable title engaged in lumbering on
land would be held while so engaged and in
actual occupation of part to be in the
constructive possession of all not actually
adversely occupied even if that embraced some
thousands of acres within the bounds of his
deed. But it is clear to my mind that if and
when such person withdraws from the possess-
30 ion of the part by ceasing to carry on the
acts which gave him possession there he
necessarily ceases to have constructive
possession of the rest. His possession in
other words must be an actual continuous
possession, at least of part."

I understand that that decision has been
followed in the Bahamas. Although it may go
somewhat further than English decisions, I do
not think it is contrary to general principles
and I am prepared to accept the principles laid
40 down therein as applicable in the Bahamas.

But, to my mind, there are two reasons why
those principles are not applicable in the
present case. In the first place it seems clear
from the evidence that possession by the respond-
ents and their predecessors in title was not

Bahama
Islands
Appeal Court

No.13
Judgment of
Sinclair P.
20th June,
1966 (Contd.)

continuous. Since they did not prove a good documentary title, they were not entitled to legal possession by virtue of a documentary title and there is no evidence of actual possession by them of any part of the land after the death of Chipman Senior in 1951. There is, indeed, evidence to the contrary. Claridge said that Chipman Senior stopped bothering with the land a couple of years before he died and Chipman Junior gave evidence that in the fifties "the land had grown up and the fruit trees were choked up and going to waste." In the second place possession by the respondents and their predecessors in title was, in my opinion, not exclusive. As has been found, between 1941 and 1946 both Chipman Senior and the appellant were in occupation of part of the land at the same time and I think it is clear from the evidence that thereafter the appellant openly continued in occupation of parts of the land, farming by his system of shifting cultivation, until action. As I have understood the learned judge's judgment, he held that the appellant's occupation of the land was not adverse on three grounds. First, as to the period 1941 to 1946, on the ground that the growing of vegetable crops by the appellant was not inconsistent with the use of the land by the true owner for growing fruit trees. Secondly, on the ground that for the first seven years of his occupation, the appellant did not have the animus possidendi, the intent to oust the true owner. Thirdly, on the ground that from 1950, when the respondents bought the land, the appellant's farming was not inconsistent with the purpose for which the respondents held the land, namely development. But those conclusions are based on the assumption that the respondents and their predecessors in title were the true owners by virtue of their documentary title. I do not think they are valid if the respondents and their predecessors in title were not the true owners.

For these reasons I am of the opinion that the respondents did not establish that they were sufficiently in possession to maintain the action for trespass. I would, accordingly, allow the appeal with costs, set aside the judgment of the Supreme Court and direct that judgment be entered for the appellant, the defendant in the court below, with costs.

President

No. 14

JUDGMENT OF HALLINAN, J.A.

COURT OF APPEAL - Civil Side

No. 14 of 1966

NORMAN PINDER

DEFENDANT-APPELLANT

vs.

OCEAN ESTATES LTD.

PLAINTIFF-RESPONDENT

Bahama
Islands
Appeal Court

No.14

Judgment of
Hallinan J.A.
20th June 1967

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JUDGMENT OF HALLINAN, J.A.

The Plaintiff-Respondents brought this suit in trespass alleging that they were the owners of a tract of land comprising some 144 acres bounded on the north by the Yamcrow Road, on the east by Sans Souci and by land granted to M. Dyer, on the south by a road reservation bordering the sea, and on the west by the Fox Hill South Side Road. At the trial the Respondents relied on their documentary title and the learned trial judge accepted the title as good. The onus of proof then shifted to the Appellant to show that he has dispossessed the Respondents and that by operation of the Real Property Limitation Act of 1874 (Chapter 150) the right to recover possession is barred after 20 years.

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The Appellant gave evidence of having farmed the land in dispute since 1938 and the trial judge held that his farming probably started in 1940, but that time did not start to run against the Respondents till 1945 or 1947 and that 20 years adverse possession had not been proved before the commencement of this suit in 1963. Accordingly, there was judgment for damages and injunction against the Respondent.

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Must the most important ground of appeal is that which submits that the Respondents did not sufficiently prove their documentary title. The Respondents' earliest document of title is a Crown Grant of 4th December, 1890 to Thomas Dodd Millburne.

Bahama
Islands
Appeal Court

No.14

Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

This was a grant of a tract of land of about 47 acres exclusive of swamp and useless land in the Eastern District of New Providence bounded on the north by land granted to Hon. Lewis Kerr, on the east by lands granted to Hon. H.M. Dyer, on the south by the sea; and on the west by the Fox Hill Road. Then came 2 deeds (one of 1919 and the other 1920) in which the trustees of Major T.D. Millburne and his widow conveyed to Mrs. M.B. Albury a parcel of land situate in the Eastern District of New Providence containing 239 acres being a tract granted to Lewis Kerr and part of a grant to H.M. Dyer and now called the "Penn". It is not clear whether the "Penn" tract was the land granted to Kerr or a larger tract granted to Dyer out of which Kerr's grant was carved. The deeds then go on to say that the parcel conveyed fronts to the north on a public road (not a very helpful piece of information) and is set out on a plan annexed to a deed of 17th February, 1890. This plan is not in evidence and I understood from Respondents' Counsel that it cannot assist the court in identifying the parcels conveyed by the deeds of 1919 and 1920. The description by metes and bounds in the grant of 1890 substantially corresponds with at least the southern part of the boundaries of the land in dispute as set out in the Statement of Claim. But the description of the land conveyed by the deeds of 1919 and 1920 appear to refer to different land, that is to say to land granted to Lewis Kerr which (according to the deed of 1890) formed the northern boundary of the land granted to T.D. Millburne in 1890. In 1922, Mrs. Albury conveyed her rights under these deeds to Mr. E.D. Knowles who a month later passed the property to Miss Key by deed of 1st May, 1937, Miss Key conveyed her rights to the Chipper Orange Co. Ltd. In this deed for the first time the Respondents produced a document of title in which the parcels are described by metes and bounds and can be identified. The description is substantially the same as the description of the lands in the Respondents' Statement of Claim which I have set out at the beginning of this judgment.

The Respondents' deeds subsequent to that of 1937 call for no special comment. It is sufficient

to say that, whatever title the Chipper Orange Co. Ltd. acquired under that deed, was by a series of sales and re-sale ultimately conveyed to the Respondents in 1950.

Bahama
Islands
Appeal Court
No. 14

Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

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It is true that the deed of 1937 states that the land conveyed by the deed is part of the "Penn Tract" and that the conveyances prior to 1937 produced by the Respondent also refer to the parcels conveyed as part of that tract, but there is nothing in these prior deeds to indicate the whereabouts of the Penn Tract or the metes and bounds of that part of that tract which is being conveyed; nor is there any extrinsic evidence to identify the Penn Tract or that portion of it which was the subject matter of the deeds prior to 1937.

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In Megarry and Wade's Real Property (3rd Edition) 586, it is stated "A good root of title is a document which describes the land sufficiently to identify it" and then goes on to indicate the other requirements. In my view the deeds put in evidence by the Respondents prior to 1937 do not sufficiently describe the property to identify it. The Conveyancing Law of Property Act (Chapter 115 Section 3 (4)) provides that the length of title to which a purchaser is entitled is 30 years. In this suit begun in 1963, the deed of 1937 is not a good root of title.

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Counsel for the Respondents has referred us to Section 3 (3) of Chapter 115—recitals, statements and descriptions of facts, matters and parties contained in deeds 20 years old at the date of the contract of sale are prima facie evidence of such facts, matters, and descriptions. This provision is similar to that contained in the Vendor and Purchaser Act 1874 Section 2, and the Law of Property Act 1925, Section 45 (6) of the United Kingdom. The deed of 1937 is more than 20 years old and counsel relies on a recital that the

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vendor is seized in fee simple of the land described in that deed. The better opinion appears to be that a vendor cannot rely on the provisions of Section 3 (3) of Chapter 115 to cure a defect in a root of title 30 or more years old; the authority for this is in re Wallace and Grouts Contract (1906) 2 Ch. D. 199 at 210.

Bahama
Islands
Appeal Court

No.14

Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

Moreover, since the Crown Grant of 1890 obviously covers a considerable portion of the land now in dispute—certainly the southern part—and since the "Penn" tract lay outside the grant of 1890, it follows that the deeds of 1919 and 1920 (which conveyed the "Penn" tract or part of it) could not be the basis of a title to at least the southern part of the land now in dispute. Miss Kay's title was derived from the deeds of 1919 and 1920 and did not extend beyond the "Penn" tract; yet, in the conveyance Key to the Chipper Orange Co. in 1937, she purports to convey land whose metes and bounds include the land granted in 1890 which was not part of the "Penn" tract. In short, there is no sufficient evidence that the description of the land by metes and bounds in the deed of 1937 was a proper description of the "Penn" tract or part of it; on the contrary the deeds produced by the Respondents show that these metes and bounds included a substantial tract of land that was not part of the "Penn" tract.

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In my view, the Respondents have failed to prove a good documentary title to the land in dispute, for a good documentary title can only mean one which can be forced on an unwilling purchaser under a contract for sale. Anything less than this is a defective title and this can only avail a claimant in the special circumstances discussed later in this judgment. It is sufficient now to say these special circumstances are not present in this case.

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In presenting their case, the Respondents relied on the strength of their documentary title. However, as the Appellant adduced a considerable body of evidence to show that he had been farming the land in suit for more than 20 years and that he had thus acquired a possessory title, the Respondents to rebut this claim led evidence as to the ownership and occupation of the land by them and their predecessors in the documentary title. Since in my view the Respondents have not proved a good documentary title, I have given some thought as to whether this case should be sent back to afford them an opportunity of proving a possessory

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10 title or at least a right to possession better than that of the Appellant. I do not favour such a course. The Respondents in this action for trespass chose to rely on their documentary title and if, because of that, they did not present their right to possession as strongly as they might have done, I see no reason why at this late stage they should be allowed a fresh hearing. Moreover, in seeking to rebut the Appellant's

10 evidence, the Respondents appear to have given such evidence as they could muster of their own and their predecessor's occupation of the land, and thereby have afforded this court upon appeal sufficient material to evaluate their claim to possession being better than that of the Appellant.

20 Before considering this issue as to possession, it is convenient to rule on the admissibility of the statutory declaration of Howard Helson Chipman made on the 28th February, 1948. Mr. Chipman was agent and manager for Miss Key and also for the Chipper Orange Co. Ltd. In the declaration he makes statements as to the ownership, use, and occupation of the land in suit. Mr. Chipman died in 1951 and his declaration was admitted under Section 42 (7) of the Evidence Act (Ch. 42) as a Statement made by a person since

30 dead in the ordinary course of business. I am clearly of the opinion that this was not the kind of declaration which Mr. Chipman would have made in the ordinary course of business. It is not the ordinary business of a manager to bolster up his employer's title to land by a statutory declaration. This document was wrongly admitted.

40 The Respondents' witnesses to acts of possession by their predecessors were Ethelyn Taylor, H.N. Chipman, Junior and F.C. Claridge. All of these witnesses stated that Mr. Chipman senior, had planted fruit trees on the land. The trial judge, after taking into account the evidence for the Appellant that he too had planted fruit trees and also the evidence of the air-photographs taken at different periods, decided that Mr. Chipman had planted fruit trees about the years 1940 to 1946. These trees, according to Claridge, were planted at the northern end of the property along the Yamacraw Road to a depth of 200 feet. Ethelyn Taylor in cross-examination said that Mr.

Bahama
Islands
Appeal Court

No.14

Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

Chipman had grown tomatoes, beans, cassava and "every vegetable" but gave no particulars, either dates of where on the land this farming took place. Mr. Chipman died in 1951 and some years before his death appears to have abandoned these fruit trees. Chipman junior stated that his father was disgusted because the fruits were being stolen. He said, "I saw in the '50's that the land had grown up and the fruit trees were choked up and going to waste."

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The evidence of acts of possession and user by the Appellant is much stronger, given by five witnesses besides himself. This evidence was to the effect that the Appellant had farmed continuously on the land since 1938; because of the nature of the ground he followed a system of shifting cultivation, farming not more than 20 acres at a time. The southern part of the land is mainly swamp and was not cultivated. He also planted a considerable number of trees on the land. The trial judge held that the air-photographs showed farming on the land in 1941 and 1942 and that this on the balance of probabilities was the work of the Appellant. He also held that the younger fruit trees on the land, planted about the year, 1954 to 1956 were planted by the Appellant. Unfortunately, the learned judge did not expressly make any finding on the Appellant's farming after the 1940's since he held that the Appellant could not have acquired a possessory title for the following reasons; first, during the period 1941-1946 the Appellant did not have exclusive possession because of Mr. Chipman's fruit growing; secondly, because the owners of the documentary title since 1950 held the land for the purpose of development and the Appellant's farming would not be inconsistent with that purpose; and lastly because the Appellant had not an "animus possidendi" to hold against the true owner until 1946—too late to have a possessory title by 1963. Since in my view the Respondents have not proved a documentary title, the second and third reason cannot support the Respondents' case; it does, however, become important to consider the evidence of the Appellant's farming in the 1950's if the Respondents can only maintain trespass against the Appellant by reason of the course and character of the Respondents' alleged possession. On the

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evidence given by both parties I think it must be accepted that the Appellant farmed quite openly on the land in the 1950's. The Respondents own witness, C. Claridge stated "Norman Pinder (the Defendant) farmed there 16 or 17 years ago." He was giving evidence in 1966—"He farmed okra and tomato and I used to buy the okra from him. The first place he cut there was 90 to 100 feet wide and 400 to 500 feet long. That was just before Howard Chipman died." He died in 1951.

Bahama
Islands
Appeal Court

No.14

Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

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Counsel for the Respondents submitted that, even if the Respondents have not proved a documentary title, they are entitled to succeed on two grounds: first, that on the evidence his predecessors in title had prior possession, and could maintain trespass against all but the true owner; and, secondly, that since he had entered into possession of part of the land under a colourable title, he was in constructive possession of the whole. As to the first ground, it is sufficient to say that the trial judge appears to have found that the parties each commenced operations on the land about the same time in 1941: Mr. Chipman planting fruit trees and Mr. Pinder growing tomatoes: I see no reason to disturb this finding of fact.

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For his second ground, Counsel relied on a paragraph in Franks on Limitation of Actions (1959); and on the Canadian case of Josiah Wood v. Henry S. Le Blanc (34 Can. S.C.R. 627). Franks at page 123 says: "There is no presumption in favour of a wrong doer that possession of part imports possession of the whole, but this has no application where it was intended that the intruder should have possession of the whole, e.g. where he entered under an ineffective conveyance." The case of Low Moor Co. v Stanley Coal Co. (1876) 14 Ch.D. 537 is cited in support of this statement. The basic situations in that case may be stated as follows:—A, the true owner of land conveys the subsurface rights of coal to X; the conveyance was not perfected and therefore was defective. The grantee X worked the upper seams and then stopped, leaving his equipment "in situ"; he later assigned his rights to Y. Then A, taking advantage of the defect in the conveyance assigned whatever subsurface rights he had to B. It was

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Bahama
Islands
Appeal Court

No.14

Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

held that since he had intended to give X possession of all subsurface coal, X had constructive possession of all the seams and had acquired a possessory title to them. The grounds for the decision in the Low Moor case were clearly formulated in the other case cited by Franks:—Glyn v. Howell (1909) 1 Ch. 666, where Eve J. agreeing with the submission of Mr. Upjohn (as he then was) states the rule thus: Where title is founded on adverse possession, the title will be limited to the area of which actual possession has been enjoyed, and, as a general rule, constructive possession of the whole area will only be inferred from actual possession of the limited area if the inference of such wider possession is necessary to give effect to contractual obligations or to preserve the good faith of a bargain. In the Low Moor Case, this special rule of constructive possession enabled the court to give a possessory title to the assignees of a grantee in order to prevent the assignees of the grantor taking unconscionable advantage of a defective conveyance. I am unable to see how by virtue of this rule any presumption as to constructive possession of the whole land arises in the present case in favour of the Respondents: they are not claiming possession against a grantor or his assigns and no breach of contract or of good faith is in question.

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I shall now consider the Canadian case of Wood v. Le Blanc. In that case the Plaintiff claimed a possessory title to a large tract of forest land of which he and his predecessor had had intermittent possession of part in order to cut and take out timber. He claimed constructive possession of the whole as he had entered on the land under a colourable title. His claim was rejected both by the trial court and upon appeal. It is convenient to comment first on a passage from the judgment of Killam J. who delivered the last judgment. At page 644, he states: "In the American and English Encyclopaedia of Law (2nd Ed.) Vol. 1 Page 824, this principle (of constructive possession) is thus stated:—

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"An entry into possession under a conveyance from a person having colour of title is presumed to be made according to the

"description in the deed, and his occupation is construed as possession of the entire lot where there is no actual adverse possession of the parts not actually occupied by him."

Bahama
Islands
Appeal Court

No.14

Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

10 We have not been referred to any English authority in support of this broad statement of principle, although I understand it has been accepted in some cases decided in the Supreme Court of the Bahamas. For my part, I am not entirely persuaded that it is necessary or expedient to apply in a small island and to comparatively small parcels of land a principle that has been found beneficial in the great open spaces of Canada and the United States. But even if accepted, it would not avail the Respondents in the present case, for, in my view, the Appellant was in actual adverse possession of parts of the land not occupied by Mr. Chipman. The Appellant
20 was farming the land while Mr. Chipman was planting trees. The trial judge considered that the Appellant's possession was not adverse until he decided to claim the land against the true owner, but if the Respondents' predecessors had no documentary title, they were not the true owner and the Appellant's possession of part of the land would prevent any presumption of constructive possession of that part arising in the Respondents' favour. Later in the 1950's, when the Appellant
30 farmed the land, I do not think the Respondents were in possession of any part; I shall return to this aspect of the case presently.

The only other passage from the judgment in Wood v. Le Blanc upon which I would also comment is taken from that of Davies J. at P. 635 where he says: "Now, in my judgment, the possession necessary under a colourable title to oust the title of the true owner must be just as open, actual, exclusive, continuous and notorious as
40 when claimed without such colour, the only difference being that the actual possession of part is extended by construction to all the lands within the boundaries of the deed, but only when and while there is that part occupation."

Here again, even if one were prepared to accept the principle as stated by Davies J., the

Bahama
Islands
Appeal Court
No.14
Judgment of
Hallinan J.A.
20th June
1967 (Contd.)

principle is so limited as to preclude the Respondents from bringing their case within it. In my comment on the passage from Killam J., I have explained why possession of the Respondents predecessors in title was not exclusive. In my view, the Respondents, moreover, ceased to be in possession even of a part of the land after Mr. Chipman's death. His son said in evidence that in the 1950's "the land had grown up and the fruit trees were choked and going to waste." The Respondents bought the land in 1950 and the trial judge states, "they bought the land for the purpose of development and in the meantime made no use of it." This might not matter if they had a good documentary title, but it is fatal to their case if they are seeking to establish a possessory title.

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For the reasons I have stated in this judgment, I consider that the Respondents have failed to establish their right, either by documentary title or by possession, to maintain trespass against the Appellant.

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I would accordingly allow this appeal with costs.

ERIC HALLINAN

(20th June, 1967).

No.15

JUDGMENT OF BOURKE J.A.

IN THE COURT OF APPEAL FOR THE BAHAMA ISLANDS

CIVIL APPEAL No. 14 of 1966

NORMAN PINDER

APPELLANT

v.

OCEAN ESTATES LIMITED

RESPONDENT

Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th June
1967

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JUDGMENT OF BOURKE J.A.

The question arising concerns the title to 144 acres of unenclosed land which includes an area of swamp and required scrub clearance to enable cultivation to be carried on. The respondent company, Ocean Estates Ltd., purchased the land in 1950 for the purpose of development and it has shown a chain of transactions back to a deed of conveyance of 1937 (exh. O.E.7), to which no exception is taken, made between one Elsie May Key recited therein to be the vendor seised in fee simple and the Chipper Orange Company Ltd., of which Howard Chipman senior was president and the holder of nearly all the shares. According to the finding the use and purpose for which the land was then so acquired was the growing of fruit trees and collection of the produce.

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There is the evidence of the appellant's witness, Thomas Davis, that he knew Elsie May Key and had seen her riding in the area with Chipman. Whether this was before or after she conveyed to his company is not made clear. The respondent apparently set out to establish that its title derived from a Crown grant of 1890 (exh. O.E.1); but that document or later conveyances do not supply a proper description or identification of the land. There is no dispute about it that the land is part of a larger area known as the "Pen Tract" and this description occurs in the later deeds, as, for instance, the conveyance by Edmund

Bahama
Islands
Appeal Court
No.15
Judgment of
Bourke J.A.
20th June
1967 (Contd.)

Dorsett Knowles to Elsie May Key in 1922 (exh. O.E.5) But the first clear and definite identification of the land by reference to boundaries (and also as being a portion of the Pen Tract) is found in the deed of 1937. It may well be that the land conveyed by Elsie May Key to the Chipper Orange Company in 1937 is part of the land that came to her under the conveyance of 1922, but the plan referred to as setting out the boundaries in the 1922 deed is not in evidence and doubt has arisen. Mr. Hanna for the appellant has strongly contended that one cannot get beyond the 1937 deed and that there is not enough to disclose the respondent as the true and outright owner.

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There is a document (exh. O.E. 10) being a statutory declaration made by Howard Chipman senior in 1948 (he died in 1951) admitted in evidence and seemingly offered with the object of showing occupation by Key and Chipman and linking things up between the deeds of 1922 and 1937. Both here and below it was submitted that the document was admissible under section 42 (7) of the Evidence Act. I consider that the objection below was well taken and that clearly the declaration does not fall within this exception to the hearsay rule. It was not put forward as constituting part of the res gestae and I do not appreciate how the respondent could successfully seek to justify its inclusion on this ground if it had sought to do so. Had this been a quieting of title matter, it would no doubt, have been admissible under section 8 (1) of the Quieting Titles Act, 1959. But I am of the opinion that this wrongful admission of evidence did not occasion any substantial wrong or miscarriage so as to justify a retrial. The judgment leaves me with the impression that the learned judge did not make use of the contents of the document in reaching his findings as to title or possession. His sole reference to it is to indicate that he was sympathetic to one branch of the argument advanced for the respondent against the appellant's application to lead further evidence of a rebutting character, in that it supplied notice to the latter that reliance was, in addition to proof of documentary title, being placed on actual possession.

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Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th June
1967 (Contd.)

The procedure that had been followed, without the raising of any objection, was that the respondent led evidence in production of papers going in proof of title as owner. The appellant then called witnesses in support of his case alleging possession, and as to title arising through long possession. The respondent proceeded to examine its witnesses in rebuttal and as to possession by a predecessor in title, namely, the Chipper Orange Company, following which the appellant applied to lead rebutting evidence through further witnesses on the ground that he had been misled and taken by surprise through an absence of cross-examination of his earlier witnesses to suggest that Howard Chipman senior had gone into possession at a time when, according to the case being made by the respondent, the land belonged to his company. This application was refused. In fact, as it appears to me, there was some reference in such cross-examination to Chipman having entered upon the land (see pp. 21 and 22 of the record). But this was an action in trespass and evidence of possession was surely to be anticipated as a relevant element. Moreover at an early stage exhibit O.E. 10 was in evidence, though wrongfully. I think, however, since it was in proof, that it should suffice to put the appellant on his guard that he was being asked to meet a case involving actual possession. The matter had to end somewhere. If the appellant was taken by surprise I do not think he had good reason to be. The respondent asserted a right to possession as legal owner on a documentary title but did not leave it open to be presumed that there had been no actual possession by a predecessor in title at a material time or that there had been a discontinuance of possession at such time. Having adduced what was regarded as proof of ownership the respondent was entitled to see the full case the appellant was making on his plea of possession. A failure by Counsel to put his case in some detail in cross-examination of his opponent's witnesses might, no doubt, be a factor to be taken into consideration by a judge in determining the true facts. Mr. Liddell was heard in explanation for not putting it precisely what he was later to prove regarding Howard Chipman's activities on the land. The application was not for the recall

Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th June
1967 (Contd.)

of any witness but to call three new witnesses--
"to rebut the evidence that Mr. Chipman senior
farmed or grew fruit after the year 1936 and to
show that Chipman junior did not even know where
the land was as late as 1958/1959" (p. 45 of
record). But, as far as I can make out from the
record, it was never put directly to the respon-
dent's witness, Chipman junior, by the appellant's
Counsel in cross-examination, that his testimony
as to witnessing acts of possession upon the land
in dispute was false or that he was speaking of
some other land. It does appear that he was
taxed as to the whereabouts of the property. He
denied that he made enquiries in 1958-59 as to
where it was and asseverated that he had been on
the land a hundred times and had on an occasion
shown it to cross-examining Counsel. His
credibility was a matter for the trial Judge. I
am not prepared to hold that in refusing the
application the learned Judge acted in a wrong
and unjudicial exercise of his discretion and that
an order for retrial would be justified on the
ground of appeal that the appellant had been mis-
led or caught by surprise.

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Nor do I find any substance in the grounds of
appeal that the evidence, on the view taken of it
by the trial Judge, does not support the findings
that Howard Chipman senior was planting fruit
trees and gathering fruit in season from about
1941 to 1946 and that the appellant was on the land
at the same time farming tomatoes. It was accepted
as a fact on the evidence of Chipman junior that
he began assisting his father, Howard Chipman
senior, to plant the trees in 1940. The Judge
also came to the conclusion that the appellant,
Norman Pinder, started his cultivation of vegetables
in 1940. Again I find myself unable to agree
with the contention for the appellant that this
finding is based on a wrong estimate of the
evidence.

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There is no finding as to whether Pinder or
Chipman was the first to make entry on the land.
There is no reference in the judgment to the
evidence of the respondent's witness, Mrs. Ethelyn
Taylor. She was unable to speak to actual years,
but she did testify that she had accompanied Chipman,
with whom she lived, to his fruit farm on the land

when their children were walking about, the eldest having been born in 1923. That would seem to indicate a year prior to 1940. But it would appear, having regard to the finding, that the Judge felt he could place as little reliance upon her testimony as that of the appellant's witnesses Charles Mortimer and Maud Rahming who supported Pinder's evidence that he started farming on part of the land in 1938.

Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th June
1967 (Contd.)

10 It is evident that the Court below came to the conclusion that the respondent's paper title was sufficient to establish it as the true owner and that its predecessor in title, the Chipper Orange Company, had gone into possession through its agent, the president of the company, Howard Chipman senior. The Appellant's acts of cultivation upon the land as an admitted trespasser upon the land were found to constitute neither exclusive possession nor adverse possession.

20 The appellant did not have more than 20 acres under cultivation at any one time. He would clear a piece of the land; then farm on it for a year or eighteen months; then abandon it and allow it to revert to bush. In due course he would return and clear the piece of land again. No one has questioned the Judge's estimate that on average on this basis any single area of land cleared would be cultivated three times in a period of 27 years. He did nothing to enclose or fence off the property. In evidence the
30 appellant, referring to his entry upon the land, made his attitude of mind quite clear. If anybody had come along with rights of ownership to the land he would have sought a lease from him and if that was not granted he would have got off the land. It was only after he had been on the land for seven years that he "started claiming" the land. This was held to amount to an admission
40 that it was not until he had been on the land for seven years that he formed the intent to oust the true owner, so that time would not have begun to run until the lapse of such period.

I must say that I find the greatest difficulty in the accepting the argument that the trial Judge read more into this evidence than the appellant really meant. It is submitted that the

Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th June
1967 (Contd.)

appellant was saying no more than to indicate that after the lapse of seven years he considered that he had a right to remain upon the land and not be excluded; that he was merely in error as to his appreciation of the law and that this could not count against him. But it seems to me that the appellant was making his intention plain. If a person had come along with rights of possession over the land who declined to surrender such rights to the extent of granting a letting, the appellant would have left the land—or rather the portion of it (20 acres or so) which he was then cultivating. He did not, on his own showing, intend to infringe the rights of another. He was merely using the land, that is, the particular piece of it upon which he was growing vegetables at any one time during the seven years at the end of which he formed the intention of asserting a right to the possession of the ground to the exclusion of the person entitled.

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There is no presumption in favour of a wrongdoer that possession of part imports possession of the whole; the doctrine of constructive possession can have no application in the case of a trespasser. And I am not convinced by the submission that, having regard to the nature of the land, the appellant's acts of user from time to time over different areas with intervals of years, are correctly to be taken as amounting to a possession of the whole. Moreover in the earlier years there was the concurrent possession of part of the land by Howard Chipman senior. It is my view that there is no ground for disturbing the findings that there was no exclusive occupation and no adverse possession of the land by the appellant when fruit trees were grown upon it for the Chipper Orange Company or later when it was acquired for the purpose of development.

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But the respondent must succeed on the strength of its own title and not on the weakness of the appellant's. On the paper title the trial Judge accepted that the respondent had shown itself to be the true owner. No authority has been referred to for the proposition I understand to be put forward for the appellant, that is, that in a matter of this kind, and as between the parties, the respondent must show an absolute or perfect

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title or even a marketable title in the sense envisaged by section 3 (4) of the Conveyancing and Law of Property Act, Ch. 184. It is a question surely of the relativity of titles (see Megarry and Wade on the Law of Real Property 3rd ed. pp. 1135-6). The respondent has shown transactions concerning the land in dispute going back at any rate to the conveyance of 1937; and the reference to the Pen Tract land, to say nothing of the recital, may suffice to suggest the likelihood of the chain of dealings reaching the conveyance of 1922. If there is an infirmity of documentary title I think that at the lowest it can be said that there is a colourable title in the sense that was regarded as coming within the scope of the principle acted upon in the Canadian case of Wood v. LeBlanc, 24 S.C.C. 627. In that case it was held, according to the headnote, that the possession of a part of land claimed under colour of title is constructive possession of the whole which may ripen into an indefeasible title if open, exclusive and continuous for the whole statutory period.

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The respondent's predecessor on the documentary title, so far as it goes, namely, the Chipper Orange Company acting through its president and virtual owner, Howard Chipman senior, was in open possession in 1940 of part of the land on which he grew fruit trees and continued to reap crops from then until 1946 when there was the conveyance to the British Bahamian Land Company Ltd. (ex.O.E.8). There was no actual adverse possession by anyone else. As is said in Megarry and Wade's work (op. cit. p. 1135)—where it is a matter of the relativity of titles in the last resort all depends upon possession. The appellant, though he made use of the soil of part of the land upon entry did not have the animus possidendi—an intention to exclude any person with a better right to possession. Possession involves the continuing exercise of a claim to the exclusive use. I do not think that this subjective element can be left out of account when one comes to consider the true nature of his occupancy and user of the soil. In my judgment moreover there is no solid ground for criticism of the finding that the appellant was not in exclusive or continuous occupation of the land or in actual adverse possession. Howard Chipman

Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th June
1967 (Contd.)

Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th June
1967 (Contd.)

on the other hand did go into full and real possession of part of the land and he did so, if not under an absolutely good or even a marketable title, at least under a colour of right. Applying the principle to which I have just referred, it seems to me that Mr. Liddell's alternative argument (for he maintained throughout that there was a good and sound title to establish a right as the true owner) based on Wood v LeBlanc (sup.) should anyway prevail and that the appellant's predecessor in title must be deemed to have been in constructive possession of the whole land in dispute when Howard Chipman entered in 1940 and took actual possession of part. There was thus a prior possession of the property in favour of the respondent. The respondent having therefore the better title, and the appellant having failed to establish that his opponent is barred from obtaining the remedy through extinction of the claim, is entitled to succeed in trespass. 10

Before concluding I desire to make a further brief reference to Wood v. LeBlanc. Mr. Hanna has argued that the principle there accepted goes too far, is not a tenet of English Law, and that the case should not be held to be of assistance to the respondent. Counsel for each side however are agreed that the case has been acted upon in decisions of the Supreme Court of the Colony. In the absence of any local law reports one is put at a certain disadvantage; but such research as I have been able to effect, which in the nature of things is far from being exhaustive, discloses that the case has been followed, for instance, in the determination of Quieting Title Petitions Nos. 170 of 1961 and 2 of 1965 and in Paradise Beach and Transportation Co. Ltd. v. Price, Civil Case No. 171 of 1960. In the Quieting Title Petition of H. and E. Reeves, No. 319 of 1964 there was a defect in the documentary title. It was held by the Supreme Court (Cunningham Smith J.) that, in reliance upon the Canadian case under reference, there was sufficient to afford a colour of title so that possession of some three acres of the land enabled the conclusion that there was constructive possession of the whole parcel of twenty-one acres. I can discover no good reason why Wood v. LeBlanc should be regarded as laying down a proposition of law that should not be applied by the Courts of the Bahama Islands. 20 30 40

Whether the principle is correctly to be held as applicable in the circumstances of the present case is another matter, as to which I have rendered my opinion in the affirmative sense.

I would dismiss the appeal with costs.

Paget J. Bourke, J.A.

(June 20, 1967)

Bahama
Islands
Appeal Court

No.15

Judgment of
Bourke J.A.
20th July
1967 (Contd.)

No.16

CERTIFICATE OF THE ORDER OF THE COURT

10 BAHAMA ISLANDS
IN THE COURT OF APPEAL

CERTIFICATE OF THE ORDER OF THE COURT

Civil Appeal No.14 of 1966

Appeal from the order of the Court of Appeal dated the 20th day of June 1967 on the hearing of Notice of Motion for Leave to Appeal to Privy Council

BETWEEN

OCEAN ESTATES LIMITED

Appellants

20 AND

NORMAN PINDER

Respondent

This Notice of Motion coming on for hearing on the 21st day of June 1967 before the Court of Appeal in the presence of Mr. J. Liddell, Attorney for the Appellants and Mr. C.S. Fountain, Attorney for the Respondent.

I HEREBY CERTIFY that an Order was made as follows:

The applicant has an appeal as of right.
Leave to appeal granted on the following

No.16

Certificate
of The Order
of the Court
21st June
1967

Bahama
Islands
Appeal Court
No.16

Certificate
of the Order
of the Court
21st June
1967 (Contd.)

conditions:

1. Bond for £1,000 under Rule 4(a) within 90 days from to-day.
2. Record to be prepared within five (5) months from to-day.
3. Liberty to apply to a single judge.
4. Formal order in usual terms to be drawn up.

Given under my hand and the Seal of the Court
this 21st day of June 1967.

10

Signed.

Registrar.

No.17
Order granting
leave to
Appeal
21st June
1967

No.17
ORDER GRANTING LEAVE TO APPEAL

| | |
|------------------------|-------|
| BAHAMA ISLANDS | 1966 |
| IN THE COURT OF APPEAL | No.14 |
| CIVIL SIDE | |

OCEAN ESTATES LIMITED

Appellant

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NORMAN PINDER

Respondent

ORDER

ON MOTION made this day unto this Court by Counsel for Ocean Estates Limited, Appellant, for an Order that the Appellant may be at liberty to appeal from the Judgment herein of this honourable court given on the 20th day of June, 1967 to Her Majesty's Privy Council for an Order that the Judgment given by this honourable court may be set

aside and Judgment may be entered for the Appellant and upon reading the Affidavit of James Liddell dated 20th June, 1967 IT IS ORDERED that the Appellant have leave to appeal from the said Judgment to Her Majesty's Privy Council as prayed on the following conditions:

Bahama
Islands
Appeal Court

No.17

Order granting
leave to
Appeal
21st June
1967 (Contd.)

10 1. That the said Ocean Estates Limited, Appellant, do within 90 days from this date procure some sufficient person or persons on its behalf to give security to the satisfaction of a judge in Chambers in case the parties differ by Bond to Norman Pinder, Respondent, in the sum of \$2857.14 Bahamian currency conditioned to answer for the due prosecution of the Appeal and the payment of all such costs as may become payable by the Appellant in the event of its not obtaining an Order granting it final leave to appeal or of the Appeal being dismissed for non-prosecution or of the judicial committee of Her Majesty's Privy Council ordering the Appellant to pay costs of the Appeal, all in terms of Rule 4 (a) of The Bahama Islands (Procedure in Appeals to Privy Council) Order, 1964.

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And until such security be given and notice thereof given to Respondent's Attorneys (such notice to be given on the same day as the security is given) all proceedings in the said Appeal are to be stayed.

30 And that in default of the Appellant giving such security as aforesaid within the time aforesaid the said Appeal do stand dismissed out of this Court without further order.

2. That the Appellant shall take the necessary steps for the purposes of procuring the preparation of the record within a period of five months from this date and for its dispatch to England, all in terms of Rule 4 (b) of the said Rules.

IT IS FURTHER ORDERED that the Appellant have leave to apply to a single judge of this Court.

40 Dated this 21st day of June, 1967.

BY ORDER OF THE COURT

Signed. REGISTRAR.

To: Norman Pinder, the above-named Respondent,
and to the Hon. A.D. Hanna, Chambers,
Nassau, Bahamas, his Attorney.

Bahama
Islands
Appeal Court

No.18

BOND FOR COSTS ON APPEAL TO PRIVY COUNCIL

No.18
Bond for
Costs on
Appeal to
Privy Council
28th July
1967

BAHAMA ISLANDS 1967
IN THE COURT OF APPEAL No.
BETWEEN
OCEAN ESTATES LIMITED
Appellant
AND
NORMAN PINDER
Respondent

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BOND FOR COSTS ON APPEAL TO
PRIVY COUNCIL

KNOW ALL MEN by these presents that we, Ocean Estates Limited, a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony and Butlers Bank Limited also a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony are jointly and severally held and firmly bound to Norman Pinder of South Beach Road in the Eastern District of the Island of New Providence in the sum of Two thousand Eight hundred and Fifty seven dollars and Fourteen cents (\$2,857.14) of lawful money of the Bahama Islands to be paid to the said Norman Pinder and his heirs and assigns for which payment well and truly to be made we bind ourselves and our successors firmly by these presents.

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IN WITNESS WHEREOF the Common Seal of Ocean Estates Limited was hereunto affixed by Philip William Andrene Director of the said Company and the said Philip William Andrene affixed his signature hereto on the twenty seventh day of July 1967 in the presence of :

30

E.J. Christianson.

IN WITNESS WHEREOF the Common Seal of Butlers Bank Limited was hereunto affixed by A. C. Butler a Managing Director of the Company and the said Allan Churchill Butler affixed his signature hereto on the 28th day of July 1967 in the presence of:

Bahama Islands Appeal Court

No.18

Bond for Costs on Appeal to Privy Council 28th July 1967 (Contd.)

10

George B. Tefford.

WHEREAS a suit is now pending in the Court wherein the said Ocean Estates Limited is Appellant, and the said Norman Pinder is Respondent.

AND WHEREAS Judgment was given by the Court of Appeal therein on the 20th day of June, 1967 for the said Norman Pinder and the said Ocean Estates Limited has filed Notice of Appeal to Her Majesty's Privy Council from the said Judgment.

20

AND WHEREAS it is by law provided that the party appealing shall give security to the satisfaction of the Court in a sum not exceeding Two thousand Eight hundred and Fifty-seven dollars and fourteen cents (\$2,857.14) Bahamian currency for the due prosecution of the Appeal and for payment of all such costs as may become payable by the Applicant in the event of its not obtaining an Order granting it final leave to appeal, or of the Appeal being dismissed for non-prosecution or of the judicial committee ordering the Appellant to pay the costs of the Appeal (as the case may be).

30

AND WHEREAS the above-named Butlers Bank Limited at the request of the said Ocean Estates Limited have agreed to enter into this obligation with the said Ocean Estates Limited for the purposes aforesaid.

40

NOW the condition of this obligation is such that if the said Ocean Estates Limited shall duly prosecute the Appeal and shall pay any costs which may be ordered to be paid by them, this obligation shall be void otherwise to remain in full force and effect.

IN WITNESS WHEREOF the Common Seal of Ocean Estates Limited

Bahama
Islands
Appeal Court

No.18

Bond for
Costs on
Appeal to
Privy Council
28th July
1967 (Contd.)

Signed

was hereto affixed by Philip
William Andrene a Director
of the said Company and the
said Philip William Andrene
affixed his signature hereto
on the 27th day of July 1967
in the presence of:

E.J. Christianson.

IN WITNESS WHEREOF the Common
Seal of Butlers Bank Limited
was hereto affixed by A.C.
Butler a Managing Director of
the Company and the said Allan
Churchill Butler affixed his
signature hereto on the 28th
day of July 1967 in the presence
of:

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George B. Gifford.

No.19

Letter Appel-
lants Solici-
tors to
Respondents
Solicitors

No.19

LETTER APPELLANTS SOLICITORS TO RESPONDENTS
SOLICITORS

20

oc/5/JL/rb

27th July, 1967.

A.D. Hanna Esq.,
Chambers,
Nassau, Bahamas.

Dear Sir,

Re: Ocean Estates - Norman Pinder -
Appeal to Privy Council

I hereby give you notice that security for
costs as ordered in this Appeal will be given by
Ocean Estates Ltd. on their own behalf and Butlers
Bank Limited, all pursuant to the Order of the Court
of Appeal dated 21st June, 1967.

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Yours faithfully,

Signed.
James Liddell.

No.20

LETTER APPELLANTS SOLICITORS TO RESPONDENTS
SOLICITORS

OC/5/JL/rb

31st July, 1967.

A.D. Hanna Esq.,
Chambers,
Nassau, Bahamas.

Dear Sir,

Re: Ocean Estates Limited -
Norman Pinder -
Appeal to Privy Council

10

I give you notice that I have today filed in the Supreme Court Registry Bond executed by Ocean Estates Limited and Butlers Bank Limited for security for costs of the Appeal. I enclose for your use a copy of this Bond.

Yours faithfully,

Sgd.

James Liddell.

No.21

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

BAHAMA ISLANDS 1966
IN THE COURT OF APPEAL No.14
CIVIL SIDE

BETWEEN

OCEAN ESTATES LIMITED

AND

NORMAN PINDER

Appellants

Respondent

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ORDER

This matter coming up for hearing before His Lordship the Chief Justice sitting as a single

Bahama
Islands
Appeal Court

No.20

Letter Appel-
lants Solici-
tors to
Respondents
Solicitors
31st July
1967

No.21

Order granting
Final leave
to Appeal to
Her Majesty
in Council
27th October
1967

Bahama
Islands
Appeal Court

No.21

Order granting
Final leave
to Appeal to
Her Majesty
in Council
27th October
1967 (Contd.)

judge of the Court of Appeal on Friday, the 27th day of October, 1967 at 9.30 o'clock in the forenoon on hearing Mr. James Liddell of Counsel for the Appellants (there being no appearance by Counsel for the Respondent) and on reading the Affidavits of Mr. James Liddell and Hartis E. Pinder filed herein

IT IS ORDERED that the Appellants have final leave to appeal from the Judgments herein of this honourable court given on the 20th day of June, 1967 to Her Majesty's Privy Council for an Order that the Judgments given by this honourable court may be set aside and Judgment may be entered for the Appellants.

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Dated the 27th day of October, 1967.

BY ORDER OF THE COURT

Signed.

REGISTRAR.

To: The above-named Respondent, and to the Hon. A.D. Hanna, Chambers, Nassau, Bahamas, his Attorney.

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EXHIBITS

Exhibits

O.E.L. Grant to Thomas Dodd Milburne

O.E.L.

(L.S.)

Grant to
Thomas Dodd
Milburne
4th December
1890

Lodged for record by
James E. ha
this 4th day of
December 890
Herbert A. ok
 Registrar of
 Records

BAHAMA ISLANDS

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

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TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING :

20

I do hereby certify, that the sum of.....Pounds Five
Shillings, and.....Pensterling, herein referred to, has
been paid, as shown on the diagram annexed, and by the
Crown Land Ledger, No. 2 Folio 406

Rob. Butler

Receiver-General.

30

Nassau, N.P. 4th Decr. 1890.

40

KNOW YE, That we of our
special grace, certain know-
ledge and mere mention for
and in consideration of the
sum of.....~~Pounds~~ Five
Shillings, and ~~Pen~~ lawful
money of the BAHAMA ISLANDS,
to our Receiver-General, in
hand well and truly paid by
Thomas Dodd Milburne at or
before the making of this our
present grant, the receipt
whereof is acknowledged in
the margin, have given and
granted and by these presents,
for us, our Heirs and
Successors, do give and grant
unto the said Thomas Dodd
Milburne, His Heirs and
Assigns, A Tract of Crown
Land comprising about forty
seven acres exclusive of
swamp and useless land and
situated in the Eastern
District of the Island of
New Providence Bounded on the
north by land granted the
Honourable Lewis Kerr, Esq.
on the east by land granted
the Honourable Henry M. Dyer,
Esq., on the south by the sea,
and on the west by the Fox
Hill Road which tract consists
of plate rock and land of a

Exhibits

O.E.1

Grant to
Thomas Dodd
Milburne
4th December
1890

very inferior quality, and which said land hereby granted, or intended so to be, hath the shape and dimensions set forth and delineated in a diagram thereof, drawn by our said Surveyor-General, bearing date the 2nd day of December in the year of our Lord one thousand eight hundred and ninety and hereunto annexed, together with all and singular the improvements, ways, liberties, privileges, easements, profits, commodities, hereditaments and appurtenances whatsoever to the said land hereby granted, belonging, or in anywise appertaining, or with the same now or at any time heretofore held, used, occupied or enjoyed, or intended so to be, or accepted or reputed, deemed taken, or known as part, parcel or member thereof, or of any part thereof, or as appurtenant thereunto, with their and every of their appurtenances. To have and to hold the said land, and all and singular other the premises hereby granted, or intended so to be granted, with their and every of their appurtenances unto the said Thomas Dodd Milburne his Heirs and Assigns for ever, yielding and paying therefore yearly and every year for ever unto us, our Heirs and Successors, the rent of one peppercorn, if the same shall be lawfully demanded, saving and reserving unto us and our successors, for the use of the Public any and all such parts of the said land as our Governor of our said Islands, for the time, may authorize to be converted into Public Roads or Footpaths, or to be used for such other purposes as he may deem necessary and as may be from time to time marked out or designated by, or by the authority of our Surveyor-General of Lands, as Public Roads or Footpaths as aforesaid or for such other public purposes as aforesaid.

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

WITNESS our trusty and well-beloved Sir Ambrose Shea, K.C.M.G. Governor and Commander in Chief in and over the Bahama Islands, Vice-Admiral and Ordinary of the same, at Nassau, in the Island of New Providence, this 4th day of December in the year of our Lord one thousand eight hundred and Ninety.

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By His Excellency's Command,

A. Shea
Governor

T.A. Thompson
prov. Colonial-Secretary.

Exhibits

O.E.1
Grant to
Thomas Dodd
Milburne
4th December
1890 (Contd.)

A True Copy

Herbert A. Brook
Registrar

6th day of December 1890.

10

BAHAMA ISLANDS
Registrar General's Office)

I certify the foregoing to be a
true copy from record book M.9 pages
110 to -

Hilda Pruddin
Ag. Asst. Registrar General
21.11.47.

EXHIBIT O.E.2.

Conveyance to Minnie Beatrice Albury

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Bahama Islands
New Providence.

O.E.2.
Conveyance
to Minnie
Beatrice
Albury
28th August
1919

Record This Indenture made the Twenty
by .A.Soloman eighth day of August in the year of
This 2nd day Our Lord One thousand nine hundred
of Nov. A.D. and nineteen Between Major Claude
1923 Isabel Edward Allan Milburne of Burton
Butler Ag. Rough Petworth in the County of
Asst. Sussex and Hugh Ernest Spencer
Registrar Milbourne of Burton Rough, Petworth
General. in the County of Sussex Executors
and Trustees of the Will of the late
Stamps 5/6. Major Thomas Dodd Milburne of 7
Evelyn Gardens of the City of London

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Exhibits

O.E.2

Conveyance
to Minnie
Beatrice
Albury
28th August
1919 (Contd.)

Kenneth
Soloman
Attorney-
at-Law
Nassau,
Bahamas.

in England (hereinafter called the Grantors) of the one part and Minnie Beatrice Albury the wife of Stanley Victor Strathmore Albury of the City of Nassau in the Island of New Providence of the other part Whereas the said late Thomas Dodd Milburne by his last Will and Testament dated the Twenty first day of October in the year of Our Lord One thousand nine hundred and fifteen after making a bequest of certain personal estate gave devised appointed and bequeathed all his estate and effects both real and personal and wheresoever situate unto his executors and Trustees upon trust to sell the same and to divide the proceeds into four equal parts one of such fourth parts to be held for his son Claude Edward Allan Milburne absolutely One other such fourth part for his son Hugh Ernest Spencer Milburne absolutely One other such fourth part for his daughter Margaret Isabella Stuart wife of Brigadier-General Stuart absolutely And to hold the remaining fourth part upon certain trusts in the said Will mentioned and described And Whereas the said late Thomas Dodd Milburne was at the time of his death seised and possessed of an estate of inheritance in fee simple in possession of in and to the hereditaments and premises hereinafter described and intended to be hereby granted and conveyed And Whereas the Grantors have agreed with the said Minnie Beatrice Albury for the absolute sale to her of the said hereditaments and premises and the inheritance thereof in fee simple in possession free from incumbrances at the price of One hundred pounds Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the said sum of One hundred pounds to the Grantors paid by the said Minnie Beatrice Albury on or before the date of these presents (the receipt whereof the Grantors do and each of them doth hereby acknowledge) the Grantors as the personal representatives of the said late Thomas Dodd Milburne do and each of them doth hereby grant and convey unto the said Minnie Beatrice Albury in fee simple All that piece parcel or tract of land situate in the Eastern District of the Island of New Providence aforesaid containing Two hundred and thirty nine acres the said tract comprising a tract originally granted to Lewis Kerr and part of a tract originally granted to Henry M. Dyer and now

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called the "Pen" the said piece parcel or tract of land now being conveyed fronts to the North on a Public Road and has the boundaries shape and dimensions delineated and set out in a plan of the same marked A which is annexed to an indenture made between James Thomas Claridge and others of the one part and the said Thomas Dodd Milburne of the other part and bearing date the 17th day of February A.D., 1890 and now of Record in the Registry of Records in Book N.9 at pages 132 to 141 To Hold the same unto and to the use of the said Minnie Beatrice Albury in fee simple.

Exhibits

O.E.2

Conveyance
to Minnie
Beatrice
Albury
28th August
1919 (Contd.)

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In Witness Whereof the said parties hereto have hereunto set their hands and seals

Claude Edward Allan Milburne
(Seal)

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Signed Sealed and Delivered by the said Claude Edward Allan Milburne at Petworth Sussex on the Twenty eighth day of August A.D., 1919 in the presence of:-

Minna Milburne

Hugh Ernest Spencer Milburne (Seal)

Signed Sealed and Delivered by the said Hugh Ernest Spencer Milburne at Glasgow in the County of Lanark Scotland on the tenth day of September A.D., 1919, in the presence of:-

J. Lydia Murray

45 West George St. Glasgow

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Clerkess

(Seal) John Huston
Notary Public

and as such a Commissioner of Oaths.

England

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I, Minna Milburne of Burton Rough, Pentworth Sussex make oath and say that I was present and saw Claude Edward Allan Milburne of Burton Rough, Pentworth Sussex sign, seal and as and for his act and deed execute and deliver the annexed conveyance dated the 28th day of August A.D. 1919 for the purposes therein mentioned; and that I subscribe

Exhibits

O.E.2

Conveyance
to Minnie
Beatrice
Albury
28th August
1919 (Contd.)

my name as the witness to the due execution
thereof.

Minna Milburne

Sworn to at Witney
Green Sussex this 18th day
of September A.D. 1919 Before me

J.A.P. Wyalst

Notary Public J.P. Sussex.

England.

I, Janetta Lydia Murray, Clerkess, of Forty
five West George Street Glasgow, make oath and say
that I was present and saw Hugh Ernest Spencer
Milburne of Burton Rough Pentworth in the county
of Sussex sign, seal and as and for his act and
deed execute and deliver the annexed conveyance
dated the 28th day of August A.D., 1919 for the
purposes therein mentioned, and that I subscribe
my name as the witness to the due execution thereof.

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J. Lydia Murray

Sworn to at Glasgow
Scotland this 10th day of
September A.D., 1919, Before me

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Jeviavi
(Stamp 1/-)
(Seal)

John Huston
Notary Public

A true copy from the original.

Isabel Butler

Ag. Asst. Registrar General.

10th December 1923.

BAHAMA ISLANDS
Registrar General's Office)

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I certify the foregoing to be a
true copy from record book U.11
pages 372 to 374.

Hilda Pruddin.

Ag. Asst. Registrar General.

22.11.47.

EXHIBIT O.E.3.

Renunciation of Dower by Jean Crawford Milburne

Exhibits

O.E.3

Renunciation
of Dower by
Jean Crawford
Milburne
2nd June
1920

Record by
. . . Solomon
Bahama Islands
New Providence.

this 2nd day
of Nov.A.D.
1923 Isabel
Butler Ag.
Asst. Regis-
trar General.

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(Stamps 2/6)

Kenneth
Solomon
Attorney-
at-Law,
Nassau,
Bahamas.

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This Indenture made the
Second day of June in the year of
Our Lord One thousand nine hundred
and Twenty Between Jean Crawford
Milburne of 7 Evelyn Gardens South
Kensington in the County of London
Widow of the late Thomas Dodd
Milburne of 7 Evelyn Gardens London
England a Major in His Majesty's
Army (retired) of the one part and
Minnie Beatrice Albury the wife of
Stanley Victor Strathmore Albury
of the City of Nassau in the Island
of New Providence of the other part
Whereas the said Thomas Todd
Milburne at the time of his death
was seised and possessed as tenant
in fee simple in possession of the
lands and hereditaments hereinafter
described And Whereas the said Jean
Crawford Milburne claims to be
entitled to dower in the said lands
and hereditaments and hath agreed
with the said Minnie Beatrice
Albury to release the same to her
for the consideration hereinafter
mentioned Now Therefore This
Indenture Witnesseth that in con-
sideration of the sum of One pound
to the said Jean Crawford Milburne
paid by the said Minnie Beatrice
Albury on or before the execution
of these presents (the receipt
whereof is hereby acknowledged and
that the same is in full satis-
faction of and for all dower free-
bench and thirds which she the said
Jean Crawford Milburne now hath or
claimeth to have in the said
hereditaments and premises) she the
said Jean Crawford Milburne doth
hereby grant remise release and quit
claim unto the said Minnie Beatrice

Exhibits

O.E.3

Renunciation
of Dower by
Jean Crawford
Milburne
2nd June
1920 (Contd.)

Albury in fee simple All dower freebench and thirds and all right title claim and demand of or to dower freebench and thirds whether at common law or by custom which she the said Jean Crawford Milburne hath or may claim of in or to All that piece parcel or tract of land situate in the Eastern District of the Island of New Providence aforesaid containing Two hundred and Thirty-nine acres the said tract comprising a tract originally granted to Lewis Kerr and part of a tract originally granted to Henry M. Dyer and now called the "Pen" the said piece parcel or tract of land fronts to the North on a Public Road and hath the boundaries shape and dimensions delineated and set out in a plan of the same marked A which is annexed to an indenture made between James Thomas Claridge and others of the one part and the said Thomas Dodd Milburne of the other part and bearing date the 17th day of February A.D. 1890 and now of record in the Registry of Records in Book N.9 at pages 132 to 141 together with the appurtenances thereunto belonging And all and all manner of actions or suits touching or concerning the same And the said Jean Crawford Milburne for herself her heirs executors and administrators doth hereby covenant with the said Minnie Beatrice Albury her heirs and assigns that she the said Jean Crawford Milburne or any other person or persons for her or in her name any manner of action or suit shall not nor will at any time hereafter bring or prosecute against the said Minnie Beatrice Albury her heirs or assigns for or by reason of any dower freebench or thirds of her the said Jean Crawford Milburne for or in respect of the aforesaid hereditaments and premises but that she and every other person shall forever hereafter by these presents be excluded and barred of and from all actions claims and demands of dower in and to the same.

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In Witness whereof the said parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

J.C. Milburne (Seal)

Signed Sealed and Delivered by the said Jean Crawford Milburne at 93 Gloucester Road South Kensington London S.W.7. in the presence of :-

Walter Alfred Haskett
Solicitors Clerk.

England.

Exhibits

O.E.3

Renunciation
of Dower by
Jean Crawford
Milburne
2nd Jure
1920 (Contd.)

10 I, Walter Alfred Haskett of 93 Gloucester Road South Kensington in the County of London Solicitors Clerk make oath and say that I was present and saw Jean Crawford Milburne of 7 Evelyn Gardens South Kensington London Widow of the late Thomas Dodd Milburne sign, seal and as and for her Act and Deed execute and deliver the annexed Release of Dower dated the Second day of June A.D., 1920 for the purposes therein mentioned; and that I subscribed my name as the Witness to the due execution thereof.

T.R.H.

T.R.H.

T.R.H.

Walter A. Haskett

20 Sworn to at 93 Gloucester Road South Kensington in the County of London this Second day of June A.D. 1920 in the presence of

T. R. Hodson

A Commissioner of Oaths.

A true copy from the original. ~~Notary Public~~

Isabel Butler

Ag. Asst. Registrar General.

10th December 1923.

BAHAMA ISLANDS
Registrar General's Office)

30 I certify the foregoing to be a true copy from record book W.11 pages 132 to 134.

Hilda Pruddin

Ag. Asst. Registrar General
22.11.47.

Exhibits

EXHIBIT O.E.4.

O.E.4.

Conveyance to Edmund Dorsett Knowles

Conveyance
to Edmund
Dorsett
Knowles
14th January
1922.

Lodged for Record Bahama Islands
by A.K. Solomon New Providence.
this 2nd day of
Nov. A.D. 1923
Isabel Butler
Ag.Asst.
Registrar
General.

Stamps
£1.1.6.

Kenneth
Solomon
Attorney-
at-Law
Nassau,
Bahamas

This Indenture made the
Fourteenth day of January in the
year of Our Lord One thousand
Nine hundred and Twenty two
Between Minnie Beatrice Albury
the wife of Stanley Victor
Strathmore Albury of the City of
Nassau in the Island of New
Providence of the one part And
Edmund Dorsett Knowles of the
same place Merchant of the other
part whereas the said Minnie
Beatrice Albury hath agreed with
the said Edmund Dorsett Knowles
for the absolute sale to him of
the hereditaments and premises
hereinafter described and
intended to be hereby granted
and conveyed and the inheritance
thereof in fee simple in posses-
sion free from incumbrances at
the price of Three hundred pounds
Now This Indenture Witnesseth
that in pursuance of the said
agreement and in consideration
of the said sum of Three hundred
pounds to the said Minnie Beatrice
Albury paid by the said Edmund
Dorsett Knowles on or before the
execution of these presents (the
receipt whereof the said Minnie
Beatrice Albury hereby
acknowledges) the said Minnie
Beatrice Albury As Beneficial
Owner hereby grants and conveys
unto the said Edmund Dorsett
Knowles All that piece parcel or
tract of land situate in the
Eastern District of the Island
of New Providence aforesaid
containing Two hundred and thirty-
nine acres the said tract

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comprising a tract originally granted to Lewis Kerr and part of a tract originally granted to Henry M. Dyer and now called the "Pen" the said piece parcel or tract of land now being conveyed fronts to the North on a Public Road and has the boundaries shape and dimensions delineated and set out in a plan of the same marked A which is annexed to an Indenture made between James Thomas Claridge and others of the one part and Thomas Dodd Milburne of the other part and bearing date the 17th day of February A.D., 1890 and now of record in the Registry of Records in Book N.9 at pages 132 to 141 To Hold the same unto and to the use of the said Edmund Dorsett Knowles in fee simple.

Exhibits

O.E.4.

Conveyance
to Edmund
Dorsett
Knowles
14th January
1922 (Contd.)

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In Witness Whereof the said parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

Minnie B. Albury (Seal)

Signed sealed and delivered by the said Minnie Beatrice Albury in the presence of :-

Stanley V.S. Albury

Bahama Islands
Registrar General's Office

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I, Stanley V.S. Albury, of the Island of New Providence, Civil Servant make Oath and say that I was present and saw Minnie Beatrice Albury of the same place, Married-woman sign, seal and as and for her Act and Deed execute and deliver the annexed Conveyance dated the 14th day of January A.D. 1922 for the purposes therein mentioned; and that I subscribed my name as the Witness to the due execution thereof.

Stanley V.S. Albury

Sworn to this 2nd day of
November A.D. 1923, before me

Isabel Butler
Ag. Asst. Registrar General.

40

A true copy from the original.

Exhibits

O.E.4

Conveyance
to Edmund
Dorsett
Knowles
14th January
1922 (Contd.)

10th December 1923.

Isabel Butler
Ag. Asst. Registrar General.

BAHAMA ISLANDS
Registrar General's Office)

I certify the foregoing to be a
true copy from record book U.11 pages
375 to 376.

Hilda Pruddin
Ag. Asst. Registrar General.
22.11.47.

10

Exhibits

O.E.5

Conveyance
to Elsie May
Key 6th
February
1922

EXHIBIT O.E.5.

Conveyance to Elsie May Key

Lodged for Record Bahama Islands
by .A. Solomon New Providence.
this 2nd day of
Nov.A.D. 1923
Isabel Butler
Ag.Asst.
Registrar
General.

Stamps
£1.17.6.

Kenneth
Solomon
Attorney-
at-Law
Nassau N.P.
Bahamas.

This Indenture made the
sixth day of February in the
year of Our Lord One thousand
nine hundred and Twenty two
Between Edmund Dorsett Knowles
of the Island of New Providence
Merchant of the one part and
Elsie May Key of the same place
of the other part Whereas the
said Edmund Dorsett Knowles
hath agreed with the said Elsie
May Key for the absolute sale
to her of the hereditaments
and premises hereinafter
described and intended to be
hereby granted and conveyed and
the interitance thereof in fee
simple in possession free from
incumbrances at the price of
Five hundred pounds Now this
Indenture Witnesseth that in
pursuance of the said agreement
and in consideration of the

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said sum of Five hundred pounds to the said Edmund Dorsett Knowles paid by the said Elsie May Key on or before the execution of these presents (the receipt whereof the said Edmund Dorsett Knowles hereby acknowledges) the said Edmund Dorsett Knowles As Beneficial Owner hereby grants and conveys unto the said Elsie May Key in fee simple All that piece parcel or tract of land situate in the Eastern District of the Island of New Providence aforesaid containing Two hundred and thirty nine acres the said tract comprising a tract originally granted to Lewis Kerr and part of a tract originally granted to Henry M. Dyer and now called the "Pen" the said piece parcel or tract of land now being conveyed fronts to the North on a public road and has the boundaries shape and dimensions delineated and set out in a plan of the same marked A which is annexed to an Indenture made between James Thomas Claridge and others of the one part and Thomas Dodd Milburne of the other part and bearing date the 17th day of February A.D., 1981 and now of record in the Registry of Records in Book N.9 at pages 132 to 141 To Hold the same unto and to the use of the said Elsie May Key in fee simple.

Exhibits

O.E.5

Conveyance to
Elsie May Key
6th February
1922 (Contd.)

In Witness Whereof the said parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

Edmund D. Knowles.

Signed Sealed and Delivered by the said Edmund Dorsett Knowles in the presence of:-

Doris L. Perpall.

Bahama Islands

Registrar General's Office.

I, Doris Louise Perpall, of the Island of New Providence Clerk make oath and say that I was present and saw Edmund Dorsett Knowles of the same place Merchant sign, seal and as and for his Act and Deed execute and deliver the annexed Conveyance dated the 6th day of February A.D. 1922 for the purposes therein mentioned; and

Exhibits

O.E.5

Conveyance to
Elsie May Key
6th February
1922 (Contd.)

that I subscribed my name as the Witness to the
due execution thereof.

Doris L. Perpall.

Sworn to this 29th day of October
A.D. 1923, before me

Isabel Butler
Ag.Asst. Registrar General.

A true copy from the original.

Isabel Butler
Ag.Asst. Registrar General.

10

10th December 1923.

BAHAMA ISLANDS
Registrar General's Office)

I certify the foregoing to be
a true copy from record book U.11
pages 376 to 378.

Hilda Pruddin
Ag.Ast.Registrar General.
22.11.47.

O.E.6

Renunciation
of Dower by
Rosalie
Blanche
Knowles

EXHIBIT O.E.6

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Renunciation of Dower by Rosalie Blanche Knowles

Lodged for Record
by . . . Solomon
this 2nd day of N
Nov.A.D. 1923
Isabel Butler
Ag.Asst.Registrar
General.

Bahama Islands
New Providence.

By Reginald de Glanville
Esquire Acting Stipendiary
and Circuit Magistrate of
the Bahama Islands.

Stamps 2/6)
Kenneth Solomon
Attorney-at-
Law, Nassau,
Bahamas.

To All To Whom These Presents
Shall Come Be Seen Made Known
Or May In Anywise Concern:

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Whereas Edmund Dorsett Knowles

of the Island of New Providence Merchant by a certain Indenture bearing date the Sixth day of February in the year of Our Lord One Thousand Nine hundred and twenty ~~one~~ two made between him the said Edmund Dorsett Knowles of the one part and Elsie May Key of the same place of the other part hath granted and conveyed unto the said Elsie May Key in fee simple All that piece parcel or tract of land situate in the Eastern District of the Island of New Providence aforesaid containing Two hundred and thirty-nine acres the said tract comprising a tract originally granted to Lewis Kerr and part of a tract originally granted Henry M. Dyer and now called the "Pen" the said piece parcel or tract of land fronts to the North on a public road and has the boundaries shape and dimensions delineated and set out in a plan of the same marked A which is annexed to an indenture made between James Thomas Claridge and others of the one part and Thomas Dodd Milburne of the other part and bearing date the 17th day of February A.D., 1891 and now of record in the Registry of Records in Book N 9 at pages 132 to 141 Now Know Ye that on this Seventh day of February in the year of Our Lord One thousand Nine hundred and Twenty ~~one~~ two personally came and appeared before me the said Reginald de Glanville as such Acting Stipendiary and Circuit Magistrate as aforesaid Rosalie Blanche the wife of the said Edmund Dorsett Knowles who being by and before me examined separate and apart from her said husband did acknowledge and declare that she did and doth freely voluntarily and without any manner of compulsion fear or dread of her said husband or of any other person or persons whomsoever remise release renounce and forever quit claim unto the said Elsie May Key in fee simple all and all manner or dower and right and title of dower which she the said Rosalie Blanche now hath or hereafter shall or may have or claim of into or out of the said hereditaments and premises with their appurtenances so by her said husband granted and conveyed to the said Elsie May Key in fee simple so that neither she the said Rosalie Blanche nor any person or persons for her or in her name or deriving right title interest or claim through or under her any manner of dower or suit or action of dower of into or

Exhibits

O.E.6

RdeG
Ag.S
 & C.M
 Renunciation
 of Dower by
 Rosalie
 Blanche
 Knowles
 (Contd.)

Exhibits

O.E.6

Renunciation
of Dower by
Rosalie
Blanche
Knowles
7th February
1922 (Contd.)

out of the said hereditaments and premises at any time or times hereafter shall or may have or claim or prosecute but of and from the same shall be utterly debarred and forever excluded by these presents.

In Witness Whereof I the said Reginald de Glanville as such acting Stipendiary and Circuit as aforesaid have hereunto set my hand and caused my seal of office to be hereon impressed the day and year lastly hereinbefore written.

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Reginald de Glanville (Seal)
Acting Stipendiary and Circuit
Magistrate.

A true copy from the original.

Isabel Butler
Ag. Asst. Registrar General.

10th December 1923.

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BAHAMA ISLANDS)
Registrar General's Office)

I certify the foregoing to be a true copy from record book W.11 pages 135 to 136.

Hilda Pruddin
Ag. Asst. Registrar General
22.11.47.



EXHIBIT O.E.7

Affidavit of Howard Helson Chipman with
attached Conveyance to Chipper Orange
Company Limited

Exhibits

O.E.7

Affidavit of
Howard Nelson
Chipman with
attached
Conveyance
to Chipper
Orange
Company
Limited 3rd
May 1937

BAHAMA ISLANDS
NEW PROVIDENCE.

10 I, HOWARD NELSON CHIPMAN, of the City of
Nassau in the Island of New Providence, Merchant,
make Oath and Say that I was present and Saw
Elsie May Key of the Western District in the
aforesaid Island of New Providence, sign, seal and
as and for her Act and Deed execute and deliver
the attached Conveyance dated the First day of
May A.D. 1937 for the purposes therein mentioned:
and that I Subscribed my name as the Witness to
the due execution thereof.

Sworn to this third day of }
May A.D. 1937 } H.N. Chipman

Before me,

20 Signed.

Justice of the Peace.

BAHAMA ISLANDS
NEW PROVIDENCE.

30 Barrister-
at-Law,
Chambers,
Nassau,
Bahamas.

Stamps.

THIS INDENTURE is made the First
day of May in the Year of Our Lord
One thousand Nine Hundred and Thirty
seven BETWEEN Elsie May Key of the
Western District in the Island of New
Providence (hereinafter called the
Vendor) of the one part AND
"CHIPPER ORANGE COMPANY, LIMITED" a
Company Incorporated in and under the
laws of the Bahama Islands and carry-
ing on business in the said Bahama
Islands (hereinafter called the
Company) of the other part WHEREAS
the Vendor is seised in Fee Simple

Exhibits

O.E.7

Affidavit of
Howard Nelson
Chipman with
attached
Conveyance to
Chipper
Orange
Company
Limited 3rd
May 1937
(Contd.)

free from incumbrances of the Tract of land hereinafter described and intended to be hereby granted and conveyed and has agreed with the Company for the Absolute Sale to the Company of the said Tract of land and the inheritance thereof in Fee Simple in possession free from incumbrances at the price of One Thousand Pounds NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of One Thousand Pounds paid to the Vendor by the Company on or before the execution of these presents (the receipt whereof the Vendor hereby acknowledges) the Vendor as BENEFICIAL OWNER hereby grants and conveys unto the Company ALL THAT Tract of land commonly known as a portion of the Pen Tract situated in the Eastern District of the aforesaid Island of New Providence comprising about One Hundred (100) Acres and bounded on the North by the Yamacraw Hill Road on the East by a portion of the Sans Sousi Tract and by land of the Estate of the late Herbert James Claridge formerly also a portion of the said Pen Tract on the South also by land of the Estate of the said late Herbert James Claridge formerly a portion of the said Pen Tract and by a road reservation along the Sea-shore separating the said Tract of land from the sea and on the West by the Fox Hill South Side Road TO HOLD the same unto and to the use of the Company and its Assigns in Fee Simple.

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IN WITNESS WHEREOF THE SAID Elsie May Key hath hereunto set her hand and Seal the day and Year first hereinbefore written.

30

Elsie May Key

Signed, Sealed and Delivered by the above named Elsie May Key in the presence of;

H.N. Chipman.



EXHIBIT O.E.8

Exhibits

Affidavit of Ronald Edward Fountain
with attached Conveyance to British
Bahamian Land Company Limited

O.E.8
Affidavit of
Ronald Edward
Fountain with
attached
Conveyance to
British
Bahamian Land
Company
Limited 24th
June 1946

BAHAMA ISLANDS

NEW PROVIDENCE

10 I, RONALD EDWARD FOUNTAIN, of the City of
Nassau in the Island of New Providence, Secretary
of "Chipper Orange Company Limited" make Oath
and Say that on the TWENTY-FOURTH day of JUNE A.D.
1946, I was present and saw the Common Seal of
"Chipper Orange Company Limited" affixed to the
attached CONVEYANCE dated the TWENTY-FOURTH day
of JUNE A.D. 1946., by Howard Nelson Chipman the
President of the said Company And that I saw the
said Howard Helson Chipman, Sign, Execute and
Deliver the said Conveyance as and for the act
and deed of the said Company and for the
20 purposes mentioned in the said Conveyance And that
I subscribed my name as the Witness to the due
execution thereof. Further that the Seal
affixed and impressed at the foot or end of the s
said Conveyance is the Common Seal of "Chipper
Orange Company Limited" and was affixed and
impressed thereto by the said Howard Nelson
Chipman by the order and with the authority of
the Directors of the said Company and in conform-
ity with the Articles of Association.

30 SWORN to this TWENTY-FOURTH)
Day of JUNE A.D. 1946) R.E. Fountain

Before me,

Signed.

JUSTICE OF THE PEACE.

BAHAMA ISLANDS

NEW PROVIDENCE

40 THIS INDENTURE is made the Twenty-Fourth
day of June in the Year of Our Lord One thousand
Nine Hundred and Forty-six BETWEEN "Chipper
Orange Company Limited" a Company incorporated
in and under the Laws of the Bahama Islands

Exhibits

O.E.8

Affidavit of
Ronald Edward
Fountain with
attached
Conveyance to
British
Bahamian Land
Company
Limited 24th
June 1946
(Contd.)

and carrying on business within the Colony (herein after called the Vendors) of the one part AND "British Bahamian Land Company Limited" a Company also incorporated in and under the Laws of the Bahama Islands and carrying on business within the said Colony (hereinafter called the Purchasers) of the other part WHEREAS BY AN INDENTURE dated the First day of May in the Year of Our Lord One Thousand Nine Hundred and Thirty-seven and made Between Elsie May Key of the one part And the Vendors of the other part which said Indenture is recorded in Book X Thirteen at pages Four Hundred and Forty to Four Hundred and Forty-one in the Registry of Records in the City of Nassau the said Elsie May Key granted and conveyed unto and to the use of the Vendors in Fee Simple a Tract of land being a portion of the tract commonly known as the "Pen Tract" situated in the Eastern District of the Island of New Providence comprising about One Hundred (100) Acres AND WHEREAS the Vendors have agreed with the Purchasers for the Absolute Sale to them of Eighty (80) Acres of land being a part of the said tract of land hereinbefore referred to the said Eighty (80) Acres being hereinafter described and intended to be hereby granted and conveyed in Fee Simple in possession free from incumbrances at the price of Five Hundred Pounds NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of Five Hundred Pounds paid by the Purchasers to the Vendors on or before the execution of these presents (the receipt whereof the Vendors hereby acknowledge) the Vendors AS BENEFICIAL OWNERS hereby grant and convey unto the Purchasers ALL THAT parcel of land containing Eighty (80) Acres more or less and being a part of the tract of land hereinbefore referred to situated in the Eastern District of the aforesaid Island of New Providence which said parcel of land containing Eighty (80) Acres more or less is bounded on the West by the Fox Hill South Side Road on the North by a part of other portion of the said tract hereinbefore referred to on the East partly by other portion of said tract and partly by land granted to Henry M. Dyer and on the South by a Road Reservation Six-six (66) Feet Wide separating the said parcel of land from the Sea and running thereon Sixteen Hundred and Ninety-six (1696) Feet the said parcel

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Signed of land having such position boundaries
BARRISTER- marks shape and dimensions as are shown
AT-LAW, on the diagram or plan hereto attached
CHAMBERS, and being delineated on that part which
NASSAU, is coloured Green on the said diagram
BAHAMAS. or plan TO HOLD the same unto and to
the use of the Purchasers and their
Assigns in Fee Simple.

Exhibits

O.E.8

Affidavit of
Ronald Edward
Fountain with
attached
conveyance to
British
Bahamian Land
Company
Limited 24th
June 1946
(Contd.)

10

IN WITNESS WHEREOF "Chipper
Orange Company Limited" have
caused their Common Seal to be
hereunto affixed the day and
year first hereinbefore
written.

H.N. Chipman.
PRESIDENT.

20

The Common Seal of "Chipper Orange Company Limited"
was affixed hereto by Howard Nelson Chipman, the
President of the said Company, and the said Howard
Nelson Chipman affixed his signature hereto on the
Twenty-fourth day of June in the Year of Our Lord
One Thousand Nine Hundred and Forty-six in the
presence of:-

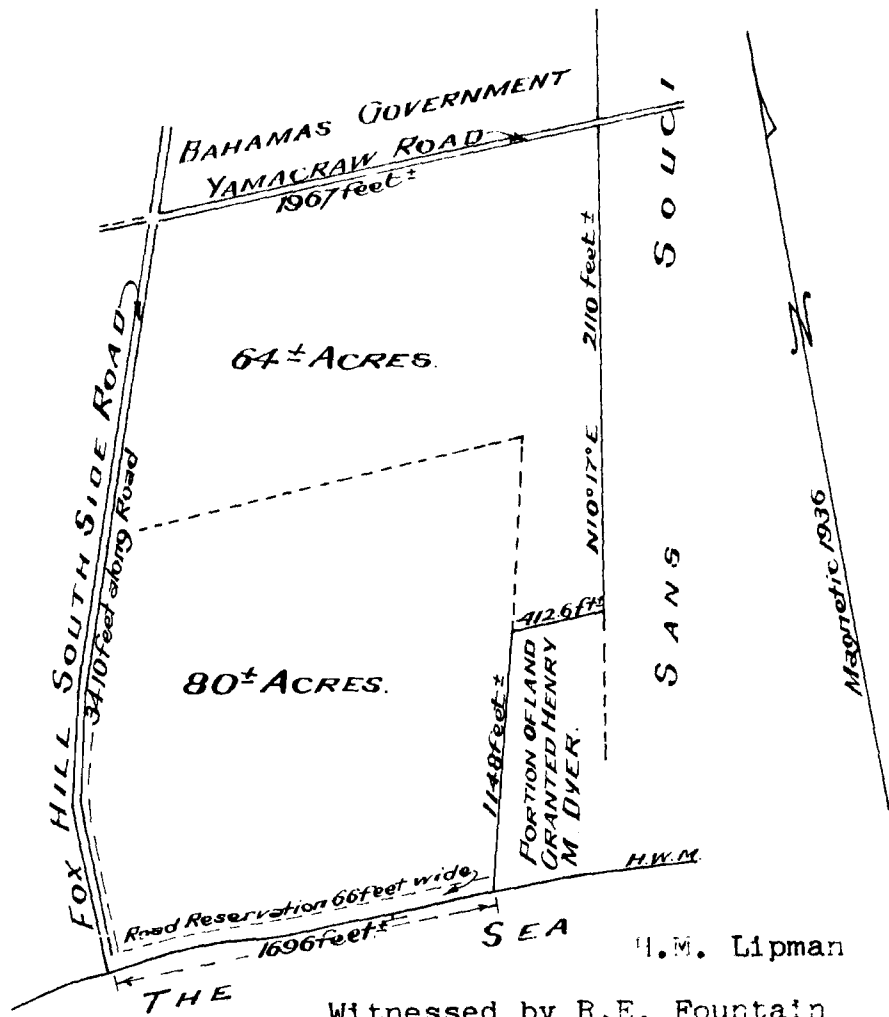
R.E. Fountain.
SECRETARY.

Exhibits

EXHIBIT O.E.8.

O.E.8

Affidavit of
Ronald Edward
Fountain with
attached
conveyance to
British
Bahamian Land
Company
Limited 24th
June 1946
(Contd.)



Witnessed by R.E. Fountain

*PLAN OF LAND SITUATE
IN THE EASTERN DISTRICT
OF THE ISLAND OF NEW
PROVIDENCE.*

SCALE: - 800 FEET TO AN INCH.

EXHIBIT O.E.9

Exhibits

Affidavit of Ronald Edward Fountain
with attached Conveyance to British
Bahamian Land Company Limited
24th June 1946

O.E.9
Affidavit of
Ronald Edward
Fountain with
attached
Conveyance to
British
Bahamian Land
Company
Limited 24th
June 1946
(Contd.)

BAHAMA ISLANDS
NEW PROVIDENCE.

10 I, RONALD EDWARD FOUNTAIN, of the City of
Nassau in the Island of New Providence, Secretary
of "Chipper Orange Company Limited" make Oath
and Say that on the TWENTY-FOURTH day of JUNE A.D.
1946., I was present and saw the Common Seal of
"Chipper Orange Company Limited" affixed to the
attached CONVEYANCE dated the TWENTY-FOURTH day
of JUNE A.D. 1946., by Howard Nelson Chipman the
President of the said Company And that I saw the
said Howard Nelson Chipman, Sign, Execute and
Deliver the said Conveyance as and for the act
and deed of the said Company and for the purposes
20 mentioned in the said Conveyance And that I sub-
scribed my name as the Witness to the due
execution thereof. Further that the Seal
affixed and impressed at the foot or end of the
said Conveyance is the Common Seal of "Chipper
Orange Company Limited" and was affixed and
impressed thereto by the said Howard Nelson
Chipman by the order and with the authority of
the Directors of the said Company and in
conformity with the Articles of Association.

30 SWORN to this TWENTY-FOURTH)
Day of June A.D. 1946) R.E. Fountain

Before me,
Signed.
JUSTICE OF THE PEACE.

BAHAMA ISLANDS
NEW PROVIDENCE.

40 THIS INDENTURE is made the Twenty-fourth
day of June in the Year of Our Lord One Thousand
Nine Hundred and Forty-six BETWEEN "Chipper
Orange Company Limited" a Company incorporated in

Exhibits
 O.E.9
 Affidavit of
 Ronald Edward
 Fountain with
 attached
 Conveyance to
 British
 Bahamian Land
 Company
 Limited 24th
 June 1946
 (Contd.)

Signed
 BARRISTER-
 AT-LAW,
 CHAMBERS,
 NASSAU,
 BAHAMAS.

and under the Laws of the Bahama Islands
 and carrying on business within the
 Colony (hereinafter called the Vendors)
 of the one part AND "British Bahamian
 Land Company Limited" a Company also
 incorporated in and under the Laws of
 the said Bahama Islands and carrying on
 business within the said Colony (herein-
 after called the Purchasers) of the
 other part WHEREAS BY AN INDENTURE
 dated the First day of May in the Year
 of Our Lord One Thousand Nine Hundred
 and Thirty-seven and made Between Elsie
 May Key of the one part And the Vendors
 of the other part which said Indenture
 is recorded in Book X Thirteen at
 pages Four Hundred and Forty to Four
 Hundred and Forty-one in the Registry
 of Records in the City of Nassau the
 said Elsie May Key granted and conveyed
 unto and to the use of the Vendors in
 Fee Simple a Tract of land being a
 portion of the tract commonly known as
 the "Pen Tract" situated in the Eastern
 District of the Island of New Providence
 comprising about One Hundred (100)
 Acres AND WHEREAS the Vendors have
 agreed with the Purchasers for the
 Absolute Sale to them of Sixty-four
 (64) Acres of land being a part of the
 said tract of land hereinbefore referred
 to the said Sixty-four (64) Acres being
 hereinafter described and intended to
 be hereby granted and conveyed in Fee
 Simple in possession free from incum-
 brances at the price of Five Thousand
 and Five Hundred Pounds NOW THIS
 INDENTURE WITNESSETH that in pursuance
 of the said Agreement and in consid-
 eration of the sum of Five Thousand
 and Five Hundred Pounds paid by the
 Purchasers to the Vendors on or before
 the execution of these presents (the
 receipt whereof the Vendors hereby
 acknowledge) the Vendors AS BENEFICIAL
 OWNERS hereby grant and convey unto the
 Purchasers ALL THAT parcel of land
 containing Sixty-four (64) Acres more
 or less and being a part of the tract

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Exhibits

O.E.9

Affidavit of
 Ronald Edward
 Fountain with
 attached
 Conveyance to
 British
 Bahamian Land
 Company
 Limited 24th
 June 1946
 (Contd.)

10

of land hereinbefore referred to situated in the Eastern District of the aforesaid Island of New Providence which said parcel of land containing Sixty-four (64) Acres more or less is bounded on the North by the Yamacraw Road and running thereon Nineteen Hundred and Sixty-seven (1967) Feet more or less on the East by the Sans Souci Tract and running thereon Twenty-one Hundred and Ten (2110) Feet on the South partly by land granted to Henry M. Dyer and partly by other portion of the said tract of land hereinbefore referred to and on the West partly by other portion of the said tract and partly by the Fox Hill South Side Road the said parcel of land having such position boundaries marks shape and dimensions as are shown on the diagram or plan hereto attached and being delineated on that part which is coloured Pink on the said diagram or plan TO HOLD the same unto and to the use of the Purchasers and their Assigns in Fee Simple.

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IN WITNESS WHEREOF "Chipper Orange Company Limited" have caused their Common Seals to be hereunto affixed the day and year first hereinbefore written.

H.N. Chipman

PRESIDENT.

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The Common Seal of "Chipper Orange Company Limited" was affixed hereto by Howard Nelson Chipman, the President of the said Company, and the said Howard Nelson Chipman affixed his signature hereto on the Twenty-fourth day of June in the Year of Our Lord One thousand nine Hundred and Forty-Six in the presence of:-

R.E. Fountain

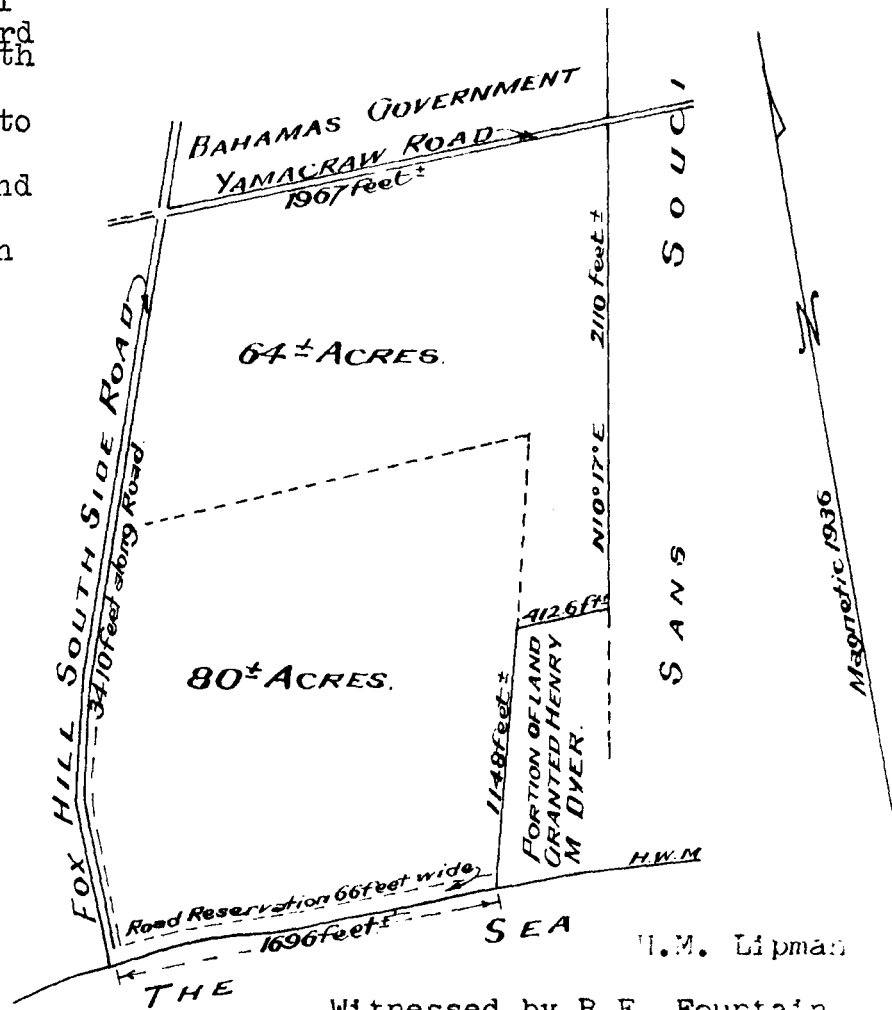
SECRETARY

Exhibits

O.E.9

EXHIBIT O.E.9.

Affidavit of
Ronald Edward
Fountain with
attached
Conveyance to
British
Bahamian Land
Company
Limited 24th
June 1946
(Contd.)



Witnessed by R.E. Fountain

*PLAN OF LAND SITUATE
IN THE EASTERN DISTRICT
OF THE ISLAND OF NEW
PROVIDENCE*

SCALE: -800 FEET TO AN INCH.

EXHIBIT O.E.10Declaration of Howard Nelson Chipman

BAHAMA ISLANDS, NEW PROVIDENCE.

BE IT REMEMBERED that on this 28th day of February in the Year of Our Lord One Thousand Nine Hundred and Forty-eight personally came and appeared before me Alfred Francis Adderley, Notary Public by lawful authority appointed duly admitted and sworn residing and practising in the City of Nassau in the Island of New Providence, Howard Nelson Chipman of the City of Nassau in the aforesaid Island of New Providence, Merchant, who did solemnly declare (such declaration being made in pursuance of the Laws of the Bahama Islands made for substituting a declaration in lieu of an Oath in certain cases) in manner following that is to say:-

1. I am Sixty-six years of age and have lived in the aforesaid Island of New Providence for the whole of my life.

2. I have acted as Real Estate Agent for Elsie May Key of the Western District in the aforesaid Island of New Providence for over Thirty-five years.

3. In the Year 1922 I acted as the agent of the said Elsie May Key in the purchase of a parcel of land being a part of the "Pen Tract" situate in the Eastern District of the aforesaid Island of New Providence. During negotiations with Edmund Dorsett Knowles for the purchase of this parcel of land, and at the time of the conveyance of the same to the said Elsie May Key by the said Edmund Dorsett Knowles, it was part of the agreement for sale and purchase that the said parcel of land extended from the Eastern Road South to South Beach.

4. From the Sixth day of February in the Year of Our Lord One Thousand Nine Hundred and Twenty-two when the said parcel of land was conveyed by the said Edmund Dorsett Knowles to the said Elsie May Key, the whole of the said parcel extending from the Eastern Road to South Peach was occupied by the said Elsie May Key until the Northern portion of the same from the Eastern Road to the Yamacraw Road was conveyed by the said Elsie May Key to George Murphy on the Twenty-fourth day of October in the Year of Our Lord One thousand Nine hundred and Twenty-three. From this date the other

Exhibits

O.E.10

Declaration of
Howard Nelson
Chipman 28th
February 1948

Signed.
Barrister-
at-Law,
Nassau,
Bahamas.

Stamp.

Exhibits

O.E.10

Declaration
of Howard
Nelson
Chipman
28th February
1948 (Contd.)

portion of the said parcel of land, extending from the Yamacraw Road south to South Beach, was in the undisturbed possession of the said Elsie May Key.

5. In my capacity as Real Estate Agent and Manager for the said Elsie May Key I managed the said land running from the Yamacraw Road to the Sea until it was conveyed by the said Elsie May Key to Chipper Orange Company Limited on the First day of May in the Year of Our Lord One Thousand Nine Hundred and Thirty-seven, after which date I managed and developed a portion of the same for Chipper Orange Company, Limited.

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6. A plan of the land conveyed by the said Elsie May Key to Chipper Orange Company, Limited is attached to a deed of Conveyance dated the Twenty-fourth day of June in the Year of Our Lord One thousand Nine Hundred and Forty-six from Chipper Orange Company, Limited to British Bahamian Land Company, Limited the said land being thereon coloured Pink and Green.

7. From the Year 1922, when the said parcel of land was purchased by the said Elsie May Key from the said Edmund Dorsett Knowles, up to the present time, I have not heard of any other than the said Elsie May Key, Chipper Orange Company, Limited and now British Bahamian Land Company, Limited making any claim to title in and to the said parcel of land. These last three named owners exercised full rights of ownership over the said parcel of land without interference on the part of any person or persons, and to my personal knowledge they enjoyed undisturbed, uninterrupted and undisputed possession and used the same as their absolute property and were recognised as the sole owners thereof.

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H.N. Chipman

IN TESTIMONY WHEREOF the said Declarant hath hereunto set his hand and I the said Notary my hand and Seal Notarial the day and year first hereinbefore written.

Signed. NOTARY PUBLIC, NASSAU, BAHAMAS.

O.E.11

Conveyance to
British
Bahamian Land
Company Ltd.
12th February
1949

Signed.
Attorney-at-
Law, Chambers,
Nassau Bahamas.

EXHIBIT O.E.11

Conveyance to British Bahamian Land Company Limited
BAHAMA ISLANDS New Providence.

40

THIS INDENTURE made the Twelfth of February in the year of Our Lord One thousand Nine hundred and Forty-nine BETWEEN Elsie May Key of the Western District of the Island of New Providence aforesaid (hereinafter called the Vendor) of the one part AND British Bahamian Land Company, Limited a company incorporated and existing under the laws of the Bahama Islands aforesaid and

having its registered office in the City of Nassau in the said Island of New Providence (hereinafter called the Purchaser) of the other part WHEREAS by an Indenture made the First day of May in the year of Our Lord One thousand Nine hundred and Thirty-seven between the Vendor of the one part and Chipper Orange Company, Limited, of the other part which said Indenture is now of record in the Registry of Records in the City of Nassau in Book X 13 at pages 440 to 441 the Vendor granted and conveyed unto the said Chipper Orange Company, Limited the hereditaments and premises hereinafter described unto and to the use of the said Chipper Orange Company, Limited and its assigns in fee simple and WHEREAS by two Indentures made the Twenty-fourth day of June in the year of Our Lord One thousand Nine hundred and Forty-six the said Chipper Orange Company, Limited granted and conveyed unto the Purchaser the hereditaments and premises hereinafter respectively described AND WHEREAS by the Indenture first hereinbefore recited the hereditaments and premises hereinafter described were stated to comprise about One hundred (100) acres AND WHEREAS the hereditaments and premises hereinafter described have been surveyed and found to comprise One hundred and Forty-four (144) acres more or less AND WHEREAS doubts have arisen as to whether the Indenture first hereinbefore recited effectively conveyed all the right title and interest of the Vendor of in and to the said hereditaments and premises hereinafter described AND WHEREAS effectually to remove any such doubts as aforesaid the Vendor has agreed to execute these presents in manner hereinafter appearing NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Vendor as Beneficial Owner hereby grants conveys and confirms unto the Purchaser All the right title claim estate and interest of her the Vendor of in and to All the said hereditaments and premises particularly described and set out in the Schedule hereto together with the appurtenances thereunto belonging TO HOLD the same unto and to the use of the Purchaser and its assigns in fee simple.

THE SCHEDULE HEREINBEFORE REFERRED TO

1. ALL that parcel of land containing Sixty-four (64) acres more or less and being a part of the tract of land hereinbefore referred to situated

Exhibits

O.E.11

Conveyance to
British Bahamian Land
Company Limited
12th February
1949 (Contd.)

Stamp.

Exhibits
 O.E.11
 Conveyance
 to British
 Bahamian Land
 Company
 Limited 12th
 February
 1949 (Contd.)

in the Eastern District of the aforesaid Island of New Providence which said parcel of land containing Sixty-four (64) acres more or less is bounded on the North by the Yamacraw Road and running thereon Nineteen Hundred and Sixty-seven (1967) feet more or less on the East by the Sans Souci Tract and running thereon Twenty-one Hundred and Ten (2110) feet on the South partly by land granted to Henry M. Dyer and partly by other portion of the said tract of land hereinbefore referred to and on the West partly by other portion of the said tract and partly by the Fox Hill South Side Road the said parcel of land having such position boundaries marks shape and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the Twenty-fourth day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Chipper Orange Company, Limited of the one part and the Purchaser of the other part and is delineated on that part which is coloured Pink on the said diagram or plan. 10 20

2. ALL that parcel of land containing Eighty (80) acres more or less and being a part of the tract of land hereinbefore referred to situated in the Eastern District of the aforesaid Island of New Providence which said parcel of land containing Eighty (80) acres more or less is bounded on the West by the Fox Hill South Side Road on the North by a part of other portion of the said tract hereinbefore referred to on the East partly by other portion of the said tract and partly by land granted to Henry M. Dyer and on the South by a Road Reservation Sixty-six (66) feet wide separating the said parcel of land from the Sea and running thereon Sixteen Hundred and Ninety-six (1696) feet the said parcel of land having such position boundaries marks shape and dimensions as are shown on the diagram or plan attached to an Indenture of Conveyance dated the Twenty-fourth day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Chipper Orange Company Limited of the one part and the Purchaser of the other part and is delineated on that part which is coloured Green on the said diagram or plan. 30 40

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

Elsie May Key.

Signed, Sealed and Delivered by the said Elsie May Key in the presence of,

Ronald E. Fountain,
Merchant.

Exhibits

O.E.11

Conveyance
to British
Bahamian Land
Company
Limited 12th
February
1949 (Contd.)

BAHAMA ISLANDS
NEW PROVIDENCE.

10

I, RONALD EDWARD FOUNTAIN, of the City of Nassau in the Island of New Providence, Merchant, make oath and say that I was present and saw Elsie May Key of the Western District in the aforesaid Island of New Providence, Sign, Seal and as and for her act and deed execute and deliver the attached Conveyance dated the Twelfth day of February A.D. 1949., for the purposes therein mentioned: and that I subscribed my name as the Witness to the due execution thereof.

SWORN to this Twenty-second)
Day of February A.D. 1949.,) Ronald E. Fountain

Before me,

20

Signed.

JUSTICE OF THE PEACE.

EXHIBIT O.E.12.

Conveyance to Alfred John Roy Whiteway

O.E.12

Conveyance
to Alfred
John Roy
Whiteway
14th February
1949

Signed BAHAMA ISLANDS
Attorney- New Providence.
at-Law,
Chambers,
Nassau,
Bahamas.

30

Stamps.

THIS INDENTURE made the Fourteenth day of February in the year of Our Lord One thousand Nine hundred and Forty-nine BETWEEN British Bahamian Land Company, Limited a company incorporated and existing under the Laws of the said Bahama Islands and having its registered office in the City of Nassau in the Island of New

Exhibits

O.E.12

Conveyance to
Alfred John
Roy Whiteway
14th February
1949 (Contd.)

Providence aforesaid (hereinafter called the Vendor) of the one part AND Alfred John Roy Whiteway of 15 Addison Road London in England Solicitor (hereinafter called the Purchaser) of the other part WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments and premises hereinafter described and has agreed to sell the same to the Purchaser for the like estate in possession free from incumbrances at the price of Seventeen thousand Two hundred (17,200) pounds NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of Seventeen thousand Two hundred (17,200) pounds paid by the Purchaser to the Vendor on or before the execution of these presents (the receipt whereof the Vendor hereby acknowledges) the Vendor as BENEFICIAL OWNER hereby grants and conveys unto the Purchaser ALL the hereditaments and premises particularly described and set out in the Schedule hereto together with the appurtenances thereunto belonging TO HOLD the same unto and to the use of the Purchaser in fee simple. 10 20

THE SCHEDULE HEREINBEFORE REFERRED TO

1. ALL that parcel of land containing One hundred and Eighty and Nine tenths (189.9) acres and being a part of a tract of land originally granted to Amelia Tuhoy and situate in the Eastern District of the Island of New Providence aforesaid the said parcel of land being bounded Westwardly by Soldier Road Northwardly partly by land the property of the Public Board of Works for the Island of New Providence aforesaid and now occupied by the Telecommunications Department and partly by land granted to Alwxander Ross Eastwardly by Fox Hill or Sandilands Allotments and running thereon One thousand Nine hundred and Eighty-one and Ninety-eight hundredths (1981.98) feet and Southwardly partly by Malcolm Allotments and partly by Crown Land which said parcel of land has such position shape marks boundaries and dimensions as are shown on the diagram or plan attached to an Indenture dated the Twenty-second day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Howard Nelson Chipman of the one part and the Vendor of the other part about to be lodged for record in 30 40

the Registry of Records in the City of Nassau and is delineated and set out on that part of the said diagram or plan which is coloured Pink.

Exhibits

O.E.12

Conveyance to
Alfred John
Roy Whiteway
14th February
1949 (Contd.)

10 2. ALL that parcel of land containing Sixty-four (64) acres more or less situate in the Eastern District of the Island of New Providence aforesaid which said parcel of land is bounded on the North by the Yamacraw Road and running thereon One thousand Nine hundred and Sixty-seven (1967) feet on the East by the Sans Souci Tract and running thereon Two thousand One hundred and Ten (2110) feet on the South partly by land granted to Henry M. Dyer and partly by other portion of a tract known as the Pen Tract immediately hereinafter described and about to be hereby granted and conveyed and on the West partly by other portion of the said tract known as the Pen Tract and partly by the Fox Hill South Side Road which said parcel of land has such position shape
20 marks boundaries and dimensions as are shown on the diagram or plan attached to an Indenture dated the Twenty-fourth day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Chipper Orange Company, Limited of the one part and the Vendor of the other part about to be lodged for record in the Registry of Records in the City of Nassau and is delineated and set out on that part of the said diagram or plan which is coloured Pink.

30 3. ALL that parcel of land containing Eighty (80) acres more or less being a part of a tract of land known as the Pen Tract situate in the Eastern District of the Island of New Providence aforesaid which said parcel of land is bounded on the west by the Fox Hill South Side Road on the North by a part of other portion of the said tract known as the Pen Tract immediately hereinbefore described and about to be hereby granted and conveyed on the East partly by other portion
40 of the said tract known as the Pen Tract and partly by land granted to Henry M. Dyer and on the South by a Road Reservation Sixty-six (66) feet wide separating the said parcel of land from the Sea and running thereon One thousand Six hundred and Ninety-six (1696) feet which said parcel of land has such position shape marks boundaries and dimensions as are shown on the diagram or plan

Exhibits

O.E.12

Conveyance to
Alfred John
Roy Whiteway
14th February
1949 (Contd.)

attached to an Indenture dated the Twenty-fourth day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Chipper Orange Company, Limited of the one part and the Vendor of the other part about to be lodged for record in the Registry of Records in the City of Nassau and is delineated and set out on that part of the said diagram or plan which is coloured Green.

IN WITNESS WHEREOF British Bahamian Land Company, Limited has caused its Common Seal to be affixed hereto on the fourteenth day of February in the year of Our Lord One thousand Nine hundred and Forty nine. 10

Signed.

Director.

The Common Seal of British Bahamian Land Company, Limited was affixed hereto by Donald Bruce McKinney a Director of the said Company and the said Donald Bruce McKinney affixed his signature hereto in the presence of:- 20

Dorothea Welch.

Secretary.

BAHAMA ISLANDS
New Providence.

I, Dorothea Eloise Webb of the Island of New Providence, Secretary of British Bahamian Land Company, Limited make oath and say that I was present on the Fourteenth day of February in the year of Our Lord One thousand Nine hundred and Forty-nine and saw the Common Seal of British Bahamian Land Company, Limited affixed to the annexed Conveyance by Donald Bruce McKinney a Director of the said Company; and that I saw the said Donald Bruce McKinney sign, execute and deliver the said Conveyance as and for the act and deed of the said Company and for the purposes mentioned in the said Conveyance; and that I subscribed my name as the witness to the due execution thereof; further that the seal affixed 30 40

and impressed at the foot or end of the said Conveyance is the Common Seal of British Bahamian Land Company, Limited and was affixed and impressed thereon by the said Donald Bruce McKinney by the order and with the authority of the Board of Directors of the said Company and in conformity with the Articles of Association of the said Company.

Exhibits

O.E.12

Conveyance to Alfred John Roy Whiteway 14th February 1949 (Contd.)

10 Sworn to this 14th day of }
February A.D. 1949 } Dorothea Webb

Before me,

Signed.

NOTARY PUBLIC.

EXHIBIT O.E.13.

O.E.13

Conveyance to Ocean Estates Limited

Conveyance to Ocean Estates Limited 30th March 1950

ENGLAND.

County of London.

20 THIS INDENTURE made the Thirtieth day of March in the year of Our Lord One thousand Nine hundred and Fifty BETWEEN Alfred John Roy Whiteway of 15 Addison Road London in England Solicitor (hereinafter called the Vendor) of the one part AND Ocean Estates, Limited a Company incorporated under the laws of and carrying on business within the Bahama Islands and having its registered office in the City of Nassau in the Island of New Providence one of the said Bahama Islands (hereinafter called the Purchasers) of the other part
30 WHEREAS the Vendor is seised of the hereditaments hereinafter described and assured in unincumbered fee simple in possession AND WHEREAS the Vendor has agreed to sell such unincumbered fee simple estate to the Purchasers for the sum of Seventeen thousand pounds NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of Seventeen thousand pounds paid to the Vendor by the Purchasers (the receipt of which sum the Vendor

Exhibits

O.E.13

Conveyance to
Ocean Estates
Limited 30th
March 1950
(Contd.)

hereby acknowledges) the Vendor as Beneficial Owner hereby conveys unto the Purchasers ALL the hereditaments and premises situate in the Eastern District of the said Island of New Providence and more particularly described and set out in the Schedule hereto together with the appurtenances thereunto belonging TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple.

THE SCHEDULE HEREINBEFORE REFERRED TO

10

1. ALL that parcel of land containing One hundred and Eighty and Nine tenths (180.9) acres and being a part of a tract of land originally granted to Amelia Tuhooy and situate in the Eastern District of the Island of New Providence aforesaid the said parcel of land being bounded Westwardly by Soldier Road Northwardly partly by land the property of the Public Board of Works for the Island of New Providence aforesaid and now occupied by the Telecommunications Department and partly by land granted to Alexander Ross Eastwardly by Fox Hill or Sandilands Allotments and running thereon One thousand Nine hundred and Eighty-one and Ninety-eight hundredths (1981.98) feet and Southwardly partly by Malcolm Allotments and partly by Crown Land which said parcel of land has such position shape marks boundaries and dimensions as are shown on the diagram or plan attached to an Indenture dated the Twenty-second day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Howard Nelson Chipman of the one part and British Bahamian Land Company, Limited of the other part now of record in the Registry of Records in the City of Nassau in Book Y 17 pages 328 to 332 and is delineated and set out on that part of the said diagram or plan which is coloured Pink.

20

30

2. ALL that parcel of land containing Sixty-four (64) acres more or less situate in the Eastern District of the Island of New Providence aforesaid which said parcel of land is bounded on the North by the Yamacraw Road and running thereon One thousand Nine hundred and Sixty-seven (1967) feet on the East by the Sans Souci Tract and running thereon Two thousand One hundred and Ten (2110) feet on the South partly by land granted to Henry

40

M. Dyer and partly by other portion of a tract known as the Pen Tract immediately hereinafter described and about to be hereby granted and conveyed and on the West partly by other portion of the said tract known as the Pen Tract and partly by the Fox Hill South Side Road which said parcel of land has such position shape marks boundaries and dimensions as are shown on the diagram or plan attached to an Indenture dated the Twenty-fourth day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Chipper Orange Company, Limited of the one part and British Bahamian Land Company, Limited of the other part now of record in the said Registry of Records in the City of Nassau in Book B 18 at pages 76 to 80 and is delineated and set out on that part of the said diagram or plan which is coloured Pink.

Exhibits

O.E.13

Conveyance to
Ocean Estates
Limited 30th
March 1950
(Contd.)

3. ALL that parcel of land containing Eighty (80) acres more or less being a part of a tract of land known as the Pen Tract situate in the Eastern District of the Island of New Providence aforesaid which said parcel of land is bounded on the West by the Fox Hill South Side Road on the North by a part of other portion of the said tract known as the Pen Tract immediately hereinbefore described and about to be hereby granted and conveyed on the East partly by other portion of the said tract known as the Pen Tract and partly by land granted to Henry M. Dyer and on the South by a Road Reservation Sixty-six (66) feet wide separating the said parcel of land now being described from the Sea and running thereon One thousand Six hundred and Ninety-six (1696) feet which said parcel of land has such position shape marks boundaries and dimensions as are shown on the diagram or plan attached to an Indenture dated the Twenty-fourth day of June in the year of Our Lord One thousand Nine hundred and Forty-six and made between Chipper Orange Company, Limited of the one part and British Bahamian Land Company, Limited of the other part now of record in the said Registry of Records in the City of Nassau in Book C 18 at pages 25 to 27 and is delineated and set out on that part of the said diagram or plan which is coloured Green.

Exhibits

O.E.13

Conveyance to
Ocean Estates
Limited 30th
March 1950
(Contd.)

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

Signed.

Signed, Sealed and Delivered by the said Alfred
John Roy Whiteway in the presence of,

Signed.

Solicitor
7 & 8 Norfolk Street,
Strand, W.C.1.

10

ENGLAND.
County of London.

I, John Barker Leaver of 7 & 8 Norfolk Street
Strand Solicitor make oath and say that I was
present and saw Alfred John Roy Whiteway of 15
Addison Road London in England aforesaid Solicitor
sign, seal and as and for his Act and Deed execute
and deliver the foregoing Indenture of Conveyance
dated the thirtieth day of March A.D. 1950, for
the purposes therein mentioned; and that I sub-
scribed my name as the witness to the due
execution thereof.

20

Signed.

Sworn to this thirtieth)
day of March A.D. 1950,)

Before me,

Signed.

A Commissioner for Oaths.

Rodgers, Gilbert & Horsley,
7 & 8 Norfolk Street,
Strand, London, W.C.2.

30



EXHIBIT O.E.14.

Extract from Minutes of Ocean Estates
Limited

EXTRACT FROM MINUTES OF MEETING OF DIRECTORS
OF OCEAN ESTATES LIMITED HELD IN THE OFFICE
OF SIR GEORGE ROBERTS, BAY STREET, NASSAU,
BAHAMAS AT 2.30 P.M. ON THURSDAY, 28TH
JANUARY 1960

Exhibits

O.E.14

Extract from
Minutes of
Ocean Estates
Limited 28th
January 1960

10 Paragraph 49 - Mr. A.B. Bowen's Report, sub
section (ii)

"(ii) Yamacraw

20 Mr. Bowen then reported on his findings
regarding the company's property at Yamacraw. He
said that the property was extremely valuable and
was obviously going to increase considerably in
value in the future, and that in his opinion the
company should at present resist all attempts by
purchasers. Other people had bought surrounding
property with the idea of reclaiming land out to
sea and dredging swampy areas and he gave brief
particulars of this in relation to the company's
property. With this in mind he had had dis-
cussions with the Director of Public Works, Town
Planning Officer and was seeing the Crown Lands
Department, but it was his opinion that no system
of reclamation could be proceeded with by the
company at present and he thought the development
of Yamacraw should be left in abeyance for the
time being."

30 Certified to be a true extract from the
Minutes of Meeting of Directors of Ocean
Estates Limited held in the office of
Sir George Roberts, Bay Street, Nassau,
Bahamas at 2.30 p.m. on Thursday,
28th January, 1960.

Signed.

J.K. Brownlees
Registrar, Court of Appeal.

ExhibitsEXHIBIT O.E.23

O.E.23

Statement of
Chipper
Orange
Company
Limited 19th
October 1938
and Extract
from
Register

Statement of Chipper Orange Company
Limited 19th October, 1938 and Extract
from Register

"Chipper Orange Company, Limited"

STATEMENT

made up to the Nineteenth day of October
A.D. 1938. (being the fourteenth day
succeeding the day after the Ordinary
general meeting, ~~on the First Ordinary
general meeting in 1938~~), showing the
following particulars:

10

| <u>Surnames & Christian names of Members of Company</u> | <u>Addresses</u> | <u>Occupation</u> | <u>Shares held by each</u> | |
|---|--------------------|----------------------|--|----|
| HOWARD NELSON CHIPMAN | Nassau, Bahamas | Merchant | 2438 | |
| HAROLD HASTINGS CHIPMAN | " | " | 1 | 20 |
| ROLAND BLEBY CASH | " | " | 1 | |
| RONALD EDWARD FOUNTAIN | " | Clerk | 1 | |
| ALFRED FRANCIS ADDERLEY | " | Barrister- at-Law | 1 | |
| | | Total | <u>2442</u> | |

1. Amount of capital £6,000
2. Number of shares into which
the capital is divided. 6000 Shares of
£1.--each. 30
3. Number of shares taken from
commencement of company
to date. 2442 Shares.
4. Amount of calls made on each
share. NIL.
5. Total amount of calls received. NIL.

- 6. Total amount of calls unpaid. NIL
- 7. Total amount of shares forfeited. NIL.
- 8. Names, addresses and occupations of persons who have ceased to be members since last return was made, as follows:

Exhibits
O.E.23
Statement of
Chipper
Orange Company
Limited 19th
October 1938
and Extract
from Register
(Contd.)

| Name | Addresses | Occupation | Shares held by each |
|---------------------------|------------------|-------------|---------------------|
| Clarence Charles Perpall. | Nassau, Bahamas. | Investments | 1438 |

Copy of Register, Showing the Names, Addresses and Occupations of Directors or Managers.

Howard Nelson Chipman. Nassau, Bahamas, Merchant,
President, Treasurer and Director.

Roland Bleby Cash. Nassau, Bahamas, Merchant,
Secretary and Director.

Harold Hastings Chipman. Nassau, Bahamas, Merchant,
Director.

Roland B. Cash.
SECRETARY.

20

N.B. - Changes in directors or managers must be notified from time to time as they take place.

BAHAMA ISLANDS,
Registrar General's Office

I certify the foregoing to be a true copy of the original deposited in this Office.

Signed.
Registrar General.

2nd August, 1966.

ExhibitsEXHIBIT O.E.24

O.E.24

Statement of
Chipper Orange
Company
Limited April
1944 and
Extract from
Register

Statement of Chipper Orange Company
Limited April 1944 and Extract from
Register

CHIPPER ORANGE COMPANY LIMITED.

STATEMENT

made up to the day of April 1944.
(being the fourteenth day succeeding the day
after the Ordinary general meeting, ~~or the~~
~~First Ordinary general meeting in 19~~),
showing the following particulars:

10

| <u>Surnames & Christian names of Members of Company</u> | <u>Addresses</u> | <u>Occupation</u> | <u>Shares held by each</u> |
|---|---------------------|----------------------|------------------------------------|
| Howard Nelson Chipman | Nassau, Bahamas. | Merchant | 2438 |
| Harold Hastings Chipman | " | " | 1 |
| Roland Bleby Cash | " | " | 1 |
| Ronald Edward Fountain | " | Clerk | 1 |
| Alfred Francis Adderley | " | Barrister- at-Law | 1 |
| | | Total | <u>2442</u> |

20

1. Amount of capital £6000
2. Number of shares into which
the capital is divided 6000 Shares
of £1 each
3. Number of shares taken from
commencement of company
to date. 2442 Shares.
4. Amount of calls made on each
share NIL
5. Total amount of calls received NIL
6. Total amount of calls unpaid NIL

30

7. Total amount of shares forfeited. NIL

Exhibits

8. Names, addresses and occupations of persons who have ceased to be members since last return was made, as follows:

O.E.24

Statement by
Chipper
Orange Company
Limited April
1944 and
Extract from
Register
(Contd.)

| <u>Names</u> | <u>Addresses</u> | <u>Occupation</u> | <u>Shares held by ea.</u> |
|--------------|------------------|-------------------|---------------------------|
| - | - | - | - |

Copy of Register, showing the Names, Address and Occupations of Directors or Managers

10 Howard Nelson Chipman Nassau, Bahamas. Merchant
President, Treasurer &
Director.

Roland Bleby Cash Nassau, Bahamas. Merchant.
Secretary and Director.

Harold Hastings Chipman Nassau, Bahamas. Merchant.
Director.

H.N. Chipman
President.
25th April, 1945.

20 BAHAMA ISLANDS,
Registrar General's Office.

I certify the foregoing to be a true copy of the original deposited in this office.

Signed.
Registrar General.
2nd August, 1966.

30 N.B. - Changes in directors or managers must be notified from time to time as they take place.

ExhibitsEXHIBIT O.E.25

O.E.25

Statement of
Chipper
Orange Company
Limited 4th
May 1947 and
Extract from
Registrar

Statement of Chipper Orange Company
Limited 4th May 1947 and Extract from
Registrar

"CHIPPER ORANGE COMPANY, LIMITED".

STATEMENT

made up to the 4th day of May A.D.1947
(being the fourteenth day succeeding the day
after the Ordinary general meeting, ~~on the~~
~~First Ordinary general meeting in 19~~), showing
the following particulars:

10

| <u>Surnames & Christian names of Member of Company</u> | <u>Addresses</u> | <u>Occupation</u> | <u>Shares held by each</u> |
|--|-------------------|-----------------------|------------------------------------|
| Howard Nelson Chipman | Nassau Bahamas | Merchant | 2438 |
| Roland Bleby Cash | " | " | 1 |
| Ronald Edward Fountain | " | " | 1 |
| Lois Mercedes Fountain | " | Housewife | 1 |
| Alfred Francis Adderley | " | Barrister- at-Law. | 1 |
| | | Total | <u>2442</u> |

20

1. Amount of Capital £6,000
2. Number of shares into which
the capital is divided 6,000 Shares of
£1 each
3. Number of shares taken from
commencement of company to
date 2,442
4. Amount of calls made on each
share NIL
5. Total amount of calls received NIL
6. Total amount of calls unpaid NIL
7. Total amount of shares forfeited NIL.

30

Persons who have ceased to be members since last return was made.

| <u>Names</u> | <u>Addresses</u> | <u>Occupation</u> | <u>Shares held by each</u> |
|--------------|------------------|-------------------|----------------------------|
|--------------|------------------|-------------------|----------------------------|

| | | | |
|---|---|---|---|
| - | - | - | - |
|---|---|---|---|

Copy of Register, Showing the Names Addresses and Occupation of Directors or Managers

Howard Nelson Chipman Nassau, Bahamas Merchant President, Treasurer and Director.

10 Ronald Edward Fountain, Nassau, Bahamas, Merchant Secretary and Director.

Roland Bleby Cash Nassau, Bahamas Merchant Director.

Seal. Ronald E. Fountain. Secretary.

N.B. This statement must be sealed with the Company's Seal.

Changes in directors or managers must be notified from time to time as they take place.

20

BAHAMA ISLANDS,
Registrar General's Office.

I certify the foregoing to be a true copy of the original deposited in this office.

Signed.
Registrar General.

2nd August, 1966.

Exhibits

O.E.25

Statement of Chipper Orange Company Limited 4th May 1947 and Extract from Register (Contd.)

IN THE PRIVY COUNCIL.

No.30 of 1967.

ON APPEAL FROM THE COURT OF
APPEAL FOR THE BAHAMA ISLANDS

B E T W E E N :-

OCEAN ESTATES LIMITED (Plaintiffs)
Appellants.

- and -

NORMAN PINDER (Defendant)
Respondent.

RECORD OF PROCEEDINGS.

WIGRAM & CO.,
9, Queen Street,
Mayfair, London, W.1.
Solicitors for the Appellants.

HATCHETT JONES & CO.,
90 Fenchurch Street,
London, E.C.3.
Solicitors for the
Respondent.