

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

Scan

SUIT NO. C.L.T. 105/83

BETWEEN	DERVENT TAYLOR (Administrator Estate Pearline Agatha Taylor dec'd)	PLAINTIFF
A N D	BRUCE REALTY COMPANY OF FLORIDA	DEFENDANT

W. B. Frankson Q.C. and Margaret Forte instructed by Gaymair and Fraser for the Plaintiff.

R. Williams Q.C., J. Leo Rhyne Q.C., Dr. L. Barnett, Mr. Charles Fiper instructed by Clinton Hart and Company for the defendant Company.

Hearing on March 4, 1985 - March 8, 1985; May 6, 1985 - May 10, 1985; May 13, 1985 - May 17, 1985; May 20, 1985; May 22, 1985; May 24, 1985; September 30, 1985 - October 4, 1985; October 7, 1985 - October 11, 1985; October 14, 1985 - October 19, 1985; October 22, 1985; February 24, 1986 - February 27, 1986; March 3, 1986 - March 5, 1986; March 10, 1986; March 11, 1986, July 31, 1986.

JUDGMENT

The matter which forms the subject of this Judgment is one that must of necessity severely test the mental capacity of any Judge especially one who has to contend with the physical conditions to which those who have business at the Supreme Court in Kingston, Jamaica are not wholly accustomed to experiencing.

In this case the matter was set down for hearing for over fifty days but the actual hearing lasted a mere forty six (46) days and over varying periods in excess of one year and in which at times no less than six Counsels including three Queen Counsels and two Senior Counsels were engaged.

The arguments were at times lengthy and wide ranging, covered a number of issues, some of which arose on the pleadings and others, mostly from the plaintiff's side, which seemed like the "uses" of the old Courts of Equity to spring up from time to time as the hearing dragged on and on to what appeared at times an interminable end. Even at the stage of the closing submissions some new questions were still being raised which had nothing to do with the issues that arose on the pleadings.

It may not be improper and even timely to remind
 Counsel who practice in the Supreme Court, a Court of Fleadings, that
 one of the main reasons for the filing of pleadings is so that
 the issues or matters in dispute may be identified and narrowed
 down in order that time and expense may be saved at the hearing
 and determination of causes.

Although the task which now confronts me in sifting
 through the mass of evidence is a difficult if not insurmountable
 one, it has, however, been made that much easier by the invaluable
 assistance that I have obtained especially in the area of the
 issues as they had to do with the Law and for this assistance I
 must acknowledge my gratitude to Counsel on both sides for the
 commendable skill and industry which I am sure went into the
 preparation and the presentation of the arguments as they related
 to both the opening and closing submissions.

The Fleadings

1. The Claim

The plaintiff's claim is of a two-fold nature in that
 he claims that as "the lawful son and administrator of his
 mother, Fearline Agatha Taylor's Estate by virtue of Letters of
 Administration issued to him out of the Supreme Court on
 10th February, 1978" that:-

1. "His family has owned and openly occupied the
 property known as part of Mamme Bay in the parish
 of Saint Ann and being the land now registered at
 Volume 1166 Folio 762 of the Register Book of Titles
 for several generations leading up to his grand-
 father Lucius Hinds, the father of the aforesaid
 Fearline Agatha Taylor.
2. Following upon the death of the said Lucius Hinds,
 his daughter the said Fearline Agatha Taylor and
 his son Teddy Hinds occupied the said lands
 jointly until the said Teddy Hinds gave the plaintiff
 his interest in the said lands after which the
 plaintiff occupied the same jointly with his mother

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until the latter died on 29th January, 1972,
intestate.

3. The plaintiff states further that following upon the death of Pearlina Agatha Taylor he enjoyed sole and undisturbed possession thereof until the present time.
4. The said land adjoined lands owned and occupied by one Edward Carol Seymour Pratt who procured the registration of the same at Volume 824, Folio 53 of the Register Book of Titles on or about 22nd September, 1956.
5. Notwithstanding the aforesaid registration the plaintiff and his predecessors continued in free, open and unmolested use of and occupation of the said lands.
6. The plaintiff will contend that if, which is not admitted the aforesaid Edward Carol Seymour Pratt had any estate or interest in the said land which was capable of being registered under the provisions of the Registration of Titles Act, the registration was subject to the estate which had vested in the plaintiff's predecessors in title by virtue of their open and undisturbed possession.
7. The aforesaid Edward Carol Seymour Pratt purported to sell and transfer the said lands to Bruce Realty Company of Florida, United States of America, a corporation existing under the laws of the State of Florida in the United States of America which transfer was registered in the Register Book of Titles on 11th March, 1963.
8. The plaintiff says that notwithstanding such purported sale, transfer and registration the title to the said lands did not vest in the aforesaid Bruce Realty Company of Florida in as much as the said transfer was in breach of Section 33 of the

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Exchange Control Act and Section 346 and 347 of the Companies Act.

9. Further and or in the alternative the plaintiff will say that if which which is not admitted any estate or interest in the said land vested in Bruce Realty Company of Florida by virtue of the alleged sale, transfer and registration of the said land the said Bruce Realty Company of Florida took the same subject to the plaintiff predecessors in title which had occupied by virtue of the long, free open possession and occupation of the said land.
10. Further the plaintiff says that notwithstanding the purported sale and transfer of the said lands referred to above his predecessors and himself continued in free open and undisturbed possession of the said land save and except for an action in trespass brought against him by Twin Reef Acres Limited in the Resident Magistrates Court for the parish of Saint Ann holden at Saint Anns Bay in or about March 1974 which said action was on 18th April 1974 adjourned sine die for the reason that the said Twin Reef Acres Limited was then in voluntary liquidation.
11. On or about 18th December, 1969 the aforesaid Bruce Realty Company of Florida purported to transfer the said property to Twin Reef Acres which company went into voluntary liquidation on or about 19th day of December, 1973 following which Bruce Realty Company Incorporated was on 6th day of May, 1976 again unlawfully registered as the proprietor of an estate in the said lands.

The plaintiff therefore claims:-

- a. A declaration that he is entitled to be registered as the proprietor of a estate in fee simple in possession of the

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said lands or

- b. Alternatively a declaration that he has acquired an estate in free simple in the said land by virtue of long possession and
- c. An order cancelling the certificate of title registered at Volume 1166, Folio 762 in respect to the said lands."

The Defence

In paragraphs 1 and 2 the preceding paragraphs of the statement of claim are denied.

The defendant further contend that:-

- 3. The defendant denies that Fearline Agatha Taylor and Teddy Hinds occupied the said lands jointly or at all, or that the said Teddy Hinds, gave or had any right to give the said lands to the plaintiff or that the plaintiff and/or his mother occupied the said lands as alleged in paragraph 3 of the Statement of Claim or at all.
- 4. At paragraph 4 there is a denial of paragraph 4 of the Statement of Claim.
- 5. In paragraph 5 it is admitted that "Edward Carol Seymour Fratt obtained registration of the said lands in his name in September 1956, but it is stated that no part of the said lands was owned by the plaintiff."
- 6. Paragraph 6 of the Statement of Claim is denied and the defendant further denies that any interest in the said lands had vested in the plaintiff predecessors as alleged in paragraph 7 thereof or at all.
- 7. It is here alleged that "the said lands were sold and transferred by the said Edward Carol Seymour Fratt to Bruce Realty Company of Florida on March 1963 and the said sale had exchange control approval and even if it had not, the transfer ~~is nevertheless effective~~ and valid. Further, the defendant denies the allegation that there was a breach of Section 346 or 347 of the Companies Act and says that even if there was the said sale and transfer was valid.

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- 8. The defendants further deny paragraph 10 of the Statement of Claim.
- 9. In paragraph 9 of the Defence paragraph 11 of the Statement of Claim is referred to and the defendant contends that "paragraph 11 of the Statement of Claim was always contested and neither the plaintiff or persons through whom he claims were ever in free, open and undisturbed possession of the said lands.
- 10. At paragraph 10 the defendant here alleges that "in addition, the said lands have been the subject of litigation including:-
 - i) Suit number E/0/79 - Lervent Taylor (Administrator of the estate of Fearline Agatha Taylor) vs. Bruce Realty Company of Florida.
- 11. ii) Further, in 1960 an action was instituted on behalf of certain fishermen, including the plaintiff by the Beach Control Authority against George Farkas claiming an easment over part of the said land but the said proceedings terminated in favour of Mr. George Farkas the principal shareholder of the defendant's company. The plaintiff is therefore estopped from denying the title which devolved on the defendant.
- 12. From 1949, Edward Carol Seymour Pratt, E. S. Pratt and Elma Pratt were recorded as the owners in fee simple of the said lands at Liber New Series 602 Folio 41 at the Island Record Office and in September 1949 they exercised their right of ownership of the said lands by granting easements over the said lands to Jamaica Public Service Company by Deed recorded at Liber New Series 687, Folio 454 entered in the Island Record Office on May 13, 1950.
- 13. Edward Carol Seymour Pratt became the sole owner of the said lands and on 13th October, 1956 was registered as its sole proprietor in fee simple at Vol me 824, Folio 52 and 53 of the Register Book of Titles.

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14. The said Edward Carol Seymour Pratt transferred all his interest in the said lands to the defendant on 31st December, 1962. The certificate of title at Volume 824, Folio 53 was cancelled and a substitute issued and registered at Volume 1029, Folio 593 in the name of the defendant.

15. In the premises the plaintiff is not entitled to the relief claimed or any relief.

16. Save as is herein before expressly admitted, the defendant denies each and every allegation in the Statement of Claim as if the same were herein before set forth and traversed seriatim."

There is then a counter claim in which reliance is also placed upon:-

17. Paragraph 1 to 15 of the Defence.

18. At paragraph 18 the defendant contends "that as the registered proprietor of the said lands its title is valid and indefeasible.

19. The defendant further says that the plaintiff never had or acquired any right over the said lands.

20. The plaintiff subsequent to the decision of the Court of Appeal holding that he had invalidly been issued with a Title to the said lands has by himself or his servants and/or agents on diverse other days, trespassed on the said lands of the defendant and intimidated the defendant's agents."

The defendant therefore counter claims for:-

1. Damages for trespass.

2. An Injunction to restrain the plaintiff by himself his servants or agents from entering upon the defendant's said lands or from threatening or intimidating the defendant's servants or agents."

The Reply

1. Issue is joined with the defendant on the defence.

2. It is here denied that the action brought by the Beach Control Authority was instituted on behalf of the plaintiff.

England until it was repealed in both countries and that Act prohibited foreign corporations from holding lands in Jamaica without a license from the Crown.

- iii) That Sections 345 - 347 of the Companies Act are reproductions of the Mortmain and Charitable Uses Act which were repealed and for which were substituted.
- iv) That a failure to comply with the provisions of the Companies Act is fatal to the right of any foreign Company to own lands in Jamaica and therefore the transfer allegedly effected by Pratt to the defendant company in 1963 was ineffectual to convey any title to Bruce Realty Company to invest it with the character of a corporate citizen of Jamaica.

Mr. Leo Rhyne for the defendant has submitted that the contention of the other side was untenable for the following reasons:-

i) On a proper construction of Sections 345 and 347 of the Companies Act of Jamaica the provisions contained therein did not apply to the defendant at the material time and even if they did so apply to the defendant its non-compliance therewith did not have the effect in law of rendering void or invalid the defendant's title to the said lands.

The question as to whether a company exists not as a corporate body is determined by the law of the place of its incorporation and both English Law as well as Jamaican Law recognise a company as a corporate body if it is duly incorporated according to the law of the foreign state in which it was incorporated.

He relied for support upon the following authorities:-

- a) Halsbury Law of England 4th Edition Volume 9, paragraph 1229.
- b) Modern Company Law by L.C. Gower 4th Edition pages 743 - 744.

English Law will give recognition whether or not the foreign corporation complies with the disclosure of information.

contained in part 10 of the English Act. This section is in pari materia with the local Companies Act. Recognition of status is to be determined by the law of the place of incorporation. The fact that the defendant company was duly incorporated under the laws of the state of Florida, United States of America is not disputed and is admitted by the plaintiff in paragraph 8 of the Statement of Claim.

ii) At common law the right of a company incorporated in one state to carry on business and enter into contracts in another state is universally recognised. The exercise of such a right is conditional and is subject to that corporation having the capacity to carry out the particular act and is determined by:-

- a) Its constitution construed in the light of the law of the place of its incorporation.
- b) The law governing the transaction in question; any corporation has the same capacity to hold land as does a private person provided this is not inconsistent with its objects.

He relied for support on:

- a) Halsburys Laws of England 4th Edition, Volume 9 page 791.
- b) Falmers Company Law 22nd Edition, paragraph 1815 at page 155.

He further he contended that if therefore a foreign corporation has the power to hold lands in the state of its origin then it possesses the like powers in other states, including as in this case, Jamaica except for a statutory prohibition against the exercise of such powers.

For support he cited:-

- a) Modern Company Law by L. C. Gower 4th Edition at page 744.
- b) Campbell vs. Morgan (1919) 29 Manitoba Reports at page 297 per Judgment of Mathers C.J. at page 300.

iii) The defendants have further contended that the submission

Since the Mortmain and Charitable Uses Act never applied in Jamaica there existed therefore no statutory provision against a foreign corporation acquiring lands in Jamaica.

- iv. The only statutory prohibition against a foreign corporation holding or acquiring land in Jamaica are to be found in part 10 of the Companies Act which includes Section 345 - 347 of the Act.

Mr. Leo Rhyne for the defendant further submitted that Part 10 of the Companies Act of Jamaica did not apply to the defendant company as it is well established that a company incorporated under the laws of another state may carry on business in Jamaica without having a place of business here. The distinction between having a place of business and carrying on business, Section 345 - 347 clearly governing the former term, has been the subject of judicial interpretation in England. A company has been held to have an established place of business in the United Kingdom where it:-

- a) Has an identifiable place of business or an office from which it operates.

See South India Shipping Corporation vs. Export Import Bank of Korea (1985) 2 AER 219, at pages 222 and 223.

It has been well established that Part 10 of Companies Act does not apply to a company who has not established a place of business in Jamaica.

Reference is made for support to page 761 - 764 of Falmers Company Law.

The defendant further contended that in this case it has neither been alleged or proved that the defendant company at the date of the sale, transfer or registration of the lands by Pratt to it had an established place of business in Jamaica.

In conclusion therefore, the defendant submitted that Section 345 - 347 of the Companies Act did not apply to the said transfer from Pratt to the defendant company. In any event the defendant also contends that even if the relevant sections of the

Act did apply to the transaction on a proper interpretation of Section 353 of the said Act, the defendant company still obtained an indefeasible title to the lands in dispute because based upon a proper construction of the section, a breach of the relevant provisions of the Act rendered the said transfer voidable and not void as non-compliance is punishable by penalties (Section 353 of the Act). These submissions of Mr. Leo Rhynie in his opening for the Defence were both relied upon and amplified by Mr. Williams in his closing submissions. He further submitted that in any event the plaintiff had no locus standi to raise either of the first two issues. He cited in support of this contention the case of Horace Clinton Nunes (Executor Estate Lionel S. Coke, deceased) and Appleton Hall Limited vs. Roy Williams et al. Unreported Civil Appeals of Jamaica # 64 and 67/84, a Judgment of the Court of Appeal of Jamaica delivered on 13th June, 1985. There it was held by the Court that the question as to the effect of failure by a company to obtain the approval of the Land Development and Utilization Commission under the relevant Act before transfer of property subject to the Act was not fatal to the validity of the transfer. The transferee still obtained an indefeasible title. Moreover, only the Crown through the Attorney General had the locus standi to challenge the validity of the transfer as the plaintiff not being a party to the transaction and not one who would have been affected thereby had no right to complain as:-

1. The relevant question raised was concerned with public law not private law.
2. The plaintiff could not do so as he had suffered neither damnum nor injuria which were the two bases upon which an actionable right could vest thereby in him (per dictum of Carey J.A.) at pages 9 - 12.

I regard the submissions made on behalf of the defendants as being well founded and having merit and I wish to adopt them as my own as in my view they are correct in so far as they seek to

state the legal principles to which the facts in the matter are concerned. The last case cited by Mr. Williams when examined on the main question of:-

- i) The locus standi of the plaintiff.
- ii) The effect of a transfer made in breach of the relevant act on the title obtained by the transferee.

In the respective judgments of Carey and Campbell J.J.A. in so far as their opinions sought to deal with both questions and in which all the relevant authorities referred to by both sides were examined at length as well as others touching on the same question, this judgment is in my opinion fully decisive of the question of the capacity of the plaintiff to raise either of the first issues as:-

1. He has not been peculiarly affected by the transfer as to give him title to sue.
2. Any remedy to ensure compliance with the provisions of Sections 345 - 347 of the Companies Act and Section 33 of the Exchange Control Act, both of which vest the authority for compliance in the Minister charged with the responsibility for the particular subject; clearly falls within the realm of public law not private law.

Carey J.A. in dealing with the matter and referring to *Gowie vs. Union of Post Officer Workers* (1977) 3 ABR 70 at page 80 where Lord Wilberforce had this to say:-

"A realtor action, a type of action which has existed from the earliest times, is one in which the Attorney General, on the relation of individuals (who may include local authorities or companies) brings an action to assert a public right. It can be properly said to be a fundamental principle of English Law that private rights can be asserted by individuals but that public rights can only be asserted by the Attorney General as representing the public. In terms of constitutional law, the rights of the public are vested in the Crown, and the Attorney General enforces them as an Officer of the Crown. And just as the Attorney General has in general no power to interfere with the assertion of private rights, so in general no private person has the right of representing the public in the assertion of public rights. If he tries to do so his action can be struck out."

It is my opinion that the words expressed by the

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Learned Law Lord applies with equal force to the situation of the plaintiff in this matter.

Even if there was non-compliance with the relevant sections of the Companies Act it is my opinion that having regard to the interpretation to be put upon Sections 353 of the Companies Act which prescribes a penalty of a fine for non-compliance with Section 346, this would have had the effect of rendering the said transfer voidable and not void.

The effect of the judgment of the Court of Appeal is when applied to the facts in the instant case clearly establishes that the plaintiff has no locus standi to raise either of these two issues and even if he did have such a right and as the fact of non-compliance did not preclude the defendant company from becoming registered as the fee simple owner then in the absence of fraud, having got on the register they obtained an indefeasible title to the lands in dispute as "it is the fact of registration and not its antecedents that vests and divests title" per Campbell J.A. quoting from the opinion of Lord Wilberforce in *Fraser vs. Walker* (1967) 1 AER 649 at 651(I).
Walker (one of the authorities relied on and cited by Learned Counsel for the defendants).

Although I would regard the case of *Horace Clinton Nunes and Appleton Hall Limited vs. Roy Williams et al* as being a complete answer to the submission made by Mr. Frankson for the plaintiff, there was also the further contention of Mr. Williams in his closing submissions which dealt with the second issue in so far as the evidential situation was concerned. Those submissions are in my opinion no less weighty and equally sound.

In this regard he has submitted that:-

- i) The burden is on the plaintiff to show that the conditional approval granted in respect to the transfer from Pratt to Bruce Realty Company of Florida never became unconditional.
- ii) That there has been a breach of Section 33 of the Exchange Control Act. He submitted that the plaintiff

has not discharged that burden.

iii) On the evidence the Court is obliged to infer in the absence of evidence on this point that the condition was fulfilled having regard to the fact that the transfer from Pratt to Bruce Realty was duly registered by the Registrar of Titles and subsequent transfers and mortgages were similarly registered. The Court should infer therefore that if the conditions were not fulfilled that those transfers and mortgages would not have been registered. In this regard I would also say that the presumption of regularity can also be invoked in aid of this contention by Mr. Williams and if this is so, then in my opinion that presumption has not been displaced by any evidence coming from the plaintiff, his witnesses or the documentary evidence in the matter tendered on their behalf.

iv) Even if the Court is satisfied on the evidence of feels obliged to infer that the condition was not fulfilled and there was a breach of Section 33 of the said Act, the fact that the defendant became the registered owner means in effect that it acquired an indefeasible title to the property notwithstanding such breach.

Even if all the above submissions are untenable in any event the plaintiff for the reasons already stated does not have the necessary locus standi to raise the matter.

Mr. Frankson for the plaintiff in the face of what were the most convincing arguments presented by the Learned Counsels for the defendants although repeating his earlier submissions was not able to refer me to any authorities persuading me to a **contrary** conclusion.

I am therefore of the firm opinion for the reasons I have stated that there ought to be a determination on these two issues in favour of the defendants.

This brings me now to what I considered to be the substantive issue in this matter which is as to whether the plaintiff and/or his predecessors in title as he has sought to contend were ever in open, continuous and notorious possession of the lands in dispute to the exclusion of all others for a period of at least twelve years sufficient to oust the title of the defendants under Section 3 of the Limitation Act?

In this regard it has been conceded by Mr. Frankson that the registration of the said lands in dispute by Edward Carol Seymour Pratt on 13th October, 1956 had the effect of extinguishing all prior claims to the lands in dispute of whatever nature existing at that date. This meant that, in order to succeed in his claim that he was asserting, the plaintiff would therefore have to establish on a balance of probabilities a possessory title within Section 3 of The Limitation Act commencing from and after 13th October, 1956, the date of the first registration of title to these lands by Edward Pratt.

In determining this question one also has to bear in mind the fact that the plaintiff has sought to rely almost entirely upon the oral evidence of himself and ten supporting witnesses in advancing his claim of adverse possession. There is also ^{the} further aspect of the plaintiff bona fides being called into question which arises in the following manner:-

Mr. Williams has contended that the plaintiff not only claims the said lands in dispute as Administrator of the Estate of his mother Fearline Agatha Taylor but he also ^{lays} _{claim} ^{to} _{the} said lands in his own right. Even given the fact that because of the acquisition of a registered title by Edward Pratt in October 1956 that any subsequent claim arising by way of possession, would of necessity have to be adverse, I am minded to agree with the contention of Mr. Williams that on the basis of what the plaintiff has sought to allege in paragraph 2 of the Statement of Claim, these are clearly two inconsistent positions and this ought to affect to some degree the mind of the Court in

the final analysis in weighing and assessing the evidence adduced by the plaintiff as to just how genuine his claim is. Graham Perkins J.A. in *Farrington vs. Bush* (1974) 12 JLR 1492 another of the authorities relied upon by the defendant's Attorneys in support of their submissions on the Law relating to the issue of Adverse Possession and where the contention of the plaintiff was similar had this to say at page 1494 (c - d):-

"What is clear is that from 1952 to April 1971 the appellant was maintaining that there was vested in him a perfectly good title to the fee simple by virtue of the conveyance to him in 1952. How then could he claim to have acquired a title by adverse possession? These irrevocably inconsistent positions could not possibly have escaped the notice of the Learned Judge of the Grand Court. He would have noticed the absence in the appellant of the mental element so essential to the concept of adverse possession. On the hypothesis that the appellant was found to be in possession the Trial Judge would have recognised that such possession far from being adverse to anyone would have been enjoyed by the appellant in his own right as owner."

In approaching this the critical issue in the case because of the nature of the evidence adduced by the plaintiff as well as the manner in which he has sought to advance his claim in the pleadings, the question of the credibility of himself and his witnesses in relation to the respective accounts which they sought to relate is of the gravest importance.

It is therefore necessary at this stage to set out in some detail just what the plaintiff's account was and how this account stood up when put to the test by cross examination. It is only if the structure of the plaintiff's account when tested remained intact or stood up under cross examination that one could then proceed on a detailed examination of the testimony of his supporting witnesses as in so far as the structure of his case was eroded by the cross examination then in my opinion there would have been nothing left for the other evidence of those ten witnesses to support.

If along with the falling structure went the plaintiff's credibility then on any rational assessment of the accounts of

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these witnesses as to the supporting role they played in the whole senario, would have meant in effect that their testimony would have had to be examined in no better light than the plaintiff as they all would stand or fall together.

It is now necessary at this stage to examine the account of the plaintiff and in so far as appeared necessary those of the witnesses whom he called in support of his claim of adverse possession.

The Flaintiff's Account

He gave evidence of growing upon the Mamme Bay Property from he was a boy, six years of age. He left to go to school at Steer Town but returned on weekends to stay with his uncle, Samuel Hinds until his uncle died. He thereafter stayed with his uncle, Teddy Hinds. When he got older and at the age of fifteen years he left the area for Kingston where he learnt trade as a welder at Kingston Technical School. He spent three years in Kingston. After this, he got a job with Reynolds Bauxite Company in Saint Ann. This was a full-time job. He gave evidence of being on the Mamme Bay Property from 1956 to 1968 continously. He went to bed there, got up there, farmed there and fished from there during this period. Later on in cross examination he stated that in 1968 he removed to live at Steer Town but still farmed on the property.

According to the plaintiff apart from himself and the rest of the Hinds family which included Lucius Hinds, his grand-father Samuel Hinds, Teddy Hinds and Alphonso Hinds his uncles and his mother Fearline Hinds, no other person occupied the Mamme Bay Property, nor sought to molest them on the property.

The plaintiff also gave evidence of building a zinc house (shed) on the property in 1956 about sixteen months after after another old wattle and daub house which had been constructed there fell down. Later on in cross examination, however, he changed his account to one in which he testified to building the house after his uncle, Teddy Hinds died. As his uncle Teddy Hinds on the evidence of plaintiff died after his mother who passed on

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in 1972, and the plaintiff has stated that his uncle Teddy died about four years after his mother, this would have placed the construction of the house by the plaintiff as being about in the mid 1970's.

The plaintiff although growing up on the property from a little boy in 1930's denied having any knowledge of the first registered owner Mr. Edward Carol Seymour Fratt who occupied a great house opposite to the Mamme Bay Property which he the plaintiff now claims, certainly up into the 1950's.

Several witnesses were called and in their accounts they have sought to support the account of the plaintiff that he and his family were in free, open, continuous and undisturbed possession of the Mamme Bay Property. The testimony of these witnesses went back to as far as 1913 for which the account of Alphonso Hinds, an uncle of the plaintiff bears reference. These ten varied and conflicting accounts when examined and compared with the testimony of the plaintiff, however, prompted Mr. Frankson to refer to the totality of their evidence as representing a "golden thread of possession" which ought to be accepted with the resulting effect no doubt that the consequence of such acceptance carries with it, in ousting the defendant's title to the said lands in dispute.

Before I probe deeper into the evidence of the plaintiff and his ten supporting witnesses, however, it is necessary to consider from the outset the fact that despite this "golden thread of possession" being canvassed and put forward as representing witnesses whose testimony are worth of belief, it strikes me as somewhat remarkable that a family could have been as it is here being contended in possession of a property consisting of thirty acres of prime lands from what on the evidence of Alphonso Hinds represented a period of almost seventy years and through what in the presence of the plaintiff represents the third successive generation and there has not been not one shred of documentary evidence brought in support of this claim being

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asserted by the plaintiff. All the supporting witnesses can testify to is seeing the plaintiff and his relatives on the land, seeing a zinc house (shed) and an old iron bed about 20 years old and an old car axle. There has been no old conveyance produced, no tax receipt, no valuation notice, and although there is evidence of persons residing to the eastern boundary of the lands in dispute who would probably have been able to testify concerning the claim being put forward by the plaintiff the Court has not been afforded the benefit of their testimony. The witnesses called with the possible exception of Alphonso Finds and Carol Freemantle both of whom are related to the plaintiff and as such have an interest to serve in these proceedings were to a large extent deficient in so far as their knowledge of the activities in the area surrounding the property were concerned. Their knowledge seemed for the most part to be confined to the farming activities on the property.

It is necessary to state for the sake of emphasis that the fact that the plaintiff's case is one which is based entirely upon the viva voce evidence of these witnesses including the plaintiff meant in effect that the demeanour of the plaintiff and his witnesses were of the most paramount importance as regards just how credible their accounts were.

Furthermore, the onus of proof being on the plaintiff in relation to all issues if the accounts of the plaintiff and his witnesses are not to be believed then his claim must be rejected and Judgment must be entered on the Counter Claim for the defendant.

As the evidence emerged this account related by the plaintiff in chief was contradicted in almost every material particular when he was cross examined by Mr. Williams for the defendants. To refer to any witness as being dishonest and a liar is something that any Court is loathe to do especially having to the limited knowledge, background and experience of the particular witness. Casting my mind back to the evidence given by

this plaintiff under cross examination, however, I am of the view that he was afforded every opportunity as the records will show to retract certain answers which he gave had he wished to do so but that such answers that he gave were given with the sole intention of deceiving and misleading the Court on the particular fact about which his knowledge had been called into question.

At the outset of his evidence the plaintiff swore on oath that he lived at Steer Town. Later on in his evidence he changed his account to one of residing at Mamme Bay. Although as Mr. Frankson contended it is possible for one person to have more than one residence in the light of what the plaintiff has said as to first "living at Steer Town all his life" and then later on in his evidence "living at Mamme Bay all his life", a simple matter just having to do with where he lived, I agree with Mr. Williams contention in this regard that:-

- i) What the plaintiff sought to testify about was an impossibility having regard to the two inconsistent answers he gave.
- ii) The real purpose of his later evidence was to seek to place himself at all material times as living on the Mamme Bay Property.

In this regard as to what was being canvassed by Mr. Frankson in opening the plaintiff's case that "the plaintiff would be strongly asserting that the period of twelve years from the year 1956 to 1968 was the period upon which he was relying to establish a possessory title", the plaintiff's evidence in this regard is of some significance in arriving at the truth.

Under examination in chief by Mr. Frankson the following dialogue emerged:-

"Q: In 1956 who was in possession of what you call your land?

A: I was in possession (witness pauses). Now say that it was my uncle Teddy and my mother who were in possession at that time. I used to be regularly on the land."

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Later on in chief the witness continued "during the time that I was in possession of the property nobody ever disturbed me." Further on he stated "when I say that I lived on the property at Mamme Bay I meant that I went to bed there and woke up there, farm there and went to sea from there for over twelve years, constant and continuous living."

Later on under cross examination the plaintiff admitted that in 1968 he removed to live at Steer Town.

So if the plaintiff is to be believed he was in open continuous and undisturbed possession jointly with his uncle Teddy Hinds and his mother Fearline Agatha Taylor during the period from 1956 to 1968. During which time he went to bed in the house that he built enjoying what Mr. Williams has chosen to refer to as "a life of total beaucolic existence." Was this account true? The following incontrovertible facts will indicate whether this in fact so.

Exhibits 5A and 5B in this matter relate to the notes of evidence and Judgment of the Civil action brought by the Beach Control Authority on behalf of certain fishermen of Steer Town in Saint Ann in 1960 against one George Farkas an American and the subsequent Judgment of the Court of Appeal in the same case. In this action the authority acting on behalf of these fishermen sought to obtain a right of way by way of prescription based upon a claim by the fishermen of a track or pathway leading through the Mamme Bay Property to the beach adjoining the said lands to the north and the corresponding right to the use of the said beach. In the Statement of Claim George Farkas was sued in the capacity as owner of the said property.

It is common ground that having regard to the position of these lands as to the respective boundaries of it and on the pleadings in this matter that these lands in dispute are in fact the same lands in respect of which the said action in 1960 was concerned with.

The Beach Control Authority was successful in their claim in the Resident Magistrates Court but this success was short lived. In the Court of Appeal, the appeal brought by the defendant

Farkas was successful and with it the fishermen of Steer Town lost their right to encroach unto the said lands or to use any portion of the said beach. The decision of the Court of Appeal was handed down in 1961.

Following the decision of the Court of Appeal the Attorneys acting on behalf of Farkas, Clinton Hart and Company took steps to have the presence of the fishermen removed from off the beach. In this regard their letters of 7th August, 1961 and 21st September, 1961 both addressed to the Secretary of the Beach Control Authority and tendered in evidence as Exhibits 9 and 11 in this matter is of no little significance in the light of what I now wish to state.

It may be convenient in order to effectively dispose of this aspect of the matter to also deal with an action brought against the plaintiff Derwent Taylor by George Farkas for trespass tried in April 1962 at Saint Ann's Bay Magistrate Court. This action related to a boat owned by the plaintiff which Farkas contended was being moored on the Mamme Bay lands. This action tried by His Honour Mr. A. M. Eden. George Farkas was also successful. The Judgment was handed down in May 1962. The defence of Derwent Taylor in that case is worthy of note. He there stated that the boat was not on Farkas' land but was on Crown lands.

The Notes of Evidence and the Judgment in this case were tendered in evidence in this matter as Exhibit 6.

As the plaintiff in this matter is the same defendant in the trespass case brought in 1962 and the property which he now claims by way of adverse possession asserting as he has now done to being there continuously and in particular from 1956 to 1968 it maybe pertinent to ask the question as to:-

1. Where was the plaintiff and his predecessors in title, more particular Teddy Hinds and Pearlina Agatha Taylor in 1960 and 1961 when the Beach Control Case brought on behalf of the fishermen of Steer

Town involving the claim of a prescriptive right to a right of way through the said Mamme Bay and the use of the said beach was being pursued in the Resident Magistrates Court for Saint Ann and in the Court of Appeal?

The action was brought against George Farkas as owner and had these persons including the plaintiff any semblance of a claim of any nature whatsoever to these lands would they have sat by idly without mentioning or asserting such a right? Dervent Taylor's defence that his boat not being on Farkas' land without more is certainly not keeping with someone who now seeks to contend that at that point in time he was along with his uncle and mother on the property.

Mr. Frankson has submitted that a reasonable interpretation to be put upon what the plaintiff was saying in ^{the} defence given in Court was that he was not on Farkas' land meaning he was on the land of his uncle Teddy Hinds and his mother Fearline Taylor. Can this be so in the light of the letter which he wrote later down in 1962, on 18th September, 1962? This letter written to the Secretary of the Beach Control Authority in Taylor's capacity as President of the Steer Town Fishing Group was one written by him following the unsuccessful action brought by the Beach Control Authority and the action brought against him by George Farkas in the boat case. The letter which is in all probability the most important piece of evidence in the case read as follows:-

"Dervent Taylor
Steer Town F.A.

18th September, 1962

St. Anns

Mr. Dugan
Beechwood Avenue
Beach Control Auty.

Sir

Good day I do hope when these few lines of mine reaches your greatfull helping hands they will find you still with a trying helping heart for us. Sir we are getting on very good with our fishing. But I see a little sign of trouble again. They trying to stop the fishermen from walking through the Hotel land and we

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have no other way to reach the Beach but from that point. Sir I am asking you to try your best for us we are tired of the prosecution. The only way to reach the Beach now is to go through Farkas' place for we dont have a right of way as yet.

Dear Sir,

We are willing to fight a strong battle with you until our victory is won. We are asking you sir to take up the matter for us. Right a way we only want a right of way. We all thank you in advance.

Sir
Yours truly
President Steer
Town fishing group
Dervent Taylor."

The question needs to be asked as to just how genuine is this present claim of the plaintiff in the light of what he stated in this letter. "The only way to reach the Beach now" and this was in September 1962, "is to go through Farkas' place."

The Secretary of the Beach Control Authority at the time was one Mr. Arthur Dujon, an Attorney At Law now practising law in Belize who came and gave evidence in this matter for the defendant.

Under cross examination, when asked whether there was a fishing group in Steer Town, the plaintiff referred to it as "a little thing going on down there, some sort of group meetings" but sought to avoid any mention of the fact that he was the chief spokesman and as President the leader of the fishermen's group there. He further denied at first writing the letter, Exhibit 4. He also denied ever seeing Mr. Dujon save and except on one occasion in Ocho Rios by the spot where the Turtle Towers Hotel is now situated. He swore on oath that he never saw him at Saint Anns Bay Court House during the trial of the case of trespass (the boat case) in April and May 1962, this despite the fact that Mr. Dujon, on the unchallenged evidence in the case, was the person who assisted the plaintiff by way of legal advice and assisted him to prepare his defence in the matter and also gave evidence on his behalf.

Mr. Dujon also testified to meeting with the plaintiff on at three or four other occasions. Despite the tendering of the Notes of Evidence in the boat case and the contents being put to the plaintiff in order to refresh his memory and to obtain his frank

admissions to certain facts, he continued to deny Mr. Dujon's presence at Court. He also denied for the most part the very proceedings taking place and even when retracting this position somewhat at times went to such extremes as to place himself at all material times during the proceedings outside of the Court, a fact which is clearly unrealistic and highly improbable unless he never attended the hearing, but with no other obvious intention than to mislead this Court as to the truth of the matter.

The effect of the letter (Exhibit 4) on the plaintiff's case is fatal as not only does it destroy the plaintiff's credibility and reliability as a witness of the truth but it stamps this account of his as living on the Mamme Bay Property with his family between 1956 to 1968 or certainly up to that point in time in 1962 as a concoction. It also has the effect of casting grave doubts on the credibility of the ^{rest of his} testimony.

The most classic example of the guile and crafty nature of the plaintiff, however, occurred in cross examination in relation to the contents of the letter (Exhibit 4). In seeking to find a way out of his obvious dilemma the plaintiff not content with being exposed as being the obvious liar that the contents of the letter made his present testimony out to be, stated that he was not aware that the problem of the Steer Town fishermen and their efforts to secure a right of way over the land to the Mamme Bay Property which he was now claiming. He now proceeded to state that he was not involved in the representations to the Beach Control Authority by the fishermen but was merely acting on their behalf "to keep them away from his property and his beach." He then sought to shift the lands owned by George Farkas to the west of the Arawak Hotel. When pressed further as to what he meant by the words in the letter (Exhibit 4) "we have no other way to reach the beach except through Farkas' place", he stated that "we" in the letter did not refer to him but to the fishermen.

There is a preponderance of evidence establishing the fact that George Farkas was in 1960's the reputed owner and the person

in undisputed possession of the Mamme Bay Property. This was the unchallenged evidence of both Mr. Jacob Taylor and Mr. Arthur Dujon. This was also the unchallenged testimony of Alastair Frederick Dougal, who represented Mr. Farkas as his agent, in the boat case for trespass brought against the plaintiff.

The effect of the case of the Beach Control Case brought against Farkas by way of a prescriptive claim to secure a right of way over the Mamme Bay Property and use of the beach in so far as the plaintiff was concerned, was to establish that up to 1961, when the Judgment of ^{the} ~~Court~~ ^{Appeal} of ~~Court~~ was delivered that it was George Farkas who was acknowledged as being the person in possession of the Mamme Bay Property and not the plaintiff and his family, who it is inconceivable to believe could have been unaware of this case. Being a matter involving fishermen from the very district from where they came the obvious notoriety of this case in the area would ^{have been} ~~be~~ apparent. To take the matter a step further although the plaintiff was not a party to the action brought by the Authority, I agree with the contention being advanced by Mr. Williams, that the action being one brought on behalf a special class of persons, the fishermen of Steer Town and the plaintiff being a fisherman of Steer Town, he is estopped from denying the possession of George Farkas and the fact of his reputed ownership of the Mamme Bay Property at the time of the dispute.

The credibility of the plaintiff is also further eroded when one examines his account in so far as he sought to deny any knowledge of George Farkas as ^{ever} ~~being~~ on the Mamme Bay Property. He recalls seeing him only twice, once over at the Arawak hotel compound, and once driving pass on the main road in a car. Having first admitted that he knew Alastair Frederick Dougal he later changed his testimony to deny any knowledge of this person who not only Mr. Jacob Taylor, but Mr. Arthur Dujon, Mr. Ernest Smatt and Mr. Stedley Finnock all knew as being the agent for the owners of the Mamme Bay Property during the 1960's and into the 1970's. Even assuming that the plaintiff's memory with the passage of time might have become somewhat dimmed, one would certainly

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expect him to remember Mr. Dougal giving evidence against him in the boat case for trespass in April 1962. at the Saint Anns Bay Court House.

When the plaintiff's evidence is further examined his account of his being on the Mamme Bay Property between 1956 and onwards into the 1970's, fishing and farming is highly improbable and cannot be believed as:-

- i) On the plaintiff's own account save and except for a short period between changing jobs from Reynolds Bauxite Company to Kaiser Bauxite Company between 1967 - 1968, he was engaged as a full-time Welder at both companies. It is therefore highly improbable that he could have been at one and the same time both a full-time farmer who according to the witness ^{someone} Adam Eubanks/who stated that he worked for Teddy Finds for fourteen years and after his death for the plaintiff for one year puts the plaintiff as being continuously on the property departing only for an hour or two each day, something which is a obvious impossibility having regard to the plaintiff's occupation as a full-time welder over most of the period from 1955 to 1975.

Following the Beach Control case the documentary evidence tendered in the case on behalf of the defendant shows 'a golden thread of evidence' which established the credibility of witnesses such as Mr. Arthur Dujon and Mr. Jacob Taylor. As the documentary evidence supports Mr. Taylor's evidence, and far from suggesting as Mr. Frankson had sought to contend in his closing submissions in so far as his assessment of Mr. Jacob Taylor's evidence was concerned the untruthful nature of his testimony, it was his untiring efforts in assisting the fishermen of Steer Town which continued to the point where had the Government of the day acted in 1975 to take up the offer made to it through the Beach Control Authority by George Farkas, his efforts would no doubt would have been crowned

with praise and adulation by the same fishermen.

In the long run when the plaintiff's evidence is examined the account which he has sought to give is when put to the test reveals a witness with a will and a determination to concoct and mislead which to my mind has been unrivalled and unequalled in all my long experience as a Judge. Mr. Williams in his lengthy closing submissions has summed up the plaintiff's performance in the witness box as being one in which "seldom if ever has a Court ever come across such a witness. His demeanour was evasive and shifty and his evidence was shot through with contradictions and deliberate falsehoods which were so barefaced as to warrant severe comment by the Court in its Judgment." When one resorted as I have done over and over again in carefully going through the evidence presented by the plaintiff and his witnesses in so far as they too have sought to give credence to his evidence of being with his family on the Mamme Bay Property continuously unmolested from before 1956 and onwards to the present, this evidence in the light of the incontrovertible and unchallenged testimony of the witnesses called by the defendant whose testimony I accept as truthful, supported as they were as well as by the weight of the documentary evidence such as:-

1. The proceedings in Beach Control Authority vs. Farkas case (Exhibits 5A and 5B).
2. The boat case of Trespass brought on Farkas's behalf against the plaintiff (Exhibit 6).
3. The letter from Clinton Hart and Company to the Beach Control Authority dated August 7, 1961 (Exhibit 9).
4. The letter from Clinton Hart and Company to the Beach Control Authority dated September 21, 1961 (Exhibit 11).
5. Correspondence between Clinton Hart and Company and the Beach Control Authority and the Ministry responsible for the subject of Beach Control re negotiations to establish a Public Beach on Mamme Bay lands (Exhibits 13 - 20).
6. The unchallenged evidence of the recorded minutes of the meeting held at the Beach Control Authority office on November 8, 1972

involving the plaintiff as president of the Steer Town fishermens Group and Lorenzo Brown and Mr. Jacob Taylor in which certain representations were made on behalf of the fishermen of Steer Town requesting Mr. Farkas to improve the alternate beach site on the property.

It was further admitted by the plaintiff under cross examination that it was George Farkas was the person responsible for sending the bulldozer on the Mamme Bay Property in 1969 in order to prepare the alternate beach site for the fishermen. This act and the subsequent meeting at the Beach Control Authority in so far as what it sought to achieve through the Authority of behalf of the fishermen from Mr. Farkas as to the probative nature of this evidence in so far as it affected the plaintiff's bona fides, clearly established, that even up to the time of this meeting, the plaintiff far from being in open and continuous possession of the lands in dispute, was not at that point in time advancing any claim to these lands. The plaintiff's evidence under cross examination, after he had earlier denied any knowledge of ever talking with Jacob Taylor or meeting with him, later admitted under cross examination, of visiting the Beach Control Authority offices in his capacity as President of the Steer Town Fishing Group. In another evasive display, having said that 'he took along' Lorenzo Brown as company beacuse Lorenzo Brown was working with him on the Mamme Bay Property he sought to contend that he left Brown in the meeting with Mr. Taylor and went outside and took very little part in the discussions. The fact of the matter was that, as Mr. Jacob Taylor has testified, far from working with plaintiff at that point in time, Lorenzo Brown was a fisherman who went along to meeting in his capacity as such. Derwent Taylor is the same person, who the unchallenged evidence of Mr. Jacob Taylor was that he was the most articulate of the group of fishermen, hence, he was selected to be their President and the plaintiff, himself, has said that he was sorry for the fishermen because they were for the most part illiterate. It would be highly

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improbable, therefore, that he would have been turning his back on the meeting and leaving Brown to handle the discussions all by himself. This attempt by the plaintiff in seeking to remove himself from the discussions at the meeting can be seen in the light of the fact that he, having sought to shift Mr. Farkas' land to the west of the hotel, and the negotiations relating to the alternative beach site, being a site on Farkas' property to the east of the hotel property, such an admission on his part would have further eroded any evidence on his part seeking to establish possession by him and his family at the date of the meeting at Beach Control Authority on November 8, 1972.

The defendants through the evidence of both Ernest Smatt and Mr. Jacob Taylor have testified to seeing a cultivation commencing in 1973 and in this regard the evidence of the plaintiff's ^{both} witness Superintendent Cross and Superintendent Holness bear out this evidence.

In so far, therefore, as the weight of the evidence adduced by the defendant including the documentary evidence among which the letter (Exhibit 4) is of paramount importance in giving the lie to the plaintiff's account to being with his family in an open ^{the} continuous and notorious possession of Mamme Bay Property from before ¹⁹⁵⁶ and onwards, any evidence adduced by the other supporting ^{who} witnesses such as Vannazette Warren, sought to place the plaintiff on the property farming from 1957 to 1958 and seeing him there in the daytime hours, a most improbable fact having regard to the plaintiff's full-time employment as a welder with Reynolds Bauxite Company from 1955 to 1967. The evidence of the two Walters, Trevor Walters who met the plaintiff for the first time in 1968 at Kaiser Bauxite Company at Discovery Bay and who went to the property and saw the plaintiff cultivating the lands there from that time and his nephew the Restaurateur who first saw plaintiff on the property cultivating in 1970.

In so far as the evidence of the accounts of the supporting witnesses for the plaintiff differs from the evidence contained in the documents tendered in this matter, I accept the documentary evidence preferring in this regard to rely upon the contemporaneous and permanent record in so far as it was faithfully recorded or sought to establish a particular factual situation at the time that the document was made rather than to rely on memory of someone who with the long passage of time became crowded out by other events that have superceded the facts which the particular witnesses have sought to relate. Moreover, in so far as most of these witnesses called by the plaintiff have sought to testify positively to certain facts therefore which are contradicted by the proven documentary evidence such as Exhibits 4, 5A, 5B and 6 their credibility can be seen in no better light than that of the plaintiff. They either stand or fall together and in so far as the unchallenged documentary evidence such as Exhibits 4, 5 and 6 has the effect of discrediting their testimony on a particular fact it clearly has the added effect of casting doubt on the rest of their testimony.

In this area, the Exhibits previously referred to and in particular, the letter which was the plaintiff's own document in so far as they conflict with the testimony of:-

1. Adam Eubanks:-who placed the plaintiff and Teddy Hinds as being on the property from 1960 to 1975 when he left there to cultivate for himself, but according to him, not leaving the property for more than an hour or two each day.
2. Carol Freemantle the cousin of the plaintiff, who sought by his testimony to place the entire Hinds family including the plaintiff on the property from in the 1930's up to the present date.
3. Alphonso Hinds whose evidence seeks to establish "the golden thread of possession" by the plaintiff and his predecessors in title going back to 1913, while being at the same time totally lacking in any knowledge about the first registered owner of the property Edward Carol Seymour Pratt, who is it

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the unchallenged evidence in the case was a big landowner in ^{owning} the area / / property from Roaring River in the east to Drax Hall in the west and which area would have encompassed ^{which} the Mamme Bay Property/was also known by the name of "Bridge Pasture" and whose Great House was situated just opposite to the Mamme Bay lands.

- 4. Lincoln Gabbidon who first went to the property in 1965 and saw the plaintiff there cultivating and also saw Trevor Walter and the plaintiff patrolling the property from that time. It is worthy of note that Trevor Walter on his own evidenc did not go to the property until 1968.
- 5. John Wilberforce Panton who spoke to the plaintiff and went to the cultivation in 1961 and started buying produce from the plaintiff from that time and continued to do so up to 1972. He saw the zinc house (shed) there from 1961.

When the evidence of the plaintiff's supporting witnesses, whom I have referred to are examined, they struck me as being for the most part as bearing the stamp of witnesses of convenience.

In this regard, for example, it is difficult to conceive how Superintendent Reginald Cross could have forgotten an event as important as the big meeting held at the Mamme Bay Beach on November 1, 1972 involving as it did, the two Ministers of Government Honourable Mr. Wills O. Isaacs also the Member of Parliament for the area and Honourable Mr. Allan Isaacs.

As Mr. Williams has in my view correctly assessed their accounts "they all came with their respective stories neatly assembled and refused adamantly to venture beyond the parameters of those of those stories." In this regard in so far as witnesses such as Eubanks, who for some strange reason never saw any fishermen using the beach, a fact which having regard to the continuing problem of the Steer Town fishermen going back to the 1950's which matter is still to be resolved, and in so far as these witnesses have sought to place the plaintiff on the property as a full-time farmer during the period before 1975, they are

clearly discredited, as the plaintiff has himself testified that he worked as a full-time welder for a period of twenty years, between 1955 to 1975 save and except for a short time in 1967 - 1968 between changing jobs with two Bauxite companies in the area. It may be repeated for emphasis that he could not be both a full-time farmer, as the supporting witnesses have sought to testify, and a full-time welder at one and the same time.

Moreover, in so far as the plaintiff himself has testified that as a full-time welder they worked him hard, that could have been a physical impossibility. It is not being disputed by the defence, however, that he was a part-time fisherman.

Having regard therefore to the fact that the whole structure of the plaintiff's case when examined has in the light of his demeanour, his credibility in my opinion has been destroyed to such an extent as to render his account as not worthy of belief. There is, therefore, nothing remaining in my view of this account that needs to be looked at. In so far as his supporting witnesses are concerned, as I have stated before, in as much as the credibility of the plaintiff has been shaken and destroyed their accounts in so far as they sought to support the plaintiff's story and to place him and his family on the Mamme Bay property at a point in time which was totally in conflict and controverted by the effect of the documentary evidence tendered by the defendants and the weight of the other evidence to the contrary their evidence can be seen in no better light than that of the plaintiff.

I accordingly reject the claim being advanced by the plaintiff as being false and concocted.

As it is not being disputed by the defendants that the plaintiff did commence cultivating a portion of the property, which on the evidence amounted to about two acres and this from 1973, it is unnecessary to examine the rest of the evidence in so far as it relates to the nature of user by the plaintiff from that point in time as to do so would be an exercise in futility, as this action was filed in 1983, and even if his acts of possession were of a manner which if continued in would have satisfied Section 3 of the

Limitation Act the section does not apply as the period of twelve years uninterrupted possession required to satisfy the Section would not have been met. In this regard therefore, the several authorities being referred to by Learned Counsel on both sides in so far as they sought to deal with the proper interpretation to be placed upon the relevant sections of the Limitation Act and the Torrens System of Registration on the one hand and the nature of the user required to establish adverse possession sufficient to satisfy Section 3 of the Limitation Act; all these considerations are no longer relevant and now become in my view of only passing academic interest.

It would not, however, to be out of place again to acknowledge with gratitude and admiration the obvious care with which the arguments were compiled and presented, a matter which in the long run has served to shorten to some extent what has been a very lengthy trial.

In the light of the reasons which I have attempted to set out therefore, despite the obvious imperfections which I am sure still remains there must be:-

1. Judgment entered on the claim for the defendants with costs to be agreed or taxed.
2. Judgment is also entered for the defendants on the counter claim for Trespass \$5,000 with costs to be agreed or taxed.
3. The Interlocutory Injunction granted in favour of the plaintiff pursuant to the Judgment of Mr. Justice Vanderpump on 13th June, 1984 is hereby discharged forthwith
4. An Injunction is hereby granted to the defendants in terms of the Counter claim.
5. Ordered that the caveat at present lodged by the plaintiff Derwent Taylor against the defendant, registered title at Volume 1166 Folio 762 be removed forthwith.

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Mr. Williams asks for an order of possession to be made.
Court grants order for possession to take effect forthwith.

Mrs. Forte requesting the usual stay of execution of
six weeks. Court-Stay of execution granted for six weeks.

D.O. Bingham
Puisne Judge
July 31, 1986

11.

for the plaintiff in respect to this issue is totally misconceived and is based upon two major premises both of which are false as:-

- a) the contention that the Mortmain and Charitable Uses Act applied in Jamaica before its repeal is wrong as this Act was never received in Jamaica. In support reference is made to page 1419 of Supreme Court Decisions of Jamaica 1774 - 1923 by Mr. Justice Stephen where a statement to that effect appears.
- b) That Section 345 - 347 of the Companies Act of Jamaica was substituted for the provisions of Section 1 of the Mortmain and Charitable Uses Act is also fallacious for the same reasons as stated before.

In the Attorney General vs. Farsons and Others (1956) I.A.E.R. 65 a decision of the House of Lords in England, the Morelle Cases, based upon the principle of automatic forfeiture for a breach of Part 10 of the English Act, which section is in pari materia with the local act and relied upon by Mr. Frankson in his opening submissions, were overruled. The construction of Part 10 of the English Companies Act of 1948 was examined in this case as to the effect of non-compliance.

The House of Lords held that forfeiture was not automatic as the Crown had a discretionary right to order forfeiture and unless and until that right was exercised the corporation would retain ownership of the property.

The defendant have placed further reliance upon the other following authorities:-

- c) Third Edition Halsburys Laws of England, Volume 9 paragraph 141, 144, 145.
- d) Principles of Company Law by Pennington 1959 page 606 paragraph.

8.

3. As to the allegations set out in the Counter Claim paragraphs 1 - 12 of the Statement of Claim is repeated and it is now denied by the plaintiff that he or his servants or agents trespassed upon the lands in dispute or intimidated the defendant's servants and/or agents.
4. It is repeated at paragraph 4 by the plaintiff that he and his predecessors in title have been the true owners of the said lands or in the alternative have acquired a title thereto by reason of their free, open and undisturbed possession of the said lands as set out in the Statement of Claim."

Arising from the pleadings which I have fully and deliberately set out in extenso it is common ground that three main issues arose for determination namely:-

1. What is the proper construction to be put upon Section 346 and 347 of the Companies Act in so far as these Sections of the transfer and registration of the Title to the said lands? Further, assuming that the said transfer was in breach of Sections 346 and 347 of the Companies Act, did the transaction affect the passing of the fee simple to the purchasers Bruce Realty Company of Florida?
2. Was the sale, transfer and registration of title to the said lands rendered non-effectual because of the non-compliance of Bruce Realty Company of Florida with Section 33 of the Exchange Control Act?
3. Whether the plaintiff and/or his predecessors in title have acquired title to the land by virtue of adverse possession?

In so far as to what may conveniently be referred to as the Company Law point is concerned, Mr. Frankson for the plaintiff submitted that:-

- i) Except under the provisions of the Companies Act a foreign corporation is incapable of holding lands in Jamaica.
- ii) That the provisions of the Mortmain and Charitable Uses Act of 1888 apply in Jamaica as it did in