

1,1968

IN THE PRIVY COUNCIL

No. 40 of 1964.

ON APPEAL

FROM THE SUPREME COURT OF THE  
BAHAMA ISLANDS.

1963 No. 391

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B E T W E E N

EQUITY SIDE

IN THE MATTER of the Quieting Titles Act 1959

- and -

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

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
16 JAN 1969  
25 RUSSELL SQUARE  
LONDON, W.C.1.

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- and -

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IN THE MATTER of the Petition of Paradise Beach  
and Transportation Company  
Limited, Beach Head Limited and  
Eleanor Parroti, Joycelyn Moxey,  
Mizpah Burrows and Frederick  
Burrows

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CASE FOR RESPONDENTS

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1. This is an appeal from the Judgment of  
Seare J. in the Supreme Court of the Bahamas  
Equity Side dismissing the Petition of the  
Appellants by which Petition the Appellants  
were seeking a declaration under the Quieting  
Titles Act 1959 in respect of an undivided 17/21

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interest in a tract of land of about 32½ acres forming part of Lot Number 8 at Hog Island now known as Paradise Island.

2. It is common ground between the parties that the entirety of the land in dispute was vested in John Alexander Burrows (hereinafter called "the Testator") on his death on the 23rd October 1913 and that such land devolved under the terms of his Will dated the 22nd November 1912.

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3. By his said Will the Testator devised his real estate as to one third to his wife Elizabeth who died on the 2nd May 1918 for life and after her death he devised the one third to his grandsons Percy Webb and Clarence Asgin as tenants in common and the other two thirds of his real estate he devised to seven of his children namely Nehemiah Burrows Joseph Burrows Roseliza E. Price Victoria L. Hanna Eliza B. Hall Veronica L. Murray and Miriam A. Stuart to be held by them as tenants in common.

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Page 120  
Line 10

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4. The said grandchildren and children are now all dead. The Respondent Cyril Price Robinson was joined in these proceedings as a representative of the devisees of Victoria Hanna and the Respondents Beatrice Louise Lightbourn and Edith Augusta Price are the devisees of Roseliza Price.

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5. The learned Judge considered the devolution of the interests of each of the above-mentioned tenants in common and the Respondents accept his conclusion on such devolution which he summarised as follows:-

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Page 30  
Line 8

The Appellant Paradise Beach and  
Transportation Co. Ltd. 35/105 Shares

The Appellant Beach Head Limited 5/105 Shares

The four Appellant children of  
John Burrows (Cousin John) 44/210) 45/105 Shares 35

The Crown 46/210)

The Respondent Cyril Price Robinson  
as a representative of the devisees  
of Victoria Hanna 10/105 Shares 40

The Respondents Beatrice Louise  
Lightbourn and Edith Augusta Price  
as devisees of Roseliza Price 10/105 Shares  
as tenants in common.

5 6. In addition to 20/105 Shares to which are entitled under the documentary title the Respondents claim the entirety of the land by virtue of long possession of themselves and their respective predecessors in title namely Victoria Hanna and Roseliza Price.

10 7. Victoria Hanna and Roseliza Price were farming the disputed land before the death of the Testator in 1913 with his permission and thereafter they continued in possession of the land for their respective lives and their successors in title have since remained in possession.

Page 49  
Line 7

15 8. The Respondents' primary contention is that none of the other devisees under the Testator's Will ever entered into possession of the disputed land and accordingly that their respective rights to make an entry upon or to bring an action to recover the disputed land became barred after the expiration of 20 years from the death of the Testator.

25 9. In support of this contention the Respondents rely upon the Real Property Limitation (No. 1) Act 1833 (Cap. 216) and in particular the Respondents say that upon the true construction of Section 3 of the Act of 1833 as none of such other devisees under the Testator's Will ever entered into possession time commenced to run against them from the death of the Testator and expired in 1933.

35 10. A claim was made before the learned Judge that Nehemiah Burrows one of the devisees under the Testator's Will in fact entered into possession of the disputed land. The Respondents say that the learned Judge rightly found on the evidence before him that Nehemiah Burrows never entered into possession of the disputed land.

Page 45  
Line 9

45 11. If contrary to the contention of the Respondents Nehemiah Burrows did enter into possession of the disputed land then the Respondents say upon the true construction of the above-mentioned Acts

	time in respect of his share commenced to run on his death on the 24th September 1917 and that as none of the devisees under the Will of Nehemiah Burrows ever entered into possession the right to make an entry upon and the right to bring an action to recover the disputed land in respect of his share therein became barred in 1937.	5
Page 22 Line 39	12. Upon the documentary title found by the learned Judge John Burrows (Cousin John) the eldest son of Nehemiah Burrows took as one of seven joint tenants under the Will of his father Nehemiah Burrows his father's share in the disputed land and as heir-at-law the share of the grandson Percy Webb who died intestate in 1923.	10  15
Page 46 Line 27	13. A further claim was made before the learned Judge that John Burrows (Cousin John) entered into possession of the disputed land but the Respondents say that the learned Judge rightly found on the evidence before him that John Burrows (Cousin John) never entered into possession of the disputed land.	20
Page 47 Line 9 Page 48 Line 20	14. If contrary to the contention of the Respondents John Burrows (Cousin John) did enter into possession of the disputed land then the Respondents say upon the true construction of the above-mentioned Acts time in respect (a) of his interest as a joint tenant under the Will of his father Nehemiah Burrows and (b) of his interest in the share of Percy Webb as his heir-at-law commenced to run from his death on the 17th July 1939.	25  30
Page 48 Line 27	15. None of the joint tenants under the Will of Nehemiah Burrows who survived John Burrows (Cousin John) ever entered into possession of the disputed land and accordingly their respective rights to recover the disputed land became barred in 1959.	35  40
Page 124	16. The Appellants Eleanor Parroti, Mizpah Burrows, Frederick Burrows and Joycelyn Moxey together with John Burrows Junior who has since died became entitled under the provisions of the Will of John Burrows (Cousin John) to the interest in the disputed land taken by John Burrows as heir-at-law of the grandson Percy Webb but none of such persons entered	45

into possession of the disputed land and accordingly their respective rights to recover the disputed land also became barred in 1959.

5           17. For these reasons and upon the grounds  
stated in the reasons for the Judgment of  
Seare J. it will be contended on behalf of  
the Respondents that the Judgment dismissing  
10           the Appellants' Petition is right and should  
be upheld.

KENNETH W. RUBIN,

23/6/67.

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF  
THE BAHAMA ISLANDS.

Re: The Quieting Titles Act 1959

- and -

Re: 76/105th Shares in certain  
land in Hog Island

- and -

Re: The Petition of Paradise  
Beach & Transportation Ltd  
and Others

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CASE FOR RESPONDENTS

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Bulcraig & Davis,  
Amberley House,  
Norfolk Street,  
W.C.2.